REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

FMC SWITZERLAND II GMBH DOING BUSINESS UNDER THE NAME FMC SWITZERLAND II, MANILA ROHQ, Petitioner,	**CTA CASE NO. 11233** **Members:** **RINGPIS-LIBAN,** *P.J., Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 2 6 2026

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DECISION

***FERRER-FLORES, J.*:**

THE CASE

The **Petition for Review** filed on July 28, 2023 prays for the refund of the amount of **₱12,609,855.82**, allegedly representing petitioner's excess and unutilized input value-added taxes (VAT) attributable to its zero-rated sales for the period January 1, 2021 to December 31, 2021.[1]

THE PARTIES

Petitioner **FMC Switzerland II GMBH** is a multinational company organized and existing under the laws of Switzerland, duly licensed by the Securities and Exchange Commission to establish its regional operating headquarters (ROHQ) in the Philippines under the name, FMC Switzerland II GMBH, Manila ROHQ.[2] It is registered with the Bureau of Internal Revenue

[1] Summary of the Case, Pre-Trial Order dated May 30, 2024, Docket, p. 373.
[2] Exhibit "P-2", BIR Records (Exhibit "R-5"), p. 380.

(BIR) as a VAT taxpayer, under Taxpayer Identification Number (TIN) 009-862-335-000, with registered address at 10/F Six/Neo Building, 5th Avenue corner 26th Street, Bonifacio Global City, Taguig City.[3]

Respondent **Commissioner of Internal Revenue** is empowered to perform the duties of his office, including acting upon protests cases and claims for refund or tax credit, as provided by law and implementing regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On March 31, 2023, petitioner filed with the BIR - VAT Credit Audit Division an administrative claim for VAT refund in the total amount of ₱12,609,855.82,[5] allegedly representing unutilized input taxes attributable to its VAT zero-rated sales for the period January 1, 2021 to December 31, 2021.

Respondent then issued Tax Verification Notice No. TVN 202200006204 dated March 31, 2023,[6] authorizing Revenue Officers (ROs) Aubrey M. Pepito-Collado, Tessielyn L. Lumido, and Faye Armie S. Arroyo, to verify petitioner's supporting documents and/or pertinent records relative to petitioner's claim for VAT refund.

Petitioner, thereafter, was served a VAT Refund Notice dated May 31, 2023,[7] issued and signed by Ms. Maria Luisa I. Belen, Assistant Commissioner - Assessment Service, which denied petitioner's administrative claim for VAT refund for "lack of factual and legal basis."

PROCEEDINGS BEFORE THIS COURT

On July 28, 2023, petitioner filed the present *Petition for Review*.[8]

Summons was issued to respondent on September 27, 2023.[9]

Respondent filed via electronic mail a *Motion for Extension of Time to File Answer* on October 31, 2026.[10]

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[3] Exhibit "P-3", Docket, p. 427.
[4] Par. A.1, *Joint Stipulation of Facts and Issues* (*JSFI*), Docket, p. 333.
[5] Exhibit "P-30" and "P-31", BIR Records (Exhibit "R-5"), pp. 381 to 387 and 388, respectively.
[6] Exhibit "P-34" and Exhibit "R-1", BIR Records (Exhibit "R-5"), p. 392.
[7] Exhibit "P-4" and Exhibit "R-3", BIR Records (Exhibit "R-5"), pp. 479 to 490.
[8] Docket, pp. 6 to 46.
[9] Docket, p. 256.
[10] Docket, p. 266.

On December 4, 2023, respondent filed his *Answer*[11] and, on December 13, 2023, transmitted the *BIR Records* of this case.[12]

The Pre-Trial Conference was set and held on March 14, 2024.[13] Prior thereto, petitioner's *Pre-Trial Brief* was filed on March 5, 2024,[14] while respondent's *Pre-Trial Brief* was submitted on March 8, 2024.[15]

On April 15, 2024, the parties submitted their *Joint Stipulation of Facts and Issues*,[16] which was admitted and approved by the Court in its Resolution dated April 30, 2024,[17] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on May 30, 2024.[18]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals: (1) Ms. Zhyra Mae I. Sabado,[19] its Finance and Accounting Lead; and, (2) Ms. Elaine E. De Guzman,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

Ms. De Guzman submitted her *Report*[22] on July 15, 2023.

On August 16, 2024, petitioner filed its *Formal Offer of Evidence*,[23] to which respondent filed his *Comment (on Petitioner's Formal Offer of Evidence)* on August 27, 2024.[24]

In the Resolution dated October 3, 2024,[25] the Court admitted all of petitioner's offered exhibits, except Exhibits "P-70.1 to P-70.4", "P-75.1", "P-

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11 Docket, pp. 267 to 280.
12 *Compliance* dated November 13, 2023, Docket, pp. 284 to 286.
13 Notice of Pre-Trial Conference dated January 5, 2024, Docket, pp. 282 to 283; Minutes of the hearing held on, and Order dated, March 14, 2024, Docket, pp. 324 to 327.
14 Docket, pp. 290 to 304.
15 Docket, pp. 306 to 309.
16 Docket, pp. 333 to 347.
17 Docket, p. 350.
18 Docket, pp. 373 to 379.
19 Exhibit "P-35", Docket, pp. 65 to 88, and 243 (for the *Attestation*); Minutes of the hearing held on, and Order dated, May 30, 2024, Docket, pp. 380 and 383 to 384, respectively.
20 Exhibits "P-92", Docket, pp. 388 to 404; Minutes of the hearing held on, and Order dated, August 1, 2024, Docket, pp. 407 to 408-B.
21 *Oath of Commission* dated May 30, 2024, Docket, p. 382; Minutes of the hearing held on, and Order dated, May 30, 2024, Docket, pp. 380 and 383 to 384, respectively.
22 Exhibit "P-37".
23 Docket, pp. 411 to 425.
24 Docket, pp. 432 to 434.
25 Docket, pp. 440 to 441.

77.1", "P-78.1", and "P-91.1 to P-91.3", for not being found in the USB submitted by Ms. De Guzman.

Petitioner, thus, filed a *Motion for Partial Reconsideration to the Resolution dated October 3, 2024* on October 17, 2024,[26] to which respondent filed his *Comment (on Petitioner's Motion for Partial Reconsideration to the Resolution dated October 3, 2024)* on December 16, 2024.[27]

The Court, in its Resolution dated February 28, 2025,[28] granted petitioner's *Motion for Partial Reconsideration*, thereby admitting Exhibits "P-70.1 to P-70.4", "P-75.1", "P-77.1", "P-78.1", and "P-91.1 to P-91.3".

For his part, respondent presented the testimony of RO Pepito-Collado.[29]

On October 14, 2024, respondent filed his *Formal Offer of Evidence*,[30] to which petitioner filed its *Comment/Opposition (To the Respondent's Formal Offer of Evidence)* on October 17, 2024.[31]

The Court admitted all of respondent's offered exhibits in the Resolution dated January 2, 2025.[32]

On February 3, 2025, petitioner filed its *Memorandum*,[33] while respondent submitted his *Memorandum* on February 17, 2025.[34]

The present case was considered submitted for decision on April 29, 2025.[35]

THE STIPULATED ISSUE

The sole issue[36] for this Court's resolution is whether petitioner is entitled to a refund of the excess unutilized input VAT allegedly attributable

[26] Docket, pp. 460 to 462.
[27] Docket, pp. 468 to 471.
[28] Docket, pp. 545 to 548.
[29] Exhibit "R-6", Docket, pp. 316 to 322; Minutes of the hearing held on, and Order dated, October 3, 2024, Docket, pp. 436 to 438.
[30] Docket, pp. 447 to 450.
[31] Docket, pp. 454 to 455.
[32] Docket, pp. 475 to 476.
[33] Docket, pp. 478 to 524.
[34] Docket, pp. 528 to 541.
[35] Minute Resolution dated April 29, 2025, Docket.
[36] Par. B, *JSFI*, Docket, p. 334.

and allocable to its VAT zero-rated sales for the period January 1, 2021 to December 31, 2021, amounting to ₱12,609,855.82.

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that its claim for tax refund should be granted because it has complied with all the elements of a valid claim for refund of excess input VAT.

Petitioner further maintains that, contrary to the allegations of the BIR in the VAT Refund Notice dated May 31, 2023, its claim for refund of excess input VAT attributable to zero-rated sales within the subject period has legal and factual basis. It stresses that it was able to fully comply with the invoicing requirements provided for in the National Internal Revenue Code (NIRC) of 1997, as amended. Moreover, petitioner, asserts that it only claims input taxes which have been substantiated with official receipts and invoices.

Lastly, petitioner asserts that the Securities and Exchange Commission (SEC) properly issued a Certificate of Corporate Filing/Information instead of a Certificate of Non-Registration of FMC Corporation, a corporation duly organized and registered under the laws of the United States of America, since the SEC system indicates that there is already a domestic corporation registered with the same name under Company Registration No. CS201806035.

Respondent's counter-arguments:

Respondent mainly contends that petitioner failed to establish its entitlement to the refund claimed.

Since the administrative claim for refund was denied, respondent avers that petitioner cannot now submit to the Court documents which were not submitted and considered at the administrative level.

Lastly, respondent posits that claims for tax refunds are strictly construed against the claimant and liberally in favor of the taxing authority.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law

Section 112 of the NIRC of 1997, amended by Republic Act No. (R.A.) 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law,[37] 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 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.

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[37] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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. Said requisites are classified into certain categories, *to wit*:

> <u>As to the timeliness of the filing of the administrative and judicial claims:</u>
>
> 1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[38]
>
> 2. in case of full or partial denial of the refund claim rendered within a period of 90 days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within 30 days from receipt of the decision or upon expiration of the 90-day period to decide, whichever is earlier;[39]
>
> <u>With reference to the taxpayer's registration with the BIR</u>:
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> 3. the taxpayer is a VAT-registered person;[40]
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> <u>In relation to the taxpayer's output VAT</u>:
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> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]

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

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

[40] *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., vs. Commissioner of Internal Revenue*, supra.

[41] *Id.*

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[42] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[43]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[44]

7. the input taxes are due or paid;[45]

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;[46] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[47]

In addition, the taxpayer-claimant must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[48] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[49]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's

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[42] Under Republic Act No. 10963, Section 106(A)(2)(a)(**2**) was renumbered to Section 106(A)(2)(a)(**3**) while Section 106(A)(2)(**b**) was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

[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., vs. Commissioner of Internal Revenue*, supra.

[44] *Id.*

[45] *Id.*

[46] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[47] *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. vs. Commissioner of Internal Revenue*, supra.

[48] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

[49] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[50] In short, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[51]

At the outset, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[52] Contrary to respondent's argument, the Court is not limited by the evidence presented in the administrative level. Corollary to this, since the claim for tax refund or credit was litigated anew before the Court in Division, the latter's decision should solely be based on the evidence formally presented before it, notwithstanding any evidence that may have been submitted (or not submitted) to the BIR. What is vital in the determination of a judicial claim for VAT refund or credit is the evidence presented before the CTA, regardless of the body of evidence found in the administrative level.

Timeliness of petitioner's administrative and judicial claims for refund/credit

The first requisite provided in Section 112(A) of the NIRC of 1997, as amended, commands the taxpayer to file an administrative claim for input VAT refund within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The table below shows a summary of the relevant dates pertaining to petitioner's filing of the administrative claim for refund:

Close of the Taxable Quarter	**End of the Two (2) Year Period**	**Date of Filing of Administrative Claim**
March 31, 2021	March 31, 2023	March 31, 2023[53]
June 30, 2021	June 30, 2023	
September 30, 2021	September 30, 2023	
December 31, 2021	December 31, 2023	

[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

[51] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[52] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[53] Exhibit "P-30" and "P-31", BIR Records (Exhibit "R-5"), pp. 361 to 387 and 388, respectively.

Considering that petitioner's administrative claim for refund covering the above stated quarters was filed on March 31, 2023, the same was timely made within the two-year prescriptive period. From the said date, respondent had a 90-day period, or until June 29, 2023, within which to decide the said claim.

As regards the second requisite, the same necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended, whichever is earlier.

In this case, petitioner received the VAT Refund Notice on June 30, 2023.[54] Respondent, however, had until June 29, 2023 to decide on the administrative claim. Petitioner then had 30 days from June 29, 2023 to file its judicial claim. Clearly, the present *Petition for Review* was timely filed on July 28, 2023.[55]

Given the foregoing, petitioner complied with the above-stated first and second requisites to successfully obtain a credit or refund of input VAT.

Petitioner is a VAT-registered entity

Anent the third requisite, it was likewise established that petitioner is a VAT-registered taxpayer with TIN 009-862-335-000 as indicated in its BIR Certificate of Registration No. OCN 9R0000557653.[56]

Petitioner had zero-rated sales or effectively zero-rated sales

The fourth and fifth requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales. For zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b),[57] and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds thereof must have been duly accounted for in accordance with BSP rules and regulations.

Petitioner alleges that it rendered services to FMC Corporation and its foreign affiliates, which were not engaged in business in the Philippines and

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54 Exhibit "P-4" and Exhibit "R-3", BIR Records (Exhibit "R-5"), pp. 479 to 490.

55 Docket, pp. 6 to 50.

56 Exhibit "P-3", Docket, p. 427.

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

were outside of the Philippines when the services were rendered.[58] According to petitioner, its sale of services to the said foreign affiliates is, thus, subject to zero percent VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**; xxx *(Emphases supplied)*

Based on the foregoing provision, certain essential elements must be complied with for a sale or supply of services to be subject to the VAT rate of zero percent, under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[59]

2. The services fall under any of the categories under Section 108(B)(2) of the NIRC of 1997, as amended,[60] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[61]

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[58] Par. 3.6, petitioner's *Memorandum,* Docket, p. 482.

[59] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[60] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

3. The services must be performed in the Philippines[62] by a VAT-registered person; and,

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[63]

With regard to the first essential element, in order to be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Company issued by the Philippine SEC, and proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *first* essential element. In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[64] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> For purposes of zero-rating under Section 108(B)(2) of the Tax Code, **the claimant must establish the two components of a client's NRFC status,** *viz.*: **(1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
>
> Such proof must be especially required from ROHQs such as DKS. That the law expressly authorizes ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.
>
> To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.
>
> The Court upholds these findings.

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62 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

63 *Id.*

64 G.R. No. 234445, July 15, 2020.

> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**. *(Emphases supplied)*

To prove its compliance with the first essential element, petitioner presented the following documentary evidence, to wit:

Company Name	**Certification of Non-Registration of Company issued by the SEC**[65]	**Proof of Incorporation/ Registration in foreign country**[66]
CHEMINOVA A/S	"P-68.11"	"P-67.1"
CHEMINOVA AGRO FRANCE S A S	-	"P-67.2"
CHEMINOVA DEUTSCHLAND GMBH AND CO KG	"P-68.10"	"P-67.3"
FMC (CHINA) INVESTMENT CO. LTD.	"P-68.46"	"P-67.4"
FMC (SHANGHAI) AGRICULTURAL SCIENCES CO., LTD.	"P-68.36"	"P-67.5"
FMC (SUZHHOU) CROP CARE CO. LTD	"P-68.8"	"P-67.6"
FMC AG (THAILAND) LIMITED	-	"P-67.7"
FMC AGRICULTURAL CARIBE INDUSTRIES LTD	"P-68.27"	"P-67.8"
FMC AGRICULTURAL PRODUCTS INTERNATIONAL AG	"P-68.38"	"P-67.9"
FMC AGRICULTURAL SOLUTIONS SAU	"P-68.12"	"P-67.10"
FMC AGRO AUSTRIA GMBH	"P-68.1"	"P-67.11"
FMC AGRO BULGARIA EOOD	"P-68.3"	"P-67.12"
FMC AGRO CESKA REPUBLIKA SPOL S R O	"P-68.9"	"P-67.13"
FMC AGRO HUNGARY KFT	"P-68.17"	"P-67.14"
FMC AGRO LIMITED	"P-68.14"	"P-67.15"

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65 USB (Exhibit "P-37-2").
66 USB (Exhibit "P-37-2").

FMC AGRO POLSKA SP Z O	"P-68.26"	"P-67.16"
FMC AUSTRALASIA PTY LTD	"P-68.35"	"P-67.17"
FMC CHEMICALS (MALAYSIA) SDN BHD	"P-68.23"	"P-67.18"
FMC CHEMICALS (PTY) LTD	"P-68.34"	"P-67.19"
FMC CHEMICALS HELLAS MEPE	"P-68.15"	"P-67.20"
FMC CHEMICALS K	"P-68.20"	"P-67.21"
FMC COLUMBIA SAS	-	"P-67.22"
FMC CORPORATION	"P-68.44"	"P-67.23"
FMC FORET, S.A.	-	"P-67.24"
FMC FRANCE	"P-68.13"	"P-67.25"
FMC INDIA PRIVATE LIMITED	"P-68.43"	"P-67.26"
FMC INTERNATIONAL SWITZERLAND SARL	"P-68.6"	"P-67.27"
FMC KOREA LTD	"P-68.21"	"P-67.28"
FMC OF CANADA LIMITED	"P-68.5"	"P-67.29"
FMC OPERATIONAL NETHERLANDS B.V.	"P-68.24"	"P-67.30"
FMC QUIMICA CHILE LIMITADA	"P-68.7"	"P-67.31"
FMC SWITZERLAND II GMBH HK BRANCH	"P-68.16"	"P-67.32"
FMC TAIWAN CO LTD	"P-68.31"	"P-67.33"
FMC VIETNAM COMPANY LIMITED	"P-68.33"	"P-67.34"
PT FMC AGRICULTURAL MANUFACTURING	"P-68.18"	"P-67.35"
PT. BINA GUNA KIMIA	"P-68.39"	"P-67.36"

After a review of the evidence submitted, only the following clients of petitioner have both the Certification of Non-Registration of Company issued by the Philippine SEC and the proof of incorporation/registration in a foreign country, which can be considered NRFCs doing business outside the Philippines:

Company Name	**Certification of Non-Registration of Company issued by the SEC**[67]	**Proof of incorporation/ registration in a foreign country**[68]
CHEMINOVA A/S	"P-68.11"	"P-67.1"
FMC (CHINA) INVESTMENT CO., LTD.	"P-68.46"	"P-67.4"
FMC (SHANGHAI) AGRICULTURAL SCIENCES CO., LTD.	"P-68.36"	"P-67.5"
FMC (SUZHOU) CROP CARE CO., LTD.	"P-68.8"	"P-67.6"
FMC AGRICULTURAL CARIBE INDUSTRIES, LTD.	"P-68.27"	"P-67.8"
FMC AGRICULTURAL PRODUCTS INTERNATIONAL AG	"P-68.38"	"P-67.9"

[67] USB (Exhibit "P-37-2").
[68] USB (Exhibit "P-37-2").

FMC AGRICULTURAL SOLUTIONS, S A U	"P-68.12"	"P-67.10"
FMC AGRO BULGARIA EOOD	"P-68.3"	"P-67.12"
FMC AGRO CESKA REPUBLIKA SPOL SRO	"P-68.9"	"P-67.13"
FMC AGRO HUNGARY KFT	"P-68.17"	"P-67.14"
FMC AGRO LIMITED	"P-68.14"	"P-67.15"
FMC AGRO POLSKA SP Z O O	"P-68.26"	"P-67.16"
FMC CHEMICALS (MALAYSIA) SDN BHD	"P-68.23"	"P-67.18"
FMC CHEMICALS PTY LTD	"P-68.34"	"P-67.17"
FMC CHEMICALS HELLAS MEPE	"P-68.15"	"P-67.20"
FMC CHEMICALS K.K.	"P-68.20"	"P-67.21"
FMC CORPORATION (UNITED STATES OF AMERICA)	"P-68.44"	"P-67.23"
FMC FRANCE	"P-68.13"	"P-67.25"
CHEMINOVA INDIA LIMITED	"P-68.43"	"P-67.26"
FMC INTERNATIONAL SWITZERLAND SÀRL	"P-68.6"	"P-67.27"
FMC KOREA LTD.	"P-68.21"	"P-67.28"
FMC OF CANADA LIMITED	"P-68.5"	"P-67.29"
FMC OPERATIONAL NETHERLANDS B.V.	"P-68.24"	"P-67.30"
FMC SWITZERLAND II GMBH, HK BRANCH	"P-68.16"	"P-67.32"

In relation to the second essential element, petitioner presented the Intercompany Service Agreement,[69] which it entered into with the aforementioned affiliates,[70] with the exception of FMC (Shanghai) Agricultural Sciences Co., Ltd. It provides, in part, for the following intercompany services to be rendered by petitioner to the said affiliates,[71] to wit:

1. Payable, T&E and Masterdata Processing;

2. Procurement Services for legal entities transacting using Purchase Order ("PO")-based process;

3. Human Resource Services;

4. Plant Cost Accounting Analytics;

5. Information Technology ("IT") and IT Infrastructure Services; and,

6. Supply Chain Analytics.

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69 Exhibit "P-28", BIR Records (Exhibit "R-5"), pp. 48 to 78.
70 Appendix A of Exhibit "P-28", BIR Records (Exhibit "R-5"), pp. 57 to 58.
71 Appendix C of Exhibit "P-28", BIR Records (Exhibit "R-5"), pp. 50 to 52.

Verily, the abovementioned are services "other than processing, manufacturing or repacking goods"; hence, petitioner satisfactorily complied with the second essential element with respect to the foregoing NRFCs, except for FMC (Shanghai) Agricultural Sciences Co., Ltd.

Anent the third essential element, petitioner must show that the subject services were performed in the Philippines by a VAT-registered person. Relative thereto, although the aforementioned Intercompany Service Agreement does not bear any indication that the subject services were to be performed by petitioner in the Philippines, petitioner's Finance and Accounting Lead, Ms. Zhyra Mae I. Sabado, testified that "(f)or the period January 1, 2021 to December 31, 2021, the Petitioner rendered services in the Philippines to the following non-resident foreign corporations (NRFCs) that are engaged in business outside the Philippines."[72] Petitioner was, thus, able to establish that the subject services were actually performed in the Philippines. Accordingly, the said third essential element was likewise fulfilled by petitioner.

As for the fourth essential element, it is important to consider that the VAT zero-rated sales, to which the foreign currency remittances correspond, must be duly supported by VAT zero-rated ORs or invoices, in accordance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended. Further, the sales invoices (SIs) and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended.

In its amended Quarterly Value-Added Tax Returns (BIR Form No. 2550-Q) for the four quarters of taxable year (TY) 2021, petitioner declared an aggregate amount of ₱568,191,923.48 sales/receipts, which comprised of vatable sales/receipts of ₱7,387,805.95, and zero-rated sales/receipts of ₱560,804,117.53, as follows:

Exhibit no.	**"P-9"**[73]	**"P-15"**[74]	**"P-20"**[75]	**"P-26"**[76]	**Total**
TY 2021	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	
Vatable Sales/Receipts	₱ 1,584,812.97	₱ 2,009,626.27	-	₱ 3,793,366.71	₱ 7,387,805.95
Zero-Rated Sales/Receipts	95,567,492.35	92,882,815.70	12,863,351.16	359,490,458.32	560,804,117.53
Total Sales/Receipts	₱97,152,305.32	₱94,892,441.97	₱12,863,351.16	₱363,283,825.03	**₱ 568,191,923.48**

[72] Q&A No. 31, Exhibit "P-35", Docket, p. 79.
[73] Docket, pp. 134 to 136.
[74] Docket, pp. 152 to 154.
[75] Docket, pp. 167 to 169.
[76] Docket, pp. 185 to 187.

Upon examination of the ORs and billing statements[77] issued to its clients, as well as the Summary of Zero-Rated Sales,[78] the Court determined that, out of the declared zero-rated sales of ₱560,804,117.53, only the amount of ₱378,127,654.33 complied with the first, second and third essential elements (i.e., duly substantiated with **both** SEC Certificate of Non-Registration of Company and Articles of Incorporation in a country other than the Philippines, services fall within the scope of "services other than processing, manufacturing or repacking goods", and services were performed in the Philippines, respectively), to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended, summarized as follows:

Name of Customer/ Contractee	**1st Quarter**[79]	**2nd Quarter**[80]	**3rd Quarter**[81]	**4th Quarter**[82]	**TOTAL**
Cheminova A/S	₱ 2,361,514.56	₱ 6,876,420.37	₱ 0.00	₱ 19,626,871.23	₱ 28,864,806.16
FMC (China) Investment Co., Ltd.	0.00	0.00	320,783.31	396,428.47	717,211.78
FMC (Suzhou) Crop Care Co., Ltd.	0.00	0.00	4,010,711.20	6,035,775.14	10,046,486.34
FMC Agricultural Caribe Industries, Ltd.	1,039,997.58	895,412.10	0.00	3,884,000.19	5,819,409.87
FMC Agricultural Products International AG	1,009,387.85	668,728.03	0.00	2,733,703.48	4,411,819.36
FMC Agricultural Solutions, SAU	446,318.87	189,150.75	0.00	1,778,225.63	2,413,695.25
FMC Agro Bulgaria EOOD	51,713.09	67,703.56	0.00	322,377.85	441,794.50
FMC Agro Ceska Republika SPOL SRO	137,666.84	71,779.45	0.00	382,395.62	591,841.91
FMC Agro Hungary Kft	194,594.98	88,935.10	0.00	722,522.37	1,006,052.45
FMC Agro Limited	807,600.33	834,387.92	0.00	3,918,943.05	5,560,931.30
FMC Agro Polska SP Z O.O.	114,985.41	172,352.04	0.00	791,374.53	1,078,711.98
FMC Chemicals (Malaysia) Sdn Bhd	217,472.35	0.00	2,162,705.54	0.00	2,380,177.89
FMC (Chemicals) Pty Ltd	140,032.57	0.00	273,011.99	257,775.03	670,819.59
FMC Chemicals Hella MEPE	77,088.70	69,979.19	0.00	246,115.65	393,183.54
FMC Chemicals K.K.	1,718,136.27	331,325.33	0.00	1,645,598.33	3,695,059.93
FMC Corporation	49,593,867.32	44,634,577.25	0.00	199,260,061.58	293,488,506.15
FMC France	27,465.15	26,832.84	0.00	3,616,731.44	3,671,029.43
Cheminova India Limited	0.00	0.00	0.00	0.00	0.00
FMC International Switzerland Sàrl	1,229,252.94	1,038,552.56	0.00	3,809,176.24	6,076,981.74
FMC Korea, Ltd.	0.00	615,358.89	0.00	709,588.42	1,324,947.31
FMC of Canada Limited	189,568.68	1,874,158.53	0.00	1,566,560.40	3,630,287.61
FMC Operational Netherlands B.V.	50,613.69	23,074.11	194,997.46	209,531.05	478,216.31
FMC Switzerland II GMBH HK Branch	598,460.23	206,582.70	0.00	560,641.00	1,365,683.93
TOTAL	**₱60,005,737.41**	**₱58,685,310.72**	**₱6,962,209.50**	**₱252,474,396.70**	**₱378,127,654.33**

[77] Exhibits "P-80.1.1" to "P-80.1.148", "P-80.2.1" to "P-80.2.125", "P-80.3.1" to "P-80.3.79", and "P-80.4.1" to "P-80.4.302", USB (Exhibit "P-37-2").
[78] Exhibits "P-80" and "P-80.1" to "P-80.4", USB (Exhibit "P-37-2").
[79] Exhibit "P-80.1" (included in Exhibit "P-80" excel file), USB (Exhibit "P-37-2").
[80] Exhibit "P-80.2" (included in Exhibit "P-80" excel file), USB (Exhibit "P-37-2").
[81] Exhibit "P-80.3" (included in Exhibit "P-80" excel file), USB (Exhibit "P-37-2").
[82] Exhibit "P-80.4" (included in Exhibit "P-80" excel file), USB (Exhibit "P-37-2").

Petitioner, however, still fell short in proving that all the corresponding payments thereof were inwardly remitted thru the Philippine banking system and duly accounted for in accordance with the BSP rules and regulations, as enunciated in the above-stated fourth essential element and fifth requisite.

To recall, petitioner claims that it generated VAT zero-rated sales during the period January 1, 2021 to December 31, 2021 (first to fourth quarters of TY 2021) through the sales of services to NRFCs. These transactions were invoiced in foreign currency, with payments primarily settled through intercompany offsets and bank remittances.[83] However, in proving that the payments were inwardly remitted and accounted for in accordance with the BSP rules, petitioner only presented Bank of America and Citibank N.A.'s Bank Statements and/or Certificate of Inward Remittances.[84]

Nonetheless, under Revenue Memorandum Circular (RMC) No. 42-2003 dated July 15, 2003,[85] the BIR's requirement for full documentation of proofs of inward remittances of export proceeds is no longer enforced, in view of the full liberalization of BSP rules and, the documents enumerated therein can be considered as acceptable documentary proof in the processing of claims for the issuance of tax credit certificate and refund in an offsetting arrangement. Pertinent portions of RMC No. 42-2003 are herein quoted for ready reference:

> Q-8 With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8 In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
>
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
>
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;

wm

83 Par. 3.14, petitioner's *Memorandum*, Docket, p. 486.
84 Exhibits "P-81", "P-81.1" to "P-81.14", "P-88", and "P-88.1" to "P-88.12", USB (Exhibit "P-37-2").
85 SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

d. Documents or correspondence regarding offsetting arrangements;

e. **Confirmation of the offsetting arrangements by the heads of the business organizations involved**;

f. Documents to prove actual export of goods;

g. Documents to prove that the sales are zero-rated sales. (*Emphasis supplied*)

In the Judicial Affidavit of petitioner's Finance and Accounting Lead, Ms. Sabado, she explained the process by which said offsetting arrangement was being implemented, thus:[86]

36 Q: You earlier mentioned that the payments for the services rendered by the Petitioner are primarily through off-setting arrangement between the group companies. Can you clarify this?

A: Yes. The Petitioner, being a multinational company with various internal clients abroad, utilizes intercompany netting arrangement where each subsidiary makes payments to, or receives payment from, a clearing house (FMC Finance BV) for obligations due from other subsidiaries in the group. FMC Finance BV is an entity incorporated to act as a financing/clearing house for the Petitioner and group companies. This procedure is done to reduce credit/settlement risk and to simplify payment procedures across FMC group. Each entity can transact with FMC Finance BV (as a clearing house) through an account opened in its own name at Bank of America (BOA).

As participant to the netting arrangement, Petitioner receives collections from FMC affiliates from sale of services it rendered to its foreign customers. These collections are reflected in the clearing account as a credit transaction (deposit).

In the succeeding month, the Petitioner remits funds from clearing house (BOA account) to its local bank (BPI-PH) to regularly finance its operation. This is normally done every first week of each month. The remittance is reflected on the clearing account as debit transaction (withdrawal) against any balance amount.

As in a normal bank transaction, any withdrawals (debit) by Petitioner will be offset against collections (credit) it received via intercompany netting in the account statement of Petitioner. The net balance is reflected at month-end then reflected as opening balance in subsequent month. Thereafter, all collections will be debited in the clearing account and eventually be withdrawn/credited and remitted to petitioner's local bank account (BPI-PH) and so on.

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[86] Q&A No. 36, Exhibit "P-35", Docket, pp. 81 to 82.

> Clearly, the credit amounts are payments/consideration for services rendered by petitioner to FMC foreign affiliates paid for in acceptable foreign currency (US Dollars and Euro) duly accounted for in accordance with the BSP rules.

To summarize, petitioner receives collections from FMC affiliates through FMC Finance BV (clearing house). Each entity can transact with FMC Finance BV through an account opened in its own name at the Bank of America. These collections are, accordingly, reflected in the clearing account as a credit transaction (deposit). Petitioner will then remit funds from FMC Finance BV to its local bank, BPI-PH to finance its operation and the same is reflected on the clearing account as debit transaction (withdrawal) against any balance amount. Any withdrawals (debit) made by petitioner will be offset against the collections (credit) it received via intercompany netting in the account statement of petitioner.

To support its assertions, petitioner presented its In House Cash Account Statements[87] for the offsetting arrangement. While these documents confirm the existence of intercompany netting arrangement of petitioner with FMC Finance BV, it nonetheless failed to exhibit that said netting or set-off arrangement exists between petitioner and its other affiliates as an alternative mode of payment in consideration of petitioner's services to them. Specifically, petitioner failed to submit source documents and its separate agreements with said affiliates to substantiate the claimed offsetting arrangement. This is particularly significant given that FMC Finance BV is a distinct legal entity separate from FMC group of companies.

In the absence of such proof, petitioner failed to show that a valid offsetting arrangement exists which may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to its affiliates.

In view of the foregoing, only the ₱1,939,859.58 zero-rated sales of services supported by certificates of inward remittances from Bank of America and Citibank N.A. for the four quarters of TY 2021, qualify as zero-rated sales pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, in compliance with the fourth and fifth requisites, as follows:

[87] Exhibits "P-87", and "P-87.1" to "P-87.12", USB (Exhibit "P-37-2").

Name of Customer/ Contractee	Date of Remittance mm/dd/yyyy	Accredited Bank	Amount Remitted (in Foreign Currency)	Proof of Remittances (Bank/Credit Memo)	Amount in Peso	Exhibit (Remittance)
FMC OF CANADA LIMITED	06/04/2021	Bank of America	$ 3,387.77	6008AQS155D9E62	₱ 161,935.41	"P-88.6"
FMC (CHINA) INVESTMENT CO LTD	08/19/2021	Citibank, N.A.	6,350.51	3361017455	320,783.31	"P-81.1"
FMC KOREA LTD	12/13/2021	Bank of America	4,785.87	6008AQS347D2487	240,882.41	"P-88.12"
FMC OF CANADA LIMITED	11/24/2021	Bank of America	22,071.76	6008AQS328D9M85	1,115,021.17	"P-88.11"
FMC OF CANADA LIMITED	12/15/2021	Bank of America	2,011.31	6008AQS349DBT05	101,237.28	"P-88.12"
TOTAL			**$38,607.22**		**₱1,939,859.58**	

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

In its amended Quarterly Value-Added Tax Returns for the four quarters of TY 2021, petitioner reported a total input VAT of ₱13,496,392.58, arising from its current domestic purchases of goods and services and input VAT amortized on purchases of capital goods from previous and current quarter, detailed as follows:

Exhibit No.	**"P-9"[88]**	**"P-15"[89]**	**"P-20"[90]**	**"P-26"[91]**	**Total**
TY 2021	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	
Input Tax Due on Capital Goods exceeding P1Million:					
Deferred from previous quarter	₱ 386,299.45	₱ 641,831.66	₱ 596,057.97	₱ 550,284.27[92]	₱ 2,174,473.35
Add: Purchase of Capital Goods exceeding P1Million	296,366.48	-	-	-	296,366.48
Less: Deferred for the succeeding period	(641,831.66)	(596,057.97)	(550,284.26)	(504,510.57)	(2,292,684.46)
Amortized input tax on capital goods exceeding P1Million	*₱ 40,834.27*	*₱ 45,773.69*	*₱ 45,773.71*	*₱ 45,773.70*	*₱ 178,155.37*
Input Tax Due on Current Purchases of Goods other than Capital Goods exceeding P1Million:					
Input tax on purchase of capital goods not exceeding P1Million	₱ 22,842.89	₱ 25,178.58	₱ -	₱ 115,714.28	₱ 163,735.75
Input tax on domestic purchases of goods other than capital goods	7,715.07	12,402.76	161,630.09	39,216.68	220,964.60
Sub-total	*₱ 30,557.96*	*₱ 37,581.34*	*₱ 161,630.09*	*₱ 154,930.96*	*₱ 384,700.35*
Input Tax Paid on:					
Input tax on domestic purchase of services	*₱ 3,167,678.32*	*₱ 4,298,482.24*	*₱ 2,107,903.31*	*₱ 3,359,472.99*	*₱ 12,933,536.86*
Total input tax during the period	**₱ 3,239,070.55**	**₱ 4,381,837.27**	**₱ 2,315,307.11**	**₱ 3,560,177.65**	**₱ 13,496,392.58**

[88] Docket, pp. 134 to 136.
[89] Docket, pp. 152 to 154.
[90] Docket, pp. 167 to 169.
[91] Docket, pp. 185 to 187.
[92] With ₱0.01 difference per *Quarterly VAT Return* for the 3rd quarter of TY 2021, Line 23F, Exhibit "P-20", Docket, p. 169.

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

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

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.[93]

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

Not all of petitioner's input VAT incurred or paid and being claimed for refund were duly substantiated

Anent the seventh requisite in claiming VAT refund, it is important for petitioner to provide supporting documents to prove that the input taxes claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended.

In order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

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[93] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., et seq.*, G.R. Nos. 158885 and 170680, April 2, 2009.

Particularly, Section 113(A), in relation to Section 113(B)(2)(c) and (d) of the NIRC of 1997, as amended, provides:

> **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** –
>
> (A) ***Invoicing Requirements.*** - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) ***Information Contained in the VAT Invoice or VAT Official Receipt.*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx
>
> (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:
>
> 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;
>
> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. xxx

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005,[94] as amended, which reads:

> **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 and properties; and

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[94] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

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

xxx

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

xxx

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

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

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

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

Based on the findings of the ICPA, Ms. Elaine E. De Guzman, out of the total input VAT claim of ₱12,609,855.82, only ₱9,367,446.26 are valid, while ₱3,011,405.54 are exceptions, as follows:[95]

Description	**Amount Claimed** (A)	**Exceptions** (B)	**Valid Input VAT claim** (A – B + C)
Purchases of Capital Goods Not Exceeding ₱1M	₱ 163,735.75	₱ 115,714.28	₱ 48,021.47

[95] Exhibit "P-37", ICPA Binder, p. 11.

Description	Amount Claimed (A)	Exceptions (B)	Valid Input VAT claim (A – B + C)
Purchases of Capital Goods Exceeding ₱1M	296,366.48	82,500.00	213,866.48
Purchases of Goods Other Than Capital Goods	220,964.60	5,981.10	214,983.50
Purchases of Services	12,933,536.86	2,807,210.16	10,126,326.70
Unamortized Portion of Input VAT on Purchase of Capital Goods Exceeding ₱1M	(504,510.57)		(504,510.57)
Input Tax Deferred on Capital Goods Exceeding ₱1Million from previous period/quarter	386,299.45		386,299.45
Output Tax applied	(886,536.74)		(886,536.74)
Subtotal	**₱12,609,855.82**[96]	**₱3,011,405.54**	**₱9,598,450.29**
Input VAT attributable to Sales subject to 12% VAT			(231,004.03)
GRAND TOTAL	**₱ 12,609,855.82**	**₱3,011,405.54**	**₱9,367,446.26**

Upon verification of the above ICPA findings through the supporting documents submitted to the Court, the Court agrees with the exceptions found by the ICPA as far as the exceptions in the total amount of ₱1,685,978.05 are concerned, as follows:[97]

ICPA Findings	Exhibit	Amount
A. Purchases of Capital Goods Not Exceeding P1Million		
A.1. Without or Missing SIs	"P-77.1"	₱ 115,714.28
C. Purchases of Goods Other Than Capital Goods		
C.1. Without or Missing SIs	"P-75.1"	5,981.10
D. Purchases of Services		
D.6 No/Incorrect TIN	"P-76.6"	1,274,145.99
D.7 Without or Missing ORs	"P-76.7"	290,136.68
	Total	**₱1,685,978.05**

In addition, **the Court finds that an additional input VAT in the total amount of ₱7,254,683.42 shall likewise be disallowed** for reasons stated hereunder:

1.) Purchase of services wherein the nature of service is not indicated in the OR		
Exhibit	**Supplier's Name**	**Input VAT amount**
"P-74.1.11"	CROWN WORLDWIDE MOVERS INC	₱ 624.00
"P-74.1.13"	E. M. ZALAMEA ACTUARIAL SERVICES	3,600.00
"P-74.1.36"	RICOH PHILIPPINES INC	2,850.19
"P-74.1.37"	RICOH PHILIPPINES INC	15,760.80

[96] Actual footing is ₱12,609,855.83; With ₱0.01 difference.
[97] Exhibit "P-37", ICPA Binder, p. 13.

"P-74.1.38"	SANTA FE MOVING AND RELOCATION SERVICES PHILS INC	4,560.00
"P-74.1.40"	SONGCO LAW OFFICE	6,000.00
"P-74.1.41"	SONGCO LAW OFFICE	3,600.00
"P-74.2.2"	AUDACIOUS SECURITY SERVICES INC	1,100.31
"P-74.2.12"	CROWN WORLDWIDE MOVERS INC	6,875.59
"P-74.2.13"	FORTMED MEDICAL CLINICS MAKATI INC	21,230.26
"P-74.2.14"	FORTMED MEDICAL CLINICS MAKATI INC	6,542.14
"P-74.2.15"	FORTMED MEDICAL CLINICS MAKATI INC	10,102.02
"P-74.2.16"	FORTMED MEDICAL CLINICS MAKATI INC	140.03
"P-74.2.17"	FORTMED MEDICAL CLINICS MAKATI INC	9,957.07
"P-74.2.18"	FORTMED MEDICAL CLINICS MAKATI INC	3.21
"P-74.2.26"	N LIMA BGC PROPERTIES INC	4,594.73
"P-74.2.28"	N LIMA BGC PROPERTIES INC	740.14
"P-74.2.38"	PEOPLE MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC	2,760.00
"P-74.2.51"	SONGCO LAW OFFICE	10,800.00
"P-74.3.11"	CARRERAS, RESTY M	276.43
"P-74.3.13"	FORTMED MEDICAL CLINICS MAKATI INC	24,133.29
"P-74.3.14"	FORTMED MEDICAL CLINICS MAKATI INC	10,565.16
"P-74.3.15"	FORTMED MEDICAL CLINICS MAKATI INC	10,064.86
"P-74.3.24"	RECORDS SAFEKEEPING INC	429.79
"P-74.3.29"	SONGCO LAW OFFICE	3,600.00
"P-74.4.15"	FORTMED MEDICAL CLINICS MAKATI INC	13,636.51
"P-74.4.16"	FORTMED MEDICAL CLINICS MAKATI INC	14,673.81
"P-74.4.17"	FORTMED MEDICAL CLINICS MAKATI INC	10,369.37
"P-74.4.18"	FORTMED MEDICAL CLINICS MAKATI INC	12,377.06
"P-74.4.21"	LBC EXPRESS INC	279.10
"P-74.5.3"	FORTMED MEDICAL CLINICS MAKATI INC	14,175.83
"P-74.5.5"	PEOPLE MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC	2,760.00
"P-76.1.2"	FORTMED MEDICAL CLINICS MAKATI INC	61.84
"P-76.1.3"	SUPRA MULTI SERVICES INCORPORATED	12,967.71
"P-76.1.4"	SUPRA MULTI SERVICES INCORPORATED	5,092.56
"P-76.1.6"	N LIMA BGC PROPERTIES INC	700,975.01
"P-76.1.7"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-76.1.10"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-76.1.11"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-76.1.12"	AUDACIOUS SECURITY SERVICES INC	934.70
"P-76.1.13"	AUDACIOUS SECURITY SERVICES INC	868.95
"P-76.1.14"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-76.1.15"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-76.1.16"	AUDACIOUS SECURITY SERVICES INC	901.84
"P-76.1.20"	LBC EXPRESS INC	225.70
"P-76.2.1"	SUPRA MULTI SERVICES INCORPORATED	2,806.95
"P-76.5.8"	SONGCO LAW OFFICE	3,600.00
"P-76.5.11"	SONGCO LAW OFFICE	13,200.00
	Subtotal	**₱ 975,819.51**
2) Purchase of services wherein the nature of services <u>cannot be ascertained</u>		
Exhibit	**Supplier's Name**	**Input VAT amount**
"P-74.1.1"	A7 RECRUITMENT CORPORATION	₱ 109,512.00
"P-74.1.3"	BEN EDICTIO CORP	245,215.20
"P-74.1.4"	BEN EDICTIO CORP	156,760.81
"P-74.1.5"	BEN EDICTIO CORP	145,236.00
"P-74.1.6"	BEN EDICTIO CORP	47,392.80
"P-74.1.7"	BEN EDICTIO CORP	7,228.02

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"P-74.1.8"	BEN EDICTIO CORP	106,141.72
"P-74.1.9"	BEN EDICTIO SEARCH INC	65,913.60
"P-74.1.10"	BEN EDICTIO SEARCH INC	199,180.80
"P-74.1.14"	FORTMED MEDICAL CLINICS MAKATI INC	11.09
"P-74.1.15"	FORTMED MEDICAL CLINICS MAKATI INC	66,472.08
"P-74.1.16"	HEXAMATICS CONSULTING INC.	11,206.76
"P-74.1.17"	JAVIER PROJECT MANAGERS INC	5,280.00
"P-74.1.18"	JAVIER PROJECT MANAGERS INC	10,560.00
"P-74.1.24"	N LIMA BGC PROPERTIES INC	12,503.51
"P-74.1.28"	RECORDS SAFEKEEPING INC	615.64
"P-74.1.29"	RECORDS SAFEKEEPING INC	307.82
"P-74.1.30"	RGP HONGKONG PHILIPPINE BRANCH	146,160.00
"P-74.1.31"	RGP HONGKONG PHILIPPINE BRANCH	48,720.00
"P-74.1.32"	RGP HONGKONG PHILIPPINE BRANCH	48,720.00
"P-74.1.33"	RGP HONGKONG PHILIPPINE BRANCH	24,360.00
"P-74.1.34"	RGP HONGKONG PHILIPPINE BRANCH	97,440.00
"P-74.1.35"	RICOH PHILIPPINES INC	5,700.38
"P-74.1.43"	TRENDS AND TECHNOLOGIES INC	32,389.28
"P-74.1.44"	VERTERE GLOBAL SOLUTIONS INC	10,356.48
"P-74.1.45"	VERTERE GLOBAL SOLUTIONS INC	83,675.70
"P-74.1.46"	VERTERE GLOBAL SOLUTIONS INC	41,593.80
"P-74.1.47"	VERTERE GLOBAL SOLUTIONS INC	12,945.60
"P-74.2.1"	A7 RECRUITMENT CORPORATION	45,489.60
"P-74.2.3"	BEN EDICTIO CORP	219,844.09
"P-74.2.4"	BEN EDICTIO CORP	101,509.49
"P-74.2.5"	BEN EDICTIO CORP	197,361.15
"P-74.2.6"	BEN EDICTIO CORP	69,410.71
"P-74.2.7"	BEN EDICTIO CORP	7,193.26
"P-74.2.8"	BEN EDICTIO CORP	195,941.46
"P-74.2.9"	BEN EDICTIO SEARCH INC	64,521.60
"P-74.2.10"	BEN EDICTIO SEARCH INC	54,741.02
"P-74.2.11"	CORPORATE EXECUTIVE SEARCH INC	41,337.00
"P-74.2.20"	GREAT YEAR INDUSTRIES CORPORATION MANILA	48,152.36
"P-74.2.21"	HEXAMATICS CONSULTING INC.	8,424.00
"P-74.2.22"	HEXAMATICS CONSULTING INC.	5,400.00
"P-74.2.23"	HEXAMATICS CONSULTING INC.	11,229.82
"P-74.2.24"	INFO VISION RESEARCH SYSTEMS INC	2,460.00
"P-74.2.25"	INFO VISION RESEARCH SYSTEMS INC	960.00
"P-74.2.27"	N LIMA BGC PROPERTIES INC	249.12
"P-74.2.30"	N LIMA BGC PROPERTIES INC	223,902.84
"P-74.2.39"	RECORDS SAFEKEEPING INC	429.79
"P-74.2.40"	RG MANABAT AND CO	15,952.80
"P-74.2.41"	RICOH PHILIPPINES INC	3,152.15
"P-74.2.42"	RICOH PHILIPPINES INC	1,425.09
"P-74.2.43"	RICOH PHILIPPINES INC	13,805.44
"P-74.2.44"	RICOH PHILIPPINES INC	3,590.34
"P-74.2.45"	RICOH PHILIPPINES INC	2,943.19
"P-74.2.52"	SUPRA MULTI SERVICES INCORPORATED	2,561.63
"P-74.2.53"	SUPRA MULTI SERVICES INCORPORATED	5,092.56
"P-74.2.54"	SUPRA MULTI SERVICES INCORPORATED	2,061.74
"P-74.2.55"	SUPRA MULTI SERVICES INCORPORATED	4,538.96
"P-74.2.56"	SUPRA MULTI SERVICES INCORPORATED	7,697.89
"P-74.2.57"	VERTERE GLOBAL SOLUTIONS INC	11,651.04
"P-74.2.58"	VERTERE GLOBAL SOLUTIONS INC	15,194.34
"P-74.3.1"	AUDACIOUS SECURITY SERVICES INC	1,000.51
"P-74.3.2"	AUDACIOUS SECURITY SERVICES INC	1,000.51

"P-74.3.3"	AUDACIOUS SECURITY SERVICES INC	1,101.39
"P-74.3.4"	AUDACIOUS SECURITY SERVICES INC	1,395.19
"P-74.3.5"	BEN EDICTIO CORP	77,427.08
"P-74.3.6"	BEN EDICTIO CORP	60,137.05
"P-74.3.7"	BEN EDICTIO CORP	17,565.60
"P-74.3.8"	BEN EDICTIO CORP	15,508.36
"P-74.3.9"	BEN EDICTIO CORP	158,306.17
"P-74.3.10"	BEN EDICTIO CORP	14,647.50
"P-74.3.12"	CROWN WORLDWIDE MOVERS INC	624.00
"P-74.3.16"	HEXAMATICS CONSULTING INC.	5,400.00
"P-74.3.17"	HEXAMATICS CONSULTING INC.	5,728.96
"P-74.3.18"	JAVIER PROJECT MANAGERS INC	14,527.74
"P-74.3.19"	JAVIER PROJECT MANAGERS INC	5,280.00
"P-74.3.20"	MAPECON PHILIPPINES INC	7,500.00
"P-74.3.23"	RECORDS SAFEKEEPING INC	1,265.27
"P-74.3.25"	RECORDS SAFEKEEPING INC	1,289.37
"P-74.3.26"	RICOH PHILIPPINES INC	2,667.84
"P-74.3.27"	RICOH PHILIPPINES INC	3,246.09
"P-74.3.28"	RICOH PHILIPPINES INC	1,907.34
"P-74.3.30"	SUPRA MULTI SERVICES INC	4,821.95
"P-74.3.31"	SUPRA MULTI SERVICES INC	10,364.55
"P-74.3.32"	SUPRA MULTI SERVICES INC	26,014.33
"P-74.4.1"	BEN EDICTIO CORP	140,016.63
"P-74.4.2"	BEN EDICTIO CORP	46,991.31
"P-74.4.3"	BEN EDICTIO CORP	12,012.00
"P-74.4.4"	BEN EDICTIO CORP	11,437.57
"P-74.4.5"	BEN EDICTIO CORP	5,772.00
"P-74.4.6"	BEN EDICTIO CORP	5,874.00
"P-74.4.7"	BEN EDICTIO CORP	219,890.22
"P-74.4.8"	BEN EDICTIO CORP	57,126.64
"P-74.4.9"	BEN EDICTIO CORP	133,151.06
"P-74.4.10"	BEN EDICTIO CORP	1,287.27
"P-74.4.11"	BEN EDICTIO CORP	305,778.59
"P-74.4.12"	BEN EDICTIO SEARCH INC	25,459.20
"P-74.4.13"	BEN EDICTIO SEARCH INC	35,193.60
"P-74.4.14"	BEN EDICTIO SEARCH INC	9,185.28
"P-74.4.19"	JAVIER PROJECT MANAGERS INC	5,280.00
"P-74.4.22"	MGTSTRAT INC	8,400.00
"P-74.4.33"	N LIMA BGC PROPERTIES INC	108,547.78
"P-74.4.35"	PAYROLL SERVICE PROVIDERS INC	13,140.00
"P-74.4.36"	PAYROLL SERVICE PROVIDERS INC	13,020.00
"P-74.4.38"	RECORDS SAFEKEEPING INC	429.79
"P-74.4.39"	R.G. MANABAT AND CO.	23,929.20
"P-74.4.40"	RICOH PHILIPPINES INC	3,052.59
"P-74.4.41"	RICOH PHILIPPINES INC	2,275.59
"P-74.4.42"	RICOH PHILIPPINES INC	2,419.59
"P-74.4.43"	SANTA FE MOVING AND RELOCATION SERVICES PHILS INC	2,976.00
"P-74.4.45"	SUPRA MULTI SERVICES INCORPORATED	9,825.77
"P-74.4.46"	SUPRA MULTI SERVICES INCORPORATED	4,670.74
"P-74.4.47"	SUPRA MULTI SERVICES INCORPORATED	18,093.51
"P-74.4.48"	SUPRA MULTI SERVICES INCORPORATED	5,129.73
"P-74.4.49"	SUPRA MULTI SERVICES INCORPORATED	4,376.25
"P-74.4.50"	SUPRA MULTI SERVICES INCORPORATED	25,542.86
"P-74.4.51"	TRENDS AND TECHNOLOGIES INC	7,982.14
"P-74.4.52"	TRENDS AND TECHNOLOGIES INC	7,982.14
"P-74.4.53	TRENDS AND TECHNOLOGIES INC	7,982.14

"P-74.5.1"	ACCENT MICRO TECHNOLOGIES INC	22,058.52
"P-74.5.2"	BEN EDICTIO CORP	5,509.64
"P-76.1.1"	WJGLOBAL INC	15,268.87
"P-76.1.5"	BEN EDICTIO CORP	43,204.15
"P-76.1.8"	SUPRA MULTI SERVICES INC	10,459.70
"P-76.1.9"	SUPRA MULTI SERVICES INC	4,615.25
"P-76.1.17"	BEN EDICTIO CORP	86,241.28
"P-76.1.18"	BEN EDICTIO CORP	906.08
"P-76.1.19"	PAYROLL SERVICE PROVIDERS INC	13,200.00
"P-76.3.1"	SUPRA MULTI SERVICES INCORPORATED	12,628.16
"P-76.4.1"	SUPRA MULTI SERVICES INCORPORATED	14,893.41
"P-76.4.2"	SUPRA MULTI SERVICES INCORPORATED	4,567.93
"P-76.4.8"	SUPRA MULTI SERVICES INC	5,129.73
"P-76.5.1"	SUPRA MULTI SERVICES INCORPORATED	16,467.26
"P-76.5.2"	SUPRA MULTI SERVICES INCORPORATED	11,589.81
"P-76.5.3"	SUPRA MULTI SERVICES INCORPORATED	10,545.12
"P-76.5.4"	PAYROLL SERVICE PROVIDERS INC	12,900.00
"P-76.5.5"	PAYROLL SERVICE PROVIDERS INC	13,380.00
"P-76.5.6"	PAYROLL SERVICE PROVIDERS INC	26,580.00
"P-76.5.9"	SUPRA MULTI SERVICES INCORPORATED	2,137.56
"P-76.5.10"	SUPRA MULTI SERVICES INC	3,507.82
"P-76.5.13"	SUPRA MULTI SERVICES INCORPORATED	14,785.14
"P-76.5.14"	SUPRA MULTI SERVICES INCORPORATED	14,469.44
"P-76.5.15"	PAYROLL SERVICE PROVIDERS INC	13,140.00
"P-76.2.2"	SUPRA MULTI SERVICES INCORPORATED	23,496.41
"P-76.2.3"	SUPRA MULTI SERVICES INCORPORATED	7,817.49
"P-76.2.5"	ESCO UNIFIED SOLUTIONS, INC.	39,674.11
"P-76.2.6"	CROWN WORLDWIDE MOVERS INC	624.00
	Subtotal	**₱5,302,578.44**

3.) Purchase of services with alterations that are countersigned by signatory that is not the same as the authorized signatory in the OR

Exhibit	Supplier's Name	Input VAT amount
"P-74.2.29"	N LIMA BGC PROPERTIES INC	₱ 469,934.37
"P-74.2.32"	N LIMA BGC PROPERTIES INC	43,736.72
"P-74.2.35"	N LIMA BGC PROPERTIES INC	316,694.12
"P-74.4.30"	N LIMA BGC PROPERTIES INC	5,473.62
	Subtotal	**₱ 835,838.83**

4.) Purchase of goods wherein the TIN is <u>not indicated in the sales invoice</u>

Exhibit	Supplier's Name	Input VAT amount
"P-73.1.1"	ACCENT MICRO TECHNOLOGIES INC	₱ 750.00
"P-73.1.2"	ACCENT MICRO TECHNOLOGIES INC	750.00
	Subtotal	**₱ 1,500.00**

5.) Amortized input VAT on capital goods exceeding ₱1Million (purchase of equipment) <u>not supported by sales invoices</u>[98]

Date Purchased	Amount (Net of VAT)	Input Tax	Estimated Life (in months)	Monthly Amortization	No. of amortized months in TY 2021	Amortized Input VAT in TY 2021
02/15/2021	₱687,500.00	₱82,500.00	60	₱1,375.00	11	₱ 15,125.00
04/22/2020	1,703,872.69	204,464.72	60	3,407.75	12	40,893.00
08/04/2020	1,554,910.50	186,589.26	36	5,183.04	12	62,196.48
07/27/2020	518,303.50	62,196.42	36	1,727.68	12	20,732.16
					Subtotal	**₱ 138,946.64**
					TOTAL	**₱7,254,683.42**

98 Refer to Exhibits "P-90", "P-72" and "P-84", USB (Exhibit "P-37-2").

Hence, for purposes of compliance with the seventh requisite, out of the total reported input VAT of ₱13,496,392.58, only the amount of ₱4,555,731.11 represents petitioner's valid input VAT due or paid for the TY 2021, as computed below:

Total reported Input VAT		₱13,496,392.58
Less Disallowances:		
Per ICPA Findings	₱1,685,978.05	
Per Court's Verification	7,254,683.42	8,940,661.47
Substantiated Valid Input VAT		**₱ 4,555,731.11**

Since there are both taxable sales subject to 12% VAT and 0% VAT, the valid input VAT shall be proportionately allocated based on sales volume

The eighth requisite states that the claimed input taxes must be attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sales and taxable sales and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In this case, there exist taxable sales subject to the 12% VAT rate and zero-rated sales for the four quarters of TY 2021.

Petitioner reported total sales in the amount of ₱568,191,923.48. However, since its input VAT cannot be directly or entirely attributed to any of the sales transactions, the valid input VAT of ₱4,555,731.11 shall be allocated proportionately on the basis of the volume of its sales, as provided for in Section 112(A) of the NIRC of 1997, as amended. Thus:

	Amount per VAT Returns		**Allocation Factor**	**Valid Input VAT Allocation**	
	(A)		(C)	(D)	
			(A÷B)	(D x C)	
Taxable Sales	₱ 7,387,805.95		1.30023072%	₱ 59,235.02	
Zero-Rated Sales	560,804,117.53		98.69976928%	**4,496,496.09**	
Total	**₱568,191,923.48**	**(B)**	**100.00000000%**	**₱4,555,731.11**	**(D)**

Based on the foregoing, only the amount of ₱4,496,496.09 represents its valid input VAT attributable to total zero-rated sales for the four quarters of TY 2021.

Petitioner's valid input taxes were not applied against output taxes in the succeeding quarters

Having determined that petitioner had valid input VAT attributable to its zero-rated sales for the subject periods, the Court shall now determine whether the same was applied against its output VAT liability during and in the succeeding quarters.

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue*,[99] the Supreme Court held that:

> ...the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or 'excess' input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of 'excess' creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence. *(Emphases added)*

Clearly, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or,

2. Refund all of the input taxes attributable to zero-rated sales.

Applying the foregoing, records show that petitioner chose the first option in that its total input VAT incurred for TY 2021 was applied against its output VAT for the same period, and the remaining unutilized input VAT is the subject of the present claim for refund.[100] Hence, the refundable input VAT shall be computed net of output tax liability.

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[99] G.R. No. 215159, July 5, 2022.
[100] Refer to Exhibit "P-30", BIR Records (Exhibit "R-5"), at p. 382.

Since petitioner's valid input VAT allocated to taxable sales in the amount of ₱59,235.02 is not enough to cover its output VAT liability for TY 2021 in the amount of ₱886,536.74,[101] the valid input VAT allocated to total zero-rated sales in the amount of ₱4,496,496.09 shall then be utilized against the remaining output VAT due of ₱827,301.72. Consequently, only the remaining input VAT of ₱3,669,194.37 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱560,804,117.53, as computed below:

Output VAT	₱ 886,536.74
Less: Valid Input VAT Allocated to Taxable Sales	59,235.02
Output VAT Still Due	**₱ 827,301.72**
Valid Input VAT Allocated to Zero-rated Sales	₱ 4,496,496.09
Less: Output VAT Still Due	827,301.72
Excess Input VAT Attributable to Zero-rated Sales	**₱3,669,194.37**

As determined earlier, however, out of the total zero-rated sales declared by petitioner amounting to ₱560,804,117.53, only the amount of ₱1,939,859.58 qualifies as valid zero-rated sales. Hence, out of the excess input VAT attributable to total zero-rated sales amounting to ₱3,669,194.37, only the amount of ₱12,691.99 is attributable to the valid zero-rated sales of ₱1,939,859.58, as computed below:

Excess Input VAT Attributable to Zero-rated Sales	₱ 3,669,194.37
Divided by Declared Zero-rated Sales	560,804,117.53
Multiply by Valid Zero-rated Sales	1,939,859.58
Input VAT Attributable to Valid Zero-rated Sales	**₱ 12,691.99**

Finally, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained, that while petitioner carried over the input VAT subject of this claim amounting to ₱12,609,855.82 in the succeeding quarters, the same was ultimately deducted as VAT Refund/TCC Claimed (Line 23D) in its amended Quarterly Value-Added Tax Return for the 4th quarter of TY 2022.[102]

[101]

Docket page	Exhibit	TY 2021	Output VAT (Line 15B)
135	"P-9"	1st Quarter	₱190,177.69
153	"P-15"	2nd Quarter	241,155.15
168	"P-20"	3rd Quarter	-
186	"P-26"	4th Quarter	455,203.90
Total			**₱886,536.74**

[102] Exhibit "P-27", Docket, p. 193.

Petitioner, therefore, is deemed to have fulfilled the ninth requisite for the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

ACCORDINGLY, the present **Petition for Review** is **PARTIALLY GRANTED**.

Respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱12,691.99**, representing the excess and unutilized input VAT attributable to its VAT zero-rated sales for the period from January 1, 2021 to December 31, 2021.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

On Leave
MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice