REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AGRI EXIM GLOBAL PHILIPPINES INC., *Petitioner,*	**CTA Case No. 10621**
- versus -	Members: **MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 12 2024 3:41 pm

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DECISION

REYES-FAJARDO, *J.*:

The Petition for Review filed on October 22, 2021, by Agri Exim Global Philippines Inc. seeks to refund the amount of ₱6,853,897.93, representing the denied portion of its administrative claim of alleged unutilized input value-added tax (VAT) attributable to its VAT zero-rated sales, for the 1st to 4th quarters of taxable year (TY) 2019.[1]

PARTIES

Petitioner Agri Exim Global Philippines Inc. is a corporation organized and existing under Philippine laws, with principal office address at Upper Quinocol, Brgy. Darong, Sta. Cruz, Davao del Sur, the primary purpose of which is to establish a business of manufacturing, exporting, importing and trading of goods with regards agricultural consumer and other related products on wholesale basis.[2] It is registered with the Bureau of Internal Revenue

1 Prayer, *Petition for Review*, Docket, p. 16.
2 Exhibits "P-1" and "P-2," Docket, pp. 468 to 476.

(BIR) as a VAT taxpayer, under Taxpayer Identification Number (TIN) 008-891-373-000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under the 1997 National Internal Revenue Code, as amended by Republic Act (RA) No. 10963 (NIRC, as amended),[4] with the authority to decide, approve and grant tax refunds. He may be served with summons and other court processes at the National Office Building, Agham Road, Diliman, Quezon City.[5]

FACTS

On several dates, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th Quarters of TY 2019 with the BIR, through the BIR's Electronic Filing and Payment System (eFPS), detailed as follows:

2019	Date of Filing	Return Type
1st Quarter	September 4, 2019[6]	Amended
2nd Quarter	October 25, 2019[7]	Amended
3rd Quarter	November 20, 2019[8]	Amended
4th Quarter	January 27, 2020[9]	Original

On May 11, 2021, petitioner filed with the BIR VAT Credit Audit Division (VCAD), an administrative claim for input VAT refund of its unutilized input VAT for the 1st to 4th Quarters of TY 2019,[10] in the amount of ₱14,940,360.86, as shown in its Application

3 Exhibit "P-3," Docket, p. 477.

4 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 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

5 Par. 1.b., Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 201.

6 Exhibit "P-4," Docket, pp. 478 to 479.

7 Exhibit "P-5," Docket, pp. 480 to 481.

8 Exhibit "P-6," Docket, pp. 482 to 483.

9 Exhibit "P-7," Docket, pp. 484 to 485.

10 Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket - Vol. I, pp. 7 and 115, respectively.

for Tax Credits/Refund (BIR Form No. 1914),[11] and its duly accomplished Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund.[12]

On even date, Amelita A. Escober, Chief, VCAD issued to petitioner a Tax Verification Notice No. TVN201800143135, authorizing Revenue Officers (ROs) Dexter C. Bustillos and Denise R. Dayanan to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund covering the taxable period January 1, 2019 to December 31, 2019.[13]

On August 5, 2021, petitioner received a VAT Refund Notice dated July 13, 2021, partially granting petitioner's input VAT refund in the amount of ₱8,086,462.93. Of the ₱14,940,360.86 claimed by petitioner as input VAT refund, the amount of ₱6,853,897.93 was disallowed, computed as follows:[14]

> Per VAT Refund Notice dated 13 July 2021 of the assigned Revenue Officer/s, the following findings were observed:

VAT refund claimed	**Php14,940,360.86**
Deductions from claim	
Disallowed input VAT on big-ticket purchases due to non-compliance With invoicing requirements pursuant to Section 113 of the NIRC of 1997, as amended, and Annex 'A.1' under RMO 47-2021 (Annex A.1)	Php 5,367,106.66
Discrepancy of the certified true copies of capital goods exceeding Php1 Million acquired from the previous period as against the amount Reported per schedules of 2019 1st quarter (Annex A.2)	5,225.00
VAT on imported items without proof of payment (Annex A.3)	642,361.76
Input VAT attributable to invalid zero-rated sales/exempt sales (Annex A.4)	839,204.51
Total Deductions	Php 6,853,897.93
Net allowable VAT refund	Php 8,086,462.93

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11 Exhibit "P-8," Docket, p. 486.

12 Exhibit "R-2," BIR Records (Exhibit "R-5"), p. 109.

13 Exhibit "R-1," BIR Records (Exhibit "R-5"), p. 106.

14 Par. 1.a., Stipulation of Facts, JSFI, Docket, pp. 200 to 201; Exhibit "P-10," Docket, pp. 489 to 495; Exhibit "R-4," BIR Records (Exhibit "R-5") [unpaginated, in between pp. 233 and 234].

On October 22, 2021, petitioner filed its Petition for Review (With Motion for the Commissioning of Independent Certified Public Accountant), docketed as CTA Case No. 10621.[15] The case was initially raffled to this Court's First Division.

On February 2, 2022, respondent posted his Answer.[16]

On June 2, 2022, the Pre-Trial Conference was held.[17]

On July 4, 2022, the parties filed their Joint Stipulation of Facts and Issues (JSFI),[18] which was approved through Resolution dated July 13, 2022.[19] On the basis thereof, the Court issued a Pre-Trial Order dated August 4, 2022.[20]

Trial ensued. Petitioner presented: (1) Archie B. Mediano,[21] petitioner's Finance Manager; and (2) Krista V. Bambao,[22] the Court-commissioned independent certified public accountant (ICPA Bambao),[23] as its witnesses.

On December 7, 2022, petitioner filed its Formal Offer of Evidence,[24] to which respondent filed his Comment (Re: Formal Offer of Evidence) on December 12, 2022.[25]

By Resolution dated February 22, 2023,[26] the Court admitted petitioner's offered exhibits, except:

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15 Docket, pp. 6 to 19.

16 Docket, pp. 115 to 122.

17 Notice of Pre-Trial Conference dated March 24, 2022, Docket, pp. 139 to 141; Minutes of the hearing held on, and Order dated, June 2, 2022, Docket, pp. 184 to 186 and 188 to 190, respectively.

18 Docket, pp. 200 to 204.

19 Docket, p. 207.

20 Docket pp. 211 to 220.

21 Exhibit "P-12," Docket, pp. 67 to 78; Minutes of the hearing held on, and Order dated, August 17, 2022, Docket, pp. 221 to 221-B and 222 to 224, respectively.

22 Exhibit "P-3440," Docket, pp. 282 to 292; Minutes of the hearing held on, and Order dated, October 20, 2022, Docket, pp. 293 to 295; Exhibit "P-3448," Docket, pp. 360 to 364; Minutes of the hearing held on, and Order dated, November 22, 2022, Docket, pp. 368 to 370.

23 *Oath of Commission* dated August 17, 2022, Docket, p. 221-C; Minutes of the hearing held on, and Order dated, August 17, 2022, Docket, 221 to 221-B and 222 to 224, respectively.

24 Docket, pp. 372 to 467.

25 Docket, pp. 499 to 501.

1. Exhibits "P-176," "P-1424," "P-1426," "P-1427," "P-1428," "P-1429," "P-1430," "P-1431," "P-1432," "P-1433," "P-1434," "P-1435," "P-1436," "P-1437," "P-1493," "P-2021," "P-2022," and "P-3356," for failure to present the originals for comparison;

2. Exhibits "P-384" and "P-834," for not being found in the records; and

3. Exhibit "P-425," for failure of the exhibit formally offered to correspond with the document actually marked.

Respondent presented Revenue Officer Bryan Patrick A. Lafrades[27] as his witness.

On March 23, 2023, respondent filed his Formal Offer of Evidence,[28] *sans* petitioner's comment.[29]

In the Resolution dated May 26, 2023,[30] the Court admitted the pieces of evidence offered by respondent.

By Resolution dated June 1, 2023,[31] CTA Case No. 10621 was transferred from the First Division to the Third Division of the Court.

In the Resolution dated July 14, 2023 this case was submitted for decision,[32] considering respondent's Memorandum filed on June 15, 2023,[33] and petitioner's Memorandum submitted on July 12, 2023.[34]

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26 Docket, pp. 510 to 530.
27 Exhibit "R-6," Docket, pp. 131 to 134; Order dated March 7, 2023, Docket, pp. 532 to 532-A.
28 Docket, pp. 533 to 536.
29 Records Verification dated April 19, 2023 issued by the Judicial Records Division of this Court, Docket, p. 538.
30 Docket, pp. 542 to 543.
31 Docket, p. 544.
32 Minute Resolution dated July 14, 2023, Docket, p. 576.
33 Docket, pp. 547 to 553.
34 Docket, pp. 556 to 575.

ISSUE[35]

Is petitioner entitled to claim the refund of alleged unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of TY 2019 in the amount of ₱6,853,897.93?

ARGUMENTS

Petitioner maintains that it had established compliance with all the requisites for the grant of input VAT refund under Section 112 of the NIRC, as amended by Republic Act (RA) 10963.[36] Specifically: 1) its administrative and judicial claims for input VAT refund were timely filed; 2) it is a VAT-Registered entity; 3) it is engaged in zero-rated sales of goods; 4) it had duly substantiated its input taxes; 5) the input taxes it claimed are not transitional input taxes; 6) said substantiated input taxes are attributable to its zero-rated sales; 7) it had duly substantiated zero-rated export sales, which was paid for in acceptable foreign currency exchange proceeds, and duly accounted for under *Bangko Sentral ng Pilipinas (BSP)* rules and regulations; and 8) such substantiated input taxes were not applied to its output VAT. Therefore, petitioner asserts that it is entitled to the refund in the amount of ₱6,853,897.93, representing the denied portion of its administrative claim for refund of its alleged unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of TY 2019.

Respondent counters that petitioner's judicial claim is an appeal of a partially unsuccessful administrative claim for input VAT refund. Due to the appellate nature of the Court's jurisdiction over such decision, the Court may only review whether the decision he rendered is proper, solely taking into account petitioner's evidence submitted with the BIR. Respondent further argues that petitioner's input VAT refund claim must be rejected for its failure to prove at administrative level all the requisites for the full grant of input VAT refund under Section 112 of the NIRC, as amended by RA No. 10963.

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35 Stipulation of Issues, JSFI, Docket, p. 201.

36 Tax Reform for Acceleration and Inclusion (TRAIN).

RULING

The Petition is denied.

The case is litigated anew before the Court. Hence, the Court may accept evidence that was not presented by petitioner at the administrative level.

Petitioner's appeal to the Court is on account of a partly unsuccessful claim for input VAT refund before the BIR. To be precise, respondent partially granted petitioner's claim for input VAT refund in the amount of ₱8,086,462.93 but disallowed the amount of ₱6,853,897.93 because of non-compliance with invoicing requirements under Section 113 of the NIRC, as amended, discrepancy of the certified true copies, of capital goods exceeding ₱1,000,000.00 acquired from the previous period as against the amount reported per schedules of 2019 1st quarter, VAT on imported items without proof of payment and input VAT attributable to invalid zero-rated sales/ exempt sales. [37]

In relation to an administrative claim for input VAT refund, *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* (*Pilipinas Total Gas*) [38] envisioned two (2) scenarios, namely: (1) dismissal thereof by the BIR due to the taxpayer's failure to submit complete documents, despite the former's notice or request; or (2) inaction tantamount to a denial, or denial other than due to taxpayer's failure to submit complete documents despite notice or request. In the first scenario, the refund claimant must show the Court its entitlement to a VAT refund under substantive law, and submission of complete supporting documents at administrative level requested by petitioner. In the second scenario, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court

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[37] Par. 1.a., Stipulation of Facts, JSFI, Docket, pp. 200 to 201; Exhibit "P-10," Docket, pp. 489 to 495; Exhibit "R-4," BIR Records (Exhibit "R-5") [unpaginated, in between pp. 233 and 234].

[38] G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

will consider all evidence offered even those not presented before respondent at the administrative level.[39]

Respondent's partial denial of petitioner's administrative claim for input VAT refund falls under the second scenario. Following *Pilipinas Total Gas,* the Court may give credence to all evidence presented by petitioner to support its prayer for refund, irrespective of whether such evidence was presented at administrative level.

Further, *Philippine Airlines, Inc. v. Commissioner of Internal Revenue (PAL)*[40] ruled that in the exercise of the Court's appellate jurisdiction, it is not precluded from considering evidence that was not presented in the administrative claim before the BIR:

> Section 8. Court of record; seal; proceedings. - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the forms of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

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39 See *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

40 G.R. Nos. 206079-80, January 17, 2018.

Requisites under the law for the grant of the refund or issuance of tax credit certificate of input VAT.

Section 112 (A) and (C) of the NIRC, as amended, 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.
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> ...
>
> (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 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.

Jurisprudence has laid down requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT, as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[41]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[42]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[43]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[45] the acceptable

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[41] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[42] Refer to *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue v. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[43] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., v. Commissioner of Internal Revenue, supra.*

[44] *Id.*

foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;[46]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[47]

7. the input taxes are due or paid;[48]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, 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;[49] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[50]

Petitioner's administrative and judicial claims were timely filed.

Section 112(A) of the NIRC, as amended, commands the taxpayer to file an administrative claim for input VAT refund, within two (2) years, following the close of the taxable quarter when the sales were made.

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45 Under RA No. 10963, Section 106(A)(2)(a)(2) was renumbered to Section 106(A)(2)(a)(3) while Section 106(A)(2)(b) was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

46 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, supra.*

47 *Id.*

48 *Id.*

49 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

50 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra.

Section 112(C) of the same Code grants the BIR a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund. At present, said invoices, official receipts, and other supporting documents are submitted upon the filing the taxpayer's administrative claim for input VAT refund.[51] In turn, the taxpayer, may appeal to the Court, within thirty (30) days: a) from receipt of adverse decision rendered within said 90-day period; or b) after the lapse of said 90-day period, whichever is earlier.

Petitioner's input VAT refund claim covering the 1st to 4th quarters of TY 2019 was timely filed on May 11, 2021. Consider the following presentation:

<table>
<tr><th>Quarter (2019)</th><th>Close of the Taxable Quarter</th><th>Last Day to File Administrative Claim for Refund</th><th>Date of Filing of Administrative Claim for Refund</th><th>Remarks</th></tr>
<tr><td>1st Quarter</td><td>March 31, 2019</td><td>March 31, 2021</td><td rowspan="4">May 11, 2021[52]</td><td>Timely filed within the extended deadline</td></tr>
<tr><td>2nd Quarter</td><td>June 30, 2019</td><td>June 30, 2021</td><td rowspan="3">Timely filed</td></tr>
<tr><td>3rd Quarter</td><td>September 30, 2019</td><td>September 30, 2021</td></tr>
<tr><td>4th Quarter</td><td>December 31, 2019</td><td>December 31, 2021</td></tr>
</table>

To be sure, the last day for petitioner to file its administrative claim covering the 1st quarter of 2019 is only until March 31, 2021. However, due to Corona Virus Disease 2019 (COVID-19), the statutory deadlines and timeliness for the filling and submission of any document were extended.[53] The filing of the VAT refund claims

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51 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue (CIR)*, G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the documents are deemed complete upon filing of the taxpayer's administrative claim for input VAT refund.

52 Par. 3, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket - Vol. I, pp. 7 and 115, respectively; Exhibit "P-8," Docket, p. 486.

53 RA No. 11494, otherwise known as *"Bayanihan to Recover As One Act,"* October 6, 2020.

shall be extended for thirty (30) days after the lifting of the ECQ or MECQ.[54] In relation thereto, the filing of VAT Refund with VCAD, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021.[55] On April 5, 2021, RMC No. 45-2021[56] was issued, extending the deadline for filing of VAT refund applications with the VCAD which falls due on April 12, 2021 per RMC No. 39-2021 to thirty (30) days from the lifting of the ECQ.[57] Thereafter, the NCR, among others, was then placed under General Community Quarantine (GCQ), starting May 15, 2021 until May 31, 2021.[58] Counting thirty (30) days from May 15, 2021, petitioner had until June 14, 2021 to file its administrative claim for the 1st quarter of TY 2019. Thus, the filing of petitioner's administrative claim for refund of unutilized input VAT for TY 2019, was timely.

The BIR VCAD has ninety (90) days from May 11, 2021, or until August 9, 2021 to decide on said administrative claim for refund. On August 5, 2021,[59] petitioner received the VAT Refund Notice dated July 13, 2021, issued by respondent through VCAD Chief, Amelita A.

Section 4(tt) - Moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under CQ;

54 Revenue Regulations (RR) No. 27-2020 dated October 6, 2020
SUBJECT:Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4 (tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".
Section 5 thereof provides, in part, that "[i]f the deadline for the filing of the VAT refund claim falls within the ECQ or MECQ period, filing of the claim shall be extended for thirty (30) days after the lifting of the ECQ or MECQ. This applies to the affected areas of the processing offices or to the registered business address of the taxpayer-claimant where the restrictions are strictly enforced."

55 Revenue Memorandum Circular (RMC) No. 39-2021 dated March 18, 2021
SUBJECT: Extension of the Deadline for the Filing of Applications and Suspension of the Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Pursuant to Section 112 of the Tax Code of 1997, as Amended by the R.A. No. 10963 (TRAIN Law) with the VAT Credit Audit Division (VCAD).

56 SUBJECT: Extension of the Deadline for the Filing of Position Papers, Replies, Protests, Documents and Other Similar Letters and Correspondences in Relation to Ongoing BIR Audit Investigations, and Filing of VAT Refund with VAT Credit Audit Division (VCAD).

57 The National Capital Region (NCR), among others, was then placed under Modified Enhanced Community Quarantine (MECQ) from April 12, 2021 to April 30, 2021, and from May 1, 2021 to May 14, 2021, pursuant to the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) Resolution Nos. 109-A dated April 10, 2021, and 113-A dated April 29, 2021, respectively.

58 Inter-Agency Task Force Resolution No. 115-A dated May 13, 2021.

59 Exhibit "P-12" (Q&A No. 45), Docket, p. 75.

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Escober, partially granting petitioner's refund claim[60] Counting thirty (30) days from petitioner's receipt thereof on August 5, 2021, petitioner had until September 4, 2021, to file its judicial claim for refund. However, due to the physical closure of the Courts brought about by the COVID-19, this was extended until November 3, 2021. Several Office of the Court Administrator (OCA) Circulars and Administrative Circulars (ACs) were issued,[61] ordering the physical closure of courts. The filing of pleadings shall resume seven (7) calendar days counted from the first day of physical reopening of the relevant court. The Court of Tax Appeals (CTA) physically reopened on October 21, 2021, pursuant to Supreme Court AC No. 83-2021 dated October 18, 2021. Counting seven (7) calendar days from October 20, 2021, petitioner had until October 27, 2021 to file a Petition for Review. Thus, the filing of its judicial claim for refund of unutilized input VAT for TY 2019 on October 22, 2021, was timely.[62]

Petitioner is a VAT-registered taxpayer.

Petitioner is registered with the BIR as a VAT taxpayer, as evidenced by BIR Certificate of Registration No. OCN 2RC0001693309, and with Tax Identification Number 008-891-373-000.[63]

Petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales for the 1st to 4th quarters of TY 2019.

Petitioner's primary purpose is to establish a business of manufacturing, exporting, importing and trading of goods with regards agricultural consumer and other related products on wholesale basis.[64]

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60 Exhibit "P-10," Docket, pp. 489 to 495; Exhibit "R-4," BIR Records [unpaginated, in between pp. 233 and 234].

61 Refer to OCA Circular No. 114-2021 dated August 20, 2021; OCA Circular No. 117-2021 dated August 28, 2021; OCA Circular No. 119-2021 dated September 7, 2021; AC No. 72-2021 dated September 15, 2021; AC No. 75-2021 dated October 1, 2021; and AC No. 83-2021 dated October 18, 2021.

62 Docket, pp. 6 to 19.

63 Exhibit "P-3," Docket, p. 477.

64 Exhibit "P-2," Docket, p. 469.

In its Quarterly VAT Returns (BIR Form No. 2550-Q) for TY 2019, petitioner reported total sales in the amount of ₱561,550,170.82, of which ₱554,044,938.55,[65] are zero-rated sales:

TY 2019	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
Vatable Sales	₱ 615,869.87	₱ 1,229,579.46	₱ 2,915,910.40	₱ 2,487,288.59	₱ 7,248,648.32
Zero Rated Sales	124,717,761.93	124,384,961.04	148,556,819.96	156,385,395.62	554,044,938.55
Exempt Sales	0.00	0.00	78,241.74	178,342.21	256,583.95
Total Sales	**₱125,333,631.80**	**₱125,614,540.50**	**₱151,550,972.10**	**₱159,051,026.42**	**₱561,550,170.82**

Petitioner claims that its sales of goods to various customers abroad, as evidenced by various documents, such as sales invoices, bills of lading and export declarations, proving the shipment of the goods outside of the Philippines, falls under Section 106(A)(2)(a)(1) of the NIRC, as amended, which states:

> SEC. 106.Value-added Tax on Sale of Goods or Properties. –
>
> (A) Rate and Base of Tax. – ...
>
> (1) ...
>
> (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).

To accord 0% VAT on sales falling under Section 106(A)(2)(a)(1) of the NIRC, as amended, the following essential elements must concur: *first,* the sale was made by a VAT registered person; *second,* there was sale and actual shipment of goods from the Philippines to a

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65 Exhibits "P-4" to "P-7," Docket, pp. 478 to 485.

foreign country; and *third,* said sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

In relation to the *second* element, any VAT-registered person claiming VAT zero-rated direct export sales must present, among others: *one,* sales invoice (SI) as proof of sale of goods;[66] and *two,* bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.[67]

Said SIs must also comply with the pertinent invoicing and substantiation requirements, containing all the required information under Section 113(A) and (B), of the NIRC, as amended.[68] This is

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66 Section 113(A)(1) of the NIRC, as amended, requires a VAT-registered person to issue a VAT invoice for every sale of goods, among others. See *Takenaka Corporation-Philippine Branch v. Commissioner of Internal Revenue,* G.R. No. 193321, October 19, 2016.

67 *Commissioner of Internal Revenue v. Colt Commercial, Inc.* and *Colt Commercial, Inc. v. Commissioner of Internal Revenue,* CTA EB Nos. 2006 and 2012, June 29, 2020, citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.

68 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:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(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;
(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 break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[69] as amended. In addition, the SIs must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the NIRC, as amended.[70]

Thus, only the export sales of goods supported by the proper documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

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(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

69 SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

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:

(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 written or printed prominently on the invoice or receipt;

(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 break-down 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 peso (₱1,000.00) 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, shall be indicated in addition to the information required in (1) and (2) of this Section.

70 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 (₱25.00) 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: ....

For the *first* condition, petitioner's status as a VAT-Registered person may not be denied.[71]

For the *second* condition, petitioner presented its schedules of zero-rated sales[72] and the corresponding SIs,[73] bills of lading[74] and export declarations,[75] to prove direct export sales of its goods.

Out of the ₱554,044,938.55 reported total zero-rated sales of petitioner for TY 2019, ICPA Bambao accounted only the amount of ₱509,215,283.76, as follows:[76]

Table 10	1st Quarter[77]	2nd Quarter[78]	3rd Quarter[79]	4th Quarter[80]	Total
1. Zero-rated sales supported by compliant VAT-registered SIs, bill of lading and export declarations	₱118,249,945.89	₱106,699,349.54	₱149,584,316.67	₱110,965,955.84	₱485,499,567.94
2. Adjustments, various charges or returned shipment supported by credit note	(17,444.40)	-	(1,658,107.77)	(2,688,896.33)	(4,364,448.50)
3. Zero-rated sales supported by sales invoice and bill of lading	6,088,541.83	5,594,693.07	-	-	11,683,234.90

71 *Supra* note 63.
72 Annexes 3 to 6, Exhibit "P-3447," Docket, pp. 312 to 318.
73 Exhibits "P-135" to "P-379".
74 Exhibits "P-380" to "P-614".
75 Exhibits "P-615" to "P-838".
76 Table 10, Exhibit "P-3447," Docket, p. 304.
77 Annex 3, Exhibit "P-3447," Docket, pp. 312 to 313; Exhibits "P-135" to "P-195," "P-380" to "P-436" and "P-615" to "P-669," USB.
78 Annex 4, Exhibit "P-3447," Docket, p. 314; Exhibits "P-196" to "P-244," "P-437" to "P-484" and "P-670" to "P-710," USB.
79 Annex 5, Exhibit "P-3447," Docket, pp. 315 to 316; Exhibits "P-245" to "P-319," "P-485" to "P-554" and "P-711" to "P-780," USB.
80 Annex 6, Exhibit "P-3447," Docket, pp. 317 to 318; Exhibits "P-320" to "P-379," "P-556" to "P-614" and "P-781" to "P-838," USB.

but without export declaration					
4. Supported by sales invoice but without bill of lading and export declaration	396,718.61	49,684.04	-	-	446,402.65
5. VAT-exempt sales per invoice				2,667,019.29	2,667,019.29
6. Zero-rated sales supported by sales invoice and bill of lading but without export declaration; No date[81] per bill of lading		7,906.00			7,906.00
7. Zero-rated sales supported by sales invoice, bill of lading, and certificate of origin but without export declaration		12,033,328.39	630,611.06	611,662.03	13,275,601.48
Grand Total	**₱124,717,761.93**	**₱124,384,961.04**	**₱148,556,819.96**	**₱111,555,740.83**	**₱509,215,283.76**

Notably, sales in the amount of ₱44,829,654.79 (declared zero-rated sales per Quarterly VAT Returns in the total amount of ₱554,044,938.55 less zero-rated sales as accounted for by the ICPA in the amount of ₱509,215,283.76) were not supported by VAT zero-rated SIs, must be denied VAT zero-rating.

Further, an examination of the supporting documents and the ICPA Report, as shown in the table above, reveal that the claimed

81 Dated April 16, 2019 per bill of lading, Exhibit "P-480," USB.

zero-rated sales in the respective amounts of ₱446,402.65 and ₱2,667,019.29 (item nos. 4 and 5 of the table above), or in the total amount of ₱3,113,421.94 are supported by sales invoice without bill of lading and export declaration, and VAT-exempt sales per invoice must also be denied VAT zero-rating.

In addition, petitioner's claimed zero-rated sales in the amount of ₱8,859,672.77, must likewise, be disallowed VAT zero-rating for the following reasons:

Exhibit No. (Bill of lading)	Exhibit No. (SI)	SI No.	Amount per SI (in US$)	Amount of Sales (in Ph₱)
"P-384" was denied admission by the Court.[82]	"P-139"	158	$ 25,392.00	₱ 1,337,927.98
"P-421"	"P-176" was denied admission by the Court.[83]	103	26,400.00	1,387,144.74
"P-425" was denied admission by the Court.[84]	"P-180"	99	22,040.00	1,160,616.96
Subtotal			**$ 73,832.00**	**₱ 3,885,689.68**
"P-420" **is illegible.** [85]	"P-175"	104	$ 54,900.00	₱ 2,883,888.05
"P-445" **is illegible.** [86]	"P-204"	221	21,751.20	1,127,916.87
"P-512" **is illegible.** [87]	"P-272"	308	18,476.13	962,178.17
Subtotal			**$ 95,127.33**	**₱ 4,973,983.09**
Total			**$168,959.33**	**₱ 8,859,672.77**

Therefore, petitioner's zero-rated sales duly supported by SIs and bills of lading only amounts to ₱497,242,189.05, computed as follows:

Zero-rated sales per VAT Returns	₱ 554,044,938.55
Less disallowances:	
Without supporting sales invoices	44,829,654.79
Per ICPA's report	3,113,421.94
Per Court's findings	8,859,672.77
Supported zero-rated sales	**₱ 497,242,189.05**

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82 Resolution dated February 22, 2023, Docket, p. 523.
83 *Id.*
84 *Id.*
85 *Id.*
86 *Id.*
87 *Id.*

For the *third* condition, petitioner presented Inward Remittance Certifications issued by BDO Unibank Inc.[88] and Transaction Detail Advice Reports issued by CitiBank.[89] Yet, an examination of these Certificates of Inward Remittance/Transaction Detail Advice Report[90] show certain amounts (in US$) of inward remittances credited to petitioner's account from its customers that do not match with the sales amounts per the supporting SIs.

Moreover, the ICPA's comparison of the amounts remitted to petitioner's account against the SIs issued by petitioner shows the following:[91]

Table 11	Sales per SI in US$	Amount Credited in USD per Bank Certification (Net of Bank Charges)	Difference in US$	Remarks
Agri Exim DMCC	$8,559,910.52	$8,701,789.38	$(141,878.86)	According to Petitioner, the difference noted pertains to the following: - Payment applied to December 2018 receivables from AGRI EXIM DMCC amounting to ₱48,828.20; - Unaccounted amounting to ₱73.28; and - Overpayment was applied in the succeeding zero-rated sales to ₱502,848.00. Please refer **Annex 11** for details.
Agri Exim FZE	1,284,164.80	1,295,958.69	(11,793.89)	According to Petitioner, overpayment was applied in 2020 zero-rated sales and reported in Advances from Customers as of December 2019. Please refer **Annex 12** for details.
Anil Kumar Jain	153.00	-	153.00	According to Petitioner, this was remitted through Western Union and was deposited to their Peso Account

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88 Exhibits "P-3441" to "P-3443," USB. Note that Exhibit "P-3443" has no exhibit marking on actual document, refer to Resolution dated February 22, 2023, Docket, p. 526.

89 Exhibits "P-3444," "P-3445 and "P-3446," USB. Note that exhibit markings on actual documents are Exhibits "P-3443," "P-3444" and "P-3445," respectively, refer to Resolution dated February 22, 2023, Docket, p. 526.

90 Exhibits "P-3441" to "P-3446," USB.

91 Table 11, Exhibit "P-3447," Docket, pp. 304 to 305.

Table 11	Sales per SI in US$	Amount Credited in USD per Bank Certification (Net of Bank Charges)	Difference in US$	Remarks
Total	$9,844,228.32	$(9,997,748.07)	$(153,519.75)	

Petitioner failed to present any documentary evidence to support its claim regarding the differences noted by the ICPA. Moreover, while the ICPA's schedules of "Invoices v. Remittances-Agri Exim DMCC" [92] and "Invoices v. Remittances–Agri Exim FZE"[93] show no difference on most items when grouped together, it must be emphasized that the amounts on various SIs were merely splitted or broken down to reconcile with the alleged foreign currency remittances.

Since it cannot be ascertained whether the foreign currency inward remittances actually pertain to the payments for petitioner's export sales of goods during TY 2019, petitioner failed to satisfy the conditions for zero-rating under Section 106(A)(2)(a)(1) of the NIRC, as amended. It is thus unnecessary for this Court to look into petitioner's compliance with the other remaining requisites in obtaining a refund of unutilized input VAT.

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi Juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[94] Petitioner failed in this regard.

WHEREFORE, the present Petition for Review filed by Agri Exim Global Philippines Inc., is **DENIED**, for lack of merit.

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92 Annex 11, Exhibit "P-3447," Docket, pp. 351 to 355.

93 Annex 12, Exhibit "P-3447," Docket, p. 356.

94 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018. Citations omitted.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
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.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
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