REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## SECOND DIVISION

**KURIMOTO (PHILIPPINES) CORPORATION,**
Petitioner,

- versus -

**HON. CAESAR R. DULAY, IN HIS CAPACITY AS THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 9740**

Members:

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

Promulgated: SEP 17 2021 1:10 p.m.

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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Kurimoto (Philippines) Corporation (**petitioner/KPC**) pursuant to Rule 8, Section 3(a)[2], in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules

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1 Filed on 22 December 2017, Division Docket, Volume I, pp. 10-31.

2 **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other

of the Court of Tax Appeals[4] (**RRCTA**). It seeks the reversal of the decision embodied in a letter dated 23 November 2017[5] of respondent Hon. Caesar R. Dulay, in his capacity as the Commissioner of Internal Revenue (**respondent/CIR**), issued through Revenue District Officer Isabel A. Paulino (**RDO Paulino**) of the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 49 - North Makati. Petitioner prays that in lieu thereof, the Court renders judgment granting petitioner's claim for refund or issuance of tax credit certificate (**TCC**) in the aggregate amount of ₱11,666,047.12.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal place of business at the 10th Floor, Pacific Star Building, Makati Avenue corner Gil Puyat, Bel-Air, Makati City.[6] Petitioner's Vice-President, Tomohiko Yoshida, is its duly authorized representative.[7]

Respondent is the incumbent CIR, the government official and functionary principally charged with the implementation, enforcement, and collection of internal revenue taxes in the Philippines, inclusive of the power to grant and/or deny, among others, the administrative application for the issuance of tax refunds/tax credits in accordance with law.[8]

## FACTS OF THE CASE

Petitioner's primary purpose, as stated in its Articles of Incorporation[9] (**AOI**), is "to enter into contracts related to construction, installation works, electric works, piping works, repairs & maintenance and staff service to various kinds of plants except for locally funded public works and defense related infrastructure and without engaging in local recruitment business".[10]

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matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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4 A.M. No. 05-11-07-CTA dated 22 November 2005.
5 Exhibit "P-15", Division Docket, Volume II, p. 764.
6 Joint Stipulation of Facts (JSF), id., Volume I, p. 313.
7 Id.
8 Id., pp. 313-314.
9 Exhibit "P-17" and "P-17-A", id., Volume II, p. 766-779.
10 Id., p. 766; JSF, id., Volume I, p. 314.

On 07 October 2015 and 14 January 2016, petitioner filed its Value-Added Tax (**VAT**) returns for the third[11] (3rd) and fourth[12] (4th) quarters of taxable year (**TY**) 2015, respectively. Both VAT returns were amended seven (7) times each.[13]

On 28 September 2017, petitioner filed with the BIR its administrative claim for VAT refund/tax credit[14] for the 3rd and 4th quarters of TY 2015, in the aggregate amount of ₱11,666,047.12.[15] The same was anchored on, among others, Section 108(B)(3)[16], in relation to Section 112(A)[17] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Petitioner claimed that this provision allows and authorizes a refund/tax credit if there are zero-rated or effectively zero-rated sales to which input VAT sought to be refunded is/are attributable.[18]

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11 Exhibit "P-4-A", id., Volume II, pp. 616-617.

12 Exhibit "P-5-A", id., pp. 632-633.

13 Exhibits "P-4-B", "P-4-C", "P-4-D", "P-4-E", "P-4-F", "P-4-G", "P-4", id., pp. 614-615 and 618-629; Exhibits "P-5-B", "P-5-C", "P-5-D", "P-5-E", "P-5-F", "P-5-G", "P-5", id., pp. 630-631 and 634-645.

14 Exhibits "P-2" and "P-3", BIR Records, pp. 3-10.

15 JSF, Division Docket, Volume I, p. 314.

16 **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:

...

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

...

17 **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.

...

18 JSF, Division Docket, Volume I, pp. 314-315.

Through RDO Paulino's letter dated 23 November 2017[19], the BIR denied petitioner's administrative claim for refund.[20]

## PROCEEDINGS BEFORE THIS COURT

On 22 December 2017, following the adverse decision, petitioner filed the instant Petition for Review.[21] The same was raffled to the First Division.[22]

On 02 March 2018, respondent filed his Answer[23], interposing the following special and affirmative defenses:

1. The Petition for Review should be dismissed for lack of cause of action and for being prematurely filed as respondent issued a letter dated 28 November 2017 requesting RDO Paulino to forward petitioner's claim to the Regional Office, and thereafter to the National Office, considering that Revenue Memorandum Circular (**RMC**) No. 89-2017[24] mandates the same;

2. It is incumbent for petitioner to show that it has complied with the provisions of Section 204(C)[25], in relation to Sections 108(B)(3) and 112(A) of the NIRC of 1997, as amended;

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19 Supra at note 5.
20 JSF, Division Docket, Volume I, p. 314.
21 Supra at note 1.
22 Then First Division was composed of Hon. Presiding Justice Roman G. Del Rosario, as Chairperson, Hon. Associate Justice Erlinda P. Uy and Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.
23 Received on 15 March 2018; Division Docket, Volume I, pp. 61-75.
24 Circularizes the Amendments to Revenue Memorandum Circular No. 51-2007 on the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) and Revenue Officials Authorized to Approve and/or Issue the Tax Refund/TCC.
25 **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* –

...

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

...

3. Petitioner's claim was not fully substantiated by proper documents such as sales invoices and official receipts (**ORs**). Thus, the same was denied on the ground of submission of incomplete documents under RMC No. 54-2014.[26] Specifically, petitioner failed to submit supporting documents relative to its sale to Kurimoto, Ltd. wherein the requirements for offsetting pursuant to RMC No. 54-2014 were not complied with;

4. In a claim for tax refund or tax credit, the taxpayer-applicant must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements; and,

5. Claims for refund are construed strictly against the claimant as the same partakes the nature of exemption from taxation and is, thus, looked upon with disfavor.

On 14 March 2018, respondent forwarded to this Court the BIR Records consisting of one hundred ninety-nine (199) pages and petitioner's supporting documents consisting of four (4) binders.[27]

On 15 May 2018 and 22 June 2018, respondent and petitioner filed their respective pre-trial briefs.[28] On 13 July 2018, the parties filed their Joint Stipulation of Facts[29] (**JSF**).

In the meantime, pursuant to CTA Administrative Circular No. 02-2018[30], the case was transferred to the Second Division.[31] Thereafter, the Court issued the Pre-Trial Order dated 23 November 2018.[32]

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[26] Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.
[27] Division Docket, Volume I, p. 60.
[28] Id., pp. 93-106; pp. 290-298.
[29] Id., pp. 312-320.
[30] Reorganizing the Three (3) Divisions of the Court dated 18 September 2018.
[31] See Order dated 26 September 2018, Division Docket, Volume I, p. 383.
Then Second Division was composed of Hon. Associate Justice Juanito C. Castañeda, as Chairperson and Hon. Associate Justice Cielito M. Mindaro-Grulla (Ret.), as Member.
[32] Id., pp. 387-394.

On 30 January 2019, the Court appointed Ma. Cecilia C. Katigbak (**Katigbak**) as the Independent Certified Public Accountant (**ICPA**).[33]

Thereafter, on 04 March 2019, petitioner presented both of its witnesses, Miel O. Golla (**Golla**) and ICPA Katigbak.[34]

On the witness stand, Golla testified by way of her Judicial Affidavit[35] that: (1) she is petitioner's accountant; (2) petitioner's income is primarily derived from the sale of services to Philippine Economic Zone Authority (**PEZA**)-registered enterprises, which makes them effectively zero-rated; (3) the claim for refund pertains to the 3rd and 4th quarters of TY 2015; (4) Step Asia, Inc. (**Step Asia**) is petitioner's service provider; (5) Step Asia submitted a claims report (based on an internal review of the documents in connection with the claim for refund) together with petitioner's application for tax refund/credit; (6) petitioner also submitted with its administrative claim for refund its quarterly VAT returns for the said period; (7) in addition, petitioner also submitted all other documents specified in the Checklist of Mandatory Requirements for Claims for VAT Credit/ Refund[36]; (8) the BIR denied petitioner's administrative claim for refund through its 23 November 2017 letter[37] which was served upon petitioner the following day; and, (9) petitioner complied and provided the complete requirements for its refund claim.

On cross-examination, Golla further confirmed that: (1) petitioner authorized Step Asia to process the application for refund or credit[38]; (2) Step Asia attempted to appeal the claim by elevating the same from the RDO to the regional office[39]; and, (3) Step Asia sent a letter dated 28 November 2017, which the BIR received on 01 December 2017, [requesting] that the tax refund be elevated to the regional office.[40] Petitioner did not conduct any re-direct examination.[41]

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33 See Order dated 30 January 2019, id., p. 420.
34 See Order dated 04 March 2019, id., p. 466.
35 Id., pp. 144-153.
36 Exhibit "P-7", BIR Records, p. 8.
37 Supra at note 5.
38 TSN of 04 March 2019, p. 7.
39 Id.
40 Id., p. 8.
41 Id.

Later on, ICPA Katigbak also testified by way of her Judicial Affidavit[42] that: (1) she was able to verify the documents supporting petitioner's claim for VAT refund; (2) the results of her verification and examination are contained in the "Final Report on the Results of the Procedure Performed for the Claim for Refund/Tax Credit Certificate for 3rd Quarter ended September 30, 2015 and 4th Quarter ended December 31, 2015 CTA Case No. 9740"[43] which was submitted to the Court on 28 February 2019; (3) the objectives of her review is to verify and issue a report on the examination, evaluation and substantiation of the amount of input tax indicated in the pertinent quarterly VAT returns; (4) her first step was to review the subject Petition for Review to ascertain the nature and amount of unutilized input tax credit claimed and the nature of petitioner's transactions; (5) her second step was to trace the amount of unutilized input VAT on purchases of goods and services to the figures presented in petitioner's amended 3rd and 4th quarter VAT returns; (6) she also verified if the amount claimed was not carried forward to the succeeding quarters; (7) she traced the amount of input VAT reflected in the said VAT returns to input VAT details outlined and indicated in the Summary List of Purchases (**SLP**)/Input VAT listing; (8) she traced the input VAT indicated in the said VAT returns listing to each of the supporting documents such as invoices for purchases of goods and ORs for purchases of services; (9) for the validation of VAT zero-rated sales of services, she traced the amount of sales/receipts to the total amount of zero-rated sales presented in the Schedule of Sales and the details in the Schedule of Sales and Receipts to each of petitioner's copy of supporting documents; (10) she also examined its clients' Certificates of Non-Registration of Company issued by the Securities and Exchange Commission (**SEC**) and the authenticated and consularized AOIs, as well as the VAT Zero-Rating Certificates issued by PEZA; (11) all of petitioner's sales are zero-rated since the same were made to either Taganito HPAL Nickel Corporation (**THPAL**), a PEZA-registered entity and a qualified enterprise for the purpose of VAT zero-rating as provided in its PEZA Certification[44], or Kurimoto, Ltd., a non-resident foreign corporation (**NRFC**) not engaged in trade or business in the Philippines; and, (12) based on her review, she ascertained that the total amount of ₱8,843,122.19 is substantiated by supporting documents.

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42 Exhibit "P-52", Division Docket, Volume II, pp. 453-464.
43 Exhibit "P-51", id., pp. 423-450.
44 Exhibit "P-14", id., p. 761.

On cross-examination, ICPA Katigbak confirmed that based on SEC's [Certification], Kurimoto, Ltd. is not a registered company. ICPA Katigbak likewise testified that Kurimoto Company, a company based in Japan, is not a registered company.[45]

Petitioner did not likewise conduct any re-direct examination.[46]

On 11 March 2019, petitioner filed an Urgent Omnibus Motion with Leave of Court (**Omnibus Motion**), seeking to: (1) defer the filing or submission of its Formal Offer of Evidence (**FOE**); (2) reopen trial and recall a witness for further testimony; and, (3) set a commissioner's hearing.[47] After respondent filed his Comment/Objection[48] to the said Omnibus Motion, the Second Division granted the same and set a hearing for the further testimony of Golla on 15 July 2019.[49]

On the scheduled hearing date, 15 July 2019, Golla was recalled to the witness stand. Through her Supplemental Judicial Affidavit[50], she testified that: (1) petitioner is registered with the SEC as evidenced by its AOI[51] and Amended AOI[52]; (2) petitioner is also registered with the BIR as evidenced by its Certificate of Registration (BIR Form No. 2303)[53]; (3) the BIR issued a Letter of Authority (**LOA**) SN: eLA201500048415[54]; (4) petitioner amended its quarterly VAT returns for the quarters succeeding the 4th quarter of TY 2015 to remove the amount being claimed in the present case in compliance with the requirement that the same should not have been utilized nor carried over to the succeeding quarters; (5) as proof that Kurimoto, Ltd. is an NRFC not doing business in the Philippines, petitioner has Kurimoto, Ltd.'s AOI[55] and the SEC Certification of Corporate Filing/Information dated 03 August 2016[56] certifying that Kurimoto, Ltd. was issued a Certificate of Withdrawal of License on 06 July 2011; and, (6) as proof

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45 TSN of 04 March 2019, p. 15.
46 Id.
47 Division Docket, Volume II, pp. 468-474.
48 Id., pp. 478-481.
49 See Resolution dated 26 June 2019, id., pp. 488-490.
50 Exhibit "P-66", id., pp. 494-502.
51 Supra at note 9.
52 Exhibits "P-18" and "P-18-A", Division Docket, Volume II, pp. 780-795.
53 Exhibit "P-16", id., p. 765.
54 Exhibit "P-54", id., p. 854.
55 Exhibit "P-63", id., pp. 871-885.
56 Exhibit "P-64", id., p. 886.

that THPAL is a PEZA-registered entity and is a qualified enterprise for the purpose of VAT zero-rating, petitioner has a PEZA Certification[57] dated 08 January 2015 certifying that the former is a PEZA-registered Ecozone Export Enterprise with Registration Certificate No. 10-02 dated 07 January 2010.

Respondent did not conduct any cross-examination.[58]

On 19 August 2019, petitioner filed its FOE[59], with respondent's Comment filed on 02 September 2019.[60] The latter merely stated in his Comment that he has no objection to the admission of petitioner's exhibits but does not admit their probative value, relevance and materiality to the purposes for which they were offered. On 16 October 2019, the Court resolved[61] to admit all of petitioner's exhibits, *except* Exhibits "P-19"[62], "P-20"[63], "P-21"[64], "P-22"[65], "P-35-5 and series"[66], "P-36"[67] and "P-54".[68]

Petitioner filed its Partial Motion for Reconsideration[69] (**PMR**) on 22 November 2019, seeking the admission of Exhibit "P-54" as there has been a typographical error in the identification of the subject LOA, without respondent's comment.[70]

In the meantime, respondent presented his lone witness, Revenue Office Milan S. Madarang (**RO Madarang**), who testified through his Judicial Affidavit[71] that: (1) he received LOA SN: eLA201500048757 dated 10 October 2017[72] authorizing him to examine petitioner's books of account and other accounting records; (2) BIR

57 Supra at note 44.
58 TSN of 15 July 2019, p. 5.
59 Division Docket, Volume II, pp. 594-611.
60 Id., Volume III, pp. 889-890.
61 See Resolution dated 16 October 2019, id., pp. 895-897.
62 Petitioner's 2015 General Information Sheet.
63 BIR Form No. 0605 with reference number 291500010369963.
64 Annual Income Tax Return of Petitioner for Taxable Year 2015.
65 Petitioner's Audited Financial Statements for Taxable Year 2015.
66 Petitioner's Summary List of Purchases for the month of December 2015.
67 Certification of Corporate Filing issued by the Securities and Exchange Commission.
68 Letter of Authority No. eLA201500048415.
69 Division Docket, Volume III, pp. 904-908.
70 *Per* Records Verification dated 23 January 2020, id., p. 921.
71 Exhibit "R-10", id., Volume I, pp. 108-125.
72 Exhibit "R-2", BIR Records, p. 11.

RDO 49 received petitioner's Claim for Tax Certificate/Refund[73] on 28 September 2017;[74] (3) after petitioner's case was assigned to him, he immediately collated and examined all the documents and conducted an investigation; (4) he prepared BIR Form No. 0513 Revenue Officer's Audit Report on Claims for VAT Credit/Refund dated 10 October 2017[75] based on the documents submitted by petitioner; (5) after his audit, the claim for refund was disallowed due to incomplete supporting documents, particularly those relating to the sale to Kurimoto, Ltd.; (6) petitioner was informed in writing of such denial on 24 November 2017[76] through Gerissa Mae S. Belga[77], an employee of Step Asia with ID No. 10340; (7) thereafter, a Memorandum Report[78] was submitted to the Regional Director recommending the denial of the application due to incomplete supporting documents; (8) on 01 December 2017[79], the BIR received petitioner's letter dated 28 November 2017[80] requesting that its application for TCC/refund be forwarded to the Assessment Division of Revenue Region 8 for review prior to transmittal to the Regional Director pursuant to RMC No. 89-2017[81]; (9) thereafter, petitioner's claim for refund was submitted to Officer-in-Charge-Chief James R. Ferrer (**OIC-Chief Ferrer**) of the Assessment Division of BIR Revenue Region 8, through an Indorsement Letter[82] which was received on 07 December 2017; (10) subsequently, BIR RDO 49 received a Memorandum Report dated 08 December 2017[83] from OIC-Chief Ferrer; (11) thereafter, he continued his evaluation for which he reiterated his previous recommendation for the denial of petitioner's claim due to incomplete supporting documents; and, (12) his recommendation was indicated in the Memorandum Report[84] of OIC-Chief Ferrer dated 18 December 2017.

On cross-examination, RO Madarang confirmed, among others, that: (1) the documentary requirements listed in RMC No. 54-2014[85] are the only documents required to be submitted to the BIR[86]; (2) the BIR

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73 Exhibit "R-1", id., pp. 3-7.
74 Exhibit "R-1-a", id., p. 7.
75 Exhibit "R-3", id., p. 60.
76 Exhibit "R-4", id., p. 43.
77 Exhibit "R-4-a", id.
78 Exhibit "R-5", id., p. 66.
79 Exhibit "R-6-a", id., p. 74.
80 Exhibit "R-6", id.
81 Supra at note 24.
82 Exhibit "R-7", BIR Records, p. 79.
83 Exhibit "R-8", id., pp. 80-82.
84 Exhibit "R-9", id., pp. 184-186.
85 Supra at note 26.
86 TSN of 04 December 2019, p. 7.

received the claim for VAT refund including the checklist provided in Annex A of RMC No. 54-2014 as well as all the documents mentioned in that checklist[87]; and, (3) RMC No. 54-2014 provides that there are no other documents to be submitted apart from those included in the checklist.

Respondent did not conduct any re-direct examination.[88]

On 09 December 2019, respondent filed his FOE[89] without petitioner's comment.[90] In the Resolution dated 13 February 2020[91], the Second Division resolved to grant petitioner's PMR and admitted all of respondent's documentary evidence.

On 01 July 2020, respondent filed his Memorandum[92] while petitioner transmitted its Memorandum[93] on 10 August 2020. Accordingly, the case was submitted for decision on 18 September 2020.[94]

## ISSUES

As the parties so stipulated, the issues for this Court's determination are the following:[95]

I.

WHETHER THIS HONORABLE COURT HAS JURISDICTION OVER THE PETITION FOR REVIEW FILED BY PETITIONER KURIMOTO (PHILIPPINES) CORPORATION; AND,

II.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S ASSAILED DECISION SHOULD BE REVERSED AND SET ASIDE AS THERE IS ABSOLUTELY NO FACTUAL AND/OR LEGAL BASIS FOR THE DENIAL OF PETITIONER KURIMOTO

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87 Id., p. 8.
88 Id.
89 Division Docket, Volume III, pp. 914-919.
90 Supra at note 70.
91 Division Docket, Volume III, pp. 923-925.
92 Id., pp. 927-937.
93 Id., pp. 958-975.
94 See Resolution dated 18 September 2020, id., p. 977.
95 JSF, id., Volume I, p. 315.

(PHILIPPINES) CORPORATION'S CLAIM FOR TAX REFUND/ CREDIT IN THE TOTAL AMOUNT OF ₱11,666,047.12.

## RULING OF THE COURT

Petitioner anchors its claim for refund or issuance of a TCC on Section 110(B), in relation to Section 112 of the NIRC of 1997, as amended. The said provisions, prior to the amendment brought about by Republic Act (**RA**) No. 10963[96], otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN), read as follows:

> ...
> **Sec. 110.** *Tax Credits.* —
> ...
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
> ...
>
> **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or

96 An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

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.

...

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[97], the Supreme Court laid down the requisites that must concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit:

...

A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the

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97 G.R. No. 188260, 13 November 2013; Citation omitted.

> 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; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.
>
> ...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the first ($1^{st}$) and ninth ($9^{th}$) requisites, followed by the second ($2^{nd}$) and seventh ($7^{th}$) requisites, then the third ($3^{rd}$), fourth ($4^{th}$), fifth ($5^{th}$) and eighth ($8^{th}$) requisites, jointly.

**FIRST ($1^{ST}$) REQUISITE:**
**PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.**

Petitioner complied with the $1^{st}$ requisite considering that it is VAT-registered entity with Tax Identification Number (TIN) 007-889-234-000, as evidenced by its BIR Certificate of Registration OCN9RC0000879946E dated 07 March 2011.[98]

**NINTH ($9^{TH}$) REQUISITE:**
**PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.**

In accordance with Section 112(A)[99] of the NIRC of 1997, as amended, the administrative claim for refund or issuance of a TCC of excess input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claim covers the $3^{rd}$ and $4^{th}$ quarters of TY 2015. Thus, petitioner's last day for filing of its administrative claim and the actual filing of its administrative claim for the said two (2) quarters fell on the following dates:

---

98 Supra at note 53.
99 Supra at note 17.

| Period Covered | Last Day to File the Administrative Claim | Actual Date of Filing of the Administrative Claim |
|---|---|---|
| July to September 2015 (3rd Quarter) | 30 September 2017 | 28 September 2017[100] |
| October to December 2015 (4th Quarter) | 31 December 2017 | |

From the foregoing, it is clear that petitioner's administrative claim was seasonably filed.

As to the timeliness of petitioner's judicial claim, respondent argues that petitioner violated the rule on exhaustion of administrative remedies considering that its administrative claim was still subject to review by Revenue Region 8 (when it filed its judicial claim and RDO Paulino's denial is not appealable before this Court).

We are not persuaded.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[101], the Supreme Court interpreted the two (2) periods provided in then Section 112(D) [now Section 112(C)[102]] of the NIRC of 1997, as amended, as follows:

> ...
>
> Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the **period of 120 days**, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the **period of 30 days**, which refers to the period for filing a judicial claim with the CTA. It is the 30-day period that is at issue in this case.
>
> The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the

100 Supra at note 14.
101 G.R. No. 168950, 14 January 2015; Citation omitted and emphasis in the original text.
102 As renumbered by RA 9337 otherwise known as AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.
>
> ...

Thus, from the filing of petitioner's administrative claim on 28 September 2017 together with the supporting documents, respondent had one hundred twenty (120) days therefrom, or until 26 January 2018, to act on the said claim. Considering that respondent issued a letter denying the claim on 23 November 2017[103] and petitioner received the same on 24 November 2017[104], petitioner had thirty (30) days therefrom, or until 24 December 2017, within which to file a judicial claim before this Court. Accordingly, the instant Petition for Review filed on 22 December 2017 was also seasonably made.

The authority of RDO Paulino to issue the denial letter finds basis in RMC No. 54-2014[105], pertinent parts of which state:

> ...
>
> **II. Filing and Processing of Administrative Claims —**
>
> The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B"). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. **The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the**

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[103] Supra at note 5.
[104] Paragraph 4 of the Complaint, Division Docket, Volume I, p. 14; Paragraph 4 of the Answer, id., p. 62.
[105] Supra at note 26.

> **concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.**
>
> **III. Mandatory 120+30-Day Period —**
>
> 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 (120)-day period, **appeal the decision or the unacted claim with the CTA.** Verily, a judicial claim must be filed with the CTA within 30 days from the receipt of the Commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the Commissioner, as the case may be. In this regard, the taxpayer/claimant is required to observe the 120+30-day rule before lodging a petition for review with the CTA.
>
> In sum, the taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.[106]
>
> ...

Clearly, RDO Paulino's letter dated 23 November 2017, denying petitioner's administrative claim, is the "Denial Letter" contemplated in RMC No. 54-2014 that is appealable to this Court.

**<u>SECOND (2$^{ND}$) AND SEVENTH (7$^{TH}$) REQUISITES:</u>**
**PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND FOR WHICH THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).**

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106 Emphasis supplied.

The 2nd and 7th requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2)[107] and (B)[108], and 108(B)(1) and (2)[109] of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

In its amended 3rd and 4th quarterly VAT returns for TY 2015, petitioner reported total zero-rated sales of ₱63,888,474.63[110] and ₱56,513,607.22[111], respectively.

---

107 **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 twelve percent (12%) 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.

...

(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 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 and delivery of goods to:
   (i) Registered enterprises within a separate customs territory as provided under special laws; and
   (ii) Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) subject to the provisions under Republic Act No. 9593 or the Tourism Act of 2009.

...

108 **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

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

...

109 **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 business conducted outside the Philippines or to a nonresident 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);

...

110 Exhibit "P-4", Division Docket, Volume II, pp. 614-615.

111 Exhibit "P-5", id., pp. 630-631.

In support of its declared zero-rated sales for the said quarters, petitioner submitted various documents such as ORs[112], SEC Certifications of Corporate Filing/Information[113], authenticated and consularized AOIs[114], and PEZA Certifications (of VAT zero-rating).[115]

Based on petitioner's Summary List of Sales[116], its total zero-rated sales for the 3rd and 4th quarters of TY 2015 of ₱120,402,081.85 can be broken down as follows:

| **Particulars** | **3rd Quarter TY 2015** | **4th Quarter TY 2015** | **Total** |
|---|---|---|---|
| Sale of services to a person engaged in business conducted outside the Philippines (*i.e.*, Kurimoto, Ltd.) | ₱110,857.00 | ₱3,388,136.45 | ₱3,498,993.45 |
| Sale to a PEZA-registered company (*i.e.*, THPAL) | 63,777,617.63 | 53,125,470.77 | 116,903,088.40 |
| **Total Zero-Rated Sales** | **₱63,888,474.63** | **₱56,513,607.22** | **₱120,402,081.85** |

From the above breakdown, petitioner has two (2) sources of zero-rated sales, namely:

(i) Sale of services under Section 108(B)(2) of the NIRC of 1997, as amended; and,
(ii) Sale to PEZA-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

Each source of zero-rated sales shall be discussed below, in *seriatim*.

(i) SALE OF SERVICES UNDER SECTION 108(B)(2) OF THE NIRC OF 1997, AS AMENDED

Section 108(B)(2) of the NIRC of 1997, as amended, provides:

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112 Exhibits "P-12" to "P-12-RRRR", id., pp. 664-760.
113 Supra at note 56.
114 Supra at note 55.
115 Exhibit "P-14", id., pp. 761-763.
116 Exhibit "P-11", id., p. 663.

> ...
>
> **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 business conducted outside the Philippines or to a **nonresident 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).**[117]
>
> ...

In *Accenture, Inc. v. Commissioner of Internal Revenue*[118] (**Accenture**), citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[119], the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following:

1. Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;

2. The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and,

---

117 Emphasis supplied.
118 G.R. No. 190102, 11 July 2012.
119 G.R. No. 153205, 22 January 2007.

3. The recipient of such services must be performing business outside the Philippines.

As to the 1st requirement, it is evident from petitioner's AOI[120] that its primary purpose is "to enter into contracts related to construction, installation works, electric works, piping works, repairs and maintenance and staff service to various kinds of plants except for locally funded public works and defense related infrastructure and without engaging in local recruitment business".

Clearly, the nature of services being rendered by petitioner falls within the scope of "services other than processing, manufacturing or repacking of goods" contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

With respect to the 2nd requirement, a perusal of the records would show that petitioner failed to substantiate its alleged receipts of foreign currency remittances from Kurimoto, Ltd.

In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[121], the Supreme Court noted that the certification of inward remittances attests to the fact of payment in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, to wit:

> ...
>
> To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the "sale and actual shipment of goods from the Philippines to a foreign country." In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. **Moreover, the certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *BSP*."**[122]
>
> ...

---

120 Supra at note 9.
121 G.R. No. 166732, 27 April 2007; Emphasis supplied.
122 Emphasis supplied.

Considering that petitioner failed to substantiate the foreign currency remittances it received from Kurimoto, Ltd., petitioner's sales of services to the latter cannot qualify as valid zero-rated sales. Consequently, the Court will no longer belabor to discuss petitioner's compliance with the 3rd requirement (as stated in the above case of *Accenture*).

(ii) SALE TO A PEZA-REGISTERED ENTITY UNDER SECTION 106(A)(2)(A)(5) OF THE NIRC OF 1997, AS AMENDED

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

> ...
>
> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
> (A) *Rate and Base of Tax.* — ...
>
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> ...
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws[.]
>
> ...

Relative thereto, Section 4.106-5(a)(5) of Revenue Regulations (**RR**) No. 16-2005[123], as amended by RR No. 04-2007[124], provides:

> ...
>
> SEC. 4.106-5. ***Zero-Rated Sales of Goods or Properties***. — ...
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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

[124] Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

(a) ***Export Sales.*** — ...

...

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

***"Considered export sales under Executive Order No. 226"*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided,* further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.[125]

...

The special law applicable to this case is RA 7916[126], as amended by RA 8748[127], otherwise known as "The Special Economic Zone Act of 1995." Sections 8 and 24 thereof read:

---

125 Emphasis, italics and underscoring in the original text.

126 AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

127 AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

...

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 certificates 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 from 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...**[128]

...

Since, by legal fiction, the ecozone is viewed as a foreign territory, a VAT-registered person's sales of goods and services to an entity registered and operating within the ecozone in the Philippine customs territory are considered exports to a foreign country subject to zero percent (0%) VAT. The Supreme Court, in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[129], explained:

...

This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.

... An ECOZONE or a Special Economic Zone has been described as —

... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes

---

[128] Emphasis supplied.
[129] G.R. No. 150154, 09 August 2005; Citations omitted and emphasis supplied.

> and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> 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 [now, twelve percent (12%)].
>
> ...

Based on the foregoing and in relation to the aforementioned Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present in order for an export sale to qualify for VAT zero-rating:

1. The sale was made by a VAT-registered person; and,

2. The sale of goods must be to an entity entitled to incentives under Executive Order (**EO**) No. 226, otherwise known as the Omnibus Investment Code of 1987 (**OIC**), and other special laws.

As determined earlier, petitioner is a VAT-registered person hence the 1st essential element is present.

Relative to the 2nd essential element, petitioner presented a PEZA-issued Certification dated 08 January 2015[130] which confirmed that the recipient of its services, THPAL, is registered with PEZA and the said certification is valid for the year 2015. From the same PEZA Certification, THPAL "is a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services, in accordance with Sections 4.106-6 and 4.108-6 of Revenue Regulations No. 16-2005, the Consolidated Value-Added Tax Regulations of 2005".

From the above, petitioner's sales of services to THPAL for the 3rd and 4th quarters of TY 2015 qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provided that they are properly supported by VAT zero-rated ORs in compliance with Section 113(A)(2), (B)(1) and (2)(c) and (3) of the NIRC of 1997, as amended, and Section 4.113-1 (A)(2), B(1) and (2)(c) of RR No. 16-2005. These provisions require that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT OR which must contain the following information:

> ...
> **SEC. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> ...
>
> (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:

---

[130] Supra at note 44.

(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*:

...

(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**;

...

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service[.]

...

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

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

...

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

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

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

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

(1) A statement that the **seller is a VAT-registered person, followed by his TIN**;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

...

(c) If the sale is subject to zero percent (0%) VAT, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt[.][131]

...

Upon examination of the ORs and related sales invoices presented in support of petitioner's sales of goods to THPAL, the following zero-rated sales must be disallowed:

| OR No. | Amount in USD *per* ORs | Gross Receipts in PHP *per* SLS | Exhibit No. | Reason |
|---|---|---|---|---|
| 0640 | $28,322.49 | ₱1,330,031.56 | "P-12-MMMM" | Incorrect TIN of customer |
| 0641 | 130,830.00 | 6,143,811.11 | "P-12-OOOO" | Noted erasures in the ORs without countersignature and incorrect TIN of customer |

Moreover, further examination of petitioner's ORs and sales invoices issued to THPAL would reveal that petitioner only declared the net amount of receipts after deducting 2% expanded withholding tax (**EWT**) withheld by THPAL, to wit:

| OR No. | Exhibit No. | Gross Receipts in PHP *per* SLS | Exchange Rate [A] | Amount in USD *per* ORs | EWT in USD [B] | Undeclared Zero-Rated Sale in PHP [C= A x B] |
|---|---|---|---|---|---|---|
| 0602 | "P-12" | ₱4,770,417.02 | 45.10 | $105,778.75 | $2,158.75 | ₱97,355.45 |
| 0603 | "P-12-B" | 10,159,468.50 | 45.07 | 225,400.00 | 4,600.00 | 207,336.09 |
| 0604 | "P-12-D" | 8,888,667.14 | 45.58 | 194,991.58 | 3,979.42 | 181,401.37 |
| 0605 | "P-12-F" | 4,148,270.74 | 45.58 | 91,001.03 | 1,857.16 | 84,658.41 |
| 0606 | "P-12-H" | 609,043.13 | 45.58 | 13,360.64 | 272.67 | 12,429.63 |
| 0607 | "P-12-J" | 4,940,415.86 | 46.71 | 105,778.75 | 2,158.75 | 100,824.81 |
| 0609 | "P-12-L" | 4,838,918.11 | 45.75 | 105,778.75 | 2,158.75 | 98,753.43 |
| 0613 | "P-12-W" | 2,993,682.16 | 46.28 | 64,680.00 | 1,320.00 | 61,095.55 |
| 0614 | "P-12-Y" | 294,832.33 | 46.28 | 6,370.00 | 130.00 | 6,016.99 |
| 0615 | "P-12-AA" | 4,323,966.04 | 46.75 | 92,483.58 | 1,887.42 | 88,244.20 |
| 0616 | "P-12-CC" | 1,205,882.11 | 46.75 | 25,792.13 | 526.37 | 24,609.84 |
| 0617 | "P-12-EE" | 1,252,159.09 | 46.75 | 26,781.93 | 546.57 | 25,554.27 |
| 0618 | "P-12-GG" | 1,332,754.36 | 46.75 | 28,505.75 | 581.75 | 27,199.07 |
| 0619 | "P-12-II" | 6,049,049.49 | 46.75 | 129,380.70 | 2,640.42 | 123,449.88 |
| 0620 | "P-12-KK" | 3,024,524.75 | 46.75 | 64,690.35 | 1,320.21 | 61,724.94 |
| 0621 | "P-12-MM" | 4,945,566.80 | 46.75 | 105,778.75 | 2,158.75 | 100,929.93 |
| ***Subtotal - 3rd quarter TY 2015*** | | ***₱63,777,617.63*** | | ***$1,386,552.69*** | ***$28,296.99*** | ***₱1,301,583.86*** |

131 Emphasis supplied.

| OR No. | Exhibit No. | Gross Receipts in PHP *per* SLS | Exchange Rate [A] | Amount in USD *per* ORs | EWT in USD [B] | Undeclared Zero-Rated Sale in PHP [C= A x B] |
|---|---|---|---|---|---|---|
| 0624 | "P-12-EEE" | 4,948,736.60 | 46.78 | 105,778.75 | 2,158.75 | 100,994.62 |
| 0626 | "P-12-GGG" | 1,141,236.15 | 47.28 | 24,140.34 | 492.66 | 23,290.53 |
| 0631 | "P-12-UUU" | 4,989,916.74 | 47.17 | 105,778.75 | 2,158.75 | 101,835.04 |
| 0632 | "P-12-WWW" | 3,051,159.28 | 47.17 | 64,680.00 | 1,320.00 | 62,268.56 |
| 0633 | "P-12-YYY" | 3,837,063.94 | 47.17 | 81,340.00 | 1,660.00 | 78,307.43 |
| 0634 | "P-12-AAAA" | 8,321,343.49 | 47.17 | 176,400.00 | 3,600.00 | 169,823.34 |
| 0635 | "P-12-CCCC" | 10,007,838.95 | 47.23 | 211,877.96 | 4,324.04 | 204,241.61 |
| 0636 | "P-12-EEEE" | 300,880.44 | 47.23 | 6,370.00 | 130.00 | 6,140.42 |
| 0637 | "P-12-GGGG" | 4,996,351.18 | 47.23 | 105,778.75 | 2,158.75 | 101,966.35 |
| 0638 | "P-12-IIII" | 1,293,628.90 | 46.96 | 27,547.31 | 562.19 | 26,400.59 |
| 0639 | "P-12-KKKK" | 1,477,667.11 | 46.96 | 31,466.33 | 642.17 | 30,156.47 |
| 0640 | "P-12-MMMM" | 1,330,031.56 | 46.96 | 28,322.49 | 578.01 | 27,143.50 |
| 0641 | "P-12-OOOO" | 6,143,811.11 | 46.96 | 130,830.00 | 2,670.00 | 125,383.90 |
| 0642 | "P-12-QQQQ" | 1,285,805.32 | 46.96 | 27,380.71 | 558.79 | 26,240.92 |
| *Subtotal - 4th quarter TY 2015* | | *₱53,125,470.77* | | *$1,127,691.39* | *$23,014.11* | *₱1,084,193.28* |
| Total | | ₱116,903,088.40 | | $2,514,244.08 | $51,311.10 | ₱2,385,777.14 |

It must be noted that for VAT purposes, the taxable base for sale of services is the "gross receipts", which is defined in Section 108(A) of the NIRC of 1997, as amended, as follows:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) [now 12% per RMC 7-2006 (Jan. 31, 2006) effective February 1, 2006)] of **gross receipts** derived from the sale or exchange of services, including the use or lease of properties; *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:
>
> ...
>
> The term 'gross receipts' **means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.**[132]
>
> ...

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132 Emphasis supplied.

In *China Banking Corporation v. Court of Appeals, et al.*[133], the Supreme Court held:

> ...
>
> As commonly understood, the term "**gross receipts" means the entire receipts without any deduction**. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in ***Commonwealth of Pennsylvania v. Koppers Company, Inc.***, —
>
>> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. **Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions**...
>
> Likewise, in ***Laclede Gas Co. v. City of St. Louis***, the Supreme Court of Missouri held:
>
>> The word 'gross' appearing in the term 'gross receipts', as used in the ordinance, must have been and was there used as the direct antithesis of the word 'net.' ***In its usual and ordinary meaning 'gross receipts' of a business is the whole and entire amount of the receipts without deduction***. x x x On the contrary 'net receipts' usually are the receipts which remain after deductions are made from the gross amount thereof of the expenses and cost of doing business, including fixed charges and depreciation. Gross receipts become net receipts after certain proper deductions are made from the gross. And in the use of the words 'gross receipts,' the instant ordinance, of course, precluded plaintiff from first deducting its costs and expenses of doing business, etc., in arriving

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133 G.R. No. 146749, 10 June 2003; Citations omitted and emphasis supplied.

> at the higher base figure upon which it must pay the 5% tax under this ordinance.
>
> ...

In fact, in RMC No. 51-2002[134], the BIR clarified that the taxable base for the imposition of gross receipts tax (**GRT**), which is also a kind of business tax, is the amount of income actually and constructively received by the taxpayer, to wit:

> ...
>
> However, since the withholding tax only answers for the income tax liability of the recipient/income earner, the particular income received, inclusive of the amount of withholding tax withheld by the payor, shall still be subject to the percentage tax, if applicable. The gross receipts tax shall be **based on the amount of income actually or constructively received during a taxable period**, which is equivalent to the economic benefit derived from the income payment. **Hence, not only should the amount actually received form part of gross receipts for purposes of the gross receipts tax, but <u>also the amount constructively received corresponding to the final withholding tax which was used in extinguishing the income tax liability of the recipient</u> on the income received.** In fine, the gross receipts tax for percentage tax purposes is **inclusive of the final withholding tax applying the doctrine of "constructive receipt" of income.**[135]
>
> ...

Based on the foregoing, the amount of gross receipts that should have been declared by petitioner that is subject to 0% VAT for the 3rd and 4th quarters of TY 2015 must include the 2% EWT withheld by THPAL totaling ₱2,385,777.14, which represents petitioner's advance income tax payments.[136] Thus, petitioner's input VAT claim corresponding to the undeclared zero-rated sales shall be denied.

In sum, petitioner's duly substantiated zero-rated sales for the 3rd and 4th quarters of TY 2015 amounted to ₱109,429,245.73, computed as follows:

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134 Imposition of the Gross Receipts Tax under Sections 121 and 122 of the Tax Code on Items of Gross Income Subject to Final Withholding Tax and Clarifying the Tax Base Thereof.

135 Emphasis supplied.

136 See *Chamber of Real Estate and Builders' Association, Inc. v. The Hon. Executive Secretary Alberto Romulo, et al.*, G.R. No. 160756, 09 March 2010.

| Particulars | 3rd Quarter TY 2015 | 4th Quarter TY 2015 | Total |
|---|---|---|---|
| Zero-Rated Sales | ₱63,888,474.63 | ₱56,513,607.22 | ₱120,402,081.85 |
| Add: Undeclared zero-rated sales to THPAL | 1,301,583.86 | 1,084,193.28 | 2,385,777.14 |
| **Total Zero-Rated Sales** | **65,190,058.49** | **57,597,800.5** | **122,787,858.99** |
| Less: Disallowances | | | |
| 1) Sales to Kurimoto, Ltd. | 110,857.00 | 3,388,136.45 | 3,498,993.45 |
| 2) Incorrect TIN and/or noted erasures without counter-signature | - | 7,473,842.67 | 7,473,842.67 |
| 3) Undeclared zero-rated sales | 1,301,583.86 | 1,084,193.28 | 2,385,777.14 |
| **Total Valid and Substantiated Zero-Rated Sales** | **₱63,777,617.63** | **₱45,651,628.10** | **₱109,429,245.73** |

**THIRD (3RD), FOURTH (4TH), FIFTH (5TH), and EIGHTH (8TH) REQUISITES: PETITIONER INCURRED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.**

The Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. 3rd requisite: the input taxes are due or paid;

b. 4th requisite: the input taxes are not transitional input taxes;

c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,

d. 8th requisite: 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.

In its amended 3rd[137] and 4th[138] quarterly VAT returns for TY 2015, petitioner declared excess and unutilized input VAT of ₱11,666,047.12 on its domestic purchases of capital goods exceeding ₱1 Million and importation of goods other capital goods as well as the amortization of capital goods, as shown below:

| | 3rd Quarter | 4th Quarter | Total |
|---|---|---|---|
| Input Tax Deferred on Capital Goods Exceeding ₱1 Million from the Previous Quarter | ₱- | ₱246,932.14 | ₱- |
| Input Tax on Purchase of Capital Goods Exceeding ₱1 Million | 259,928.57 | - | 259,928.57 |
| Input Tax on Domestic Purchase of Goods Other Than Capital Goods | 485,897.54 | 405,698.01 | 891,595.55 |
| Input Tax on Domestic Purchase of Services | 6,112,029.01 | 4,636,429.70 | 10,748,458.71 |
| Total Input Tax | ₱6,857,855.12 | ₱5,289,059.85 | ₱11,899,982.83 |
| Less: Input Tax on Purchases of Capital Goods Exceeding ₱1 Million Deferred for the Succeeding Period | 246,932.14 | 233,935.71 | 233,935.71 |
| **Total Allowable Input VAT Refund** | **₱6,610,922.98** | **₱5,055,124.14** | **₱11,666,047.12** |

As regards the 4th requisite, "transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer".[139]

Since there is no showing that the claimed input VAT is transitional input tax, petitioner is deemed to have complied with the 4th requisite.

With respect to the 3rd requisite, petitioner provided supporting documents to prove that the input VAT claimed during the subject periods are actually due or paid, such as invoices or ORs from its suppliers. However, as stated in the ICPA Report[140], petitioner's input VAT claimed in the amount of ₱2,822,924.92 must be disallowed for not being properly substantiated by VAT invoices or ORs as prescribed

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137 Exhibit "P-4", Division Docket, Volume II, pp. 614-615.

138 Exhibit "P-5", id., pp. 630-631.

139 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 158885, 02 April 2009.

140 Exhibit "P-51", Supra at note 43.

under Sections 110(A)[141] and 113(A) and (B)[142], of the NIRC of 1997, as amended, in relation to Sections 4.110-2[143], 4.110-3[144], 4.110-8[145] and 4.113-

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141 **SEC. 110.** *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

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

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

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

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

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

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

*Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

142 **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 known 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;

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(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 involved 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 known 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
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.
...

143 **SEC. 4.110-2.** *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

144 **SEC. 4.110-3.** *Claim for Input Tax on Depreciable Goods.* - Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in instalment for an acquisition cost of more than P1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.
...

145 **SEC. 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.

1[146] of RR No. 16-2005, as amended. ICPA Katigbak's findings[147] are as follows:

| Nature of Disallowance | Reference | Amount |
|---|---|---|
| Input VAT on domestic purchase of goods and services in which VAT amount not shown separately. | Annex V of the ICPA Report | ₱1,202,369.82 |
| Input VAT on domestic purchase of goods and services with incomplete petitioner's information. | Annex VI of the ICPA Report | 866,440.66 |
| Input VAT on domestic purchase of goods | Annex VII of the | 491,847.25 |

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

146 **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 pesos (P1,000.00) 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.

147 See Table 4, ICPA Report, Exhibit "P-51", Supra at note 43, p. 428.

| Nature of Disallowance | Reference | Amount |
|---|---|---|
| and services in which are beyond the period of claim. | ICPA Report | |
| Input VAT on domestic purchase of goods and services not under the petitioner's registered address. | Annex VIII of the ICPA Report | 108,528.88 |
| Input VAT on domestic purchase of goods and services in which name, address and TIN of petitioner is not indicated. | Annex IX of the ICPA Report | 69,075.93 |
| Input VAT on domestic purchase of goods and services with invalid supporting documents. | Annex X of the ICPA Report | 47,611.34 |
| Input VAT on domestic purchase of goods and services with no supporting documents at the time of verification. | Annex XI of the ICPA Report | 15,319.89 |
| Input VAT on domestic purchase of good where the amount per supporting document differs from the amount per schedule | Annex XII of the ICPA | 13,060.71 |
| Input VAT on domestic purchase of goods and services which are not under the petitioner's name. | Annex XIII of the ICPA | 8,670.44 |
| **Total** | | **₱2,822,924.92** |

Upon further scrutiny of the ICPA Report with the other submitted documentary evidence, the Court also finds that an additional amount of ₱3,434,552.56 shall likewise be disallowed for failure to meet the substantiation requirements, as listed below:

| Exhibit | Supplier | Amount | Reason |
|---|---|---|---|
| *a. Input Taxes on Domestic Purchase of Services* | | | |
| "P-46-15" | Bituin Property Holdings, Inc. | ₱8,545.01 | Supported by VAT OR with incorrect registered address |
| "P-47-17" | | 8,545.01 | |
| "P-48-11" | | 8,545.01 | |
| "P-49-10" | | 8,545.01 | |
| "P-50-9" | | 8,545.01 | |
| "P-48-22" | DHL Express Philippines Corp. | 204.00 | |
| "P-46-64" | Konsult Construction Corporation | 98,271.43 | |
| "P-48-92" | Size Able Co Inc. | 617.14 | |
| "P-48-30" | Entechnos Corporation | 197,280.00 | Supported by VAT OR that contains erasures but no countersignature |

| Exhibit | Supplier | Amount | Reason |
|---|---|---|---|
| "P-47-52" | Fuji Xerox Philippines, Inc. | 399.27 | Supported by VAT OR with no cashier's signature |
| "P-49-32" | | 121.32 | Supported by VAT OR that contains erasures but no countersignature and with incorrect TIN |
| "P-50-34" | Global Security Solutions, Inc. | 861.94 | Supported by VAT OR dated beyond the period of claim |
| "P-46-99" | PLDT | 3,613.80 | Supported by VAT OR with no TIN of petitioner |
| "P-48-85" | | 3,782.89 | |
| "P-49-68" | | 3,483.44 | |
| "P-48-90" | Seven Red Diamond Corporation | 1,093.43 | Supported by VAT OR but the VAT amount is not separately indicated |
| "P-50-70" | | 709.29 | |
| "P-45-106" | Taihei Alltech Constructions Phils., Inc. | 851,695.15 | Supported by VAT OR with incorrect TIN of petitioner |
| "P-46-121" | | 868,716.40 | |
| "P-47-132" | | 869,622.14 | |
| "P-50-78" | | 438,896.62 | |
| | ***Subtotal*** | ***₱3,382,093.31*** | |
| *b. Input Taxes on Domestic Purchase of Goods* | | | |
| "P-47-14" | Beawmont Distributions, Inc. | ₱140.09 | Supported by VAT invoice that contains erasures but no countersignature |
| "P-46-100" | Powerhouse Industrial Sales and Services, Inc. | 26,159.58 | Not supported by VAT invoice |
| "P-47-111" | | 26,159.58 | |
| | ***Subtotal*** | ***₱52,459.25*** | |
| | **Total** | **₱3,434,552.56** | |

Thus, out of petitioner's total claimed input VAT of ₱11,666,047.12, only the amount of ₱5,408,569.64 represents the substantiated input VAT, computed as follows:

| | | |
|---|---|---|
| Claimed Input VAT | | ₱11,666,047.12 |
| Less: Disallowances | | |
| *Per* ICPA | ₱2,822,924.92 | |
| *Per* Court's verification | 3,434,552.56 | 6,257,477.48 |
| **Substantiated/Valid Input VAT** | | **₱5,408,569.64** |

Consequently, only the substantiated unutilized input VAT of ₱5,408,569.64 can be attributed to the total zero-rated sales of petitioner in the amount of ₱122,787,858.99, and only the input VAT of ₱4,820,117.26 is attributable to the **valid** zero-rated sales of ₱109,429,245.73, as determined below:

| | **3rd and 4th Quarters of TY 2015** |
|---|---|
| Total Zero-Rated Sales [A] | ₱122,787,858.99 |
| Valid Zero-Rated Sales [B] | 109,429,245.73 |
| Percentage of Valid Zero-Rated Sales [C=B/A] | 89.12% |
| Substantiated/Valid Input VAT [D] | 5,408,569.64 |
| **Input VAT for Refund [D x C]** | **₱4,820,117.26** |

The claimed input VAT of ₱11,666,047.12 was also deducted as "VAT Refund/TCC Claimed" in its amended 4th quarter VAT return[148] for TY 2015; thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.

Verily, petitioner likewise complied with the 5th requisite stating that the input VAT should have not been applied against output VAT during and in the succeeding quarters.

Lastly, considering that petitioner is only engaged in zero-rated or effectively zero-rated sales and it has no taxable or exempt sales, petitioner is likewise deemed to have complied with the 8th requisite.

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the amount of ₱4,820,117.26, representing the unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of TY 2015.

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148 Supra at note 138.

**WHEREFORE**, premises considered, the present Petition for Review filed on 22 December 2017 by petitioner Kurimoto (Philippines) Corporation is hereby **PARTIALLY GRANTED**. Accordingly, respondent Hon. Caesar R. Dulay, in his capacity as the Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND ONE HUNDRED SEVENTEEN PESOS and TWENTY SIX CENTAVOS** (₱4,820,117.26), representing the unutilized and excess input value-added tax (VAT) attributable to its zero-rated sales for the third and fourth quarters of taxable year 2015.

**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