REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NO. 9726**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN** (*Special Member*), *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 2 2 2022 3:30 PM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Reconsideration** filed through registered mail on July 22, 2020, and received by the Court on August 26, 2020, with respondent's **Opposition** filed on September 25, 2020; and,

2. petitioner's **Supplement to the Motion for Reconsideration** filed via licensed private courier on July 15, 2021, and received by this Court on July 22, 2021, without respondent's comment.

In the Court's Decision dated June 5, 2020, petitioner's claim for refund of excess and unutilized input value-added tax (VAT) attributable to zero-rated or effectively zero-rated sales for the second (2^{nd}) to fourth (4^{th}) quarters of taxable year 2015 in the total amount of ₱29,875,350.26, was denied for failing to provide a reconciliation of its reported zero-rated sales vis-à-vis schedule of inward remittance, the dispositive portion of which states:

> "**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**."

Undaunted, petitioner sought the reopening the case to recall the court-commissioned independent certified public accountant (ICPA), Mr. Ericson D. Tadeja, for the purpose of clarifying his ICPA Report that petitioner's export sales were indeed zero-rated. In the Resolution dated January 11, 2021,[1] the Court granted petitioner's plea and, as a consequence, held in abeyance the resolution of the present Motion for Reconsideration.

Upon completion of the ICPA's testimony, after cross and re-direct examinations, the Court then submitted the case for resolution.[2]

Now, in its Motion for Reconsideration, petitioner primarily claims that it was able to prove the existence of its zero-rated sales with sufficient documentary evidence, contrary to the Court's conclusion. Although petitioner agrees with the Court that it "was unable to trace the sales invoices to the certification of inward remittances," it explains that the invoices could not be traced to the remittances because the foreign currency remittances received during taxable (TY) 2015 do not necessarily represent payments for invoices issued in 2015. Petitioner asserts that it is erroneous for the Court to match the foreign remittances received during the 2nd to 4th quarters of TY 2015 with the export sales for the same period because foreign customers hardly make payments for every invoices received. Simply stated, invoices are not paid in the same period that they are issued.

Petitioner also maintains that for purposes of VAT zero-rating of export sale of goods, it is not necessary that the foreign remittances must actually correspond to the zero-rated sales for the same period because in sales of goods, the VAT, whether 12% or 0%, is determined at the time the invoice is issued, not when it is paid. Likewise, export sales do not always have to be paid in foreign currency to be considered zero-rated such as those made under Executive Order (EO) No. 226 otherwise known as *"The Omnibus Investment Code"*. Petitioner further states that the fundamental principle underlying the zero-rating of VAT on exports is not the payment of foreign currency

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[1] Docket (Vol. II), pp. 646 to 652.
[2] *Minutes of the Hearing* held on July 5, 2021 and *Order* dated July 5, 2021.

but the very nature of the VAT itself as a consumption tax and the destination principle imbedded in our VAT system.

Lastly, petitioner avers that the reconciliation required by the Court was for the purpose of ascertaining the compliance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). As such, petitioner insists that it had submitted the reconciliations to the BIR as evidenced by Exhibit "P-20",[3] and that these reconciliations also form part as respondent's evidence since they are contained in the BIR Records that were admitted as evidence for respondent.

While, in the Supplement to the Motion, petitioner reiterates that as far as the respondent is concerned, there is no dispute that the zero-rated sales reported in its VAT returns and examined during the administrative review of its claim for refund, were all properly supported and accounted for. Petitioner therefore submits that the absence of any dispute with respect to petitioner's zero-rated sales, this Court is without jurisdiction to discuss and change the same.

Also, petitioner claims that the ICPA was able to clarify that his non-submission of reconciliation of sales and inward remittances was not due to his failure to reconcile these data, but because he performed a reconciliation of the sales and invoices to test the reasonableness and reliability of petitioner's own reconciliation and eventually found it to be reliable. In fact, when asked whether petitioner's export sales are paid for in foreign currency, the ICPA reiterated that *"Yes. Under prevailing accounting and auditing standards, I can reasonably conclude that petitioner's zero-rated sales are paid for in foreign currency and remitted to its bank accounts. We stand by our [ICPA] Report."*[4] Correspondingly, the ICPA found it unnecessary to submit another reconciliation.

On the other hand, in his Opposition, respondent is primarily against only in the re-opening of the case to recall the ICPA. He claims that the additional evidence sought to be presented by petitioner is not newly discovered nor were omitted through inadvertence or palpable mistake, neither will it be presented to correct evidence previously offered. In fact, the only purpose of which is to afford petitioner full opportunity to present its case. Lastly, respondent insists that since tax

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[3] "Checklist of Mandatory Requirements for claims for VAT Credit/Refund," stamped received by ELTAD I on June 30, 2017.

[4] Question No. 7, *Judicial Affidavit In Lieu of Direct Examination of Mr. Ericson D. Tadeja* dated July 21, 2020, marked as Exhibits "P-27" and "P-27-A".

refunds are construed strictly against the claimant, it is therefore incumbent upon petitioner to prove its entitlement thereto and failure to do so is fatal to its claim.

After due consideration, the Court finds both petitioner's Motion for Reconsideration and Supplement to the Motion for Reconsideration bereft of merit

At the onset, the Court does not agree with petitioner that absence of any dispute with respect to its zero-rated sales, this Court is without jurisdiction to litigate the same since only disputed issues raised on the Petition for Review should be litigated. Verily, Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> "**RULE 14**
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. - *Rendition of judgment-* xxx
>
> In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Based on the above provision, this Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[5]

Also, cases filed before this Court are litigated *de novo*. For the Court to determine whether an administrative claim should have been granted in the first place, this entails a *review* of the very same documents which were submitted to the BIR in support of the said administrative claim. The Court cannot simply assume that the documents submitted before this Court are the very same documents presented at the administrative level. Further, no value is given to documentary evidence submitted in the BIR unless it is formally offered in this Court with a statement of the purpose why it is being offered.[6]

As such, the Court cannot acquiesce to petitioner's argument that since the BIR Records form part of the records of this case and

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[5] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[6] *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 206079-80 and 206309, January 17, 2018; *See also* Section 34, Rule 132 of the Rules of Court.

also as an evidence of respondent, the reconciliation schedule therein should be sufficient to prove respondent's admission that petitioners zero-rated sales were all fully supported was not made arbitrarily or by mistake.

With regard to petitioner's claim that it is already sufficient that the ICPA found it unnecessary to submit another reconciliation since petitioner's own reconciliation of sales and inward remittances was already deemed reliable, the Court is not convinced.

Perforce, the ICPA report is only persuasive in nature and not conclusive upon the Court. The ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's petition. Thus, the ultimate determination of the merits or probative value of such report belongs to the Court. Section 3, Rule 13 of the RRCTA, relevantly provides that:

> "SEC. 3. Findings of independent CPA.– The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability, of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis supplied)*

Nonetheless, for orderly disposition of the present case, this Court shall discuss the explanation in the additional testimonial and documentary evidence presented by the court commissioned ICPA to prove that petitioner's export sales were indeed zero-rated.

Again, to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with pursuant to Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

1. The taxpayer is VAT-registered;

2. The claim for refund was filed within the prescriptive period both in the administrative and judicial levels;

3. There must be zero-rated or effectively zero-rated sales;

4. The input taxes were incurred or paid;

5. The input taxes due or paid were attributable to zero-rated or effectively zero-rated sales.

6. The input taxes were not applied against any output VAT liability.

In the assailed Decision, the Court ruled that the first two requisites were met by petitioner. However, with regard to the *third* requisite, petitioner failed to provide complete, adequate, and accurate factual substantiation. The Court held that upon examination of the evidence presented, petitioner failed to fulfill an *essential* requisite under the law, particularly, the provision of Section 106(A)(2)(a)(1), (2) and (b) which requires that the taxpayer be engaged in zero-rated or effectively zero-rated sales and such sales were paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, for the successful prosecution of the present refund claim.

Similarly, Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides that in order for an export sale to qualify as zero-rated, the following conditions must be present:

a. the sale was made by a VAT registered-person;

b. there was sale and actual shipment of goods from the Philippines to a foreign country;

c. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and,

d. the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary thereto, Section 113(A) and (B) of the same Code, and Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, provide that any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of essential documents, namely: *gr*

i. Sales Invoice as proof of sale of goods;

ii. The Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and,

iii. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Simply put, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

As held in the assailed Decision, petitioner satisfactorily complied with the *first* and *second* types of essential documents stated above.

In its Quarterly VAT Returns for the 2nd to 4th quarters of taxable year 2015, [7] Petitioner reported total sales amounting to ₱8,750,685,509.15, broken down as follows:

Type of Sales	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**TOTAL**
VATable	₱ 9,189,199.54	₱ 5,210,586.17	₱ 1,735,539.57	₱ 16,135,325.28
Sales to Government	-	-	3,099,241.07	3,099,241.07
Zero-rated	**2,871,141,286.20**	**2,895,808,392.15**	**2,960,233,304.45**	**8,727,182,982.80**
Exempt	1,184,370.00	1,752,170.00	1,331,420.00	4,267,960.00
Total	**₱2,881,514,855.74**	**₱2,902,771,148.32**	**₱2,966,399,505.09**	**₱8,750,685,509.15**

As further detailed in the Schedule of Zero Rated Sales, [8] petitioner's zero-rated sales amounting to ₱8,727,182,982.80 were derived from its export sales to the following customers, *viz.*:

Customer	**Sales in US$**	**Sales in Php**
Cliveden Trading AG	[14,516,034.62]	661,294,745.64
Louis Dreyfus Commodities Metals Suisse S.A.	7,000,443.10	328,565,796.90
MRI Trading AG	152,833,830.33	7,014,788,041.94

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[7] Exhibits "P-5", "P-6", and "P-7", Docket (Vol. I), pp. 399 to 401.
[8] Annex B.1-ICPA; Exhibit "P-26", p. 10.

Samsung C & T Hongkong Ltd.	7,815,004.91	366,680,030.38
Trafigura Pte. Ltd.	7,892,023.74	355,854,367.94
Total	**190,057,336.70**	**8,727,182,982.80**

The above reported zero-rated sales were duly supported by the corresponding sales invoices,[9] bills of lading (BOL),[10] and Bureau of Customs (BOC) export declaration documents[11] to support its zero-rated export sales.[12]

As for the *third* type of essential document, *i.e.*, the sale was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, petitioner presented the Certification issued by BDO Unibank, Inc.[13] The bank certification shows that the payment is in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

However, as also held in the assailed Decision, it is equally important that the foreign currency remittances pertain or actually correspond to the zero-rated sales for the period covered by the claim.

Thus, to ascertain whether the foreign currency remittances pertain or actually correspond to the reported zero-rated sales of ₱8,727,182,982.80, the Court scrutinized the Schedule of Inward Remittances[14] vis-à-vis the Certification issued by BDO Unibank, Inc.[15] Upon verification, the Court finds that out of the zero-rated sales of US$190,157,336.70 or ₱8,727,182,982.80, the amount of US$50,415,293.71 or ₱2,336,796,665.77 cannot be traced with certainty to the inward remittances per bank certifications.[16]

In fine, out of the reported zero-rated sales of ₱8,727,182,982.80, only the amount of ₱6,390,386,317.03 (₱8,727,182,982.80 less ₱2,336,796,665.77) qualifies as zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

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[9] Exhibits "P-10.1-A-ICPA" to "P-10.1-BL-ICPA".
[10] Exhibits "P-12.1-A-ICPA" to "P-12.1-BL-ICPA".
[11] Exhibits "P-12.2-A-ICPA" to "P-12.2-BL-ICPA".
[12] Exhibit "P-26" (Annexes B.1-ICPA, B.4-ICPA, and B.5-ICP).
[13] Exhibits "P-12.3-A-ICPA" to "P12.3-E-ICPA".
[14] Exhibit "P-31", Docket – Vol. II.
[15] Exhibits "P-12.3-A-ICPA" to "P12.3-E-ICPA".
[16] Attached hereto as "Annex A".

Now, considering that Petitioner had VAT zero-rated sales in the total amount of **₱6,390,386,317.03** for the subject period of claim, the Court shall now proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

In its, Quarterly VAT Returns for the 2nd, 3rd, and 4th quarters of taxable year 2015, [17] petitioner declared total input VAT of ₱148,145,746.03 from its current domestic purchases and importation of goods and services and input VAT on purchases of capital goods from previous quarters, as shown below:

	2nd Quarter TY 2015	**3rd Quarter TY 2015**	**4th Quarter TY 2015**	**TOTAL**
	"P-5"	**"P-6"**	**"P-7"**	
Input Tax Due on Capital Goods exceeding ₱1M				
Deferred from previous quarter	₱ 223,626,480.99	₱ 207,642,999.46	₱ 187,766,895.61	₱ 619,036,376.06
Purchase of Capital Goods Exceeding ₱1M	5,036,642.00	140,892.86	430,903.00	5,608,437.86
Total	₱ 228,663,122.99	₱ 207,783,892.32	₱ 188,197,798.61	₱ 624,644,813.92
Less: Deferred for the succeeding period	207,642,999.46	187,766,895.61	168,885,677.83	564,295,572.90
Amortized input tax on capital goods exceeding ₱1M	**₱21,020,123.53**	**₱20,016,996.71**	**₱19,312,120.78**	**₱ 60,349,241.02**
Input Tax Due on Current Purchases of Goods other than Capital Goods				-
Input tax on domestic purchases of goods other than capital goods	₱ 343,694.19	₱ 378,207.37	₱ 292,381.83	₱ 1,014,283.39
Input Tax Paid on:				-
Importation of goods other than capital goods	37,323,702.00	20,636,099.00	24,600,212.00	82,560,013.00
Input tax on domestic purchases of services	980,671.19	1,039,875.26	1,943,004.45	3,963,550.90
Services Rendered by Non-Residents	-	104,826.99	153,830.73	258,657.72
Sub-total	₱ 38,304,373.19	₱ 21,780,801.25	₱ 26,697,047.18	₱ 86,782,221.62
Total input VAT during the period	**₱59,668,190.91**	**₱42,176,005.33**	**₱46,301,549.79**	**₱148,145,746.03**

Out of the reported total input VAT of ₱148,145,746.03, petitioner claims for refund the excess input VAT amount of **₱29,875,350.26**[18] after deducting the following: (1) the amount of ₱115,962,246.75 which was already granted for refund by *jc*

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[17] Exhibits "P-5", "P-6", and "P-7", Docket, pp. 399 to 401.
[18] As per the *Amended Petition for Review*, Docket, pp. 450-463.

respondent; [19] and, (2) the output VAT due amounting to ₱2,308,148.02.[20]

However, before proceeding with the verification of petitioner's input VAT incurred or paid, the Court shall first address petitioner's claim that export sales do not always have to be paid in foreign currency to be considered zero-rated such as those made under EO No. 226, otherwise known as *"The Omnibus Investment Code"* and the implication of being a Board of Investment (BOI)-registered entity by petitioner with respect to its input VAT on domestic purchases.

Pursuant to Revenue Memorandum Order (RMO) No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of the said RMO, to wit:

> "SECTION.3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and,
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon

[19] Exhibit "R-4", BIR Records, Folder 1 of 24, p. 500.
[20] Total taxable sales amounting to ₱16,135,325.28 multiplied by 12%.

> in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, record shows that petitioner was issued a Certification[21] by the BOI attesting to the fact that petitioner is a BOI registered entity with 100% exports for the year 2015. Under Section 3.4 of RMO 9-00, the said certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner on the year 2013. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund from the said domestic purchases.

As further illustrated in the case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,*[22] the Supreme Court affirmed the ruling of this Court *En Banc* in stating that the refund-claimant's recourse is not against the government but against the seller who shifted the output VAT, thus:

> "As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, **if the petitioner had paid the input VAT, the CTA was correct in holding that the Petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to gc

[21] Exhibit "P-23", Docket, pp. 427 to 429.
[22] G.R. No. 190506, on June 13, 2016.

> the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the Petitioner**." *(Citations omitted; emphases and underscoring supplied)*

Applying the foregoing jurisprudence, the proper party to seek the tax refund or credit is not petitioner, but its suppliers. In turn, petitioner's proper recourse is not against the Government but against the seller who has shifted to it the output VAT. Such being the case, only the portion of the input VAT arising from petitioner's importations and services rendered by non-residents shall be taken into account in determining the refundable input VAT amount.

Consequently, as to the *fourth requisite* for refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, it is of fatal importance that petitioner provide supporting documents to prove that the input taxes claimed from importation of goods and input taxes withheld from services rendered by non-residents during the 2nd to 4th quarters of TY 2015 are actually paid in accordance with Section 110(A)(1)(a) and (2)(b) of the NIRC of 1997, as amended, which provides that:

> "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 gc

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

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

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

x x x

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

x x x

(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."

More so, the above provisions are implemented by Sections 4.110-1(a) and 4.110-2(a) of RR No. 16-05, which provides as follows:

"SECTION 4.110-1. *Credits For Input Tax.* — x x x

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, *Jr*

x x x

SECTION 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;"

Meanwhile, Section 4.110-8(a)(1) and (d) of RR No. 16-05 provides for the substantiation requirements of input tax credits from importation of goods and input taxes withheld from services rendered by non-residents, as follows:

"SECTION 4.110-8. *Substantiation of Input Tax Credits.*—

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

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

x x x

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor."

Again, based on the quarterly VAT returns and petitioner's supporting schedules,[23] out of the total input tax for the period of ₱148,145,746.03, the amount of ₱143,153,822.46 pertains to input taxes from importation of goods and services by non-residents, to wit:

[23] Exhibits "P-5", "P-6", "P-7", and Annex A.3 of Exhibit "P-26".

Importation of capital goods (amortization)[24]	₱ 60,335,151.74
Importation of goods other than capital goods	82,560,013.00
Services Rendered by Non-Residents	258,657.72
Total	**₱143,153,822.46**

Petitioner submitted the Statements of Settlement of Duties and Taxes (SSDT) and Import Entry and Internal Revenue Declaration (IEIRD)[25] issued by the BOC to support its input taxes from importation of goods, and BIR Forms No. 1600[26] to support the input taxes withheld from services rendered by non-residents.

Upon verification, however, the Court finds that the following input VAT amounting to ₱1,019,213.72 must be disallowed for petitioner's failure to substantiate the same in accordance with the VAT law and regulations, thus:

Exhibit No.	Supplier	Receipt No.	Payment Date	Claimed Input VAT	VAT Payment per Supporting Document	Amount of VAT Disallowed
IMPORTATION OF GOODS						
Amount of VAT claimed is higher than VAT payment per Statement of Settlement						
"P-11.2.BF-ICPA"	ORBINOX S.A	R - 24387	22-Jun-2015	₱ 158,342.00	₱ 153,919.00	₱ 4,423.00
"P-11.2.BX-ICPA"	FLSMIDTH SALT LAKE CITY INC.	R - 29843	27-Jul-2014	79,484.00	78,093.00	1,391.00
	Subtotal			***₱237,826.00***	***₱232,012.00***	***5,814.00***
With unreadable Statement of Settlement (i.e. amount of VAT, payment date)						
"P-11.2.DO-ICPA"	LHOIST SPN SDN BHD	R-45103	12-Oct-2015			₱ 234,434.00
"P-11.2.AQ-ICPA"	INDUSTRIAL MOTION INC.	R - 20661	27-May-2015			146,773.00
	Subtotal					***₱ 381,207.00***
Payment is outside period of claim						
"P-11.2.EX-ICPA"	HOANG DIEP LTD	R-54374	13-Jan-2016			***₱ 176,204.00***
The purported receipt/document cannot be found in the records						
"P-11.2.BG-ICPA"	ORBINOX S.A	R - 25345	22-Jun-2015			₱ 153,919.00
"P-11.2.DB-ICPA"	WEIR MINERALS AUSTRALIA LTD	R - 37521	07-Sep-2015			43,412.00
	Subtotal					***₱ 197,331.00***
Total disallowed input VAT from importation of goods						**₱ 760,556.00**
SERVICES RENDERED TO NON-RESIDENTS						
Supported by BIR Form No. 1600 but without proof of remittance of the VAT due						
"P-16.A-ICPA"	FLSMIDTH INC.					₱ 104,826.99

[24] The Amortized Input VAT arose from importations of goods except the amount of ₱14,089.28, covered by Exhibit P-11.3.NL-ICPA.

[25] Exhibits "P-11.2.A-ICPA" to "P-11.2.FN-ICPA"; "P-11.3.A-ICPA" to "P-11.3.NR-ICPA".

[26] Exhibits "P-16.A-ICPA" to "P-16.C-ICPA".

"P-16.B-ICPA"	ARROW SPEED CONTROLS/FLSMIDTH INC.					79,408.64
"P-16.C-ICPA"	ARROW SPEED CONTROLS/ZHONGDA BRIGHT FILTER					74,422.09
Total disallowed VAT withheld from services rendered to non-residents						**₱ 258,657.72**
TOTAL DISALLOWED INPUT VAT						**₱1,019,213.72**

As such, the Court finds that out of the total claimed input VAT from importation of goods and services rendered by non-residents amounting to ₱143,153,822.46, only the amount of **₱142,134,608.74** pertains to valid input VAT for the 2nd to 4th quarters of TY 2015, as computed below as follows:

	Importation of Capital Goods	**Importation of Goods other than Capital Goods**	**Services Rendered by Non-residents**	**Total**
Total claimed input VAT for 2nd to 4th quarters of TY 2015	₱ 60,335,151.74	₱ 82,560,013.00	₱ 258,657.72	₱ 143,153,822.46
Less: Disallowances found by the Court		760,556.00	258,657.72	1,019,213.72
Valid input VAT for the 2nd to 4th quarters of TY 2015	**₱60,335,151.74**	**₱ 81,799,457.00**	**₱ 0.00**	**₱142,134,608.74**

Moreover, for the subject period of claim, it was earlier cited that petitioner had taxable sales subject to zero percent (0%) and twelve percent (12%) rates, as well as exempt sales, in the following amounts:

	TOTAL
VATable Sales	₱ 16,135,325.28
Sale to Government	3,099,241.07
Zero-Rated Sales	8,727,182,982.80
Exempt Sales	4,267,960.00
Total Sales	**₱8,750,685,509.15**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the said transactions, the valid input VAT of **₱142,134,608.74** shall be allocated proportionately on the basis of the volume of its sales, as shown below:

Total Vatable Sales - Private per VAT Returns	₱ 16,135,325.28
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 8,750,685,509.15
Multiplied by Total Valid Input VAT	₱ 142,134,608.74
Valid Input VAT allocated to 12% Vatable Sales - Private	**₱ 262,080.97**

Total Vatable Sales to Government per VAT Returns	₱ 3,099,241.07
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 8,750,685,509.15
Multiplied by Total Valid Input VAT	₱ 142,134,608.74
Valid Input VAT allocated to 12% Vatable Sales to the Government	**₱ 50,339.99**

Total Exempt Sales per VAT Returns	₱ 4,267,960.00
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 8,750,685,509.15
Multiplied by Total Valid Input VAT	₱ 142,134,608.74
Valid Input VAT allocated to total Exempt Sales	**₱ 69,323.12**

Total Zero-Rated Sales per VAT Returns	₱ 8,727,182,982.80
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 8,750,685,509.15
Multiplied by Total Valid Input VAT	₱142,134,608.74
Valid Input VAT allocated to total Zero-rated Sales	**₱141,752,864.66**

Accordingly, for purposes of, and with respect to petitioner's compliance with the *fifth* requisite for refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, only the allocated amount of ₱141,752,864.66 represents valid input VAT attributable to total zero-rated sales.

Considering that petitioner has valid input VAT attributable to zero-rated sales, the Court shall now ascertain whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *sixth* requisite.

Upon applying the amount of ₱262,080.97 input VAT attributable to vatable sales to private entities against its output VAT liability of ₱1,936,239.09 arising from such sales, it appears that petitioner still has a net output VAT payable in the amount of ₱1,674,158.12, as computed below:

Output VAT Due on the Vatable Sales to Private Entity	₱ 1,936,239.09
Input VAT allocated to VATable sales	262,080.97
Output VAT still due	**₱1,674,158.12**

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As such, the valid input VAT attributable to total zero-rated sales in the amount of ₱141,752,864.66 shall then be utilized against the above remaining output VAT of ₱1,674,158.12. Consequently, only the remaining input VAT of ₱140,078,706.54 can be attributed to the total zero-rated sales of ₱8,727,182,982.80 and only the portion of input VAT amounting to **₱102,571,133.36** is attributable to the valid zero-rated sales of ₱6,390,386,317.03, computed below as follows:

Input VAT allocated to Zero-rated Sales	**₱141,752,864.66**
Output VAT Still Due	1,674,158.12
Excess Input VAT allocated to Zero-rated Sales	**₱140,078,706.54**
Divide by Total Declared Zero-rated Sales	₱ 8,727,182,982.80
Multiply by Valid Zero-rated Sales	₱ 6,390,386,317.03
Excess Input VAT attributable to Valid Zero-rated Sales	**₱102,571,133.36**

In addition, the above excess input VAT attributable to valid zero-rated sales in the amount of **₱102,571,133.36**, was also not utilized against the output VAT in the succeeding quarters, since the same was not even carried over to the immediately succeeding period/quarters.[27] Thus, petitioner is deemed to have fulfilled the *sixth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

Though, perusal of the records[28] would show that respondent had already authorized the issuance of VAT Credit/Refund in the total amount of ₱115,962,246.75 in favor of petitioner, which is above and beyond the amount found by this Court as valid excess input VAT attributable to its zero-rated sales for the subject period of claim. Therefore, the Court is constrained to deny petitioner's claim for refund of its alleged excess and unutilized Input VAT attributable to zero-rated or effectively zero-rated sales in the total amount of ₱29,875,350.26 for the 2nd to 4th quarters of taxable year (TY) 2015 for the said reason.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motions, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on June 5, 2020.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration and Supplement to the Motion for Reconsideration are both **DENIED** for lack of merit. *gr*

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[27] Exhibits "P-6", "P-7", and "P-9", Docket, pp. 400, 401, and 403, respectively.
[28] Exhibit "R-4", BIR Records, Folder 1 of 24, p. 500.

SO ORDERED.

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

We Concur:

Catherine T. Manahan
CATHERINE T. MANAHAN
(Special Member)
Associate Justice

I concur in the result.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice