REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PENN PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7457

- versus -

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 19 2021
9:11 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Penn Philippines, Inc. (**petitioner/PPI**) seeking the refund or issuance of a tax credit certificate (**TCC**) in the amount of ₱4,758,453.00, representing petitioner's alleged unutilized input value-added tax (**VAT**) for the four (4) quarters of calendar year (**CY**) 2004.

FACTS OF THE CASE

On 22 March 2006, petitioner filed an administrative claim for refund in a letter[2] addressed to herein respondent Commissioner of

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[1] Filed on 19 April 2006, Division Docket, Volume I, pp. 4-11.
[2] Exhibit "G", id., pp. 184-186.

Internal Revenue (**respondent/CIR**) claiming unutilized input VAT amounting to ₱4,868,496.87.

In petitioner's bid to prevent the action from prescribing, it filed its judicial claim for refund before this Court through the instant petition on 19 April 2006.

The petition, docketed as *CTA Case No. 7457*, was originally raffled to the Court's First Division.[3] There, petitioner presented the testimonies of the Court-appointed Independent Certified Public Accountant (**ICPA**), Ma. Victoria Españo (**Españo**), Benedicto J. Horca III (**Horca**) and Ma. Lourdes Aguinaldo (**Aguinaldo**). On the other hand, respondent did not present any witnesses.

After the trial or on 06 April 2010, the Special First Division promulgated its Decision[4], partially granting the Petition for Review. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE MILLION NINE HUNDRED TWENTY-FOUR THOUSAND THREE HUNDRED FOURTEEN PESOS AND 91/100 (P1,924,314.91)** in favor of petitioner Penn Philippines, Inc., representing its unutilized input VAT for the second, third, and fourth quarters of taxable year 2004.
>
> **SO ORDERED.**
>
> ...

On 30 April 2010, herein petitioner filed its Motion for Partial Reconsideration (of the Decision dated 6 April 2010).[5] On even date, respondent likewise filed his Motion for Partial Reconsideration.[6]

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[3] Reconstituted to Special First Division but with the same Members.
[4] Division Docket, Volume II, pp. 551-566.
[5] Id., pp. 567-579.
[6] Id., pp. 581-589.

On 15 September 2010, the Special First Division denied both motions for lack of merit.[7]

On 20 October 2010, respondent filed a Petition for Review[8] with the CTA *En Banc*, docketed as CTA EB No. 693.

On 27 June 2012, the CTA *En Banc* rendered a Decision[9], the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the assailed Decision dated April 6, 2010 and Resolution dated September 15, 2010 rendered by the Special First Division in C.T.A. Case No. 7457 are hereby **REVERSED** and **SET ASIDE**. The Petition for Review filed in C.T.A. Case No. 7457 is hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**
>
> ...

On 23 July 2012, petitioner filed a Motion for Reconsideration (**MR**) of the above Decision.[10] On 28 May 2013, the CTA *En Banc* rendered an Amended Decision[11], to wit:

> ...
>
> **WHEREFORE**, in view of the foregoing considerations, the instant Motion for Reconsideration is **GRANTED**. The Court *En Banc*'s Decision promulgated on June 27, 2012 is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, <u>CTA Case No. 7457 is **REMANDED** to the Court of origin for a complete determination of respondent's full compliance with other legal requirements in relation with its subject claim for refund or tax credit of its alleged unutilized input VAT for the first, second, third and fourth quarters of taxable year 2004.</u>
>
> **SO ORDERED.**
>
> ...

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7 See Resolution, id., pp. 606-613.
8 Id., pp. 616-627.
9 Id., pp. 728-742.
10 Id., pp. 750-774.
11 Id., pp. 779-787; underscoring supplied.

On 27 June 2013, respondent filed his MR[12] against the foregoing Amended Decision. However, the CTA *En Banc* denied the same in its Resolution dated 11 November 2013.[13]

Aggrieved by the Decision, respondent filed a Petition for Review on *Certiorari*[14] with the Supreme Court, docketed as G.R. No. 210041. The Supreme Court, in a Resolution dated 24 September 2018[15], resolved thusly:

> ...
>
> **WHEREFORE**, the Court **DENIES** the petition for review on *certiorari*, and **AFFIRMS** the amended decision promulgated on May 28, 2013, without pronouncement on costs of suit.
>
> **SO ORDERED.**
>
> ...

On 19 February 2019, the Supreme Court issued an Entry of Judgment[16] declaring the foregoing Resolution as final and executory.

Considering that all of the Members of the then Special First Division which rendered the Decision in CTA Case No. 7457 have retired, the case was re-raffled to the Second Division for futher proceedings (pursuant to the Court *En Banc*'s Amended Decision dated 28 May 2013[17]).

Later, despite the Second Division's directive of 29 October 2019[18] for both petitioner and respondent to file a written manifestation alleging any supervening event that may have transpired in this case which the parties would want the Court to consider, no manifestations were made.[19] On 23 January 2020[20], the case was then submitted for decision.

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12 Id., pp. 788-793.
13 Id., pp. 798-808.
14 Id., pp. 813-841.
15 Id., pp. 1066-1068.
16 Id., p. 1071.
17 Supra at note 11.
18 Division Docket, Volume II, pp. 1074-1077.
19 *Per* Records Verification dated 20 December 2019, id., p. 1085.
20 Id., pp. 1086-1087.

ISSUE

The lone issue for resolution is –

WHETHER PENN PHILIPPINES, INC. IS ENTITLED TO A TAX REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE TOTALING TO ₱4,758,453.00, REPRESENTING ITS ALLEGED UNUTILIZED INPUT VALU-ADDED TAX (VAT) ON DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE FOUR (4) QUARTERS OF 2004.

RULING OF THE COURT

Petitioner anchors its claim for refund or issuance of TCC on Section 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides:

...

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**[21]
>
> ...

Based on the afore-quoted provision, a taxpayer engaged in zero-rated transactions may apply for a claim for refund or issuance of TCC for unutilized input VAT subject to the following requirements:

> ...
> 1. the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated;
> 2. the taxpayer is VAT-registered;
> 3. the claim must be filed within two (2) years after the close of the taxable quarter when such sales are made;
> 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; and,
> 5. in case of zero-rated sales under Section 106(A)(2)(a)(1)[22] and (2), Section 106(B)[23] and Section 108(B)(1) and (2)[24], the acceptable

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21 Emphasis supplied.

22 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor. *Provided,* That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
...
(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);
(2) Sale of raw materials or packaging materials to a non[-]resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in

foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[25]

...

TIMELY-FILED ADMINISTRATIVE AND JUDICIAL CLAIM FOR REFUND

With regard to the timelines of the filing of the administrative and judicial claims, the Court *En Banc* already held that the administrative claim in the instant case filed on 22 March 2006 and judicial claim filed less than a month thereafter on 19 April 2006 fell within the exception period mentioned in *Commissioner of Internal Revenue v. San Roque Power Corporation.*[26] There, the Supreme Court ratiocinated thusly:

...
To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and

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acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

23 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

...

(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt; .

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

24 **SEC. 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in the business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

25 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, 550 Phil. 751 (2007).

26 703 Phil. 310 (2013).

> jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.
>
> ...

Such ruling was affirmed in *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue.*[27] Given that petitioner's claim for refund clearly falls within the foregoing exception period, the mandatory 120+30-day period does not apply to the case at bar.

PETITIONER IS A VALUE-ADDED TAX-REGISTERED TAXPAYER

Petitioner has sufficiently established that it is a registered VAT taxpayer with the Bureau of Internal Revenue (**BIR**) as shown in its BIR Certificate of Registration (BIR Form No. 2303).[28]

PETITIONER IS ENGAGED IN ZERO-RATED SALES

In her verification[29], the court-appointed ICPA, Españo, found that petitioner's zero-rated sales totaling ₱398,992,724.18 were wholly generated from its sales to Penn Philippines Export, Inc. (**PPEI**), a Philippine Economic Zone Authority (**PEZA**)-registered entity.

Section 106(A)(2)(a)(5) and (c) of the NIRC of 1997, as amended, read as follows:

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

[27] 706 Phil. 48 (2013).
[28] Exhibit B", Division Docket, Volume I, p. 17.
[29] Exhibit Nos. "RR-1-A", "RR-2-A", "RR-3-A", and "RR-4-A".

> (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:
>
> ...
>
> > (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and
>
> ...
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.[30]
>
> ...

PPEI's tax exemption is found under Sections 8 and 24 of the Special Economic Zone Act of 1995 which provide:

> ...
>
> **SEC. 8.** ECOZONE to be Operated and Managed as Separate Customs Territory. — **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificate of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.
>
> ...
>
> **SEC. 24.** Exemption form National and Local Taxes. — Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted** as follows:
>
> (a) Three percent (3%) of the National Government;

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[30] Emphasis in the original text.

> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located.[31]

...

In relation to the foregoing provisions, Revenue Memorandum Circular (**RMC**) No. 74-99[32] further provides:

> ...
>
> SECTION 3. *Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise.* –
>
> ...
>
> (3) In the final analysis, **any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT**. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular.[33]
>
> ...

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[31] Emphasis supplied.

[32] *Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE.*

[33] Emphasis supplied.

In the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[34], the Supreme Court affirmed the view that ECOZONES are considered as foreign territory by legal fiction. The Supreme Court declared, to wit:

> ...
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.
>
> Applying said doctrine to the sale of goods, properties, and services to and from the ECOZONES, the BIR issued Revenue Memorandum Circular (RMC) No. 74-99, on 15 October 1999.
>
> ...
>
> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.

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[34] 503 Phil. 823 (2005); Citations omitted and emphasis supplied.

> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
>
> The five percent (5%) preferential tax rate on gross income under Rep. Act No. 7916, as amended, is in lieu of all taxes. Except for real property taxes, no other national or local tax may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive, not even an indirect tax like VAT.
>
> Alternatively, Book VI of Exec. Order No. 226, as amended, grants income tax holiday to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax, but shall be subject to all other taxes, including the ten percent (10%) VAT.
>
> This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). Such distinction was abolished by RMC No. 74-99, **which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.**
>
> ...

Based on the foregoing, in order for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5)[35] of the NIRC of 1997, as amended, the following requisites must be present: (1) the sale must be made by a VAT registered person; and, (2) the sale of goods must be to an entity entitled to the incentives under Executive Order No. 226,

[35] Supra at p. 9.

otherwise known as the Omnibus Investment Code of 1987, and other special laws.

As discussed earlier, petitioner is a VAT-registered person.

As regards the *second* requisite, records show, and previously as determined by the Special First Division[36], PPEI (petitioner's sole customer) is VAT-registered[37] and a duly-registered PEZA entity as shown by its PEZA Certificate of Registration No. 96-066[38] dated 24 January 2005. Therefore, it is undeniable that petitioner in fact has zero-rated sales.

Based on the ICPA's examination and audit, out of the total ₱398,992,724.18, petitioner's zero-rated sales duly substantiated by required sales invoices amounted to ₱382,352,467.27[39], as summarized below:

	1st Quarter of CY 2004	2nd Quarter of CY 2004	3rd Quarter of CY 2004	4th Quarter of CY 2004	Total
Zero-Rated Sales	₱ 91,406,995.40	₱ 92,471,795.65	₱ 97,871,818.67	₱ 100,601,857.55	₱ 382,352,467.27

INPUT TAXES ARE INCURRED AND PAID

In its Amended Quarterly VAT Returns for the four (4) quarters of CY 2004, petitioner reported its input taxes in the amount of ₱4,868,496.87, as follows:

	1st Quarter of CY 2004[40]	2nd Quarter of CY 2004[41]	3rd Quarter of CY 2004[42]	4th Quarter of CY 2004[43]	Total
Domestic purchase of goods other than capital goods	₱137,915.49	₱78,761.56	₱70,424.80	₱178,960.88	₱466,062.73

36 Division Docket, Volume II, p. 637.
37 Exhibit No. "E", id., Volume I, p. 182.
38 Exhibit No. "F", id., p. 183.
39 Exhibit No. "RR-7".
40 Exhibit No. "V".
41 Exhibit No. "Y".
42 Exhibit No. "BB".
43 Exhibit No. "EE".

Importation of capital goods	1,388,467.00	475,115.00	111,733.00	250,111.00	2,225,426.00
Domestic purchase of services	748,776.21	317,406.43	787,277.78	323,547.72	2,177,008.14
Total Input Tax for the period	**₱2,275,158.70**	**₱871,282.99**	**₱969,435.58**	**₱752,619.60**	**₱4,868,496.87**

With regard to petitioner's importation of goods other than capital goods, the ICPA recommended the following disallowances in the total amount of ₱1,779,630.00, for the following reasons:

Particulars	**1st Quarter of CY 2004**	**2nd Quarter of CY 2004**	**3rd Quarter of CY 2004**	**4th Quarter of CY 2004**	**Total**
Input VAT on importations without BOC Certified SADs/Original IEIRDs and without original BOC/Bank ORs *(Exhibit No. "RR-12-M")*	₱1,299,858.00	₱176,146.00	₱8,325.00	₱1,415.00	₱1,485,744.00
Input VAT on importations without BOC Certified SADs/Original IEIRDs but with original BOC/Bank ORs *(Exhibit No. "RR-12-N")*	26,153.00	10,704.00	39,165.00	49,609.00	125,631.00
Input VAT on importations supported with BOC Certified SAD but without BOC/Bank ORs *(Exhibit No. "RR-12-O")*	-	139,831.00	-	-	139,831.00
Input VAT on importations pertaining to the variance between amount reported in the original BOC Certified SAD and the original BOC/Bank ORs *(Exhibit No. "RR-12-P")*	1.00	19,222.00	4,711.00	4,490.00	28,424.00
Total	**₱1,326,012.00**	**₱345,903.00**	**₱52,201.00**	**₱55,514.00**	**₱1,779,630.00**

Upon verification of petitioner's supporting documents, the Court finds the above disallowances proper.

The Special First Division, however, found that the input VAT on importation amounting to ₱115,597.00, which the ICPA previously disallowed, should instead be allowed since the available documents correctly support the claimed input VAT, as shown below:[44]

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44 Division Docket, Volume II, p. 641.

Name of Exporter	Exhibit No.	Amount of Input VAT
Dogi S.A.	RR-12-N-24	₱7,211.00
Protechna	RR-12-N-38	3,493.00
C. Illies & Co.	RR-12-N-40	29,309.00
Dogi S.A.	RR-12-N-46	5,324.00
D & S International Inc.	RR-12-N-50	4,532.00
Liba Machinen Fabrik GMBH	RR-12-N-54	49,609.00
Rubberflex SDN BHD	RR-12-O-1	3,418.00
Dogi International Fabrics	RR-12-O-2	2,961.00
Nishi-Nippon Railroad Co. Ltd.	RR-12-O-3	4,664.00
Dogi S.A.	RR-12-O-4	425.00
Dogi S.A.	RR-12-O-5	3,236.00
Dogi S.A.	RR-12-O-6	1,415.00
TOTAL		**₱115,597.00**

In sum, out of the total input tax on importation of goods other than capital goods of ₱2,225,426.00, only the amount of ₱561,393.00[45] was valid and properly substantiated with documents.

As regards petitioner's domestic purchases of goods other than capital goods and purchase of services, the ICPA recommended the following disallowances in the total amount of ₱274,458.93:

Particulars	1st Quarter of CY 2004	2nd Quarter of CY 2004	3rd Quarter of CY 2004	4th Quarter of CY 2004	Total
Input VAT on local purchases of goods and services without supporting documents *(Exhibit No. "RR-12-A")*	₱41,821.64	₱5,278.72	₱28,578.39	₱31,259.92	₱106,938.67
Input VAT supported with VAT invoices/ official receipts which are not dated within the quarter of claim and dated in a different calendar year *(Exhibit No. "RR-12-C")*	16,003.83	-	-	44,441.33	60,445.16
Input VAT supported with VAT invoices/ official receipts marked "zero-rated" *(Exhibit No. "RR-12-D")*	-	-	1,408.45	403.17	1,811.62
Input VAT supported with VAT invoices/ official receipts issued not in the name of the company *(Exhibit No. "RR-12-E")*	3,709.28	749.99	902.91	1,563.64	6,925.82
Input VAT supported with VAT invoices/ official	274.55	2,081.63	-	2,043.63	4,399.81

[45] *Computed as*: ₱2,225,426.00 (total input VAT on importation) - ₱1,779,630.00 (input VAT on importation disallowed by ICPA) + ₱115,597.00 (adjustment on ICPA's disallowance due to this Court's further verification) = ₱561,393.00.

receipts with alterations in the amount paid *(Exhibit No. "RR-12-F")*					
Input VAT supported with non-VAT invoices/ Non-VAT official receipts *(Exhibit No. "RR-12-G")*	-	6,296.88	9,176.55	-	15,473.43
Input VAT on purchases of services supported only with bank payment slip/ transaction receipt *(Exhibit No. "RR-12-H")*	9,661.11	21,892.73	12,966.10	14,333.52	58,853.46
Input VAT supported with invoices/official receipts without the "VAT" or "V" indicated after the TIN of the supplier *(Exhibit No. "RR-12-I")*	12,549.60	-	240.00	480.00	13,269.60
Input VAT supported with invoices without the BIR permit number *(Exhibit No. "RR-12-J")*	-	306.82	1,471.82	3,368.18	5,146.82
Input VAT with supporting invoice showing an amount different from the summary list of purchases *(Exhibit No. "RR-12-K")*	-	-	954.54	-	954.54
Input VAT not included in the summary list but reported per return *(Exhibit No. "RR-12-L")*	-	-	240.00	-	240.00
Total	**₱84,020.01**	**₱36,606.77**	**₱55,938.76**	**₱97,893.39**	**₱274,458.93**

Likewise, the Court finds the above disallowances proper. Consequently, only ₱2,368,611.94 of the total input VAT on local purchases (*i.e.*, ₱2,643,070.87) is properly substantiated and compliant with the invoicing requirements pursuant to Sections 113[46] and Section 237[47] of the NIRC of 1997, as amended.

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46 SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
(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.

47 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 where the receipt is issued to cover payment made as rentals, commissions, compensations, 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**

Accordingly, out of petitioner's total declared input VAT of ₱4,868,496.87 for the four (4) quarters of CY 2004, only the amount of ₱2,930,004.94 represents valid input VAT, as detailed below:

	1st Quarter of CY 2004	2nd Quarter of CY 2004	3rd Quarter of CY 2004	4th Quarter of CY 2004	Total
Input VAT claim	₱2,275,158.70	₱871,282.99	₱969,435.58	₱752,619.60	₱4,868,496.87
Less: Disallowances					
Importation of capital goods	1,326,012.00	345,903.00	52,201.00	55,514.00	1,779,630.00
Domestic purchase of goods and services	84,020.01	36,606.77	55,938.76	97,893.39	274,458.93
Add: Adjustment on disallowances per this Court's further verification	–	99,478.00	16,119.00	–	115,597.00
Total Valid Input VAT	**₱865,126.69**	**₱588,251.22**	**₱877,414.82**	**₱599,212.21**	**₱2,930,004.94**

INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES

Although petitioner had a total valid input VAT of ₱2,930,004.94, the same, however, is not entirely attributable to zero-rated sales since petitioner also had sales subject to VAT. Thus, the same shall be allocated based on the volume of total sales as computed below:

	1st Quarter of CY 2004	2nd Quarter of CY 2004	3rd Quarter of CY 2004	4th Quarter of CY 2004	TOTAL
Zero-rated sales [A]	₱100,063,174.73	₱92,471,795.65	₱97,871,818.6	₱108,585,935.13	₱398,992,724.18
Valid zero-rated sales [B]	91,406,995.40	92,471,795.65	97,871,818.67	100,601,857.55	382,352,467.27
Percentage of valid zero-rated sales [C=B/A]	91.35%	100.00%	100.00%	92.65%	
Valid Input VAT [D]	865,126.69	588,251.22	877,414.82	599,212.21	2,930,004.94

further show the Taxpayer Identification Number (TIN) of the purchaser. (Emphasis supplied)

Output VAT [E]	-	3,979.62	96,993.37	4,334.94	105,307.93
Valid less Output [F=D-E]	865,126.69	584,271.60	780,421.45	594,877.27	2,824,697.01
Input VAT for refund [F x C]	**₱790,293.23**	**₱584,271.60**	**₱780,421.45**	**₱551,153.79**	**₱2,706,140.07**

INPUT VALUE-ADDED TAX (VAT) CLAIMED WAS NOT APPLIED TO ANY OUTPUT VAT.

Petitioner's input VAT claimed was not applied to any output VAT liability. As can be seen from the above computation, petitioner did not have any output VAT liability during the 1st quarter of 2004 leaving the input VAT unutilized. On the other hand, for the 2nd to 4th quarters of CY 2004, petitioner's output VAT liabilities did not exceed the input tax it incurred or paid during the same quarters. The same remained unutilized until it was deducted as "VAT Refund/TCC Claimed", as follows:

	3rd Quarter of CY 2004 VAT Return[48]	**4th Quarter of CY 2004 VAT Return**[49]	**1st Quarter of CY 2005 VAT Return**[50]	**TOTAL**
25A Any VAT Refund/TCC claimed	₱2,252,871.41	₱867,966.64	₱1,637,614.92	**₱4,758,452.97**

Clearly, the subject claim no longer formed part of the excess input VAT as of the end of the 1st quarter of CY 2005 that was to be carried over or applied to the succeeding quarters. As such, it eliminates the possibility that petitioner's claimed unutilized input VAT was applied to its subsequent output VAT liabilities.

WHEREFORE, the foregoing considered, petitioner Penn Philippines, Inc.'s Petition for Review filed on 19 April 2006 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of ₱2,706,140.07,

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48 Exhibit No. "BB".
49 Exhibit No. "EE".
50 Exhibit No. "HH".

representing its excess and unutilized input VAT attributable to zero-rated sales for the four (4) quarters of CY 2004.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice