REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Second Division

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11109

Members:

RINGPIS-LIBAN, ***P.J.*** *& Chairperson*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, ***JJ.***

Promulgated:

MAR 19 2026

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DECISION

RINGPIS-LIBAN, *J.*:

The *Petition for Review* filed on March 27, 2023, prays for the refund or issuance of tax credit certificate in the amount of ₱14,208,017.90, allegedly representing petitioner's unutilized input taxes attributable to its zero-rated sales for the 4th quarter of calendar year (CY) 2020.[1]

THE PARTIES

Petitioner Toledo Power Company is a general partnership duly organized and existing under the laws of the Philippines, with office address at TPC Power Plant, Daanglungsod, Toledo City, Cebu.[2] It is also registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration OCN No. 8RC00012255440E, with Taxpayer Identification No. (TIN) 003-883-626-00000.[3]

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[1] Summary of the Case, Pre-Trial Order dated February 7, 2024, Docket, p. 251.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 213.
[3] Exhibit "P-2", Docket, pp. 371 to 372.

Respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of his Office, including, *inter alia*, the power to decide disputed assessments, cancel, and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations.[4]

THE FACTS

On December 28, 2022, petitioner filed with the BIR its *Application for Tax Credits/Refunds* (BIR Form No. 1914),[5] requesting for the refund or tax credit of its unutilized and excess creditable input VAT amounting to ₱14,208,017.90 for the period from October 1, 2020 to December 31, 2020.

Thereafter, on February 23, 2023, petitioner received the *VAT Refund/Credit Notice* of the BIR dated February 2, 2023,[6] and signed by Officer-in-Charge Assistant Commissioner of the Large Taxpayers Service, Mr. Jethro M. Sabariaga, which states that as per the BIR's computation, there is no refund allowed on petitioner's claim.

PROCEEDINGS BEFORE THIS COURT

As previously stated, petitioner filed the present *Petition for Review* on March 27, 2023.[7]

On April 25, 2023, the Court issued its Resolution,[8] giving petitioner ten (10) days from notice to submit an *Amended Verification and Certification of Non-Forum Shopping*. Thus, on May 18, 2023, petitioner filed its *Compliance and Submission*,[9] with the attached *Amended Verification and Certification of Non-Forum Shopping*.[10]

[4] Par. 2, Stipulation of Facts, JSFI, Docket, pp. 213 to 214.
[5] Exhibit "P-18", Docket, p. 435.
[6] Exhibit "P-19", Docket, p. 153.
[7] Docket, pp. 1 to 21.
[8] Docket, pp. 154 to 155.
[9] Docket, pp. 157 to 158.
[10] Docket, pp. 159 to 160.

On September 5, 2023, respondent filed his *Answer*,[11] interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to the claim of input VAT refund; (2) based on the verification procedures made, there is no VAT refundable amount due to insufficient input taxes with valid documents to support the amount of the claim; and (3) in an action for refund, the burden of proof is upon the petitioner to establish its right to the claimed refund, and failure to adduce sufficient proof is fatal to its claim.

The Pre-Trial Conference was set and held on October 19, 2023.[12] Prior thereto, *Petitioner's Pre-Trial Brief* was filed on October 11, 2023,[13] while respondent's *Pre-Trial Brief* was submitted on October 13, 2023.[14]

Respondent transmitted the *BIR Records* of the present case on December 5, 2023, consisting of six (6) folders.[15]

On November 9, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[16] which was admitted and approved by the Court in its Resolution dated November 28, 2023,[17] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated February 7, 2024 was then issued.[18]

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Alicia G. Brion,[19] petitioner's First Vice President/Controller; and (2) Ms. Gadiosa R. Martinez,[20] the Court-commissioned Independent Certified Public Accountant (ICPA).[21]

[11] Docket, pp. 172 to 178.

[12] Notice of Pre-Trial Conference dated September 12, 2023, Docket, pp. 180 to 181; Minutes of the hearing held on, and Order dated, October 19, 2023, Docket, pp. 209 to 212.

[13] Docket, pp. 182 to 194.

[14] Docket, pp. 195 to 198.

[15] Respondent's *Compliance* dated December 4, 2023, Docket, pp. 245 to 247.

[16] Docket, pp. 213 to 222.

[17] Docket, p. 236.

[18] Docket, pp. 251 to 256.

[19] Exhibit "P-20", Docket, pp. 22 to 36; Minutes of the hearing held on, and Amended Order dated, February 20, 2024, Docket, pp. 265 and 269 to 270, respectively.

[20] Exhibits "P-21", Docket, pp. 279 to 296; Minutes of the hearing held on, and Order dated, May 22, 2024, Docket, pp. 298 and 299-A, respectively.

[21] *Oath of Commission* dated February 20, 2024, Docket, p. 266; Minutes of the hearing held on, and Amended Order dated, February 20, 2024, Docket, pp. 265 and 269 to 270, respectively.

The *Report* of the ICPA was submitted on March 21, 2024.[22]

On June 3, 2024, petitioner filed its *Formal Offer of Evidence*,[23] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on June 14, 2024.[24] In the Resolution dated July 16, 2024,[25] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-3", for failure to present original for comparison, and Exhibits "P-34-c-1 to P-34-c-3", for not being found in the records.

For his part, respondent presented the testimony of Revenue Officer (RO) Irelene V. Galleno-Coca.[26]

On July 29, 2024, respondent filed his *Formal Offer of Evidence*,[27] to which petitioner posted its *Comment (Re: Respondent's Formal Offer of Evidence dated July 29, 2024)* on August 9, 2024.[28] In the Resolution dated January 2, 2025,[29] the Court admitted all of respondent's offered exhibits.

On February 13, 2025, petitioner filed its *Memorandum*.[30] Respondent, however, failed to file his memorandum.[31]

The present case was considered submitted for decision on March 20, 2025.[32]

THE ISSUES

The parties submit the following issue for this Court's resolution:

"3.1 WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF THE AGGREGATE

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[22] Exhibit "P-22" (in a separate binder).
[23] Docket, pp. 301 to 317.
[24] Docket, pp. 436 to 438.
[25] Docket, pp. 441 to 443.
[26] Exhibit "R-6", Docket, pp. 445 to 449; Minutes of the hearing held on, and Order dated July 18, 2024, Docket, pp. 444, and 451 to 452, respectively.
[27] Docket, pp. 454 to 457.
[28] Docket, pp. 460 to 462.
[29] Docket, pp. 467 to 468.
[30] Docket, pp. 470 to 491.
[31] Records Verification dated February 27, 2025 issued by the Judicial Records Division of this Court, Docket, p. 493.
[32] Minute Resolution dated March 20, 2025, Docket, unpaginated.

AMOUNT OF PHP14,208,017.90, REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED INPUT VALUE ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE 4TH QUARTER OF CY 2020.

3.2 WHETHER OR NOT THE RESPONDENT ERRED IN DENYING THE CLAIM FOR REFUND BASED ON THE EVIDENCE PRESENTED BY THE PETITIONER IN THE ADMINISTRATIVE PROCEEDINGS."[33]

THE ARGUMENTS OF THE PARTIES

Petitioner argues that it is a VAT-registered entity; that its sales of services to its customers are zero-rated sales; that petitioner paid or incurred input VAT which are properly substantiated in accordance with the law and regulations; that the input VAT paid or incurred by petitioner are attributable to zero-rated sales or effectively zero-rated sales; that the input taxes are not transitional input taxes; that the input VAT being refunded have not been applied against output taxes during the same and in the succeeding periods; and that petitioner's claim for refund was filed within the mandatory period provided under the law.

Respondent, in his *Answer*, contends that petitioner is not entitled to the claim for refund; that based on the verification procedures made, there is no VAT refundable amount due to insufficient input taxes with valid documents to support the amount of the claim; and that in an action for refund, the burden of proof is upon the petitioner to establish its right to the claimed refund, and failure to adduce sufficient proof is fatal to its claim.

THE RULING OF THE COURT

The present *Petition for Review* is partly meritorious.

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

[33] Proposed Issues for Stipulation, JSFI, Docket, p. 214.

Section 112 of the NIRC of 1997, as last amended by Republic Act (RA) No. 10963,[34] 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.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt

[34] 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.

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:

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;[35]

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said ninety (90)-day period;[36]

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

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

In relation to the taxpayer's output VAT:

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

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[35] *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.

[36] 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.

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

[38] Id.

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[39] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[40]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[41]

7. the input taxes are due or paid;[42]

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;[43] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[45] Thus, 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.[46] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[47] Moreover, it must be pointed out that compliance with all

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[39] 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.

[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.

[42] Id.

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

[44] *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.

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

[46] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

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

the VAT invoicing requirements provided by tax laws and regulations is mandatory.[48]

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 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.[49]

Furthermore, 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.[50] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements.

Petitioner's administrative and judicial claims for refund/credit were timely filed.

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

The present claim covers the 4th quarter of CY 2020, or for the period from October 1, 2020 to December 31, 2020. Thus, counting two (2) years from the close of the said quarter, petitioner had until January 3, 2023,[51] within which to file its administrative claim for refund.

By filing the *Application for Tax Credits/Refunds* (BIR Form No. 1914) in the amount of ₱14,208,017.90 for the period from October 1, 2020 to December

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

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

[50] *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.

[51] December 31, 2022 (the 2nd year from the close of the quarter) fell on a Saturday, while January 2, 2023, Monday, is a Special (Non-Working) Day.

31, 2020 on December 28, 2022,[52] the administrative claim of petitioner was timely made, and thus, petitioner complied with the *first* requisite.

As for the *second* requisite, the same necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application for refund under Section 112(C) of the NIRC of 1997, as amended by RA No. 10963.

Counting ninety (90) days from petitioner's submission of its administrative claim on December 28, 2022, respondent had until March 28, 2023 to act on the said claim. Thus, respondent's *VAT Refund/Credit Notice* dated February 2, 2023,[53] informing petitioner that its application for VAT refund was denied, was issued well-within the ninety (90)-day period.

Petitioner received said *VAT Refund/Credit Notice* on February 23, 2023.[54] Counting thirty (30) days therefrom, petitioner had until March 27, 2023[55] within which to file its judicial claim. Therefore, the filing of the present *Petition for Review* on March 27, 2023 was likewise timely made.[56]

Such being the case, petitioner fulfilled both the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered entity.

Anent the *third* requisite, it is undisputed that petitioner is a VAT-registered entity, under TIN 003-883-626-00000.[57] Thus, petitioner complied with the said requisite.

Petitioner had zero-rated sales or effectively zero-rated sales in the amount of ₱335,801,460.71.

[52] Exhibit "P-18", Docket, p. 435.
[53] Exhibit "P-19", Docket, p. 153.
[54] *Id.*
[55] March 25, 2023 (the 30th day) fell on a Saturday.
[56] Docket, pp. 1 to 21.
[57] Exhibit "P-2", Docket, pp. 371 to 372.

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

Petitioner alleges that its claim for refund and/or issuance of tax credit certificate for its excess and unutilized input VAT for the 4th quarter of CY 2020 is based on Section 106(A)(2)(a)(5) of the Tax Code in relation to Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005. Petitioner adds that in order for the transaction to be considered as zero-rated, Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 04-2007, provides that sales of goods, properties or services made by a VAT-registered supplier to a Board of Investments (BOI)-registered manufacturer/producer whose products are one-hundred percent (100%) exported are considered export sales. Moreover, Section 4.106-5(c) of RR No. 16-2005, as amended, also states that sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) shall be effectively subject to VAT at zero-rate.

In its amended *Quarterly Value-Added Tax Return* for the 4th quarter of CY 2020, petitioner declared total sales/receipts amounting to ₱759,371,938.50, which included zero-rated sales/receipts in the amount of ₱344,058,207.88, as follows:[58]

Particulars	**Amount**
Vatable Sales/Receipts	₱ 399,957,213.60
Sale to Government	14,155,228.25
Zero Rated Sales/Receipts	344,058,207.88
Exempt Sales/Receipts	1,201,288.77
Total	**₱759,371,938.50**

Per the ICPA, Ms. Gadiosa R. Martinez, the petitioner's zero-rated sales amounting to ₱344,058,207.88 for the 4th quarter of CY 2020, consist of the following:[59]

Schedules	**Amount**	**Exhibit No.**
Zero-rated sale of services to entities registered with: PEZA/BOI	₱336,081,997.53	"P-30-a"
Zero-rated sale of services to CEBECO	2,256,187.71	"P-30-b"
Zero-rated sale of services to IEMOP	5,720,022.64	"P-30-c"

[58] Exhibit "P-7-2", Docket, pp. 401 to 402.

[59] Item D.1., Annex II, p. 2, Exhibit "P-22".

Zero-Rated Sales Per Schedule	₱344,058,207.88	"P-26-a" to "P-26-c"
Zero-Rated Sales Per VAT Return	₱344,058,207.88	

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

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
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> (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 Investment Code of 1987, and other special laws; xxx"

Relative thereto, the applicable provision of law on petitioner's sale of services to PEZA-registered entities is Section 108(B)(3) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> 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:

xxx xxx xxx

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

Moreover, Sections 4.106-5(a)(4) and 4.108-5(b)(3) of RR No. 16-2005, as amended, also provide the following, to wit:

"SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxx

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

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

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

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 Investments (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**" *(Emphases added)*

"**SEC. 4.108-5.** ***Zero-Rated Sale of Services***. –

xxx xxx xxx

(b) ***Transactions Subject to Zero Percent (0%) VAT Rate***. – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) rate:

xxx xxx xxx

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

Based on the foregoing provisions, sales of goods and services by a VAT-registered taxpayer, such as petitioner, to a BOI-registered manufacturer/producer whose products are 100% exported, and to entities located in the ECOZONEs are considered "*export sales*" subject to VAT zero-rating, pursuant to Sections 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5(a)(4) and 4.108-5(b)(3) of RR No. 16-2005, as amended.

To stress, in order for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, as amended, the following essential elements must be present:

1. the sale was made by a VAT registered person; and,
2. there was sale of goods to an entity which is entitled to incentives under Executive Order No. (EO) 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

As for the *first* essential element, it is already settled that petitioner is a VAT-registered person.

With regard to the *second* essential element, petitioner must present the following documents:

1. the SIs as proof of sale of goods and ORs as proof of sales of services; and

2. proof of entitlement to zero-rating under the Omnibus Investment Code, other special laws, or international agreements to which the Philippines is a signatory.

To prove that its clients are subject to VAT zero-rating, petitioner submitted the following certifications:[60]

Customer	**Reason for Zero-rating**	**Supporting Document**	**Amount**	**Exhibit No.**
Carmen Copper Corporation (CCC)	BOI-Registered	BOI Exporter Certificate[61]	₱ 323,695,551.33	"P-30-a"
FDC Retail Electricity Sales Corporation (FDC)	PEZA-Registered	PEZA Certificate of VAT Zero-Rating[62]	12,386,446.20	
Cebu III Electric Cooperative Inc. (CEBECO III)	CIPDI is a PEZA-registered entity	CIPDI - PEZA Certificate of VAT Zero-Rating[63]	2,256,187.71	"P-30-b"
Independent Electricity Market Operator of the Philippines (IEMOP)	BIR Ruling OT 323-2021	BIR Ruling OT 323-2021[64]	5,720,022.64	"P-30-c"
Total Zero-rated Sales			**₱344,058,207.88**	

[60] Item V.B.4, Exhibit "P-22", p. 12.
[61] Exhibit "P-27-a", USB (Exhibit "P-23").
[62] Exhibit "P-27-b", USB (Exhibit "P-23").
[63] Exhibit "P-27-c", USB (Exhibit "P-23").
[64] Exhibit "P-27-e", USB (Exhibit "P-23").

The ICPA verified the ORs supporting the petitioner's declared total zero-rated sales amounting to ₱344,058,207.88 for the 4th quarter of CY 2020, as follows:[65]

Official Receipts	**Date** (month/day/year)	**Name of Customer/ Contractee**	**Amount in Peso**	**Exhibit No.**
A. VAT Zero-rated Sales with valid VAT Zero-rated Official Receipts and VAT Zero-rating Certifications				
OR-TPC-000000231	10/23/2020	FDC	₱ 4,044,366.83	"P-30-a-1"
OR-TPC-000000245	11/23/2020	FDC	4,132,833.37	"P-30-a-2"
OR-TPC-000000251	11/18/2020	CCC	1,824,254.68	"P-30-a-3"
OR-TPC-000000252	11/26/2020	CCC	45,589,412.41	"P-30-a-4"
OR-TPC-000000253	11/26/2020	CCC	60,759,918.06	"P-30-a-5"
OR-TPC-000000256	12/01/2020	CCC	88,223.96	"P-30-a-6"
OR-TPC-000000257	12/01/2020	CCC	280,536.82	"P-30-a-7"
OR-TPC-000000258	12/01/2020	CCC	73,260.00	"P-30-a-8"
OR-TPC-000000260	12/01/2020	CCC	168,316.64	"P-30-a-9"
OR-TPC-000000259	12/03/2020	CCC	65,132,277.56	"P-30-a-10"
OR-TPC-000000261	12/03/2020	CCC	40,821,492.01	"P-30-a-11"
OR-TPC-000000262	12/15/2020	CCC	1,824,254.68	"P-30-a-12"
OR-TPC-000000263	12/23/2020	FDC	4,209,246.00	"P-30-a-13"
OR-TPC-000000264	12/23/2020	CCC	61,071,098.65	"P-30-a-14"
OR-TPC-000000265	12/23/2020	CCC	46,062,505.86	"P-30-a-15"
Subtotal			***₱336,081,997.53***	
B. VAT Zero-rated Sales with valid VAT Zero-rated Official Receipts but No VAT Zero-rating Certifications				
OR-TPC-000000229	10/23/2020	CEBECO III	₱ 609,549.67	"P-30-b-1"
OR-TPC-000000247	11/25/2020	CEBECO III	722,085.79	"P-30-b-2"
OR-TPC-000000267	12/28/2020	CEBECO III	924,552.25	"P-30-b-3"

[65] Detailed Schedule, Exhibit "P-30", USB (Exhibit "P-23").

Subtotal			***₱ 2,256,187.71***	
C. VAT Zero-rated Sales without issued VAT Zero-rated Official Receipt				
INV0102908	10/13/2020	IEMOP	₱ 2,150,717.82	"P-30-c-1"
INV0105149	11/12/2020	IEMOP	2,321,078.52	"P-30-c-2"
INV0106665	12/14/2020	IEMOP	1,248,226.30	"P-30-c-3"
Subtotal			***₱ 5,720,022.64***	
TOTAL			**₱344,058,207.88**	

Out of the total declared zero-rated sales of ₱344,058,207.88, the ICPA disallowed the amount of ₱5,720,022.64 pertaining to sales to IEMOP for which no VAT zero-rated ORs were issued, as reflected under item C of the foregoing table. The Court finds the ICPA's disallowance proper for failure to comply with the substantiation requirements under the tax regulations.

In addition, the Court finds that the sales to Carmen Copper Corporation in the amount of ₱280,536.82 was unreceipted or unsubstantiated,[66] hence, the same should be excluded from the petitioner's valid zero-rated sales. Moreover, the total zero-rated sales to CEBECO III amounting to ₱2,256,187.71, as reflected under item B of the foregoing table, shall likewise be disallowed for lack of the required VAT zero-rating certification.

Accordingly, in compliance with the *fourth* requisite, petitioner's valid zero-rated sales for the 4th quarter of CY 2020 amounted only to ₱335,801,460.71, computed as follows:

Zero-rated sales/receipts per Quarterly VAT Return	₱344,058,207.88
Less: *ICPA Adjustment*	
a. Sales to IEMOP	5,720,022.64
Court's further verification	
a. Unsubstantiated Zero-Rated Sales	280,536.82
b. Sales to Cebu III Electric Cooperative, Inc.	2,256,187.71
Valid Zero-rated Sales/Receipts	**₱335,801,460.71**

Notably, considering that petitioner's zero-rated sales fall under Sections 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, as amended, the *fifth* requisite does not apply.

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

[66] The *Official Receipt* and *Billing Statement* marked as Exhibit "P-30-a-7", USB (Exhibit "P-23"), do not correspond with the details shown on the Schedule.

The *sixth* requisite provides that the claimed input taxes are not transitional input taxes, pursuant to 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.[67]

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, as such, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Not all of petitioner's input VAT being claimed for refund were duly substantiated.

Anent the *seventh* requisite in claiming VAT refund, it is of fatal importance 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 addition, the said documents must likewise comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

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

To support the unutilized input VAT subject for refund or issuance of tax credit certificate of ₱14,208,017.90, petitioner submitted, among others, the following: (1) Summary List of Purchases;[68] (2) Summary List of Importations;[69] and (3) ORs, SIs and billing statements issued by its suppliers,[70] which were all examined by the ICPA.

Based on petitioner's amended *Quarterly VAT Return* for the 4th quarter of CY 2020,[71] petitioner reported total allowable input VAT of ₱73,279,281.00, detailed as follows:

Current Input VAT	
Purchase of Capital Goods not exceeding ₱1Million	₱ 116,588.87
Domestic Purchases of Goods Other than Capital Goods	36,910,327.93
Importation of Goods Other than Capital Goods	10,660,252.65
Domestic Purchase of Services	25,377,445.12
Subtotal	***₱73,064,614.57***
Input VAT amortized for the period	
Purchase of Capital Goods exceeding ₱1Million	₱ 481,754.72
Add: Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	1,274,792.67
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	(1,541,880.96)
Subtotal	***₱ 214,666.43***
Total Input Tax	**₱73,279,281.00**

Out of the total allowable input VAT of ₱73,279,281.00 for the 4th quarter of CY 2020, petitioner was able to provide schedules and/or supporting documents for its current input VAT amounting only to ₱31,358,560.41, as summarized below:[72]

Findings	Goods	Services	Capital Goods	Importations	Total
No exceptions	₱15,153,266.87	₱4,845,183.24	₱145,371.42	₱10,660,252.65	₱30,804,074.18
Out of period	16,975.88	2,275.74	317,925.73	–	337,177.35
Inaccurate Input VAT	–	80,601.73	–	–	80,601.73

[68] Exhibit "P-26-f", USB (Exhibit "P-23").
[69] Exhibit "P-26-g", USB (Exhibit "P-23").
[70] Exhibits "P-32" to "P-35", USB (Exhibit "P-23").
[71] Exhibit "P-7-2", Docket, pp. 401 to 402.
[72] Item V.C.2, Exhibit "P-22", p. 15.

No supporting document	1,660.71	–	135,046.44	–	136,707.15
Total	**₱15,171,903.46**	**₱4,928,060.71**	**₱598,343.59**	**₱10,660,252.65**	**₱31,358,560.41**

The unsubstantiated input VAT amounting to ₱41,920,720.59[73] shall be disallowed outright.

Of the ₱31,358,560.41 input VAT, the ICPA found that input VAT in the amounts of ₱337,177.35, ₱80,601.73, and ₱136,707.15, or a total of ₱554,486.23, as reflected in the above table, shall be disallowed due to the out-of-period nature of the claim, the inaccurate claim of input VAT, and the absence of proper supporting documents.

In addition, the input VAT in the amount of ₱140,500.92 shall likewise be disallowed for failure to meet the substantiation and invoicing requirements under the VAT law and regulations, as follows:

Exhibit No.	**Registered Name of Supplier**	**Invoice No.**			**Input Tax**
1. Input VAT on purchase of capital goods exceeding ₱1Million wherein the sales invoice does not contain the phrase "THIS INVOICE SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE." (refer to RR No. 10-2015)					
"P-34-a-1"	Alfa Laval Philippines Inc.	000006938			₱66,160.71
"P-34-a-2"	Alfa Laval Philippines Inc.	000006939			66,160.71
Subtotal					*₱132,321.42*
2. Unamortized portion of input VAT on capital goods exceeding ₱1Million which must be amortized over 60 months (5 years) or the useful life of the asset, whichever is shorter (refer to Section 4.110-3 of RR No. 16-2005)					
			Claimed input VAT (a)	Amortization (b=a/60x3mos)	Unamortized (a-b)
"P-34-a-3"	Durich Sales and Trading Inc.	0108	₱4,650.00	₱232.50	₱4,417.50
"P-34-a-4"	Hydrauking Industrial Corporation	0006717	3,960.00	198.00	3,762.00
Subtotal					*₱8,179.50*
TOTAL					**₱140,500.92**

[73] ₱73,279,281.00 less ₱31,358,560.41.

Summarizing the above findings relative to petitioner's compliance with the *seventh* requisite, the Court finds that out of petitioner's reported input VAT of ₱73,279,281.00 for the 4th quarter of CY 2020, only the total amount of ₱30,663,573.26 represents petitioner's valid unutilized input VAT, computed as follows:

Total Current Input VAT		₱73,279,281.00
Less: Disallowances		
Unsubstantiated Purchases	₱41,920,720.59	
Per ICPA findings	554,486.23	
Per Court's further verification	140,500.92	42,615,707.74
Substantiated valid input VAT		**₱ 30,663,573.26**

A portion of petitioner's valid input VAT of ₱30,663,573.26 is attributable to its zero-rated sales.

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.

To reiterate, the petitioner's valid zero-rated sales, as verified by this Court, amounted only to ₱335,801,460.71, whereas the petitioner reported ₱759,371,938.50 in total sales in its amended *Quarterly VAT Return*[74] for the 4th quarter of CY 2020.

However, since petitioner's valid input VAT for the 4th quarter of CY 2020 in the total amount of ₱30,663,573.26 cannot be directly of entirely attributed to specific sales, the said valid input VAT shall be allocated on the basis of the volume of petitioner's sales, thus:

Valid Zero-Rated Sales	₱ 335,801,460.71
Divided by: Total Reported Sales	759,371,938.50
Ratio of Zero-rated sales over Total Sales	44.220946769%
Multiply by: Valid Input Tax	₱ 30,663,573.26
Input Tax Allocable to Zero-Rated Sales	**₱13,559,722.41**

[74] Exhibit "P-7-2", Docket, pp. 401 to 402.

Thus, for purposes of, and with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱13,559,722.41 represents valid input VAT attributable to its valid zero-rated sales for the 4th quarter of CY 2020.

The input VAT has not been applied against output VAT during and in the succeeding quarters.

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

Per the ICPA *Report*, the total amount of unutilized input VAT subject for refund or issuance of tax credit certificate amounting to ₱14,208,017.90 was computed as follows:[75]

1. Computation of Percentage of Zero-rated Sales from Total Reported Sales

Particulars	Amount
Zero-rated Sales/Receipts	₱344,058,207.88
Divide by: Total Sales/Receipts	₱759,371,938.50
Ratio of Zero-rated Sales over Total Sales	45.31%

2. Allocation of Input VAT attributable to Zero-Rated Sales

Particulars	Input VAT per 4Q 2550Q	Allocation Rate	Applied for Refund	Exhibit No.
Goods	₱15,171,903.46	45.31%	₱6,874,125.38	"P-32"
Services	4,928,060.71	45.31%	2,232,818.53	"P-33"
Capital Goods	598,343.59	45.31%	271,099.07	"P-34"
Importations	10,660,252.65	45.31%	4,829,974.93	"P-35"
Total	**₱31,358,560.41**		**₱14,208,017.91**	

Based on petitioner's foregoing computation, the claimed input VAT of ₱14,208,017.90 has not been applied against its output VAT liability for the 4th quarter of CY 2020.

Although the claimed input VAT of ₱14,208,017.90, which includes the unutilized valid input VAT of ₱13,559,722.41, was carried over by petitioner in its succeeding quarters/period, the same remained unutilized as it was deducted

[75] Items V.B.2 and V.C.1, Exhibit "P-22", pp. 11 and 14, respectively.

as "VAT Refund/TCC claimed"[76] in its *Quarterly VAT Return* for the 4th quarter of CY 2022. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱621,135,716.48[77] as of the end of the 4th quarter of CY 2022, that was carried over to the succeeding quarter of CY 2023. Hence, petitioner is deemed to have fulfilled the *ninth* requisite for the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended, and has sufficiently proven its entitlement to the refund or issuance of tax credit certificate in the amount of ₱13,559,722.41, representing unutilized input VAT attributable to its valid zero-rated sales for the 4th quarter of CY 2020.

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

Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the amount of **₱13,559,722.41**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the 4th quarter of CY 2020.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

MARIA ROWENA A. MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

[76] Line 23D, Exhibit "P-17", Docket, p. 434.
[77] Line 29, Exhibit "P-17", Docket, p. 434.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice