REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HALLIBURTON WORLDWIDE LIMITED – PHILIPPINE BRANCH, *Petitioner,*	**CTA CASE NO. 10139**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 26 2023 1:30 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed on July 26, 2019 by petitioner Halliburton Worldwide Limited - Philippine Branch[1] ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"). Petitioner assails the alleged denial of its claim for refund of unutilized input value-added tax ("**VAT**") attributable to zero-rated sales based on the *Letter*[5] dated June 26, 2019.

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[1] Dated July 23, 2019, received by the Court on July 26, 2019; Docket – Vol. I, pp. 12-23.
[2] *Section 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] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[4] A.M. No. 05-11-07-CTA.
[5] Annex "F", *Petition for Review.*

THE PARTIES

Petitioner Halliburton Worldwide Limited - Philippine Branch is a corporation duly organized and existing under the laws of Cayman Islands.[6] Its primary purpose is "to engage in the business of providing oilfield services and products, such as well completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services, and importation and provision of oilfield equipment and technology to the oil and gas industries."[7]

It is registered with the Bureau of Internal Revenue ("**BIR**") as a VAT taxpayer with Tax Identification Number ("**TIN**") 266-369-565.[8] Its office is at Pearlbank Center, 146 Valero Street, Salcedo Village, Makati City.[9]

Respondent is the Commissioner of the BIR, the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[10]

THE FACTS

On March 29, 2019, petitioner filed with Revenue District Office ("**RDO**") No. 53B an Application for Tax Credits/Refund (BIR Form 1914),[11] requesting the refund of ₱12,237,833.00 representing its unutilized input VAT for the 1st to 4th quarters of calendar year ("**CY**") 2017 attributable to zero-rated sales.

The *Notice to Comply* dated April 14, 2019 was then issued to petitioner by the BIR through Mr. Ignacio T. Camba, Jr. ("**RDO Camba, Jr.**"), Revenue District Officer of RDO No. 53B, requesting petitioner to submit certain documents to facilitate the verification and processing of its claims for VAT refund, subject to the limitations set forth under the law.

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[6] Exhibit "P-1", Docket, Vol. I, pp. 191-203.
[7] *Ibid.*
[8] Exhibit "P-2", Docket, Vol. I, p. 204.
[9] Par. 2, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 477.
[10] *Joint Stipulation of Facts and Issues*, par. 3.; Docket, Vol. II, p. 478.
[11] Exhibit "P-25", Docket, Vol. I, p. 466.

In response, petitioner filed on June 26, 2019 a *Reply to the Bureau of Internal Revenue (BIR) – Notice to Comply dated April 14, 2019 to facilitate the Application for Value-Added Tax (VAT) Refund for Taxable Year (TY) 2017* dated June 25, 2019,[12] submitting certain documents to substantiate its claim.

On June 28, 2019, petitioner received a *Letter* ("**Denial Letter**") signed by RDO Camba, Jr.,[13] stating that petitioner's claim for refund was denied for non-compliance with the requirements enumerated in the *Notice to Comply* it received on April 14, 2019. The *Letter, inter alia,* states:

> "Please be informed that submission of one or more but not all of the requirements enumerated in the Notice to Comply, which was received by your representative on April 14, 2019 does not constitute compliance, thus your claim/application is considered to have been NOT filed as provided for under Sec. 4.112-1 (d) par. 2 of Revenue Regulation No. 26-2018 '..... Provided, That, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.' and Section III item 1 of Revenue Memorandum Circular No. 17-2018 '... actual date of filing of the application with complete documents duly received by the processing office'.
>
> The result of verification and recommendation for the denial of your request by this District is subject to review by this Region. Nonetheless, you are not precluded from refiling the same request awaiting decision, however, such shall be regulated by Revenue Memorandum Circular No. 47-2019 dated April 16, 2019."

Subsequently, Regional Director Glen A. Geraldino issued a letter dated July 2, 2019,[14] denying petitioner's claim for VAT refund for failure to substantiate its claim as evidenced by its failure to comply with the *Revised Checklist of Mandatory Requirements for Claims for VAT Refund,* under Revenue Memorandum Circular ("**RMC**") No. 17-2018.

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[12] Exhibits "P-851" and "R-5", *BIR Records*, pp. 1162 to 1163.
[13] Exhibit "P-26", *id.*, p. 467.
[14] Exhibit "R-7", *BIR Records*, p. 1189.

PROCEEDINGS BEFORE THE COURT

Petitioner filed a *Petition of Review* on July 26, 2019.[15]

On August 6, 2019, petitioner filed an *Ex-Parte Motion to Admit Duly Authenticated Verification*, [16] which the Court granted in a *Resolution* dated August 13, 2019.[17]

On August 22, 2019, respondent filed his *Motion for Extension of Time to File Answer*,[18] which was granted in an *Order* dated August 27, 2019.[19]

On September 20, 2019, respondent filed another *Motion for Extension of Time to File Answer*,[20] which the Court granted in an *Order* dated September 25, 2019.[21]

The Court received respondent's *Answer* on October 22, 2019.[22]

On October 28, 2019, the Court issued a *Notice of Pre-Trial Conference*.[23] Respondent filed a *Motion for Resetting of Hearing* on November 14, 2019, [24] while petitioner filed an *Urgent Motion to Defer Pre-Trial Conference* on November 15, 2019,[25] to which petitioner filed a *Supplement to the Urgent Motion to Defer Pre-Trial Conference* on November 18, 2019.[26] In an *Order* dated November 18, 2019, the Court granted respondent's *Motion for Resetting of Hearing* and petitioner's *Urgent Motion to Defer Pre-Trial Conference*.[27]

Respondent filed his *Pre-Trial Brief* on November 29, 2019,[28] while petitioner filed its *Pre-Trial Brief* on December 2, 2019.[29]

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[15] *Supra* at note 1.
[16] Docket, Vol. I, pp. 68-70.
[17] *Id.*, pp. 77-78.
[18] *Id.*, pp. 79-82.
[19] *Id.*, p. 83.
[20] *Id.*, pp. 84-87.
[21] *Id.*, p. 88.
[22] *Id.*, pp. 89-93.
[23] *Id.*, pp. 94-95
[24] *Id.*, pp. 96-99.
[25] *Id.*, pp. 100-103.
[26] *Id.*, pp. 107-109.
[27] *Id.*, p. 106.
[28] *Id.*, pp. 111-113.
[29] *Id.*, pp. 114-128.

On December 20, 2019, petitioner filed a *Motion to Commission an Independent Certified Public Accountant* ("**ICPA**").[30] Petitioner likewise filed a *Submission* with an attached *Sworn Statement* of Ms. Gurvinder Kaur Karnail Singh on December 23, 2019.[31]

After the Court granted[32] the parties' *Joint Motion for Additional Time to File Joint Stipulation of Facts and Issues*,[33] the parties filed their *Joint Stipulation of Facts and Issues* on January 14, 2020.[34]

The Court issued the *Pre-Trial Order* on January 24, 2020,[35] setting the hearing on February 5, 2020, March 18, 2020, and May 11, 2020.

At the February 5, 2020 hearing, the ICPA, Atty. Adan T. Delamide was ordered to submit his report within 45 days from the hearing date. Subsequently, petitioner's witness, Ms. Singh, completed her testimony. The continuation of petitioner's presentation of evidence was set on April 22, 2020. The hearing previously set on March 18, 2020, was cancelled.[36]

On March 6, 2020, following the grant[37] of his *Motion for Extension of Time to Elevate BIR Records*,[38] respondent elevated the *BIR Records* before the court, consisting of 16 folders, with the Court noting respondent's *Compliance*[39] in a *Minute Resolution*.[40]

On June 8, 2020, the continuation of the presentation of petitioner's evidence was set anew on July 1, 2020.[41] Petitioner filed a *Motion for Postponement (of the hearing dated July 1, 2020)*,[42] which was granted by the Court on July 1, 2020.[43]

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[30] *Id.*, pp. 143-146.
[31] *Id.*, pp. 169-189.
[32] Order dated January 8, 2020; Docket, Vol. II, p. 472.
[33] Filed on January 3, 2020; *Id.*, pp. 469-471.
[34] *Id.*, pp. 477-489.
[35] *Id.*, pp. 492-497.
[36] *Id.*, pp. 506-507.
[37] *Id.*, p. 490.
[38] *Id.*, pp. 473-476.
[39] *Id.*, pp. 514-516.
[40] Dated March 9, 2020; *id.*, p. 519.
[41] *Id.*, p. 520.
[42] *Id.*, pp. 523-526.
[43] *Id.*, p. 529.

On July 1, 2020, A *Motion for Extension of Time to File ICPA Report* was filed by petitioner,[44] which the Court granted in an *Order* dated July 10, 2020.[45] Hence, the *ICPA Report* was filed on August 5, 2020.[46]

On August 28, 2020, petitioner filed its *Submission* with the attached *Sworn Statement* of Atty. Isabel Assunta C. Caguioa.[47]

At the September 2, 2020 hearing, counsel for petitioner presented two (2) witnesses, namely, Atty. Caguioa and Atty. Delamide. Atty. Caguioa testified on direct by way of *Judicial Affidavit.* The cross-examination of Atty. Caguioa was deferred upon motion of respondent's counsel. Atty. Delamide completed his testimony.[48] At the October 26, 2020 hearing, Atty. Caguioa completed her testimony.[49]

On November 9, 2020, the *Commissioner's Report* was issued in relation to the commissioner's hearing for petitioner.[50] On the same date, respondent filed his *Motion to Reset Commissioner's Hearing for the Respondent,* [51] which was granted in an *Order* dated November 10, 2020.[52]

On November 19, 2020, petitioner filed a *Formal Offer of Evidence,*[53] to which respondent failed to file his comment.[54]

On January 18, 2021, the *Commissioner's Report* was issued in relation to the commissioner's hearing for respondent.[55]

On January 19, 2021, respondent filed his *Compliance* with the attached *Judicial Affidavit* of Ms. Annie Rojas-Callao.[56]

[44] *Id.*, pp. 531-534.
[45] *Id.*, p. 537.
[46] *Id.*, pp. 538-562.
[47] *Id.*, pp. 589-590.
[48] *Id.*, p. 616.
[49] *Id.*, p. 622.
[50] *Id.*, pp. 624-626.
[51] *Id.*, pp. 628-631.
[52] *Id.*, p. 632.
[53] *Id.*, pp. 634-659.
[54] *Records Verification Report* dated January 18, 2021, *id.*, p. 944.
[55] *Id.*, pp. 942-943.
[56] *Id.*, pp. 945-953.

On January 27, 2021, the Court promulgated its *Resolution* admitting all petitioner's exhibits.[57]

At the March 10, 2021 hearing, respondent's lone witness, Ms. Callao, completed her testimony.[58]

On March 19, 2021, petitioner filed its *Urgent Motion to Reopen case for Trial and for Leave of Court to Present Additional Evidence*,[59] to which respondent failed to file his comment[60] despite the Court's *Order*[61] for respondent to comment and despite the Court's *Order*[62] granting his *Motion for Extension of Time to File Comment (on the Urgent Motion to Reopen Case for Trial and for Leave of Court to Present Additional Evidence)* dated June 30, 2021.[63] Petitioner's *Urgent Motion* was thus granted in a *Resolution* dated December 1, 2021.[64]

Respondent filed his *Formal Offer of Evidence* on May 31, 2021.[65] Respondent's exhibits were admitted in a *Resolution* dated December 1, 2021.[66]

Petitioner filed a *Motion to Conduct Hearing via Videoconference* on February 7, 2022,[67] a *Submission* with an attached *Sworn Statement* of Ms. Nadia Wahida Ab. Kadir on February 11, 2022,[68] a *Manifestation* on February 11, 2022,[69] and a *Motion to Correct the Attachments to the Sworn Statement* on February 16, 2022.[70]

At the February 16, 2022 hearing, petitioner's witness, Ms. Kadir, completed her testimony.[71] In relation thereto, petitioner filed its *Submission* with the attached *Certificate of Authentication* and *Sworn Statement* of Ms. Kadir on February 23, 2022,[72] which was noted in a *Resolution* dated March 2, 2022.[73]

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[57] *Id.*, p. 957.
[58] *Id.*, p. 958.
[59] *Id.*, pp. 960-966.
[60] Docket, Vol. III, p. 1005.
[61] Docket, Vol. II, p. 978.
[62] *Id.*, p. 1004.
[63] *Id.*, pp. 999-1002.
[64] Docket. Vol. III, pp. 1007-1008.
[65] Docket, Vol. II., pp. 979-983.
[66] Docket, Vol. III, pp. 1007-1008.
[67] *Id.*, pp. 1009-1011.
[68] *Id.*, pp. 1014-1015.
[69] *Id.*, pp. 1030-1031.
[70] *Id.*, pp. 1032-1035.
[71] *Id.*, p. 1047.
[72] *Id.*, pp. 1049-1050.
[73] *Id.*, p. 1056.

Following the *Commissioner's Report* in relation to petitioner's additional evidence dated March 7, 2022,[74] a *Supplemental Formal Offer of Evidence* was filed by petitioner on March 17, 2022,[75] to which respondent failed to file his comment.[76] The Court admitted all petitioner's exhibits in a *Resolution* dated May 18, 2022.[77]

Petitioner filed its *Memorandum* on June 20, 2022,[78] while respondent failed to file his Memorandum.[79]

The case was then submitted for decision on July 7, 2022.[80]

Hence, this *Decision*.

THE ISSUE

The parties submitted the following issue for this Court's resolution:[81]

> "Whether or not Petitioner is entitled to a refund or issuance of TCC in the aggregate amount of ₱12,237,833.00 representing its excess or unutilized input VAT for the 1st to 4th quarters of CY 2017 attributable to zero-rated sales."

PETITIONER'S ARGUMENTS

Petitioner argues that it is entitled to the refund of its excess and unutilized input VAT attributable to its zero-rated and effectively zero-rated sales for the 1st to 4th quarters of CY 2017.[82]

Petitioner argues that it is a VAT-registered taxpayer[83] and that it reported zero-rated sales in its quarterly VAT return.[84]

Petitioner contends that its sales to renewable energy ("**RE**") developers are zero-rated under Section 15(g) of Republic Act ("**RA**") No. 9513, otherwise known as the Renewable Energy

[74] *Id.*, p. 1057.
[75] *Id.*, pp. 1061-1064.
[76] *Records Verification Report* dated April 19, 2022, *id.*, p. 1080.
[77] *Id.*, pp. 1082-1083.
[78] *Id.*, pp. 1084-1107.
[79] *Id.*, p. 1109.
[80] *Id.*, p. 1111.
[81] Joint Stipulation of Facts and Issues; Docket, Vol. II, pp. 477-489.
[82] Petitioner's *Memorandum*, par. 24, Docket, Vol. III, pp. 1084-1107.
[83] *Id.*, par. 27.
[84] *Id.*, par. 28.

Act,[85] as confirmed by BIR Ruling No. 078-10.[86] According to petitioner, it rendered services to the Energy Development Corporation ("**EDC**"), which is registered with the Department of Energy ("**DOE**") as an RE Developer[87] and is further registered with the Board of Investments ("**BOI**").[88] It rendered services to EDC from the 1st to 4th quarters of CY 2017, amounting to ₱132,785,525.27[89] under a Contract for Directional Drilling Works.[90] Petitioner further states that the DOE's Renewable Energy Management Bureau ("**REMB**") wrote a letter endorsing to respondent the renewable energy projects of EDC for purposes of VAT zero-rating on its local purchases of goods, properties, and services needed in renewable energy operations.[91]

Petitioner likewise emphasizes respondent's Ruling No. VAT-0218-2020, which allegedly confirmed that EDC is a DOE-certified RE Developer entitled to VAT zero-rating on its local purchases of goods, properties, and services needed in renewable energy operations.[92]

Petitioner further posits that it issued VAT Official Receipts ("**OR**") to EDC for these sales, identifying the amounts as VAT zero-rated transactions,[93] as confirmed by the ICPA.[94]

Petitioner further alleges that it exported goods to its non-resident affiliates, *i.e.*, Halliburton Energy Services (Malaysia), PT Halliburton Indonesia, and Halliburton Worldwide GMB.[95] According to petitioner, these are non-resident foreign corporations ("**NRFC**") as evidenced by the *Certificates of Non-Registration of Company* issued by the Securities and Exchange Commission ("**SEC**");[96] the sales to them are paid for in acceptable foreign currencies accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* ("**BSP**"),[97] and are therefore, zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.[98]

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[85] *Id.*, par. 29.
[86] *Id.*, par. 30.
[87] *Id.*, par. 34.
[88] *Id.*, par. 35.
[89] *Id.*, par. 31.
[90] *Id.*, par. 32.
[91] *Id.*, par. 36.
[92] *Id.*, par. 37.
[93] *Id.*, par. 38.
[94] *Id.*, par. 39.
[95] *Id.*, par. 41.
[96] *Id.*, par. 42.
[97] *Id.*, par. 43.
[98] *Id.*, par. 44.

Petitioner also states that proof of offsetting arrangement, *i.e.*, its In House Cash and Intercompany Settlement Agreement with its foreign affiliates,[99] shall be sufficient to support a claim for refund of input VAT in accordance with RMC No. 42-2003[100] and the case of *CIR vs. Cebu Toyo Corporation*.[101]

Petitioner avers that it incurred input taxes for the four quarters of CY 2017, that such input taxes are not transitional,[102] have not been applied against output taxes,[103] and are duly substantiated by invoices, ORs,[104] and import documents.[105] According to petitioner, the VAT to non-residents has been withheld and remitted.[106]

Finally, petitioner alleges that it timely filed its administrative and judicial claims for a refund before respondent and the Court, respectively, in accordance with Section 112(C) of the NIRC of 1997, as amended.[107]

RESPONDENT'S ARGUMENTS

Respondent states in his *Answer* that petitioner's claim for VAT refund has been denied due to their failure to comply with the requirements outlined in Section 112(C) of the NIRC of 1997, as amended,[108] and for failure to comply with the *Revised Checklist of Mandatory Requirements for Claims for VAT Refund* and *Notice to Comply* dated April 14, 2019, under RMC No. 17-2018.[109]

According to respondent, the burden of proof is upon petitioner to prove that it is entitled to the claim for refund or issuance of a tax credit certificate.[110]

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[99] *Id.*, par. 47.
[100] *Id.*, par. 45.
[101] *Id.*, par. 46.
[102] *Id.*, par. 59.
[103] *Id.*, par. 60.
[104] *Id.*, par. 50.
[105] *Id.*, par. 52.
[106] *Id.*, par. 53.
[107] *Id.*, pars. 67-75.
[108] *Answer*, par. 7.
[109] *Id.*, par. 8.
[110] *Id.*, par. 9.

RULING OF THE COURT

The instant *Petition* is partially impressed with merit.

The Court has jurisdiction over the instant Petition.

Before going into the merits of the case, We shall first determine whether the Court has jurisdiction over the instant *Petition.*

Section 7(a)(1) and (2), and Section 11 of RA No. 1125,[111] as amended by RA No. 9282,[112] confer jurisdiction to this Court relative to decisions and inactions of respondent and state the manner of appealing the same, to wit:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphases added)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling, or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

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[111] AN ACT CREATING THE COURT OF TAX APPEALS.

[112] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> ... *[Emphasis and underscoring supplied.]*

Based on the foregoing, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

Anent decisions of respondent and the period fixed by law for actions involving claims for refund or tax credit, Section 112(C) of the NIRC of 1997, as amended by RA No. 10963,[113] provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> ...
>
> (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." [*Emphasis and underscoring supplied.*]

Indeed, the law vests the power to decide an application for refund of creditable input taxes to respondent, and the latter has ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application to act on it. In case of full or partial denial of the claim, the taxpayer affected may appeal the same with this Court within 30 days from receipt of the adverse decision.

[113] 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.

Notably, under Section 7 of the NIRC of 1997, as amended, respondent may delegate the powers vested in him under the pertinent provisions of the Code. We quote:

> Section 7. Authority of the Commissioner to Delegate Power. – **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The powers to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment, and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." [*Emphasis and underscoring supplied.*]

It is axiomatic that one of the powers granted to respondent is to decide claims for refund under Section 112 of the same law. This power may be delegated to respondent's subordinate officials under RMC No. 17-2018,[114] to wit:

[114] Amending RMC No. 89-2017 and Certain Provisions of RMC No. 54-2014 on Processing of Claims for Issuance of Tax Refund/TCC in Relation to Amendments Made in NIRC of 1997, as Amended by RA No. 10963, February 27, 2018.

"I. Claims for value-added tax (VAT) refund

A. General Policies

... ...

5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office of the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.

   Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. **<u>The denial letter shall be signed by the</u>** Commissioner (CIR)/Deputy Commissioner – Operations Group (DCIR – OG)/Assistant Commissioner (ACIR)/**<u>Regional Director</u>**, as the case may be.

... ...

C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of Tax Code, as amended by R.A. No. 10963

1. **All claims for VAT refund by other zero-rated taxpayers**, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, **shall be filed with and <u>processed by the concerned Revenue District Office</u>** and LT Audit Division having jurisdiction over the taxpayer-claimant.

2. **The docket with report on said claims shall be reviewed by the Assessment Division**/Office of the Head Revenue Executive Assistant (HREA) **and <u>shall be subject to the approval/disapproval by the Regional Director</u>**/ACIR – LTS, as the case may be, irrespective of amount.

... ...

III. **Time frame to process claims for VAT claims under Sections 112 (A) and (B) of the Tax Code, as amended further by R.A. No. 10963**

1. The 90-day period prescribed under 112(C) of the Tax Code, as amended, shall start from the <u>actual date of filing of the application</u> with complete documents duly received by the processing office.

2. The 90-day period shall be applied prospectively, i.e., for claims filed upon the effectivity of R.A. No. 10963.

3. **The following time frame shall be strictly adhered to by the** processing, reviewing and **<u>approving offices</u>**:

   Time Frame to Verify/Process, Review, and **<u>Approve/Disapprove</u> the Claim**

   ... ...

Regional Cases	No. of Days from Receipt of Application
Verification/processing RDOs)	60
Review (Assessment Division))	20
Approval by Regional Director	**10**
Total No. of Days	90

4. **<u>The concerned revenue officers/officials shall act on the recommended claims</u> in accordance with the abovementioned time frame, including VAT claims on importations.**" *[Emphases and underscoring supplied.]*

Thus, for Regional cases, the **Regional Director** may approve or disapprove the claim within the 90-day time frame set forth in Section 112(C) of the NIRC of 1997, as amended. If the claim is disapproved or denied, the Regional Director may also sign the denial letter. Notably, the participation of an RDO after the filing of the claim is **limited only to *"verification/processing."***

In the present case, petitioner invokes the timeliness of the *Petition* as follows:

> "13. **On June 28, 2019, Petitioner received a letter signed by Mr. Ignacio T. Camba, Jr., the Revenue District Officer of RDO No. 53B**, stating that Petitioner's Administrative Claim for Refund is denied for non-compliance with the requirements enumerated in the 'Notice to Comply' received on April 14, 2019. Thus, **pursuant to Section 112 (A) and (C), Tax Code in relation to Section 7(a)(1) and Section 11 of RA No. 1125 [An Act Creating the Court of**

> **Tax Appeals (CTA)], Petitioner has <u>thirty (30) days</u> therefrom, or until July 28, 2019, within which to file the present Petition for Review.**"[115] *[Emphases supplied.]*

Petitioner reiterated the foregoing allegations in its *Memorandum.*[116]

Thus, the subject of the present *Petition for Review* is the *Denial Letter* dated June 26, 2019 signed by RDO Camba, Jr. and received by petitioner on June 28, 2019.[117]

As discussed, under RMC No. 17-2018, the Regional Director, not the RDO, signs the denial letter. While claims for VAT refund are filed with the concerned RDO, the role of an RDO is limited only to the *verification and processing* of the claims.

In the present case, records reveal that aside from the RDO, the Regional Director of Revenue Region No. 8, Glen A. Geraldino, also signed a letter dated July 2, 2019,[118] denying petitioner's claim for a VAT refund for failure to substantiate the same. However, there is no allegation or indication that the same was issued by the BIR Regional Director and received by petitioner in the *Petition for Review,*[119] in the *Joint Stipulation of Facts and Issues,*[120] and petitioner's *Memorandum.*[121]

Such being the case, even if this Court would treat the present *Petition for Review* as an appeal to the Regional Director's denial letter dated July 2, 2019, there is no way for this Court to determine whether the same was timely filed, *i.e.*, within the 30 days to appeal to this Court.

Considering that the RDO is not authorized to sign the denial letter and there is no proof that petitioner has received the Regional Director's *Denial Letter*, this Court deems that there is **no decision** rendered on petitioner's application for refund or tax credit. Nonetheless, this Court treats this case as an appeal due to respondent's **inaction,** having received no "decision" after the lapse of the 90-day period.

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[115] Docket – Vol. I, pp. 16 to 17.
[116] Pars. 12 and 13, petitioner's *Memorandum*, Docket – Vol. I, p. 1087.
[117] Exhibits "P-26" and "R-6", BIR Records, p. 1177. Refer also to par. 13, *Petition for Review*, Docket – Vol. I, pp. 16 to 17.
[118] Exhibit "R-7", BIR Records, p. 1189.
[119] *Supra* at note 1.
[120] *Supra* at note 34.
[121] *Supra* at note 78.

Under Section 7(a)(2) of RA No. 1125[122] as amended by RA No. 9282,[123] respondent's **inaction** shall be deemed a denial of the refund or tax credit claim, *viz.*:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> ...
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving ... refunds of internal revenue taxes,** fees, or other charges, penalties in relation thereto,..., **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" [*Emphases and underscoring supplied.*]

Moreover, in *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* [124] the Supreme Court stated:

> A final note, the taxpayers are reminded that when the 120-day [now 90-day] period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The **CIR's inaction is the decision itself**. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day [now 90-day] waiting period. [*Emphases and underscoring supplied.*]

Petitioner filed with RDO No. 53B its administrative claim for refund or tax credit on March 29, 2019. [125] Consistent with RMC No. 17-2018,[126] respondent had 90 days, or until June 27, 2019, to act on petitioner's claim. In case of inaction within the said 90-day period, petitioner had 30 days from June 27, 2019, or until July 27, 2019, to file an appeal before this Court. Petitioner timely filed its *Petition of Review* on July 26, 2019.[127]

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[122] *Supra* at note 111.
[123] *Supra* at note 112.
[124] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation vs. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.
[125] Exhibit "P-25", Application for Tax Credits/Refunds (BIR Form 1914), Docket, Vol. I, p. 466.
[126] Amending RMC No. 89-2017 and Certain Provisions of RMC No. 54-2014 on Processing of Claims for Issuance of Tax Refund/TCC in Relation to Amendments Made in NIRC of 1997, as Amended by RA No. 10963, February 27, 2018.
[127] *Supra* at note 1.

Having settled that the *Petition* was timely filed, We likewise rule that We have jurisdiction over this case under Section 3(a)(2), Rule 4[128] of RRCTA.

We shall now determine whether petitioner is entitled to the refund of its alleged unutilized input taxes attributable to zero-rated sales for CY 2017 in the amount of ₱12,237,833.00.

To reiterate, Section 112(A) and (C) of the NIRC of 1997, as amended, provides:

> *Section 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.
>
> (B) ... ...

[128] Section 3. Cases Within the Jurisdiction of the Court in Divisions. — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

(C) Period within which Refund or Tax Credit 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 ninety (90) days period shall be punishable under Section 269 of this Code.

Comprehensively, as culled from jurisprudence, particularly *Commissioner of Internal Revenue vs. Toledo Power Co.*,[129] the requisites for claiming unutilized or excess input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

As to the timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[130]

2. In case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of ninety (90) days, the judicial claim must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[131]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[132]

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[129] G.R. Nos. 195175 & 199645, August 10, 2015, 766 SCRA 20-33.
[130] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182364, August 3, 2010.
[131] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra; and AT&T Communications Services Philippines, Inc., *supra*.
[132] *Id.*

5. For zero-rated sales under Sections 106(A)(2)(a)(1) and (3); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[133]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[134]

7. The input taxes are due or paid;[135]

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;[136] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[137]

Relative thereto, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[138] Thus, it behooves petitioner to comply with the foregoing requisites. As a corollary, the absence of any of the said requisites is a valid ground to deny the refund claim.

First requisite: Petitioner timely filed its administrative claim before the BIR.

The *first* requisite pertains to filing a claim for tax refund or tax credit of input VAT before the BIR within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

[133] Par. 2, Sec. 4.112-1.(a) of RR No. 16-2005, as further amended by RR No. 13-2018.
[134] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[135] Id.
[136] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; and San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*.
[137] Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, *supra*; San Roque Power Corporation vs. Commissioner of Internal Revenue, *supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[138] Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq., G.R. Nos. 201665 and 201668, August 30, 2017; Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014; Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014; Dizon vs. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008; Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.

We quote anew Section 112(A) of the NIRC of 1997, as amended:

> *Section 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: ... [*Emphasis and underscoring supplied.*]

Given the foregoing, the following are the pertinent deadlines for filing the administrative claim before the BIR.

	Last day of the quarter	**Last day of filing the administrative claim**
First quarter, 2017	March 31, 2017	March 31, 2019
Second quarter, 2017	June 30, 2017	June 30, 2019
Third quarter, 2017	September 30, 2017	September 30, 2019
Fourth quarter, 2017	December 31, 2017	December 31, 2019

By filing its administrative claim with the concerned RDO on **March 29, 2019**, [139] petitioner has seasonably complied with the period provided by law. Hence, We rule that the *first* requisite has been complied with

Second requisite: Petitioner timely filed its judicial claim before this Court.

As thoroughly discussed above, petitioner was able to file its *Petition for Review* within the 90+30-day period. Hence, We rule that petitioner has complied with the *second* requisite.

Third requisite: Petitioner is a VAT-registered taxpayer.

In determining whether petitioner is a VAT-registered taxpayer, reference may be made to its Certificate of Registration (BIR Form No. 2303).

[139] Exhibit "P-25", Docket, Vol. I, p. 466.

A perusal of the petitioner's Certificate of Registration[140] reveals that it is a VAT-registered taxpayer. As this is undisputed, We rule that the *third* requisite has been complied with.

Fourth and fifth requisites: Petitioner established that it had zero-rated or effectively zero-rated sales/ receipts during the 1st, 2nd, 3rd, and 4th quarters of CY 2017 in the reduced amount of ₱128,552,843.81.

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and Section 108(B)(1) and (2) of the NIRC of 1997, as amended, that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

In its Amended Quarterly VAT Returns (BIR Form No. 2550Q) for the 1st, 2nd, 3rd, and 4th quarters of CY 2017, petitioner reported ₱135,033,263.42 total sales/receipts, consisting of zero-rated sales/receipts and exempt sales/receipts, detailed as follows:

Exhibit No.	CY 2017	Zero-Rated Sales/Receipts	Exempt Sales/Receipts	Total Sales/Receipts
"P-32"	1st Quarter	₱43,598,109.44	-	₱43,598,109.44
"P-33"	2nd Quarter	28,185,027.36	-	28,185,027.36
"P-34"	3rd Quarter	28,727,928.37	₱1,712,132.63	30,440,061.00
"P-35"	4th Quarter	32,810,065.62	-	32,810,065.62
Total		**₱133,321,130.79**	**₱1,712,132.63**	**₱135,033,263.42**

The amount of ₱133,321,130.79, which petitioner treated as zero-rated sales/receipts comprised of ₱132,785,525.27 sales of services to duly registered RE developer and ₱535,605.52 export sales to its non-resident affiliates doing business outside the Philippines, detailed as follows:[141]

[140] Exhibit "P-2", Docket, Vol. I, p. 204.
[141] Pars. 7, 8, 17 and 20 *Petition for Review*, Docket – Vol. I, pp. 14, 15, 18 and 20, respectively; Pars. 7 to 8, 31 and 41, Docket – Vol. III, pp. 1086, 1092 and 1095 to 1096, respectively.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sale of services to RE developer					
Energy Development Corporation	₱43,387,093.41	₱28,044,999.79	₱28,543,366.45	₱32,810,065.62	₱132,785,525.27
Export Sales to non-resident foreign affiliates					
Halliburton Energy Services (Malaysia)	₱211,016.03	₱98,230.67	₱30,024.50	-	₱339,271.20
PT Halliburton Indonesia	-	41,796.90	-	-	41,796.90
Halliburton Worldwide GMB	-	-	154,537.42	-	154,537.42
Total Export Sales	*₱211,016.03*	*₱140,027.57*	*₱184,561.92*	-	*₱535,605.52*
Total Zero-Rated Sales/Receipts	**₱43,598,109.44**	**₱28,185,027.36**	**₱28,727,928.37**	**₱32,810,065.62**	**₱133,321,130.79**

Sale of services to EDC, a duly registered RE developer.

To prove its ₱132,785,525.27 sales of services to a duly registered RE developer, particularly to EDC, petitioner presented its Contract for Directional Drilling Works with EDC on November 29, 2011 where it undertook to provide the latter with directional drilling services in connection with the implementation of EDC's Drilling Operations Program, *i.e.*, a program for the drilling or workover of geothermal wells, in the Philippines.[142] As such, petitioner invokes Section 15(g) of RA No. 9513, which grants certain tax incentives to RE developers such as EDC, *viz*:

"CHAPTER VII
GENERAL INCENTIVES

Section 15. *Incentives for Renewable Energy Projects and Activities.* - **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives**:

xxx xxx xxx

(g) *Zero Percent Value-Added Tax Rate.* - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources

[142] Par. 1.27, Definitions, Exhibit "P-22", Docket – Vol. II, pp. 859 to 913.

using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and **services needed for the development, construction and installation of its plant facilities.**

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." [*Emphasis and underscoring supplied.*]

Moreover, Part III, Rule 5, Section 13(G) of the Implementing Rules and Regulations ("**IRR**") of RA No. 9513[143] provides:

"SEC. 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) Purchase of local goods, properties and **services needed for the development, construction, and installation of the plant facilities of RE Developers**; and

(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors." *[Emphasis supplied.]*

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[143] Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the DOE.

Based on the foregoing provisions, all RE Developers are entitled to zero-rated VAT *on its purchases* of local supply of goods, properties and *services needed for the development, construction and installation of plant facilities.* Furthermore, the law declares that the VAT zero-rating applies to the whole process of exploring and developing renewable energy sources up to their conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

However, the same Part III, Rule 5 of the IRR of RA No. 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

> "SEC. 18. *Conditions for Availment of Incentives and Other Privileges –*
>
> A. *Registration/ Accreditation with the DOE*
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:
>
> *(1)* ***DOE Certificate of Registration*** **-issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall preterminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> xxx xxx xxx
>
> *B. Registration with the Board of Investments (BOI)*
>
> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's

Investment Priority Plan (IPP) unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

... ... [*Emphases and underscoring supplied.*]

In addition, the DOE issued DC No. DC2021-12-0042, amending Section 18(C) of the IRR of RA No. 9513 to state that, as a rule, RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA No. 9513 after securing a DOE Certificate of Registration, *viz*:

SEC. 18. *Conditions for Availment of Incentives and Other Privileges* –

...

C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS

<u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment <u>shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act</u>, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, <u>after securing a Certificate of Registration from the DOE</u>.

<u>RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS</u>. *[Underscoring supplied.]*

Further, Section 3(B) of Revenue Regulations ("**RR**") No. 7-2022,[144] which implements the tax provisions of the RE Act, states:

[144] Tax Incentives under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof, June 22, 2022.

SECTION 3. Required Certifications/Accreditations from Appropriate Government Agencies for the Availment of the Tax Incentives. — **RE developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.**

... ...

A. Registration/Accreditation with the DOE — Existing and new RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE through the Renewable Energy Management Bureau (REMB). The following certifications shall be secured and submitted to the BIR:

(1) DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract. For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has previously executed with the DOE. The DOE Certificate of Registration is issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment. Any investment added to existing RE projects is subject to prior approval by the DOE.

(2) DOE Certificate of Accreditation — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements as determined by the DOE, in coordination with the DTI.

B. Certificate of Endorsement by the DOE — ...

C. Registration with the Board of Investments (BOI) — To qualify for incentives under the Act, RE developers, manufacturers, fabricators, and suppliers of locally-produced equipment shall register with the BOI.

D. Certificate of ITH Entitlement (CE) — ... [*Emphases and underscoring supplied.*]

Thus, RE Developers must have secured a DOE Certificate of Registration and BOI Certificate of Registration to qualify for VAT zero-rating on their purchases as contemplated under RA No. 9513 and its IRR.

To substantiate the foregoing, petitioner submitted the following documents for the consideration of the Court:

	DOE *Certificate of Registration*	**Registration with the BOI**
EDC's Projects	DOE Certificate of Registration	Certification dated January 9, 2019, issued by the BOI, listing the registered projects of EDC (BOI Certification dated January 9, 2019)[145]
Tongonan, Leyte	GRESC 2009-10-001 dated October 23, 2009[146]	Certificate of Registration No. 2012-024, as per BOI Certification dated January 9, 2019
Palinpinon, Negros Oriental	GRESC 2009-10-002 dated October 23, 2009[147]	Certificate of Registration No. 2011-202, as per BOI Certification dated January 9, 2019
Bacon-Manito Sorsogon/ Albay	GRESC 2009-10-003 dated October 23, 2009[148]	Certificate of Registration No. 2011-201, as per BOI Certification dated January 9, 2019
Kidapawan City, North Cotabato	GRESC 2009-10-004 dated October 23, 2009[149]	Certificate of Registration No. 2012-025 (Mt. Apo Geothermal Project), as per BOI Certification dated January 9, 2019
Northern Negros, Negros Occidental	GRESC 2009-10-005 dated October 23, 2009[150]	None

Correspondingly, petitioner must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> "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.

[145] Exhibit "P-853", Docket – Vol. III, p. 1037.
[146] Exhibit "P-11", Docket – Vol. II, p. 706.
[147] Exhibit "P-12", *id.*, p. 707.
[148] Exhibit "P-13", *id.*, p. 708.
[149] Exhibit "P-14", *id.*, p. 709.
[150] Exhibit "P-15", *id.*, p. 710.

(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

(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."

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[151] as amended, to wit:

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

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

[151] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

(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 (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any,

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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."

Apart from the above requirements, the sales invoices ("**SI**") and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, to wit:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx
>
> xxx xxx xxx
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Summarized below are the alleged zero-rated receipts to EDC of ₱132,785,525.28 for the 1st to 4th quarters of CY 2017, as lifted from petitioner's Schedule of Zero-rated Sales (Domestic), [152] ORs, [153] related invoices, [154] Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), and related schedules and documents,[155] which were all examined by the Court-commissioned ICPA.

[152] Annex H, Exhibit "P-29", Docket – Vol. II, p. 588.
[153] Exhibits "P-774" to "P-781".
[154] Exhibits "P-789" to "P-796" and "P-799" to "P-812".
[155] Exhibits "P-813" to "P-843".

OR Exhibit No.	Invoice Exhibit No.	Invoice Amount Billed (in USD)	Amount Billed (in Php)	EWT Amount	Net Amount	OR Amount
"P-774"	-	$ 4,316.49	₱ 215,487.81	₱ 4,309.76	₱ 211,178.05	₱ 211,178.05
"P-775"	-	55,713.40	2,775,808.73	55,516.17	2,720,292.56	2,720,292.56
"P-776"	"P-789"	260,579.00	12,989,602.58	259,792.05	12,729,810.53	12,729,810.53
"P-777"	"P-790"	165,125.00	8,238,746.75	164,774.94	8,073,971.81	
	"P-792"	196,757.78	9,817,032.68	196,340.65	9,620,692.03	
	"P-791"	158,799.94	7,923,164.21	158,463.28	7,764,700.93	25,459,364.76
"P-778"	"P-793"	28,347.15	1,427,250.66	28,545.01	1,398,705.65	
	"P-794"	229,590.52	11,512,816.63	230,256.33	11,282,560.30	
	-	24,864.00	1,241,384.93	24,827.70	1,216,557.23	
	"P-796"	265,913.63	13,227,075.77	264,541.52	12,962,534.25	
	"P-795"	41,488.53	2,063,722.46	41,274.45	2,022,448.01	
	"P-799"	139,646.26	7,057,582.34	141,151.65	6,916,430.69	35,799,236.13
"P-779"	"P-800"	17,140.80	870,067.01	17,401.34	852,665.67	
	"P-801"	27,936.00	1,416,299.33	28,325.99	1,387,973.34	
	"P-802"	239,374.99	12,133,439.50	242,668.79	11,890,770.71	
	"P-803"	127,196.31	6,493,371.63	129,867.43	6,363,504.20	
	"P-805"	11,280.00	572,606.64	11,452.13	561,154.51	
	"P-804"	28,094.40	1,426,084.96	28,521.70	1,397,563.26	22,453,631.69
"P-780"	"P-806"	28,756.80	1,466,939.12	29,118.56	1,437,820.56	
	"P-807"	20,857.72	1,063,992.01	21,203.96	1,042,788.05	
	"P-808"	242,326.70	12,361,546.36	247,527.03	12,114,019.33	14,594,627.94
"P-781"	"P-809"	25,608.00	1,318,351.05	26,367.02	1,291,984.03	
	"P-810"	27,936.00	1,435,463.42	28,709.27	1,406,754.15	
	"P-811"	244,483.72	12,454,000.70	249,080.01	12,204,920.69	
	"P-812"	25,200.00	1,283,688.00	25,673.76	1,258,014.24	16,161,673.11
Total			**₱132,785,525.27**		₱130,129,814.78	₱130,129,814.77

However, as presented below, some of the zero-rated receipts issued to EDC in the amount of ₱4,232,681.47 show that the nature of the services rendered cannot be ascertained. Hence, ₱4,232,681.47 of petitioner's zero-rated sales shall be disallowed for the failure of the ORs to state the nature of services as required under Section 113(B)(3) of the NIRC of 1997, as amended, *viz.*:

OR Exhibit No.	Invoice Amount Billed (in USD)	Amount Billed (in Php)	EWT Amount	OR / Net Amount
"P-774"	$ 4,316.49	₱ 215,487.81	₱ 4,309.76	₱ 211,178.05
"P-775"	55,713.40	2,775,808.73	55,516.17	2,720,292.56
"P-778"	24,864.00	1,241,384.93	24,827.70	1,216,557.23[156]
		₱4,232,681.47		₱4,148,027.84

Consequently, out of the zero-rated receipts to EDC of ₱132,785,525.28, only the amount of ₱128,552,843.81, [157] which are properly supported by VAT zero-rated ORs, qualify for VAT zero-rating under RA No. 9513 and DOE Circular No.

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[156] Part of ₱35,799,236.13.
[157] ₱132,785,525.28 less ₱4,232,681.47.

DC2009-05-008, in relation to Section 113(A)(2), (B)(1), (2)(c), (3), and (4) of the NIRC of 1997, as amended.

Export sales to non-resident foreign affiliates

With reference to its ₱535,605.52 reported zero-rated export sales of goods to its non-resident foreign affiliates, namely: Halliburton Energy Services (Malaysia), PT Halliburton Indonesia, and Halliburton Worldwide GMB, petitioner claims that it was paid for in acceptable foreign currencies accounted for in accordance with the rules and regulations of the BSP and RMC No. 42-2003, via offsetting arrangements, invoking Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, to wit:

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

Based on the foregoing, in order for a direct export sale to qualify as zero-rated, the following essential elements must be present:

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

It is settled that petitioner is a VAT-registered person. Therefore, petitioner complied with the *first* essential element.

As for the *second* essential element, any VAT-registered person claiming VAT zero-rated direct export sales must present, among others, the following documents:

1.) The SI as proof of the sale of goods; and
2.) The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first document, said SIs must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A)(1) and (B) of the NIRC of 1997, as amended.

However, petitioner failed to submit invoices and bills of lading or airway bills to prove the sale of goods and the actual shipment from the Philippines to a foreign country; hence, this element was not established.

More, petitioner failed to comply with the equally significant *third* essential element. The Court-commissioned ICPA noted in its Final Report that the sales to non-resident foreign affiliates were paid for in foreign currency (United States Dollar) through intercompany offsetting arrangements under Intercompany Balance Settlement. [158] In support thereof, petitioner submitted (1) In-House Cash and Intercompany Settlement Agreement,[159] (2) Forex Exchange Rate - USD vs PHP (January to December),[160] and (3) journal entries showing payment through offsetting.[161] However, We find the preceding documents insufficient.

In RMC No. 42-2003, entitled *"Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duly Drawback Center, Department of Finance (OSS) by Direct Exporters*, the documents required in an offsetting arrangement were enumerated, thus:

Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of

[158] Exhibit "P-847"; Par. 13, Exhibit "P-29", Docket – Vol. II, p. 570.
[159] Exhibit "P-23", Docket – Vol. II, pp. 914 to 927.
[160] Exhibit "P-846".
[161] Exhibits "P-783" to "P-788".

inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?

A-8: In the case of offsetting arrangements, the following documents should be required:

a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
d. Documents or correspondence regarding offsetting arrangements;
e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
f. Documents to prove actual export of goods;
g. Documents to prove that the sales are zero-rated sales.

Petitioner should have submitted documents establishing the existence of its foreign currency payables to its non-resident foreign affiliates as those specified under letters "a" to "c" of RMC No. 42-2003, namely: a) import documents which created liability accounts in favor of the foreign parent or affiliated company; b) other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales; and c) evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company. Likewise, petitioner should have submitted documents or correspondence regarding the offsetting and confirmation of the offsetting arrangements by the heads of both petitioner and non-resident foreign affiliates.

Without clear and convincing proof showing how much of petitioner's export sales were offset against its payables to its non-resident foreign affiliates and how much thereof were inwardly remitted and accounted for in accordance with the BSP rules and regulations, petitioner's reported export sales to its non-resident foreign affiliates, *i.e.*, Halliburton Energy Services (Malaysia), PT Halliburton Indonesia and Halliburton Worldwide GMB in the respective amounts of ₱339,271.20, ₱41,796.90 and ₱154,537.42 or in the aggregate amount of

₱535,605.52 for CY 2017 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In sum, for purposes of the *fourth* requisite, We find that out of the total reported zero-rated sales/receipts of ₱133,321,130.79, only the zero-rated receipts derived by petitioner from services rendered to EDC, an RE Developer, amounting to ₱128,552,843.81, qualify for VAT zero-rating for the four quarters of CY 2017.

As for the *fifth* requisite, such requisite provides that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations under Sections 106(A)(2)(a)(1), (2) and (B), and 108(B)(1) and (2) of the NIRC of 1997, as amended. However, since the legal basis for petitioner's zero-rated receipts of ₱128,552,843.81 is Section 15(g) of RA No. 9513, petitioner need not comply with the *fifth* requisite. In this connection, while petitioner alleges that it has export sales to its non-resident affiliates, this Court need **not** determine whether there was compliance with the same *fifth* requisite since it was not duly proven, as *shown above*, that the said export sales of goods qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Sixth requisite: Petitioner's input taxes do not appear to be transitional.

The claimed input taxes do not appear to be transitional as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* —
>
> (A) *Transitional Input Tax Credits.*— A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the transition period from non-VAT to VAT status, the transitional input tax credit alleviates the impact of the VAT on the taxpayer.[162]

Since there is no showing that the claimed input taxes are transitional, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Seventh requisite: Not all of petitioner's input VAT being claimed are due or paid.

Anent the *seventh* requisite in claiming a VAT refund, it is of vital importance for petitioner to provide supporting documents to prove that the input taxes claimed during the four quarters of CY 2017 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

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

[162] Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 158885 and 170680, April 2, 2008.

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

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

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

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

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

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005,[163] as amended, which provide as follows:

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

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

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

[163] *Supra* at note 151.

(a) Purchase or importation of goods

(1) For sale; or

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

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

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(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.

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

<u>***Capital goods or properties*** refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services</u>.

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

... ...

<u>***Construction in progress (CIP)*** is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.</u>

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; *Provided*, that an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated. [*Emphasis and underscoring supplied.*]

Further, Section 4.110-8 of RR No. 16-2005[164] provides for the substantiation requirements of input tax credits on the importation of goods, domestic purchases of goods, properties, and services payments made to non-residents, as follows:

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

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

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

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

[164] *Supra* at note 151.

(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.

... ...

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

Thus, to prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT SIs (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as the case may be, as well as, the import entry or other equivalent documents showing actual payment of VAT (for importation of goods) and BIR Form 1600 with corresponding payment confirmation (for services rendered by non-residents).

In its amended Quarterly VAT Returns for the 1st to 4th quarters of CY 2017, petitioner reported a total input VAT of ₱12,443,688.67 from its amortization of input VAT on purchases of capital goods exceeding ₱1 Million, domestic purchases and importation of goods other than capital goods, domestic purchase of services and services rendered by non-residents, out of which the amount of ₱12,237,833.00,[165] net of ₱205,855.75 input VAT allocable to exempt sales, is the subject of petitioner's claim for refund, as shown below:

W

[165] Round up amount.

Exhibit	**"P-32"**	**"P-33"**	**"P-34"**	**"P-35"**	**Total**
Period	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2017**
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	₱75,451.77	₱67,646.42	₱59,841.06	₱52,035.71	₱254,974.96
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	67,646.42	59,841.06	52,035.70	44,230.35	223,753.53
Amortization of Input Tax on Capital Goods exceeding P1Million	7,805.35	7,805.36	7,805.36	7,805.36	31,221.43
Add: Current Input Tax on -					
Domestic Purchases of Goods Other than Capital Goods	27,101.79	40,359.18	127,863.09	54,733.53	250,057.59
Importation of Goods Other than Capital Goods	149,103.00	3,174,338.00	-	-	3,323,441.00
Domestic Purchase of Services	291,973.07	767,017.57	657,796.36	516,017.27	2,232,804.27
Services Rendered by Non-residents	1,498,208.52	1,864,584.44	2,001,931.92	1,241,439.50	6,606,164.38
Total Allowable Input Tax	**₱1,974,191.73**	**₱5,854,104.55**	**₱2,795,396.73**	**₱1,819,995.66**	**₱12,443,688.67**
Less: Input Tax allocable to Exempt Sales	-	-	205,855.75	-	205,855.75
Input VAT per claim	**₱1,974,191.73**	**₱5,854,104.55**	**₱2,589,540.98**	**₱1,819,995.66**	**₱12,237,832.92**

In support of its input VAT, petitioner presented, among others, its Schedule of Input VAT Refund (Local Purchases),[166] Schedule of Importation,[167] Schedule of Withholding VAT Payments (Services of Non-Residents – BIR Form No. 1600),[168] Schedule of Income Payments to Non-Resident Suppliers,[169] and the related suppliers' official receipts and invoices,[170] importation documents[171] and Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR

[166] Annex C, Exhibit "P-29", Docket – Vol. II, pp. 576 to 583.
[167] Annex D, Exhibit "P-29", Docket – Vol. II, p. 584.
[168] Annex E, Exhibit "P-29", Docket – Vol. II, p. 585.
[169] Exhibit "P-755".
[170] Exhibits "P-40" to "P-753", inclusive of sub-markings and Exhibit "P-848".
[171] Exhibits "P-768" to "P-773".

Forms No. 1600)[172] which were all examined by the Court-commissioned ICPA.

As per ICPA's Report, the input VAT in the amount of ₱358,632.86 shall be disallowed for the following reasons:[173]

	Amount
With invalid supporting documents	₱265,677.81
Without supporting documents	54,448.05
Disallowed input tax on importations	38,507.00
TOTAL	**₱358,632.86**

Upon verification, We note that in its amended Quarterly VAT Returns for the four quarters of CY 2017, petitioner reported input VAT on domestic purchases of goods and services amounting to ₱2,482,861.86. On the other hand, the ICPA examined ₱2,496,428.98 input VAT on domestic purchases, an amount which is higher by ₱13,567.12 than what was reported per VAT Returns, as follows:

Per amended Quarterly VAT Returns[174]	
Domestic purchases of goods other than capital goods	₱ 250,057.59
Domestic purchase of services	2,232,804.27
Total domestic purchases per VAT Returns	***₱2,482,861.86***
Per ICPA's findings[175]	
With valid supporting documents	₱ 2,176,303.12
With invalid supporting documents	265,677.81
Without supporting documents	54,448.05
Total domestic purchases per ICPA findings	***₱2,496,428.98***
Difference	**₱ (13,567.12)**

[172] Exhibits "P-756" to "P-767".
[173] Par. 23, Conclusion and Recommendation, Docket – Vol. II, p. 572.
[174]

Exhibit	**"P-32"**	**"P-33"**	**"P-34"**	**"P-35"**	**Total**
Period	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**CY 2017**
Domestic Purchases of Goods Other than Capital Goods	₱27,101.79	₱40,359.18	₱127,863.09	₱54,733.53	₱250,057.59
Domestic Purchase of Services	291,973.07	767,017.57	657,796.36	516,017.27	2,232,804.27
					₱2,482,861.86

[175] Par. 18, Exhibit "P-29", Docket – Vol. II, p. 571. See Annex C for details, Exhibit "P-29", Docket – Vol. II, pp. 576 to 583.

Of the ₱2,496,428.98 input VAT from domestic purchases examined by the ICPA, the amount of ₱54,448.05 pertains to input VAT from domestic purchases without supporting documents, thus, should be adjusted by the discrepancy of ₱13,567.12.

In addition to the above disallowances, the following input VAT amounting to ₱3,938,706.63 shall likewise be disallowed for failure to meet the invoicing and substantiation requirements prescribed under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-2005,[176] as amended, *viz*:

Exhibit No.	Supplier/Exporter	Amount
1. Input VAT on domestic purchases of goods other than capital goods wherein petitioner's TIN is not indicated in the invoice.		
"P-108"	FERVID INTERNATIONAL PRODUCTS INC	₱ 6,090.43
"P-109"	FERVID INTERNATIONAL PRODUCTS INC	6,116.14
"P-110"	FERVID INTERNATIONAL PRODUCTS INC	5,789.49
"P-111"	FERVID INTERNATIONAL PRODUCTS INC	5,815.20
"P-112"	FERVID INTERNATIONAL PRODUCTS INC	9,302.75
"P-113"	FERVID INTERNATIONAL PRODUCTS INC	12,475.55
"P-114"	FERVID INTERNATIONAL PRODUCTS INC	3,572.76
"P-115"	FERVID INTERNATIONAL PRODUCTS INC	4,754.26
"P-116"	FERVID INTERNATIONAL PRODUCTS INC	3,572.76
"P-117"	FERVID INTERNATIONAL PRODUCTS INC	5,566.27
"P-118"	FERVID INTERNATIONAL PRODUCTS INC	5,566.27
	Subtotal	***₱ 68,621.88***
2. Input VAT on the domestic purchase of services wherein petitioner's TIN is not indicated in the OR.		
"P-545", "P-548", "P-549", "P-550"	SALVADOR LLANILLO & BERNARDO	₱ 8,216.39
	Subtotal	***₱ 8,216.39***
3. Input VAT on domestic purchases of services wherein petitioner's TIN and address are not indicated in the OR.		
"P-545", "P-546", "P-547"	SALVADOR LLANILLO & BERNARDO	₱ 16,758.00
"P-626"	SUPPLY OILFIELD SERVICES INC	17,280.00
"P-626"	SUPPLY OILFIELD SERVICES INC	17,280.00
"P-626"	SUPPLY OILFIELD SERVICES INC	17,280.00
"P-626"	SUPPLY OILFIELD SERVICES INC	17,280.00
"P-626"	SUPPLY OILFIELD SERVICES INC	17,280.00
	Subtotal	***₱ 103,158.00***
4. Input VAT on the domestic purchase of services wherein input VAT is not separately indicated in the OR.		
"P-166", "P-167", "P-168", "P-169"	ICO ASIAPACIFIC PHILIPPINES INC	₱ 21,370.36
	Subtotal	***₱ 21,370.36***

[176] *Supra* at note 151.

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5. Input VAT on domestic purchases of services wherein the nature of service rendered cannot be ascertained in the OR.		
"P-87"	DHL EXPRESS (PHILIPPINES) CORPORATION	₱ 116.42
"P-189"	ISUZU AUTOMOTIVE DEALERSHIP INC	1,506.48
"P-190"	ISUZU AUTOMOTIVE DEALERSHIP INC	850.86
"P-191"	ISUZU AUTOMOTIVE DEALERSHIP INC	2,435.52
"P-236"	PICASSO RENTAL MANAGEMENT CORP	879.84
"P-267", "P-274", "P-275", "P-276"	R.G. MANABAT & CO	33,120.00
"P-702"	SYCIP GORRES VELAYO & CO	15,184.28
"P-702"	SYCIP GORRES VELAYO & CO	15,184.28
"P-702"	SYCIP GORRES VELAYO & CO	15,184.28
"P-702"	SYCIP GORRES VELAYO & CO	15,184.28
"P-702"	SYCIP GORRES VELAYO & CO	15,184.28
"P-703"	SYCIP GORRES VELAYO & CO	68,820.00
"P-704"	SYCIP GORRES VELAYO & CO	15,195.62
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-705"	SYCIP GORRES VELAYO & CO	15,336.85
"P-706"	SYCIP GORRES VELAYO & CO	15,425.19
"P-707"	SYCIP GORRES VELAYO & CO	9,000.00
"P-707"	SYCIP GORRES VELAYO & CO	39,000.00
"P-707"	SYCIP GORRES VELAYO & CO	27,000.00
"P-708"	SYCIP GORRES VELAYO & CO	15,425.19
"P-710"	SYCIP GORRES VELAYO & CO	15,571.54
"P-711"	SYCIP GORRES VELAYO & CO	15,571.54
"P-712"	SYCIP GORRES VELAYO & CO	15,760.45
"P-713"	SYCIP GORRES VELAYO & CO	27,600.00
"P-726"	TECHNOLOGY EXPORTS SERVICES	221.87
	Subtotal	***₱ 471,443.02***
6. Input VAT on domestic purchases of services wherein the nature of the service rendered is not indicated in the OR.		
"P-277", "P-278"	RAJAH TRAVEL CORPORATION	₱ 72.00
"P-277", "P-279"	RAJAH TRAVEL CORPORATION	120.00
"P-277", "P-280"	RAJAH TRAVEL CORPORATION	72.00
"P-277", "P-281"	RAJAH TRAVEL CORPORATION	72.00
"P-277", "P-282"	RAJAH TRAVEL CORPORATION	72.00
"P-277", "P-283"	RAJAH TRAVEL CORPORATION	72.00
"P-277", "P-284"	RAJAH TRAVEL CORPORATION	72.00
"P-277", "P-285"	RAJAH TRAVEL CORPORATION	72.00
"P-277"	RAJAH TRAVEL CORPORATION	420.00
"P-286", "P-287"	RAJAH TRAVEL CORPORATION	348.00
"P-286"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-292"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-293"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-294"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-295"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-296"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-297"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-298"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-299"	RAJAH TRAVEL CORPORATION	72.00
"P-291", "P-300"	RAJAH TRAVEL CORPORATION	72.00
"P-291"	RAJAH TRAVEL CORPORATION	216.00

"P-291", "P-301"	RAJAH TRAVEL CORPORATION			216.00
"P-308"	RAJAH TRAVEL CORPORATION			72.00
"P-308", "P-309"	RAJAH TRAVEL CORPORATION			348.00
"P-308", "P-310"	RAJAH TRAVEL CORPORATION			348.00
"P-308", "P-311"	RAJAH TRAVEL CORPORATION			72.00
"P-308", "P-312"	RAJAH TRAVEL CORPORATION			72.00
"P-308", "P-313"	RAJAH TRAVEL CORPORATION			72.00
"P-308", "P-314"	RAJAH TRAVEL CORPORATION			72.00
"P-308", "P-315"	RAJAH TRAVEL CORPORATION			72.00
	Subtotal			***₱ 3,672.00***
7. Input VAT on domestic purchases of services wherein input VAT is over-claimed.				
		per claim	*per OR*	
"P-158", "P-159", "P-160", "P-161"	ICO ASIAPACIFIC PHILIPPINES INC	₱24,744.62	₱493.68	₱ 24,250.94
"P-162", "P-163", "P-164", "P-165"	ICO ASIAPACIFIC PHILIPPINES INC	10,122.80	201.96	9,920.84
"P-173", "P-174", "P-175"	ICO ASIAPACIFIC PHILIPPINES INC	11,273.55	224.40	11,049.15
"P-176", "P-177", "P-178", "P-179"	ICO ASIAPACIFIC PHILIPPINES INC	15,873.88	314.16	15,559.72
"P-180", "P-181", "P-182"	ICO ASIAPACIFIC PHILIPPINES INC	13,742.98	269.28	13,473.70
"P-183", "P-184", "P-185"	ICO ASIAPACIFIC PHILIPPINES INC	13,901.91	269.28	13,632.63
	Subtotal			***₱ 87,886.98***
8. Input VAT on importation of goods other than capital goods wherein the importer of the shipment is not under petitioner's name.				
"P-772"	Halliburton Far East PTE LTD			₱ 1,305,631.00
"P-773"	Halliburton Energy Services (M) SDN BHD			1,868,707.00
	Subtotal			***₱3,174,338.00***
	TOTAL			**₱3,938,706.63**

In sum, for purposes of compliance with the *seventh* requisite, only the amount of ₱7,954,060.55 represents petitioner's valid input VAT due or paid for the four quarters of CY 2017, as computed below:

Total allowable input VAT per Quarterly VAT Returns for CY 2017		₱ 12,443,688.67
Less: Input Tax allocable to Exempt Sales		205,855.75
Input VAT per claim		**₱12,237,832.92**[177]
Less: Disallowances		
Per ICPA Report	₱358,632.86	
Less: Adjustment	(13,567.12)	
Per this Court's verification	3,938,706.63	4,283,772.37
Valid Input VAT		**₱7,954,060.55**

[177] The actual amount of input VAT per claim is ₱12,237,833.00 (round up amount).

Eighth requisite: Petitioner's input VAT is attributable to zero-rated sales.

To reiterate, the *eighth* requisite is that 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.

In the present case, there exist zero-rated sales and exempt sales. Still, it should be noted that the amount claimed was already **net** of input VAT attributable to exempt sales.

Thus, for purposes of, and with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱7,669,580.19 represents petitioner's valid input VAT attributable to its valid zero-rated receipts for the CY 2017, computed as follows:

Valid input VAT attributable to reported zero-rated sales/receipts	₱7,954,060.55
Multiplied by: Valid zero-rated receipts	128,552,843.81
Divided by: Total reported zero-rated sales/receipts	133,321,130.79
Valid input VAT attributable to valid zero-rated receipts	**₱7,669,580.19**

Ninth requisite: The subject input taxes have not been applied against output taxes during and in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated receipts, We shall now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

The Supreme Court, in the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*,[178] held that the input tax attributable to zero-rated sales, may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant.

In the instant case, petitioner claims for a refund of its unutilized input VAT attributable to zero-rated sales in its **entirety**, thus, availing of the second option mentioned above.

Since petitioner had no 12% VATable sales for the four quarters of CY 2017, it had no output VAT against which the input VAT claim of ₱12,237,833.00 may be applied or credited.

Further, although the claimed input VAT of ₱12,237,833.00, which includes the valid input VAT of ₱7,669,580.19, was carried over by petitioner in its succeeding Quarterly VAT Returns,[179] the same remained unutilized until it was deducted as "*VAT Refund/TCC Claimed*" in its amended Quarterly VAT Return for the 4th quarter of CY 2018.[180] Therefore, the subject claim no longer formed part of the excess input VAT of ₱13,464,208.83[181] as of the end of the 4th quarter of CY 2018. Hence, petitioner is, in effect, deemed to have fulfilled the *ninth* requisite for the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[182] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[183]

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**.

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[178] G.R. No. 215159, July 5, 2022.
[179] Exhibits "P-36" to "P-39".
[180] Amount of ₱12,237,832.**84** (with ₱0.16 rounding-off difference), Line 23D, Exhibit "P-39".
[181] Line 29, Exhibit "P-39".
[182] Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue, G.R. No. 178090, February 8, 2010.
[183] Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015.

Accordingly, respondent is **ORDERED** to issue a tax credit certificate in favor of petitioner in the additional amount of Seven Million Six Hundred Sixty-Nine Thousand Five Hundred and Eighty Pesos and Nineteen Centavos (₱7,669,580.19), representing petitioner's unutilized input VAT attributable to its zero-rated receipts for the 1st, 2nd, 3rd and 4th quarters of CY 2017.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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

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