REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9954

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN,
BACORRO-VILLENA,[1] *JJ.*

Promulgated:
FEB 02 2021 11:16am

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DECISION

DEL ROSARIO, P.J.:

This case involves a *Petition for Review* filed by petitioner Carmen Copper Corporation against respondent Commissioner of Internal Revenue on October 18, 2018, praying that the Court render judgment ordering respondent to refund in favor of petitioner the amount of ₱22,128,978.80, representing its alleged excess and unutilized input value added tax (VAT) for the 2nd quarter of 2016, allegedly attributable to its zero-rated sales.[2]

THE PARTIES

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal office at Five E-Com Center, Palm Coast Ave. corner Pacific Drive, Mall of Asia Complex, Pasay City 1300 Metro Manila.[3] It is registered with the Bureau of Internal Revenue (BIR) as a VAT

[1] Designated as Special Member per Memorandum dated January 7, 2021.
[2] Statement of the Case, Pre-Trial Order dated May 2, 2019, Docket, p. 336.
[3] Exhibit "P-1", Docket, pp. 377 to 392.

taxpayer, under Taxpayer Identification Number 233-903-100-00000;[4] and with the Board of Investments (BOI) as a "New Producer of Copper Concentrate" under Certificate of Registration No. 2006-158.[5]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law. He may be served with summons, pleadings and other processes at his office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

THE FACTS

On June 26, 2018, petitioner filed with the BIR-VAT Credit Audit Division (BIR-VCAD) an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[7] for the refund or tax credit of input VAT under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, in the amount of ₱42,170,457.85, for the period covering April 1, 2016 to June 30, 2016.

On September 28, 2018, petitioner received the Letter dated September 19, 2018[8] from Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue (ACIR) for the BIR's Assessment Service, informing petitioner that the total amount of input VAT *allowable* on local purchases and importations is ₱20,041,479.05.

As aforestated, petitioner filed the present *Petition for Review* before the Court on October 18, 2018.[9]

Within the extended period granted by the Court,[10] respondent filed his *Answer* on February 12, 2019,[11] interposing the following special and affirmative defenses, to wit:

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[4] Exhibits "P-2" and "P-3", Docket, pp. 393 to 395.
[5] Exhibit "P-4", Docket, pp. 396 to 405.
[6] Par. 1, Admitted Fact, *Amended Joint Stipulation of Facts and Issues* (AJSFI), Docket, p. 295.
[7] Exhibit "P-8", Docket, pp. 408.
[8] Exhibit "P-11", Docket, pp. 411 to 412.
[9] Docket, pp. 10 to 24.
[10] Order dated November 22, 2018, Docket, p. 140; Resolutions dated January 7, 2019, January 29, 2019 and February 12, 2019, Docket, pp. 148, 154, and 160 to 161, respectively.
[11] Docket, pp. 167 to 174.

"4. Respondent repleads and adopts the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.

WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION; PETITIONER HAS NO CAUSE OF ACTION APPEALABLE TO THE HONORABLE COURT

5. Respondent submits that petitioner has no cause of action appealable to the Honorable Court of Tax Appeals. A cause of action is the act or omission by which a party violates a right of another. [T]he essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

6. In the instant situation, respondent submits that the third element is absent considering there is yet an act or omission on the part of respondent that would give rise to an action on the part of the petitioner.

7. Section 7 of R.A. 1125, as amended provides:

> '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 or other laws administered by the Bureau of Internal Revenue;
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> '2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations 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 of action, in which case the inaction shall be deemed a denial;

8. Based on the foregoing, an appeal to the Honorable Court may prosper only in cases when there is already a decision rendered by the Commissioner of Internal Revenue, or when there is inaction that is deemed denial by the Commissioner of Internal Revenue.

9. In the instant case, petitioner is of the belief that the letter dated 19 September 2018 it allegedly received on 28 September 2018 constitutes a decision of the BIR partially granting its claim for tax refund.

10. Respondent argues the contrary. Careful perusal of the said letter shows that the same merely informs the petitioner that its claim for VAT refund pertaining to importations was indorsed to the Bureau of Customs for further review and verification. The letter should not therefore be interpreted to be a final decision of the BIR on the claim for tax refund of the petitioner.

11. In a similar vein, the Honorable Supreme Court held in the case of *Oceanic Wireless vs. Commissioner of Internal Revenue*, to wit:

> "A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. **The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer." (Emphasis supplied)**

12. Applying the above jurisprudence shows that the letter dated 19 September 2018 cannot be considered as a final decision appealable to the Honorable Court. The letter conveys no tone of finality as to the stance of the BIR on the claim of refund of petitioner. This is evidenced by the words of the letter itself which read, to wit:

> 'The said amount representing the recommended VAT refund on importations is **subject to further verification of actual receipts of VAT payments by the Bureau of Customs (BOC)**, in compliance with the requirements of the Commissions on Audit.
>
> **The approved report on the said claim may be subjected to audit/investigation and should there be material findings, the amount allowable may be adjusted and/or an assessment notice may be issued for the collection of any deficiency tax or excess tax refund.' (Emphasis supplied)**

13. Based on the wordings itself, the amount of Php20,041,479.05 is not a final grant on the claim of refund and is still subject to further audit/investigation. In sum, the letter does not

indicate therein that the said amount is final. The said amount may still either decrease or increase based on the findings of the BOC.

14. Furthermore, it is worthy to note that the letter itself does not explicitly state that the claim for refund was granted. The said amount of Php20,041,479.05 is stated in the letter as the total amount of input VAT allowable on local purchases and importations. It does not indicate therein that this is the portion of petitioner's claim for refund that is granted by the BIR.

15. Likewise, there is no clear and unequivocal statement in the entire letter that indicates that the amount of Php22,128,978.80 was expressly denied by the BIR. It is petitioner that assumed the amount not indorsed to the BOC was deemed a denial of its claim for refund.

16. Such allegations of the petitioner are purely self-serving and highly misleading of the actual facts of the case. In fact, it is only the petitioner that claims that there is partial grant and a partial denial of their claim for refund. The letter itself is simple and raises no room for ambiguity. It is clear that the letter is not a final decision on petitioner's claim for refund.

17. Thus, having established that the letter is not a final decision, the appeal therefrom by the petitioner unto this Honorable Court is without cause of action. The Honorable Court therefore cannot acquire jurisdiction over the instant petition.

18. Anent petitioner's claim that there was allegedly violation of due process due to issuance of the letter dated 19 September 2018 beyond the 90-day period provided for under the TRAIN Law, respondent reiterates its stand as explained in the foregoing and elaborates further as follows. First, as discussed previously, there is no final decision yet rendered by the BIR. Thus, petitioner's factual premise that there was a partial denial is already lacking merit.

19. Second, assuming without admitting that the letter was a proper decision on petitioner's claim for refund, the issuance thereof beyond the 90-day period provided for under the TRAIN Law does not in effect invalidate the letter.

20. The pertinent provisions of the TRAIN Law provide, to wit:

> **Sec. 4.112-1. Claims for Refund/Credit Input Tax.-**
>
> Xxx xxx xxx
>
> **(d) Period within which refund/credit of Input Taxes shall be made**
>
> In proper cases, the Commissioner of Internal Revenue shall grant refund for creditable input taxes

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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 denial.

The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund. 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.

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 (CTA). **Provided 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 the Tax Code, as amended. Provided further, That, in the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, the VAT refund claim may still continue to be processed administratively, Provided however, That the BIR official, agent or employee who was found to have deliberately caused the delay in the processing of the VAT refund claim may be subject to penalties imposed under said section. (Emphasis supplied)**

Xxx xxx xxx

21. Pursuant to the foregoing provision of law, the issuance of the letter beyond the 90-day period only gives rise to possible administrative penalties on the part of the revenue officer who caused the delay. Nowhere in the law does it state that any decision rendered beyond the said period would be invalidated or be without effect.

22. Based on the foregoing, there was no violation of due process committed by respondent in issuing the letter beyond the 90-day period.

23. Finally, petitioner raises the issue of violation of due process again, but this time due to respondent's alleged fault in not supplying adequate explanation as to the factual and legal basis for the alleged decision.

24. Once more, on the pain of repetition, respondent reiterates that there is no valid decision yet to speak of. As previously discussed, the letter dated 19 September 2018 is not a valid decision. Hence, the alleged failure of respondent to indicate therein the legal and factual basis has no merit.

25. Furthermore, the computation pertaining *[sic]* the amounts contained in the said letter were all based on a memorandum from the VAT Credit Audit Division. That memorandum is considered as an internal matter that normally is confidential in nature and is not usually shown to the public, let alone the taxpayer. Thus, it is incorrect to say that the said letter lacks sufficient factual and legal bases.

26. Therefore, based on the foregoing, respondent submits that there was no violation of due process committed in the issuance of the said letter.

CLAIMS FOR REFUND ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND IN FAVOR OF THE GOVERNMENT.

27. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the courts have always applied the of *[sic]* strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

28. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming tax exemption.

29. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

In compliance with the Court's directive to transmit the *BIR Records* of this case,[12] respondent submitted the same on February 15, 2019.[13]

Respondent's Pre-Trial Brief was filed on March 1, 2019,[14] while *Petitioner's Pre-Trial Brief* was filed on March 4, 2019.[15] The Pre-Trial Conference was held on March 7, 2019.[16]

The parties filed their *Joint Stipulation of Facts & Issues* on March 22, 2019.[17] The Court approved the same in the Resolution dated March 29, 2019.[18]

Subsequently, on April 3, 2019, petitioner filed a *Motion for Leave to File and Admit Attached Amended Joint Stipulation of Facts & Issues.*[19] In the Resolution dated April 16, 2019,[20] said *Motion for Leave* was granted, and the *Amended Joint Stipulation of Facts and Issues* was admitted. Thereafter, the Court issued the Pre-Trial Order dated May 2, 2019,[21] thereby terminating the Pre-Trial.

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following witnesses, namely: (1) Mr. Fernando A. Rimando,[22] Chief Finance Officer; and (2) Mr. Emmanuel Y. Mendoza,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The ICPA *Report* was submitted on May 30, 2019.[25]

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[12] Order dated November 22, 2018, Docket, pp. 140 to 141.
[13] *Compliance* dated February 14, 2019, Docket, pp. 177 to 179.
[14] Docket, pp. 185 to 187.
[15] Docket, pp. 242 to 255.
[16] Notice of Pre-Trial Conference dated February 20, 2019, Docket, pp. 183 to 184; Minutes of the hearing held on, and Order dated, March 7, 2019, Docket, pp. 256 to 260, and 262 to 264.
[17] Docket, pp. 280 to 289.
[18] Docket, p. 291.
[19] Docket, pp. 292 to 304.
[20] Docket, p. 313.
[21] Docket, pp. 336 to 341.
[22] Exhibit "P-12", Docket, pp. 189 to 205; Minutes of the hearing held on, and Order dated, April 30, 2019, Docket, pp. 314 to 319.
[23] Exhibit "P-13", Docket, pp. 353 to 358; Order dated June 4, 2019, Docket, pp. 360 to 362.
[24] *Oath of Commission* dated May 2, 2019, Docket, p. 327; Minutes of the hearing held on, and Order dated, May 2, 2019, Docket, pp. 323 to 326, and 328 to 330, respectively.
[25] Docket, p. 349.

On June 24, 2019, petitioner filed its *Formal Offer of Evidence*,[26] to which respondent interposed no objection.[27] In the Resolution dated September 25, 2019,[28] the Court admitted all of petitioner's exhibits.

For his part, respondent manifested his intention not to present any testimonial or documentary evidence as he was of the position that the case involves a pure question of jurisdiction.[29]

The *Memorandum for Petitioner* was filed on December 4, 2019;[30] while respondent's *Memorandum* was filed on December 5, 2019.[31]

The present case was submitted for decision on January 14, 2020.[32]

The case was initially raffled to Associate Justice Catherine T. Manahan for study and report on January 20, 2020. On January 4, 2021, Associate Justice Manahan submitted her written report with her draft *ponencia* for deliberation. On January 7, 2021, Presiding Justice Roman G. Del Rosario issued a dissenting opinion.

Considering that the required affirmative votes of at least two (2) justices for the rendition of the decision on the present case cannot be obtained, Associate Justice Jean Marie A. Bacorro-Villena was designated as Special Member of the First Division to participate in the deliberation thereof, including other pending incidents involved in the case.[33]

On January 13, 2021, Associate Justice Villena joined the Dissenting Opinion of Presiding Justice Del Rosario.

Acting on the Memorandum dated January 13, 2021 of Associate Justice Manahan requesting for an extension of thirty (30) days from January 14, 2021 or until February 13, 2021 within which

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[26] Docket, pp. 366 to 376.
[27] Docket, pp. 422 to 423.
[28] Docket, pp. 430 to 431.
[29] *Respondent's Pre-trial Brief*, Docket, pp. 185 to 187, at p. 186.
[30] Docket, pp. 457 to 479.
[31] Docket, pp. 481 to 488.
[32] Resolution dated January 14, 2020, Docket, p. 494.
[33] *Supra*, Note 1.

to resolve the case, the same was granted by Presiding Justice Del Rosario on January 14, 2021.

The case was thereafter assigned to Presiding Justice Del Rosario as a regular member of the First Division for the writing of the majority opinion.

Hence, this Decision.

THE ISSUES

The following issues were stipulated by the parties for this Court's resolution,[34] *viz.*:

> "1. WHETHER OR NOT THE LETTER DATED 19 SEPTEMBER 2018 CAN BE CONSIDERED AS A FINAL DECISION APPEALABLE TO THE HONORABLE COURT OF TAX APPEALS PURSUANT TO RA 1125, AS AMENDED BY RA 9282.
>
> 2. WHETHER OR NOT PETITIONER'S EXCESS AND UNUTILIZED INPUT TAXES ARISING FROM PURCHASES OF GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE 2nd QUARTER OF TAXABLE YEAR 2016 IN THE AMOUNT OF PHP22,128,978.80 DENIED BY RESPONDENT ARE PROPERLY SUBSTANTIATED AND DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES."

Petitioner's arguments:

Petitioner advances the following arguments in support of its claim:

1. The Letter dated September 19, 2018 constitutes respondent's final decision appealable to this Court;

2. Petitioner's excess and unutilized input taxes are properly substantiated, entitling it to a cash refund;

[34] Stipulated Issues, AJSFI, Docket, p. 296.

3. Substantive law supports petitioner's entitlement to the refund claimed for;

4. Petitioner complied with the requisites for a valid claim for input tax refund;

5. Petitioner is VAT-registered and is engaged in zero-rated sales, which facts remain uncontested by respondent;

6. Input taxes were due or paid and were not transitional input taxes;

7. Input taxes have not been applied against output taxes during and in the succeeding quarters;

8. Input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

9. The acceptable foreign currency exchange proceeds from petitioner's export sales have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

10. Input taxes which cannot be directly and entirely attributable to any of the zero-rated sales and taxable or exempt sales shall be proportionately allocated on the basis of sales volume;

11. The claim was filed within two (2) years after the close of the taxable quarter when such sales were made; and,

12. Respondent is required by the constitution to provide the factual and legal bases of its decisions involving claim for VAT refund.

Respondent's counter-arguments:

Respondent counter-argues that:

1. This Court has no jurisdiction over the instant *Petition*;

2. Petitioner has no cause of action appealable to this Court; and,

3. Claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

Requisites for the refund of input VAT under the law

Section 112 of the NIRC of 1997, as last amended by Republic Act (RA) No. 10963,[35] provides, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or 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.
>
> xxx xxx xxx
>
> (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

[35] 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.

> 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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. The said requisites may be classified into certain categories, to wit:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[36]

2. in case of full or partial denial of the refund claim, the judicial claim is filed with this Court, within thirty (30) days from receipt of the decision;

B. With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[37]

C. In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[38]

5. for zero-rated sales under Section 106(A)(2)(1) and

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[36] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, 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.*, G.R. No. 182364, August 3, 2010.
[37] *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.
[38] *Id.*

(2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[39]

D. As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[40]

7. the input taxes are due or paid;[41]

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;[42] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[43]

The above-stated *second* requisite is closely intertwined with the issue anent the jurisdiction of this Court. Since respondent anchors his position on said issue, the Court shall primarily address the same, simultaneous with the determination of petitioner's compliance with the said requisite.

In any event, upon a finding that this Court has jurisdiction and that there is compliance with the said *second* requisite, it behooves petitioner to show compliance with each of the remaining requisites. It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[44]

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[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[43] *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.
[44] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, 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,

The Court has jurisdiction over the case

Petitioner is of the belief that the Letter dated September 19, 2018 of ACIR Erlinda A. Simple[45] already constitutes a partial denial of its VAT refund claim. Respondent, on the other hand, argues the contrary, stating that since the said letter conveys no tone of finality, the appeal therefrom by petitioner is without cause of action, thereby depriving this Court of jurisdiction over the instant *Petition for Review.*

The Court agrees with petitioner.

An examination of the said Letter dated September 19, 2018 of ACIR Erlinda A. Simple is in order. This necessarily warrants the application of Section 13 of Rule 130 of the Rules of Evidence, to wit:

> "SEC. 13. *Interpretation according to circumstances.* – **For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown,** so that the judge may be placed in the position of those whose language he is to interpret." *(Emphasis and underscoring added)*

To properly interpret and determine the meaning of the Letter dated September 19, 2018 of ACIR Erlinda A. Simple, the circumstances upon which the same was issued must be identified. For easy reference, the contents of the said letter and the annex thereto are reproduced as follows:

Letter dated September 19, 2018:

"September 19, 2018

FERNANDO A. RIMANDO
Chief Finance Officer
CARMEN COPPER CORPORATION
503-P AND 504-P 5/F Five E-Com Center
Palm Coast Ave. cor. Pacific Drive
Mall of Asia Complex, Brgy. 76, Pasay City 1300

Dear **Mr. Rimando**:

This has reference to your **claim** for Value Added Tax (VAT) refund covering the period April 1, 2016 to June 30, 2016 in the

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2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.
[45] Exhibit "P-11", Docket, pp. 411 to 412.

amount of **₱42,170,457.85** representing unutilized input VAT on account of zero-rated sales, pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Please be informed that **upon processing** of the aforementioned claim under Tax Verification No. 201700022679 dated June 26, 2018, the total amount of input VAT allowable on local purchases and importations is **₱20,041,479.05** (see Annex 'A' for the details), as summarized below:

	Local	Importation	Total
Amount claimed for refund	1,315,503.71	40,854,954.14	42,170,457.85
Less: Disallowances	1,315,503.71	20,813,475.09	22,128,978.80
Recommended Net Allowable VAT Refund	-	20,041,479.05	20,041,479.05

The said amount representing the recommended VAT refund on importations is subject to further verification of actual receipts of VAT payments by the Bureau of Customs (BOC), in compliance with the requirements of the Commission on Audit.

The **approved** report on the said claim may be subjected to audit/investigation and should there be material findings, the amount allowable may be adjusted and/or an assessment notice may be issued for the collection of any deficiency tax or excess tax refund.

Very truly yours,

(signed)
ERLINDA A. SIMPLE
Assistant Commissioner of Internal Revenue
Assessment Service" *(Emphases added)*

Annex "A" thereof:

"CARMEN COPPER CORPORATION
CLAIM FOR VAT REFUND
Covering the Period April to December 2016

COMPUTATION OF AMOUNT RECOMMENDED FOR REFUND

	Local	Importation	Total
Amount claimed for refund	₱1,315,503.71	₱ 40,854,954.14	₱ 42,170,457.85
Less: Disallowances	775,560.86	-	775,560.86
Amount recommended VCAD	₱ 539,942.85	₱ 40,854,954.14	₱ 41,394,896.99
Add/Deduct: Adjustments			
Deferred input VAT on purchase of dump truck	₱ -	₱ 186,267.86	₱ 186,267.86
Unsupported ripened portion of deferred input VAT	-	316,545.41	316,545.41
Input VAT allocated to exempt sales	539,942.85	20,062,844.33	
Output VAT on undeclared sales subject to VAT	-	119,566.97	119,566.97
Output VAT on proceeds from disposal of PPE	-	128,250.62	128,250.62
Rounding-off error	-	(0.10)	(0.10)
Total deductions from claim	₱ 539,942.85	₱ 20,813,475.09	₱ 21,353,417.94
Amount for VAT refund	**₱ -**	**₱20,041,479.05**	**₱20,041,479.05**

07

Notably, the BIR has issued Revenue Memorandum Circular (RMC) No. 17-2018[46] dated February 27, 2018, which governs the processing of claims of tax refund/tax credit certificate in relation and pursuant to the amendments to the NIRC of 1997 introduced by RA No. 10963, which took effect on January 1, 2018. Considering that the subject claim was filed with the BIR on June 26, 2018,[47] it is not hard to discern that the foregoing letter and its Annex were issued under, and in compliance with, the said RMC.

Pertinent portions of RMC No. 17-2018 state:

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

A. General Policies

xxx xxx xxx

5. xxx

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

xxx xxx xxx

B. Claims for VAT refund by direct exporters

xxx xxx xxx

3. **The following are the authorized approving revenue officials based on the amount of claims:**

Amount of Claim	Approving Revenue Official
Not more than ₱50,000,000.00	**ACIR – Assessment Service (AS)**
More than ₱50,000,000.00 up to ₱150,000,000.00	DCIR – OG
More than ₱150,000,000.00	CIR

[46] SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)

[47] Exhibit "P-8", Docket, pp. 408.

m

xxx xxx xxx

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 actual date of filing of the application 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</u> offices:**

Time Frame to Verify/Process, Review and Approve/Disapprove the Claim

VCAD cases	No. of Days from Receipt of Application		
	For claims <u>not</u> <u>more than</u> <u>₱50,000,000.00</u>	For claims more than ₱50,000,000.00 up to ₱150,000,000.00	For claims more than ₱150,000,000.00
Verification/processing	**65**	60	55
Review (TARD)	**20**	20	20
Recommending/Final Approval			
ACIR-AS	**5**	5	5
DCIR-OG		5	5
CIR			5
Total No. of Days	**90**	90	90

xxx xxx xxx

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

xxx xxx xxx

V. Other documents that will form part of a VAT refund/credit case docket

The RO assigned to process the claim should prepare, submit and/or attach the reports/schedules and **documents prescribed in Annex 'C' hereof.**" *(Emphases and underscoring added)*

C4

Based on the foregoing provisions, the concerned revenue officers and officials are mandated to observe the following in the processing of claims for refund of input VAT under Section 112 of the NIRC of 1997, as amended by RA No. 10963, to wit:

1) Where the amount of the claim is not more than ₱50,000,000.00, the approving BIR official is the ACIR – Assessment Service;

2) The time frame, which shall be strictly adhered to by the processing, reviewing and approving offices, is ninety (90) days. The said time frame for claims not more than ₱50,000,000.00 includes a period of five (5) days, within which the ACIR – Assessment Service should render a final approval of the claim;

3) The concerned revenue officers/officials (which perforce includes the ACIR – Assessment Service) must act on the recommended claims in accordance with the said time frame, <u>including VAT claims on importations</u>;

4) The revenue officer assigned to process the claim is mandated to prepare, submit and/or attach the reports/schedules and documents prescribed in Annex "C" of the said BIR issuance; and,

5) Should the claim be for *denial*, such fact should be communicated in writing to the taxpayer within the 90-day period, and the denial letter shall be signed by the ACIR – Assessment Service in case the amount of claim is not more than ₱50,000,000.00.

Relative to and anent the fourth item, one of the documents prescribed in Annex "C" of RMC No. 17-2018 is a *"VAT Refund/Credit Notice"*, which format is respectively identified as either Annex "D" (for Local Purchases) or Annex "E" (for Local Purchases and Importations). Since in this case, the subject input VAT claim involves both local purchases and importations, the contents of said Annex "E" is reproduced hereunder, for easy reference, *viz.*:

"Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
(Name of Office of the Approving Official)

(M)

VAT REFUND/CREDIT NOTICE

(Date)

Name of Claimant/Taxpayer
Address

Gentlemen/Sir/Madam:

This has reference to your claim for Value-Added Tax (VAT) refund/credit covering the period from ______________ to ______________ in the amount of Php ______________ pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In connection thereto, please be informed that, upon processing of the aforementioned claim under Tax Verification Notice No. ______________ dated ______________, the total amount of input tax allowable on local purchases and importations is Php ______________ as summarized below:

A. Local Purchases

	Amount
VAT Refund Claimed	Php x,xxx,xxx.xx
Less: Disallowances	(xxx,xxx.xx)
Net Allowable VAT Refund/Credit	Php x,xxx,xxx.xx

B. Importations

	Amount
VAT Refund Claimed	Php x,xxx,xxx.xx
Less: Disallowances	(xxx,xxx.xx)
Recommended Net Allowable VAT Refund/Credit	Php x,xxx,xxx.xx

Total Amount Allowable for VAT Refund/Credit (sum of A and B) Php x,xxx,xxx.xx

The amount of Php ______________ representing the recommended VAT refund on importations is subject to further verification of actual receipts of VAT payments by the Bureau of Customs (BOC), in compliance with the requirements of the Commission on Audit.

The approved report on the said claim may be subjected to audit/investigation and should there be material findings, the amount allowable may be adjusted and/or an assessment notice may be issued for the collection of any deficiency tax or excess tax credit.

Very truly yours,

____
Signature Over Printed Name
(Approving Revenue Official)"

With the foregoing provisions/requirements of RMC No. 17-2018 *vis-à-vis* the Letter dated September 19, 2018 of ACIR Erlinda A. Simple, the Court finds that the said Letter partakes the nature of a decision on petitioner's claim for input VAT refund appealable to this Court.

First, it is within the authority of ACIR Simple of the BIR's Assessment Service to approve or disapprove petitioner's input VAT refund claim, since it is not more than ₱50,000,000.00, *i.e.*, it is only in the amount of ₱42,170,457.85.

Second, the Letter dated September 19, 2018 of ACIR Simple is an action of the BIR (up to her level) on the claim within the required 90-day period. It must be noted that petitioner's *Application for Tax Credits/Refunds* (BIR Form No. 1914) was filed on June 26, 2018.[48] Counting from such date, the 90-day period ended on September 24, 2018, and thus, the Letter dated September 19, 2018 of ACIR Simple was compliant with the required period of action. There is no other communication or correspondence issued by the BIR regarding petitioner's administrative claim, within the same 90-day period. As a corollary, if the finding of the BIR is one of a denial of petitioner's claim, ACIR Simple could have simply issued the same within that period, as required by RMC No. 17-2018.

Third, respondent cannot validly argue that ACIR Simple's Letter dated September 19, 2018 is not a decision on petitioner's claim for VAT refund, on the ground that the amount pertaining to importations is still subject to further review and verification of the Bureau of Customs. This is so because RMC No. 17-2018 prescribes that the time frame of ninety (90) days is not only limited to VAT claims on local purchases, but likewise explicitly includes VAT claims on importation. Thus, within the said 90-day period, the BIR needs to come up with a determination of whether to grant or deny petitioner's claim for refund, in whole or in part, including VAT claims on importation. Apparently, in the Letter dated September 19, 2018 of ACIR Simple, there is an amount pertaining to input VAT on petitioner's importations.

Fourth, ACIR Simple's Letter dated September 19, 2018 is substantially similar to Annex "E" of RMC No. 17-2018, which is a *"VAT Refund/Credit Notice"*. The said letter could not have adopted the format for such a *Notice*, if ACIR Simple did not have the intention

[48] Exhibit "P-8", Docket, pp. 408.

to notify petitioner that its VAT refund claim was granted, albeit partially. The phrase *"upon processing of the aforementioned claim..., **the total amount of <u>input VAT</u> <u>allowable on local purchases and importations</u> is ₱20,041,479.05**..."* is unmistakably an expression that after processing of the claim, the said reduced amount may be refunded.

Lastly and more importantly, the same letter speaks of an *"approved report on the said claim"*, which per Annex "A" of the subject letter, is in the recommended amount of ₱20,041,479.05 for refund, including VAT on importations. Thus, if the report of the concerned revenue officer has been *"approved"*, and directly communicated to petitioner, the inevitable conclusion is that the BIR partially granted petitioner's claim in such reduced amount. While the said approval is qualified to the effect that it *"may"* be subjected to audit/investigation, in which case and should there be material findings, the amount allowable *"may"* be adjusted and/or an assessment notice *"may"* be issued, it does *not* denigrate the fact that the said report has been *"approved"*, since such subsequent audit/investigation or assessment is not definite. In other words, the said subsequent audit/investigation or assessment may or may not happen. Besides, such phraseology is a mere reiteration of the "VAT REFUND/CREDIT NOTICE" as prescribed in RMC No. 17-2018.

Correspondingly, since the foregoing are the circumstances under which ACIR Simple's Letter dated September 19, 2018 was made and the contents thereof speaks of "*a total amount input VAT allowable*" and an "*approved report*" recommending a refundable amount, the Court finds that the said Letter is the decision on petitioner's administrative claim for input VAT refund that is appealable to this Court. Considering that the same letter was received by petitioner on September 28, 2018,[49] the filing of the present *Petition for Review* on October 18, 2018[50] was timely made. Thus, this Court has acquired jurisdiction to take cognizance of the present case.

Evidently, petitioner complied with the *second* requisite to successfully obtain a credit/refund of input VAT.

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[49] Exhibit "P-11", Docket, pp. 411 to 412.
[50] Docket, pp. 10 to 24.

Petitioner's administrative claim was likewise timely filed

To reiterate, the *first* requisite pertains to the filing of the application for refund or issuance of tax credit certificate of unutilized 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.

The present claim covers the 2nd quarter of 2016 which ended on June 30, 2016. Counting two (2) years from the end of said quarter, petitioner had until June 30, 2018 within which to file its administrative claim. Indubitably, petitioner's administrative claim for refund covering the 2nd quarter of 2016 filed on June 26, 2018[51] is well within the two-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended.

Thus, the *first* requisite has been fulfilled by petitioner.

Petitioner is a VAT-registered entity

It is undisputed that petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN8RC0000791446E and Taxpayer's Identification No. 233-903-100-0000 issued by the BIR,[52] thus, satisfying the *third* requisite.

Petitioner was able to prove its zero-rated sales or effectively zero-rated sales during the 2nd quarter of 2016

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

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[51] Exhibit "P-8", Docket, p. 408.
[52] Exhibit "P-2", Docket, pp. 393 to 394.

Petitioner asserts that for the 2nd quarter of 2016, it engaged in zero-rated sales of goods, which were generated from exports to various customers abroad, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which reads:

> "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 provision, in order for an 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.

As for the *first* essential element, since it is the same as the above-stated *third* requisite, the same has already been complied with by petitioner.

In relation to the *second* and *third* essential elements, the VAT-registered taxpayer claiming VAT zero-rated direct or considered export sales must still present, among others, the following three (3) types of documents, *viz.*:

1. Sales Invoice as proof of sales of goods;

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

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

Corollary to the first type of document, the sales invoice required by law to be issued by a VAT-registered taxpayer, like herein petitioner, for every sale, barter or exchange of goods or properties must contain all the information set out under Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended. The pertinent portions of the said provisions are quoted hereunder for ready reference, to wit:

<u>Section 113 of the NIRC of 1997, as amended</u>:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

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

(1) A <u>VAT invoice</u> for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

(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:

mf

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

xxx xxx xxx

(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;

xxx xxx xxx

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service;" *(Underscoring supplied)*

Sections 4.113-1 of RR No. 16-2005, as amended:

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

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

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

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; xxx:

xxx xxx xxx

(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;" *(Underscoring supplied)*

crf

In addition to the above requirements, the sales invoice must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, which respectively read as follows:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx." *(Underscoring added)*
>
> "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."

Simply stated, the sales invoices supporting the export sales must be registered with the BIR and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number, among others.

Thus, only the export sales of goods supported by the above stated documents that are compliant with substantiation and invoicing requirements shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Apropos, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[53] Observance of the VAT invoicing and other substantiation requirements provided by tax laws and

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[53] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

regulations is mandatory[54] as the same are very vital in determining the veracity of the taxpayer's claims.[55]

In its Quarterly VAT Return for the 2nd quarter of 2016,[56] petitioner reported a total sales amounting to ₱2,811,078,446.74, which includes zero-rated sales in the amount of ₱2,806,220,224.70, as shown below:

Vatable Sales-Private	₱ 2,855,459.54
Sale to Government	514,062.50
Zero-Rated Sales	2,806,220,224.70
Exempt Sales	1,488,700.00
Total Sales	**₱2,811,078,446.74**

To substantiate its alleged zero-rated direct export sales, petitioner submitted its *Schedule of Zero-Rated Sale of Goods*[57] and the corresponding sales invoices and bills of lading (BOL),[58] which were duly examined by the Court-commissioned ICPA, Mr. Emmanuel Y. Mendoza of Mendoza Querido & Co.

A closer examination of the *Schedule of Zero-Rated Sale of Goods* reveals that petitioner's zero-rated sales in the amount of US$78,155,697.11 has a peso equivalent of ₱3,631,557,276.11, which is higher than the reported amount of ₱2,806,220,224.70 by ₱825,337,051.41. The following export sales accounts for the said difference of ₱825,337,051.41, as shown below:

Name of Customer	Sales Invoice (Exhibits)	Sales in Foreign Currency (US$) [a]	Forex Rate[59] [b]	Amount of Sales (in Ph₱) per Schedule[60] [c]	Amount (in Ph₱) as should be [d] = a x b	Difference (in Ph₱) [d – c]
MRI Trading AG	"P-37-2A"	7,640,282.12	46.12	18,358,172.76	352,369,811.37	334,011,638.61
MRI Trading AG	"P-37-3A"	7,642,482.64	46.02	19,155,109.26	351,707,051.09	332,551,941.83
Philippine Associated Smelting and Refining Corporation ("PASAR")	"P-37-5A"	3,574,478.15	46.20	6,367,419.56	165,140,890.53	158,773,470.97
Total		**18,857,242.91**		**43,880,701.58**	**869,217,752.99**	**825,337,051.41**

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[54] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[55] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[56] Exhibit "P-6", Docket, p. 406.
[57] Exhibit "P-30".
[58] Exhibits "P-37-1A" to" P-37-24A", "P-38-1A", "P-39-1A" and "P-37-1B" to" P-37-24B".
[59] Based on the conversion rate used per the "Schedule of Zero-Rated Sale of Goods" (Exhibit "P-30").
[60] The sales amount in US$ are correct as verified from the sales invoices but the peso equivalents of the same were apparently computed erroneously and not based on the stated conversion rate.

Hence, the total zero-rated sales of US$78,155,697.11, with the adjusted peso equivalent of ₱3,631,557,276.11, shall be considered in the succeeding discussions, for purposes of determining the refundable input VAT.

As confirmed from ICPA's examination of the submitted documents, only the export sales of goods amounting to US$3,974,660.71 or ₱188,200,311.43, as detailed below, were *not* fully compliant with the substantiation and invoicing requirements prescribed in the abovementioned pertinent laws and regulations, hence, not qualified for VAT zero-rating, *viz.*:[61]

	Reference to ICPA Report/ Exhibit No.	**Amount**	
		In US$	**In PhP**
Not properly substantiated:			
Export sales or zero-rated sales supported by invoices only	Annex A-5 Invoices (Exhibits "P-39-1A")	560,000.00	25,886,000.00
Export sales or zero-rated sales that were properly supported by invoices and bill of lading but invoices were dated outside the period of claim	Annex A-9 Invoices and bill of lading (Exhibits "P-37-24A" and "P-37-24B")	3,414,660.71	162,314,311.43
Total		**3,974,660.71**	**188,200,311.43**

Verily, petitioner is considered to have met the *second* essential element for VAT zero-rating, but only insofar as the amount of US$74,181,036.40 or ₱3,443,356,964.68[62] is concerned.

As for the *third* essential element, and in relation to the *fifth* requisite to successfully obtain a credit/refund of input VAT, petitioner presented the Summary of inward remittances of zero-rated sales[63] and the Certifications[64] issued by BDO Unibank, Inc. and Bank of China purportedly showing the payments for its export sales in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

A careful scrutiny of the amounts shown in the summary of inward remittances vis-à-vis those reflected per the certificates of inward remittances reveals that out of the properly substantiated

[61] Exhibit "P-14", ICPA Report Binder, p. 7.
[62] Total zero-rated sales of US$78,155,697.11 or ₱3,631,557,276.11 less Disallowed zero-rated sales of US$3,974,660.71 or ₱188,200,311.43.
[63] Exhibit "P-14", ICPA Report Binder, Annex A-6.
[64] Exhibits "P-33-1" to "P-33-3".

exports sales of US$74,181,036.40 or ₱3,443,356,964.68, the amount of US$18,701,088.48 or ₱866,024,428.16 cannot be traced with certainty to the inward remittances per bank certifications, as detailed hereunder:

Invoice No.	Sales during the quarter (in US$)	Total Sales per Invoice (in US$)	Deductions/ Adjustments per Invoice and Bank Charges (in US$)	Net Amount (in US$)	Remittances per Certificate of inward remittance		Amount not traced to inward remittance per bank cert. (in US$)
					Date	Amount (in US$)	
					12-Feb-2016	180,643.93	
					17-Feb-2016	3,802,350.78	
					29-Feb-2016	1,544,782.50	
					03-May-2016	213,128.42	
1820000356	30,090.22	6,900,690.88	696,652.27	6,204,038.61		*5,740,905.63*	30,090.22
					11-Apr-2016	1,813,453.33	
					15-Apr-2016	623,972.04	
1810000052	7,640,282.12	7,640,282.12	841,236.76	6,799,045.36		*2,437,425.37*	4,361,619.99
					16-Mar-2016	2,633,225.29	
					21-Mar-2016	2,392,886.80	
					15-Sep-2016	517,805.44	
1810000050	7,642,482.64	7,642,482.64	832,025.27	6,810,457.37		*5,543,917.53*	1,266,539.84
					09-Mar-2016	1,391,014.15	
					15-Sep-2016	549,509.17	
1810000049	7,123,529.12	7,123,529.12	800,839.49	6,322,689.63		*1,940,523.32*	4,382,166.31
					30-Mar-2016	2,470,129.46	
					18-Apr-2016	328,757.49	
					08-Aug-2016	265,925.64	
1810000051	3,574,478.15	3,574,478.15	300,929.46	3,273,548.69		*3,064,812.59*	208,736.10
					19-Apr-2016	2,834,558.83	
					10-May-2016	818,265.39	
					09-Aug-2016	227,002.60	
1810000053	4,654,526.23	4,654,526.23	382,215.50	4,272,310.73		*3,879,826.82*	392,483.91
					25-Apr-2016	2,387,647.13	
					15-May-2016	366,590.82	
					09-Aug-2016	117,080.33	
1810000054	3,518,999.69	3,518,999.69	297,672.03	3,221,327.66		*2,871,318.28*	350,009.38
					29-Jan-2016	4,560,391.07	
					28-Apr-2016	841,958.08	
1820000347	611,349.59	6,250,301.32	847,952.18	5,402,349.14		*5,402,349.15*	-
1820000362	160,656.03	6,524,663.76	887,745.03	5,636,918.73		-	160,656.03
1820000363	207,296.40	6,632,694.96	917,453.26	5,715,241.70		-	207,296.40
1820000364	76,433.12	6,468,074.60	895,688.84	5,572,385.76		-	76,433.12
1820000365	5,758.66	6,614,312.64	896,994.58	5,717,318.06		-	5,758.66
1820000366	86,766.58	6,841,079.69	895,661.41	5,945,418.28		-	86,766.58
					27-Apr-2016	3,528,300.60	
					02-May-2016	1,651,975.65	
1810000055	7,374,722.92	7,374,722.92	842,947.02	6,531,775.90	18-May-2016	771,863.02	102,535.10

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					05-Oct-2016	477,101.53	
						6,429,240.80	
					27-May-2016	2,110,785.15	
					06-Jun-2016	359,492.60	
					09-Sep-2016	230,956.83	
1810000059	3,184,538.07	3,184,538.07	295,327.62	2,889,210.45		*2,701,234.58*	187,975.87
					24-May-2016	2,561,566.14	
					03-Jun-2016	379,780.10	
					09-Sep-2016	311,821.99	
1810000058	3,808,274.46	3,808,274.46	368,101.74	3,440,172.72		*3,253,168.23*	187,004.49
					23-May-2016	3,147,965.30	
					09-Sep-2016	241,249.04	
1810000056	4,053,512.53	4,053,512.53	371,680.91	3,681,831.62		*3,389,214.34*	292,617.28
					13-Jun-2016	446,886.43	
					15-Jun-2016	1,891,111.17	
					22-Jun-2016	401,208.17	
1810000061	6,588,486.69	6,588,486.69	824,948.26	5,763,538.43		*2,739,205.77*	3,024,332.66
					01-Jun-2016	358,450.84	
					06-Jun-2016	1,979,958.04	
					10-Jun-2016	489,011.41	
1810000060	6,804,042.24	6,804,042.24	821,657.10	5,982,385.14		*2,827,420.29*	3,154,964.85
					06-Jan-2016	3,858,954.74	
					03-Jun-2016	645,053.52	
1820000377	82,117.21	6,370,053.06	873,840.83	5,496,212.23		*4,504,008.26*	82,117.21
					22-Jun-2016	3,307,396.32	
					14-Sep-2016	482,751.82	
1810000062	4,168,575.04	4,168,575.04	380,361.97	3,788,213.07		*3,790,148.14*	-
1820000346	33,025.16	6,332,192.69	885,313.84	5,446,878.85		-	33,025.16
					27-May-2016	2,304,161.16	
					09-Sep-2016	252,710.48	
1810000057	2,985,630.34	2,985,630.34	290,709.16	2,694,921.18		*2,556,871.64*	138,049.54
1820000345	(234,536.81)						
Total	**74,181,036.40**						**18,701,088.48**

The conversion to Philippine currency of the amount of US$18,701,088.48 is shown as follows:

Invoice No.	**Amount not traced to inward remittance per bank certification**		
	Amount (in US$)	**Forex Rate[65]**	**Amount (in PhP)**
1820000356	30,090.22	46.23	1,391,070.87
1810000052	4,361,619.99	46.12	201,157,913.94
1810000050	1,266,539.84	46.02	58,286,163.44
1810000049	4,382,166.31	46.02	201,667,293.59

[65] Based on the rate used per the "Schedule of Zero-Rated Sale of Goods" (Exhibit "P-30").

1810000051	208,736.10	46.20	9,643,607.82
1810000053	392,483.91	46.76	18,352,547.63
1810000054	350,009.38	46.89	16,411,939.83
1820000362	160,656.03	46.85	7,526,735.01
1820000363	207,296.40	46.85	9,711,836.34
1820000364	76,433.12	46.85	3,580,891.67
1820000365	5,758.66	46.85	269,793.22
1820000366	86,766.58	46.85	4,065,014.27
1810000055	102,535.10	46.55	4,773,008.91
1810000059	187,975.87	46.78	8,793,511.20
1810000058	187,004.49	46.75	8,742,459.91
1810000056	292,617.28	46.55	13,621,334.38
1810000061	3,024,332.66	46.43	140,419,765.40
1810000060	3,154,964.85	46.22	145,822,475.37
1820000377	82,117.21	46.76	3,839,390.16
1820000346	33,025.16	46.07	1,521,469.12
1810000057	138,049.54	46.55	6,426,206.09
Total	**18,701,088.48**		**866,024,428.16**

The Court hereby summarized the above items and accounted the discrepancies as follows:

Total zero-rated sales per 2nd quarter VAT return of 2016	₱2,806,220,224.70
Add: Peso conversion adjustment	825,337,051.41
Adjusted peso equivalent of total zero-rated sales for the 2nd quarter of 2016	₱3,631,557,276.11
Less: Sales NOT compliant with substantiation and invoicing requirements	188,200,311.43
Less: Sales that CANNOT be traced in the Certificate of Inward Remittances	866,024,428.16
Total	**₱2,577,332,536.52**

Consequently, only the export sales of goods in the amount of US$55,479,947.92 or ₱2,577,332,536.52 satisfied the *third* essential element and the *fifth* requisite, *i.e.,* the sales were paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations.

In fine, and for purposes of compliance with the *fourth* and *fifth* requisites, petitioner was able to establish that its export sales of goods for the 2nd quarter of 2016, in the amount of US$55,479,947.92 or ₱2,577,332,536.52, qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

The input taxes being claimed do not appear to be transitional input taxes

Petitioner's Quarterly VAT Return for the 2nd quarter of 2016[66] reflected total input VAT of ₱42,574,800.49 from its domestic purchases of goods and services and importation of goods, out of which the amount of ₱22,128,978.80 is the subject of the present claim for refund, as shown below:

Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 149,668,885.66
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	130,675,186.72
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	₱ 18,993,698.94
Add: Input Tax on:	
Domestic Purchases of Goods Other than Capital Goods	₱ 397,791.44
Importation of Goods Other than Capital Goods	22,649,038.00
Domestic Purchase of Services	534,272.11
Total	₱ 23,581,101.55
Total Input Tax for the period	**₱42,574,800.49**
Less: Output Tax Due	404,342.64
Excess Input VAT	**₱42,170,457.85**
Less: Allowable input VAT for TCC/Refund per BIR Letter dated September 19, 2018[67]	20,041,479.05
Excess Input VAT claimed for refund per Petition for Review	**₱22,128,978.80**

The above input taxes do ***not*** appear to be transitional input taxes as contemplated 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

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66 Exhibit "P-6", Docket, p. 406.
67 Exhibit "P-11", Docket, pp. 411 to 412.

goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[68]

In this case, there is no showing that petitioner is a newly VAT-registered entity; hence, in the absence of any indication that the claimed input taxes are transitional input taxes, the Court holds that the *sixth* requisite for the grant of an input VAT refund has been satisfied by petitioner.

The input taxes being claimed are paid

Prior to proceeding with the verification of petitioner's input VAT due or paid, the Court deems it appropriate to first discuss the legal implication of being a BOI-registered entity by the petitioner with respect to its input VAT on domestic purchases.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provides as follows, to wit:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – 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:
>
> xxx xxx xxx
>
> (5) **Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987,** and other special laws;" *(Emphasis added)*

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

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The above provision is further implemented by Section 4.106-5(a)(5) of RR No. 16-2005, which states:

> "SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. – A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> **(a)** **Export sales.** – *'Export Sales'* shall mean:
>
> xxx xxx xxx
>
> (5) **Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Code of 1987,** and other special laws.
>
> xxx xxx xxx
>
> ***'Considered export sales under Executive Order No. 226'*** shall men the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; xxx.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided*, finally, **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**." *(Emphases and underscoring added)*

Based on the foregoing, it is clear that the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered as export sales; and that a certification to this effect must be issued by the BOI.

Relative thereto, pursuant to Revenue Memorandum Order (RMO) No. 9-2000,[69] sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the reportorial and documentary requirements prescribed under Section 3 thereof, thus:

> "SECTION.3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> **(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers;** and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer." *(Emphasis added)*

In the present case, records show that petitioner is a holder of a certification[70] from the BOI confirming its BOI-registered entity status with 100% exports for the year covering January 1 to December 31, 2016.

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[69] SUBJECT: Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.
[70] Exhibit "P-5", Docket, pp. 403 to 405.

Under the above-quoted Section 3.4 of RMO No. 9-2000, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner for the year 2016. On the other hand, by virtue of the said BOI-Certification, petitioner may legally reject the "shifting" to it of the local suppliers' output tax, failing which, it cannot eventually claim for refund of input VAT from the said domestic purchase transactions.

In *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue,*[71] the Supreme Court affirmed the ruling of this Court *En Banc* in stating that the refund-claimant's recourse is not against the government but against the seller who shifted the output VAT, thus:

> "xxx the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, **if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. <u>Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner</u>.**" *(Emphases and underscoring added)*

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[71] G.R. No. 190506, June 13, 2016.

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Applying the foregoing jurisprudential pronouncements to the instant case, the proper party to seek the tax refund or credit should not be petitioner, but its suppliers. In turn, petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT.

Such being the case, only the portion of the input VAT arising from petitioner's importations shall be taken into account in determining the refundable input VAT amount.

Thus, relative to the *seventh* requisite in claiming VAT refund, it is of great importance for petitioner to provide supporting documents to prove that the input taxes claimed from importation of goods during the 2nd quarter of 2016 are actually paid in accordance with Section 110(A)(1)(a) and (2)(b) of the NIRC of 1997, as amended, which provides as follows:

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

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The above provisions are implemented by Sections 4.110-1(a), 4.110-2(a) and 4.110.-3 of RR No. 16-2005, which provides 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:
>
> (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,
>
> xxx xxx xxx
>
> 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;
>
> xxx xxx xxx

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SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱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 (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Relative thereto, Section 4.110-8(a)(1) of RR No. 16-2005 provides for the substantiation requirements of input tax credits relative to the importation of goods, to wit:

> "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.**" *(Emphasis added)*

Based on the examination conducted by the ICPA, out of petitioner's total input tax for the period amounting to ₱42,574,800.49, the amount of ₱41,259,296.89 pertains to importation of goods, which are either classified as capital goods exceeding ₱1 Million or non-capital goods, as shown below:[72]

Amortization of input tax on capital goods exceeding ₱1M	₱ 18,610,258.89
Input tax on importation of goods other than capital goods	22,649,038.00
Total	**₱41,259,296.89**

Anent the amortization of input tax on importation of capital goods exceeding ₱1 Million in the amount of ₱18,610,258.89, the Court notes the following exceptions found by the ICPA amounting to ₱155,898.37, which shall be disallowed for failure to meet the substantiation requirements under the previously mentioned law and regulations:

ICPA's findings	Reference to ICPA Report/ Exhibit Nos.	Input VAT Amount
Amortization of input tax deferred on importation of capital goods properly supported only by photocopied Statement of Settlement of Duties and Taxes (SSDT)/ Bank/Bureau of Customs (BOC) official receipts (ORs) and BOC Import Entry & Internal Revenue Declarations (IEIRD) and/or invoices	Annex B-24 (Exhibits "P-60-1A" to "P-60-1C")	₱ 17,735.85

[72] Exhibit "P-14", ICPA Report Binder, p. 9, Table 5.

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Amortization of input tax deferred on importation of capital goods without supporting documents	Annex B-25	138,162.62
Rounding Difference		(0.10)
Not Properly Substantiated		**₱155,898.37**

Consequently, only the amortization of input tax on importation of capital goods exceeding ₱1 Million amounting to ₱18,454,360.52[73] was duly supported by SSDTs, IEIRDs and invoices.[74]

As regards the input tax on importation of goods other than capital goods in the amount of ₱22,649,038.00, the Court finds the same as valid input tax credit, being duly supported by SSDTs, IEIRDs, and/or invoices.[75]

Thus, in compliance with the *seventh* requisite, only the amount of ₱41,103,398.52, as computed below, represents petitioner's valid input VAT paid on importation of goods for the 2nd quarter of 2016:

Amortization of input tax on importation of capital goods exceeding ₱1 Million	₱ 18,454,360.52
Input tax on importation of goods other than capital goods	22,649,038.00
Total Valid Input VAT	**₱41,103,398.52**

Since there are types of sales other than zero-rated or effectively zero-rated sales, the said amount of ₱41,103,398.52 shall be proportionately allocated on the basis of sales volume

The *eighth* requisite is to the effect 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.

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[73] Total input tax on importation of capital goods exceeding ₱1 Million of ₱18,610,258.89 less ICPA Disallowance of ₱155,898.37.
[74] Exhibits "P-55-1A" to "P-55-304A", "P-55-1B" to "P-55-304B", "P-55-1C" to "P-55-304C", "P-56-1A" to "P-56-7A", "P-56-1B" to "P-56-7B", "P-57-1A", "P-57-1-1C" to "P-57-1-6C", "P-58-1A" to "P-58-3A", "P-58-1B" to "P-58-3B", "P-59-1A" to "P-59-17A" and "P-59-1C" to "P-59-17C".
[75] Exhibits "P-49-1A" to "P-49-53A", "P-49-1B" to "P-49-53B" and "P-49-1C" to "P-49-52C".

As mentioned earlier, for the subject period of the claim, there exists zero-rated or effectively zero-rated sales, taxable sales subject to 12% VAT, and exempt sales in the following amounts:

12% Vatable Sales to Private Entities	₱ 2,855,459.54
12% Vatable Sales to Government	514,062.50
Zero-Rated Sales	3,631,557,276.11
Exempt Sales	1,488,700.00
Total Sales	**₱3,636,415,498.15**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the said transactions, the valid input VAT of ₱41,103,398.52 shall be allocated proportionately on the basis of the volume of its sales, as shown below:

Total Vatable Sales to Private Entities	₱ 2,855,459.54
Divided by Total Sales	3,636,415,498.15
Multiplied by Total Valid Input VAT	41,103,398.52
Valid Input VAT allocated to 12% Vatable Sales to Private Entities	**₱ 32,276.04**

Total Vatable Sales to Government	₱ 514,062.50
Divided by Total Sales	3,636,415,498.15
Multiplied by Total Valid Input VAT	41,103,398.52
Valid Input VAT allocated to 12% Vatable Sales to Government	**₱ 5,810.59**

Total Exempt Sales	₱ 1,488,700.00
Divided by Total Sales	3,636,415,498.15
Multiplied by Total Valid Input VAT	41,103,398.52
Valid Input VAT allocated to Exempt Sales	**₱ 16,827.18**

Total Zero-Rated Sales	₱3,631,557,276.11
Divided by Total Sales	3,636,415,498.15
Multiplied by Total Valid Input VAT	41,103,398.52
Valid Input VAT allocated to Total Zero-Rated Sales	**₱ 41,048,484.71**

Thus, for purposes of, and with respect to petitioner's compliance with the *eighth* requisite, only the allocated amount of ₱41,048,484.71 represents valid input VAT attributable to total zero-rated sales.

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Determination of the refundable amount

Having found that petitioner has valid input VAT attributable to zero-rated sales, the Court will now ascertain whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite and for the successful prosecution of petitioner's input VAT refund claim.

Upon applying the amount of ₱32,276.04 input VAT attributable to vatable sales to private entities against its output VAT liability of ₱342,655.14[76] arising from such sales, it appears that petitioner still has a net output VAT payable in the amount of ₱310,379.10, as computed below:

Output Tax Due on 12% Vatable Sales to Private Entities	₱ 342,655.14
Less: Valid Input VAT allocated to 12% Vatable Sales to Private Entities	32,276.04
Output Tax Still Due	**₱310,379.10**

As such, the valid input VAT attributable to total zero-rated sales in the amount of ₱41,048,484.71 shall then be utilized against the above remaining output VAT of ₱310,379.10. Consequently, only the remaining input VAT of ₱40,738,105.61 can be attributed to the total zero-rated sales of ₱3,631,557,276.11 and only the portion of input VAT amounting to ₱28,912,016.82 is attributable to the valid zero-rated sales of ₱2,577,332,536.52, computed as follows:

Valid Input VAT allocated to Total Zero-Rated Sales	₱ 41,048,484.71
Less: Output VAT still due	310,379.10
Excess Input VAT allocated to Total Zero-Rated Sales	**₱ 40,738,105.61**
Divided by Total Zero-Rated Sales	₱3,631,557,276.11
Multiplied by Valid Zero-Rated Sales	₱2,577,332,536.52
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱ 28,912,016.82**

It is worth noting that the claimed input VAT amount of ₱42,170,457.85, which includes the refundable valid input VAT of ₱28,912,016.82, was not carried-over to the succeeding taxable periods (3rd quarter of 2016 to 1st quarter of 2019).[77] Thus, the said valid input VAT claim of ₱28,912,016.82 was not utilized or applied against any output tax liabilities in the succeeding periods.

[76] Exhibit "P-6", Line 15B, Docket, p. 406.
[77] Exhibit "P-10", Line 20A, Docket, p. 410; Exhibits "P-65-1" to "P-65-10", Line 20A.

In this regard, petitioner is deemed to have fulfilled the *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

In sum, the pieces of evidence show that petitioner is entitled to VAT refund in the increased amount of ₱28,912,016.82, representing the latter's excess and unutilized input VAT on importation of goods incurred in relation to its zero-rated sales for the 2nd quarter of 2016.

Considering that respondent had already approved in favor of petitioner, the amount of ₱20,041,479.05 as net allowable VAT Refund, which entirely pertains to petitioner's input VAT on importations, per ACIR Simple's Letter dated September 19, 2018,[78] the said amount of ₱20,041,479.05 shall be offset against the refundable input VAT of ₱28,912,016.82, as found by this Court, to properly account for the remaining input VAT refund that must be rightfully accorded to petitioner for the 2nd quarter of 2016.

Accordingly, petitioner is entitled to *additional* input VAT refund in the amount of ₱8,870,537.77 (₱28,912,016.82 less ₱20,041,479.05) for the 2nd quarter of 2016.

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

Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to petitioner Carmen Copper Corporation the total amount of **₱28,912,016.82**, representing petitioner's excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:

(i) **₱20,041,479.05**, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,

(ii) **₱8,870,537.77**, pertaining to the difference between the amount of ₱28,912,016.82, representing the duly substantiated excess and unutilized input VAT on petitioner's importation of goods attributable to petitioner's zero-rated sales for the 2nd quarter of taxable year 2016

[78] Exhibit "P-11", Docket, pp. 411 to 412.

as found by the Court, and the amount of ₱20,041,479.05 as indicated in *(i)*.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CARMEN COPPER CORPORATION *Petitioner,*	**CTA Case No. 9954** Members:
-versus-	**DEL ROSARIO, P.J.,** *Chairperson,* **MANAHAN**, and **BACORRO-VILLENA**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 02 2021 11:16 am

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

With all due respect to my esteemed colleagues, I remain consistent with my dissent on this matter of directing claimants of input VAT refund due to VAT zero-rated sales to secure this from their suppliers/sellers instead of filing a refund claim with the Bureau of Internal Revenue (BIR), and I express my humble belief that this recourse or remedy proposed by them is not in accord with the nature of input VAT as seen in the relevant provisions of the 1997 National Internal Revenue Code (NIRC), as amended.[1]

The *ponencia* ruled partially in favor of petitioner but made an exception pertaining to the portion of the claimed input VAT generated from its domestic purchases of goods, and directed the petitioner to seek recourse instead from its suppliers/sellers who had shifted the output VAT to petitioner. To put it simply, the majority opined that petitioner's proper remedy is not to file a claim for refund with the Government but to ask relief or refund from its suppliers/sellers as regards its domestic purchases and maintained that "only the portion of the input VAT arising from petitioner's importations shall be taken into account in determining the refundable input VAT amount."

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[1] *CBK Power Co. Limited vs. CIR,* CTA EB No. 1685, February 20, 2019; *Hedcor, Inc. vs. CIR,* CTA EB No. 1761, April 8, 2019; *Taganito Mining Corp. vs. CIR and CIR vs. Taganito Mining Corp.*, CTA EB Nos, 1972 and 1975, September 3, 2020.

For clarity, I quote Section 112 (A) of the 1997 NIRC, as amended, which is the governing provision in claims for refund of this nature, *viz:*

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx

I have often reiterated that there is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales provided under the afore-quoted Section 112 (A) and by relevant jurisprudence, and simply resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

Focusing on requirement No. 4, it is my position that the Court should determine whether or not the VAT-registered suppliers/sellers passed on or charged its output VAT to petitioner

Carmen Copper Corporation and if they did, then the former should be entitled to the input VAT it already paid, subject of course to compliance with the other requirements.

If the records show that input taxes were passed on to petitioner by its suppliers/sellers and such input taxes were already remitted to the Government as output VAT and if under the law, such sales are found to be VAT zero-rated, then there was clearly an erroneous collection of output tax on the part of the State. Although, statutorily, the supplier is the taxpayer of the output VAT, there is no compelling reason on its part to claim for the refund because the burden of the tax, i.e., input tax, was assumed by the buyer which in this case, is the petitioner.

It is my firm belief that recourse against the government by way of a claim for refund, is more legally sound than directing the taxpayer/claimant to seek redress from its suppliers.

In view of the foregoing, I vote to decide the Petition for Review on the basis of the factual veracity of the evidence presented by Carmen Copper Corporation pertaining to its domestic purchases for the taxable period involved instead of denying a portion of the claim for refund because it should have sought redress from its suppliers and not from the government.

CATHERINE T. MANAHAN
Associate Justice