CTA Form No. 8

20-000066-0071

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10261

PHILIPPINE MINING SERVICE CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. AYESHA HANIA B . GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

PLATON MARTINEZ FLORES SAN PEDRO & LEAÑO
6th Floor, Tuscan Building
114 V.A. Rufino St., Legaspi Village
Makati City, Metro Manila

GREETINGS:

You are hereby notified by these presents that on **March 13, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 15, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE MINING SERVICE CORPORATION, *Petitioner,*	**CTA Case No. 10261** Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 13 2024 3:00PM

x - x

DECISION

MANAHAN, *J.:*

THE CASE

In this *Petition for Review* filed on February 2, 2018, petitioner Philippine Mining Service Corporation (PMSC) prays for the Court to grant the refund or issue a tax credit certificate in the total amount of ₱24,643,307.43, representing the remaining unutilized and/or unapplied and excess input value added-tax (VAT) attributable to its zero-rated sales and/or unapplied and excess input VAT attributable to its zero-rated sales for the period covering January 1, 2018 to December 31, 2018.[1]

THE PARTIES

PMSC is a corporation duly organized and existing under the laws of the Republic of the Philippines. Its present office address is at 5th Floor Mercedes-Benz Tower, Mindanao Avenue, Cebu Business Park, Cebu City. It may be served with the Court's notices and other court processes through its legal counsel, Platon Martinez Flores San Pedro and Leaño Law

[1] Prayer, *Petition for Review*, Docket – Vol. I, pp. 28 to 29.

Offices, located at 6/F Tuscan Building, 114 V.A. Rufino Street, Legaspi Village, Makati City, Metro Manila.[2]

PMSC was registered with the Securities and Exchange Commission on 16 June 1980, with the primary purpose of entering "into a service contract with Dolomite Mining Corporation in accordance with law for financial, technical, management, and other forms of assistance relative to the exploration, development, exploitation or utilization of the dolomite mining claims of said corporation in the Province of Cebu, including the marketing of such dolomite and its products, and for this purpose to the extent permitted by law to import, purchase, install, construct and/or operate such mills, factories, building, machinery, equipment, structures and works of all kinds, facilities, tools, ships, vessels, lighters, submarines, docks, piers, warehouses, storage and shipping facilities, instruments and apparatus and other properties as may be necessary or convenient for carrying on the business of the corporation, and to pay or receive payment for the foregoing either on cash or in stock, bonds, debentures, or other securities."[3]

Petitioner is further organized to, among other secondary and incidental purposes and powers, "buy, process, refine, prepare for market, sell at wholesale, export, transport and otherwise deal in and with dolomite ore, limestone ore, and other minerals of whatever nature and their by-products."[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith, with authority, among others, to decide, approve, and grant tax credits and/or refunds of unutilized/excess input VAT. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City where he may be served with summons and other processes of this Honorable Court.[5]

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[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 318.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, pp. 318 to 319; Exhibit "P-1-A", Docket – Vol. II, pp. 700 to 713.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 319.
[5] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 319.

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On November 8, 2019, PMSC filed with the VAT Credit Audit Division of the BIR (BIR VCAD) an Application for Tax Credits/Refund (BIR Form No. 1914), to request for the refund of the total amount of ₱133,915,901.59 covering the period from January 1, 2018 to December 31, 2018.[6]

In accordance with the first paragraph of Section 112(C) of the Tax Code and RMC 47-2019, the CIR had ninety (90) days from petitioner's submission of complete documents, or until February 3, 2020, to decide on PMSC's claim for tax refund.[7]

On January 9, 2020, or before the lapse of the 90-day period, the duly-authorized representative of the CIR, Deputy Commissioner — Operations Group Arnel S.D. Guballa (DCIR-OG Guballa) issued a decision partially granting and denying PMSC's claim in the amount of ₱99,146,898.93 (VAT Refund Notice). PMSC received the decision of DCIR-OG Guballa on January 23, 2020.[8]

The CIR disallowed the amount of ₱34,769,002.66 from PMSC's claim, to wit:

Total amount of claim		₱	133,915,901.59
Deductions from claim			
Less:	Non-compliance with invoicing requirements	₱	(6,023,907.45)
	Big-ticket disallowances	₱	(3,026,553.52)
	ITS verification	₱	(42,916.81)
	Deferred input tax (DIT) not reflected in the VAT returns	₱	(949,582.71)
	Overclaimed input tax per BIR Form No. 1914 as against QVRs	₱	(68,884.02)
	Additional DIT from purchases of capital goods exceeding ₱1M	₱	(6,015,536.91)
	Output VAT on related party transactions	₱	(598,545.57)

[6] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 319; Exhibits "P-3" to "P-3-A", Docket – Vol. II, pp. 717 to 719.
[7] Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 320.
[8] Par. 8, Admitted Facts, JSFI, Docket – Vol. I, p. 320; Exhibits "P4" and "R-5", Docket – Vol. II, pp. 722 to 751.

	Final withholding VAT on related party transactions	₱	(2,094,345.36)
	Allocated input VAT on exports sales with insufficient documentations	₱	(15,923,730.32)
	Compromise penalty for supplying incorrect information in the QVRs	₱	(25,000.00)
Total deductions from claim		₱	(34,769,002.66)
Total amount approved for refund		₱	**99,146,898.93**[9]

PROCEEDINGS BEFORE THIS COURT

PMSC filed the instant *Petition for Review* on February 21, 2020,[10] assailing only the disallowance in the amount of ₱24,643,307.43.[11]

On September 14, 2020, the CIR posted his *Answer*,[12] wherein he interposed the following special and affirmative defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> xxx xxx xxx
>
> 6. Petitioner avers that its purchase of taxable goods and services for the calendar year 2018 qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, which reads:
>
> '**SEC. 108. Value-added Tax on Sale of Services and Use of Lease of Properties. –**
>
> **(A)** 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:

[9] Par. 9, Admitted Facts, JSFI, Docket – Vol. I, p. 320.
[10] Docket – Vol. I, pp. 7 to 33.
[11] Pars. 16 to 17, *Petition for Review,* Docket – Vol. I, pp. 11 to 12.
[12] Docket – Vol. I, pp. 127 to 132.

> 1) xxx xxx xxx
>
> 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).'

7. In *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be satisfied:

> 1. the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;
>
> 2. the payment for such services must acceptable foreign currency accounted accordance with the BSP rules regulations; and be in for in; and
>
> 3. the recipient of such services is doing business outside the Philippines.

8. Petitioner failed to discharge with the burden of complying with the second and third requisite.

9. As to the second requisite, petitioner failed to show proof of remittances of foreign currency from export sales of service.

10. Petitioner likewise failed to fully substantiate with documentary evidence all the services claimed to be rendered to its affiliate outside the Philippines.

11. With regard the third requisite, no sufficient proof was submitted to show that its affiliate to whom petitioner rendered services is not doing business in the Philippines.

12. To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the SEC and certificate/articles of foreign incorporation/ association. These two (2) documents are necessary. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines (i.e., not engaged in trade or business within the Philippines). On the other hand, the certificate/articles of incorporation/association prove two things: (1) that the recipient of the service is indeed foreign, and (2) it is engaged in business in the country of incorporation/association (i.e., a showing of a continuity of commercial dealings and intention to establish a continuous business).

13. Petitioner failed to submit sufficient documentary evidence to support that the services were rendered to an affiliate doing outside the Philippines.

14. Considering that petitioner failed to comply with the second and third requisite to qualify for VAT zero-rating. Consequently, the second requisite for the refund or tax credit input VAT under Section 112(A) of the NIRC of 1997, as amended, was also not satisfied.

15. Having failed to prove that purchases of taxable goods and services are zero-rated sales for the period 1 January 2018 to 31 December 2018, the alleged input VAT attributable thereto cannot be refunded to petitioner.

16. Further, in order that the claimed input VAT may be refunded, the same must be properly substantiated by VAT invoices or official receipts as prescribed under Section 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to

Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended.

xxx xxx xxx"

The pre-trial conference was set[13] and held on January 21, 2021.[14] Prior thereto, *Respondent's Pre-Trial Brief* was filed on January 15, 2021;[15] while PMSC's *Pre-Trial Brief* was submitted on January 18, 2021.[16]

On February 5, 2021, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[17] In the Resolution dated February 15, 2021,[18] the Court approved the said JSFI and deemed the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated May 26, 2021 was issued.[19]

The CIR transmitted the *BIR Records* of the instant case on February 11, 2022.[20]

During trial, PMSC presented the following witnesses: (1) Mr. Ian John M. Guillena,[21] PMSC's Department Manager – Accounting Department of petitioner; (2) Mr. June Sun M. Pugoy,[22] Section Manager-Accounting Department of PMSC; and Ms. Katherine O. Constantino,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

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[13] *Notice of Pre-Trial Conference* dated October 12, 2020, Docket – Vol. I. pp. 139 to 141.
[14] Minutes of the hearing held on, and Order dated, January 21, 2021, Docket – Vol. I. pp. 305 to 307, and 308 to 309, respectively.
[15] Docket – Vol. I. pp. 145 to 147.
[16] Docket – Vol. I, pp. 162 to 182.
[17] Docket – Vol. I, pp. 318 to 323.
[18] Docket – Vol. I, p. 412.
[19] Docket – Vol. I, pp. 444 to 456.
[20] Docket – Vol. I, pp. 632 to 634.
[21] Exhibit "P-8", Docket – Vol. I, pp. 187 to 196; Minutes of the hearing held on, and Order dated, May 4, 2021, Docket – Vol. I, pp. 431 to 437, and 438 to 439, respectively; Exhibit "P-52238", Docket – Vol. I, pp. 612 to 617; Minutes of the hearing held on, and Order dated, February 22, 2022, Docket – Vol. I, pp. 638 to 641, and 642 to 643.
[22] Exhibit "P-9", Docket – Vol. I, pp. 263 to 279; Minutes of the hearing held on, and Order dated, May 4, 2021, Docket – Vol. I, pp. 431 to 437, and 438 to 439, respectively.
[23] Exhibit "P-22", Docket – Vol. I, pp. 369 to 374; Order dated July 13, 2021, Docket – Vol. I, pp. 461 to 462; Exhibit "P-23-B", Docket – Vol. I, pp. 556 to 564; Minutes of the hearing held on, and Order dated, December 7, 2021, Docket – Vol. I, pp. 580 to 582, and 583 to 584.
[24] *Oath of Commission (For a CPA Firm)* dated May 6, 2019, and Minutes of the hearing held on, and Order dated, May 6, 2019, Docket – Vol. I, pp. 555 to 557.

The *Report* of the said ICPA was submitted on October 27, 2021.[25]

PMSC filed its *Formal Offer of Evidence* on March 14, 2022.[26] On March 16, 2022, the CIR filed his *Comment (Re: Formal Offer of Evidence).*[27] On April 22, 2022, the Court issued a Resolution[28] partially admitting PMSC's evidence.

On May 26, 2022, PMSC filed its *Motion for Reconsideration (of the Resolution dated 22 April 2022) with Motion to Set Case for Commissioner's Hearing,*[29] without the CIR's comment.[30] In the Resolution[31] dated August 15, 2022, the Court partially admitted PMSC's exhibits.

On September 9, 2022, PMSC filed a *Tender of Excluded Evidence,*[32] which was noted by the Court in its Resolution dated September 20, 2022.[33]

On the other hand, the CIR presented the following witnesses: (1) Ms. Mary Ann B. Estacio,[34] Revenue Officer III and Examiner assigned at VCAD; and (2) Ms. Jelly Anne T. Mateo,[35] Revenue Officer II assigned at the Tax Audit Review Division.

On October 19, 2022,[36] the CIR filed his *Formal Offer of Evidence,* with PMSC's *Comment/Opposition (to Respondent's Formal Offer of Evidence dated 19 October 2022)* posted on November 9, 2022.[37] Subsequently, PMSC filed a *Motion for Leave to File Amended Comment/Opposition*[38] with attached

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[25] Exhibit "P-23", Docket – Vol. I, pp. 478 to 543.
[26] Docket – Vol. II, pp. 656 to 698.
[27] Docket – Vol. II, pp. 823 to 825.
[28] Docket – Vol. II, pp. 829 to 837.
[29] Docket – Vol. II, pp. 838 to 847.
[30] Records Verification dated June 30, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 913.
[31] Docket – Vol. II, pp. 919 to 933.
[32] Docket – Vol. II, pp. 934 to 940.
[33] Docket – Vol. II, p. 943.
[34] Exhibit "R-7", Docket – Vol. I, pp. 151 to 155; Minutes of the hearing held on and Order dated September 27, 2022, Docket – Vol. II, pp. 944 to 944-B, and 945 to 947, respectively.
[35] Exhibit "R-8", Docket – Vol. I, pp. 156 to 161; Minutes of the hearing held on and Order dated September 27, 2022, Docket – Vol. II, pp. 944 to 944-B, and 945 to 947, respectively.
[36] Docket – Vol. II, pp. 953 to 957.
[37] Docket – Vol. II, pp. 968 to 972.
[38] Docket – Vol. II, pp. 960 to 962. *am*

Amended Comment/Opposition (to Respondent's Formal Offer of Evidence dated 19 October 2022)[39] submitted on November 11, 2022. Said motion was granted in the Court's Resolution dated December 16, 2022.[40]

In the Resolution[41] dated January 18, 2023, the Court admitted all the exhibits formally offered by the CIR.

On January 30, 2023, the CIR filed his *Memorandum,*[42] while on February 22, 2023, PMSC filed its *Memorandum.*[43]

On March 13, 2023,[44] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE RAISED BY THE PARTIES

The parties submitted this sole issue for the Court's resolution:

> "Whether PMSC is entitled to tax refund for the alleged unutilized input VAT amounting to ₱24,643,307.43 for the taxable year 2018."[45]

PMSC's arguments:

PMSC argues that: (1) it has fully substantiated its claim for tax refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales; (2) the CIR made erroneous deductions to PMSC's claim for tax refund attributable to its zero-rated sales; (3) the cases filed in the Court of Tax Appeals (CTA) are litigated de novo.

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[39] Docket – Vol. II, pp. 963 to 967.
[40] Docket – Vol. II, pp. 975 to 976.
[41] Docket – Vol. II, pp. 978 to 979.
[42] Docket – Vol. II, pp. 980 to 987.
[43] Docket – Vol. II, pp. 989 to 1041.
[44] Minute Resolution dated March 13, 2023, Docket – Vol. II, p. 1043.
[45] Issue, JSFI, Docket – Vol. I, p. 321.

The CIR's counter-arguments:

The CIR counters that the instant petition must be dismissed for PMSC's failure to substantiate its administrative claim for refund and that PMSC is not entitled to refund in the amount of ₱24,643,307.43.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

PMSC's administrative refund claim originally involved the aggregate amount of ₱133,915,901.59.[46] Out of the said amount, only the amount of ₱99,146,898.93 was granted by the CIR.[47] Meanwhile, out of the total disallowed amount of ₱34,769,002.66 from petitioner's claim, only the amount of ₱24,643,307.43[48] is the subject of the instant claim, detailed as follows:

Item	***Reason for disallowance/ deduction***	***Amount deducted***
1	Allocated input VAT on export sales	₱ 15,923,730.23
2	Big ticket disallowance since the OR date is before ATP approval	1,207,419.49
3	Big ticket disallowance; non-compliance with invoicing requirements due to missing sales invoice	217,282.68
4	Additional Deferred Input Tax (DIT) from capital goods	4,250,946.88
5	DIT not reflected in VAT returns	949,582.71
6	Final Withholding VAT on related party transactions	2,094,345.36
Total amount of claim		**₱24,643,307.35**[49]

This Court shall now examine whether PMSC is entitled to its refund claim.

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[46] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 319; Exhibits "P-3" to "P-3-A", Docket – Vol. II, pp. 717 to 719.
[47] Exhibits "P-4" and "R-5", Docket – Vol. II, pp. 722 to 751.
[48] Prayer, Petition for Review, Docket – Vol. I, pp. 28 to 29.
[49] Par. 16, Petitioner's Memorandum, Docket – Vol. II, pp. 993 to 994.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963,[50] pertinently provides:

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

[50] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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 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 the following requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT:

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;[51]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from

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

the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[52]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[53]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[54]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[55]

7. the input taxes have not been applied against output taxes during and in the succeeding quarters.[56]

8. the input taxes are due or paid;[57] and

9. 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

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[52] *Ibid.*
[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid.*
[56] *Ibid.*
[57] *Ibid.* om

> attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.[58]

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.[59] Thus, petitioner's compliance with all the VAT invoicing requirements is mandatory to be able to file a claim for input taxes attributable to zero-rated sales.[60] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[61] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[62]

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.[63]

Further, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[64] Thus, it behooves petitioner to show compliance with each of the foregoing

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

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

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

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

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

[63] *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, supra.

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

requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

PMSC's administrative and judicial claims were timely filed

To reiterate, the *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claim covers the 1st to 4th quarters of calendar year (CY) 2018. Counting two (2) years from the close of the 1st to 4th quarters of CY 2018, the respective last day for the filing of the administrative claim for the said four (4) quarters are shown below:

Period (1st to 4th quarters of 2018)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
January 1, 2018 to March 31, 2018	March 31, 2018	March 31, 2020
April 1, 2018 to June 30, 2018	June 30, 2018	June 30, 2020
July 1, 2018 to September 30, 2018	September 30, 2018	September 30, 2020
October 1, 2018 to December 31, 2018	December 31, 2018	December 31, 2020

Considering that PMSC's administrative claim for the said periods was filed on November 8, 2019,[65] the same was timely filed.

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

Thus, from the filing of PMSC's administrative claim on November 8, 2019, the CIR had ninety (90) days or until February 6, 2020 to act on the said claim. Records show that on January 9, 2020, or before the lapse of the 90-day period, the CIR, partially granted PMSC's claim through a VAT Refund

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[65] JSFI, Admitted Facts, par. 6, Docket – Vol. I, p. 319; Exhibits "P-3" to "P-3-A", Docket – Vol. II, pp. 717 to 719.

Notice,[66] which was then received by PMSC on January 23, 2020. Thus, counting 30 days from January 23, 2020, PMSC had until February 22, 2020, within which to file its judicial claim. Evidently, PMSC seasonably filed the instant *Petition for Review* on February 21, 2020. [67]

Hence, PMSC has shown compliance with the said *first* and *second* requisites.

PMSC is a VAT-registered person.

As to the *third* requisite, the parties admitted the fact that PMSC is registered as a VAT taxpayer, with Tax Identification No. (TIN) No. 000-136-814-000 and OCN 2RC0001045342 issued on October 27, 1991.[68]

PMSC had zero-rated or effectively zero-rated sales during the four (4) quarters of CY 2018

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

In its Amended Quarterly VAT Returns for the four (4) quarters of CY 2018, PMSC declared zero-rated sales/receipts in the total amount of ₱1,391,571,100.05, broken down as follows:

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[66] JSFI, Admitted Facts, par. 8, Docket – Vol. I, p. 320; Exhibits "P4" and "R-5", Docket – Vol. II, pp. 722 to 751.
[67] Docket – Vol. I, pp. 7 to 33.
[68] JSFI, Admitted Facts, par. 4, Docket – Vol. I, p. 319; Exhibit "P-2", Docket – Vol. II, p. 714.

Period Covered	Exhibit	Zero-Rated Sales
1st Quarter	"P-6-B", Line 17[69]	₱ 348,708,575.72
2nd Quarter	"P-6-E", Line 17[70]	330,101,018.30
3rd Quarter	"P-6-H", Line 17[71]	380,429,558.07
4th Quarter	"P-6-K", Line 17[72]	332,331,947.96
	Total	**₱1,391,571,100.05**

The CIR's verification of the documents submitted by PMSC at the administrative level disclosed the following findings:[73]

> "1. Direct export sales amounted to ₱727,514,432.27 and the proceeds of which were inwardly remitted and accounted for in accordance with the BSP rules and regulations. The proof of actual exportations and foreign currency remittances for export sales were verified.
>
> The export sales were in accordance with the provisions of Sec. 106 (A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended, and the claim for VAT Refund was made in accordance with Sec. 112(A) of the same tax code.
>
> Effectively zero-rated sales pursuant to Sec. 106(A)(2)(a)(5) of the NIRC, as amended, amounted to P664,056,667.52. This represents sales to PEZA registered enterprises and the PEZA Certifications were verified through its QR Code.
>
> xxx xxx xxx
>
> 2. The term "zero-rated" is printed prominently on the invoices pursuant to Sec. 113 (B) (2) (c) of the NIRC, as amended."

However, it is to be noted that in the VAT Refund Notice, the CIR deducted from PMSC's refund claim the amount of ₱15,923,730.23, representing input VAT allocated to the alleged export sales not valid for zero-rating amounting to

69 Docket – Vol. II, p. 768.
70 Docket – Vol. II, p. 780.
71 Docket – Vol. II, p. 792.
72 Docket – Vol. II, p. 804.
73 Exhibit "R-3", BIR Records, p. 439.

₱174,059,370.30 due to insufficient documentation, detailed as follows: [74]

	Reason for disallowance	Sales Amount	Allocated Input VAT
A	Export sales with airway bills/bills of lading not under the claimant's (buyer's) name	₱ 156,283,869.50	₱ 14,303,325.93
B	Export sales with unsupported commission fees	17,775,500.80	1,620,404.30
	Total	**₱174,059,370.30**	**₱15,923,730.23**

In other words, out of the total amount of ₱1,391,571,100.05 zero-rated sales reported by PMSC for CY 2018, only the amount of ₱174,059,370.30 was disallowed by the CIR for VAT zero-rating. Thus, what is left to be resolved by the Court is whether or not the said disallowance is correct.

A. *Export sales with airway bills/bills of lading not under the claimant's (buyer's) name - ₱156,283,869.50*

As ascertained by the ICPA, the disallowed amount of ₱156,283,869.50 represents PMSC's export sales of goods to the following: [75]

Name of Buyer	Sales in USD	Sales in PHP
1. SUN JIN C&S CO. LTD.	2,965,000.00	156,096,934.50
2. JFE SHOJI TRADE CORPORATION	3,500.00	186,935.00
Total	2,968,500.00	156,283,869.50

The CIR disallowed the input VAT in the amount of ₱14,303,325.93 attributable to the said export sales on the ground that the corresponding airway bills/bills of lading are not under the claimant's name.

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides:

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[74] Exhibit "P-4"/"R-5", Annexes A and F, Docket – Vol. II, p. 723; Exhibit 'R-4", item number 5, BIR Records, p. 452.
[75] Exhibits "P-23", p.47", Docket – Vol. I, p. 531.

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties* . —

(A)*Rate and Base of Tax.* — xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales* . — The term **"export sales"** means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

Based on the foregoing, in order for an export sale to qualify as VAT zero-rated, the following conditions must be complied with:

1) The sale was made by a VAT registered person;

2) There was sale and actual shipment of goods from the Philippines to foreign country; and

3) The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *first* condition, it has been settled that PMSC is a VAT-registered person.

With regard to the *second* condition, Sections 113(A)(1), (B)(1), (2)(c), and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), B(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that a VAT taxpayer, like PMSC, shall for every sale, barter or exchange of goods or properties, issue a duly registered VAT invoice which contain all the required information under the said law and regulations.

To satisfy the *second* condition, it is incumbent upon the VAT-registered person to have, at the minimum, the following supporting documents:

a. The sales invoice as proof of sale of goods; and

b. The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

1. *Export sales to Sun Jin C&S Co. Ltd. (Sun Jin) - ₱156,096,934.50*

PMSC submitted the related shipping invoices[76] which indicated that the exported goods were for the account of Sun Jin with address located in South Korea; and that the consignee was PT Krakatau Posco (PT Krakatau) with address located in Indonesia. The corresponding bills of lading[77] submitted by PMSC show that the subject export sales were indeed delivered to the consignee indicated in the shipping invoices, PT Krakatau, in Indonesia.

PMSC explained that the subject export sales were made to Sun Jin, a non-resident foreign corporation organized and existing under the laws of the Republic of Korea. These sales are raw limestone which were further sold by Sun Jin to PT Krakatau, a non-resident foreign corporation organized and existing under the laws of Indonesia, and end user of the purchased goods, for PT Krakatau's steel making processes located in Indonesia. Since PT Krakatau is the actual end user of the raw limestone, it was therefore more cost-effective for PMSC to deliver the goods to PT Krakatau in Indonesia instead of sending the goods to Sun Jin in South Korea.[78]

To further prove that the actual buyer of the subject goods was Sun Jin, PMSC presented its Sales and Purchase

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[76] Exhibits "P-61", "P-66", "P-72", "P-73", "P-78", "P-87", "P-100","P-107", "P-135", "P-148" and "P-153".
[77] Exhibits "P-474", "P-469", "P-480", "P-481", "P-486". "P-495".
[78] Petition for Review, par. 32, Docket – Vol. I, p. 16; Exhibit "P-9", Q&A No. 40, Docket – Vol. I, p. 272.

Agreement[79] with Sun Jin. A perusal of the said document shows that Sun Jin was the buyer of the exported raw limestones, which were to be supplied by Sun Jin to PT Krakatau as raw material for the latter's steel making process.

Evidently, PMSC made export sales to Sun Jin, a non-resident foreign corporation located in South Korea, and such exported goods were shipped from the Philippines to a foreign country, *i.e.*, Indonesia.

2. *Export sales to JFE Shoji Trade Corporation (JSTC) - ₱186,935.00*

The supporting shipping invoice[80] and bill of lading[81] submitted by PMSC reflect a different sales amount of US$42,700.00, thus, these documents cannot be considered as pertaining to the disallowed export sales of ₱186,935.00 (equivalent to US$3,500)[82].

In fine, the Court finds PMSC to have satisfactorily met the *second* condition for VAT zero-rating but only with regard to its export sales to Sun Jin in the amount of ₱156,096,934.50.

PMSC likewise complied with the *third* condition for VAT zero-rating as regards the export sales of ₱156,096,934.50. PMSC submitted the Certification[83] from Mizuho Bank, Ltd. showing foreign currency inward remittances of US$3,497,697.00 which were duly accounted for in accordance with BSP rules and regulations. As ascertained by the Court-commissioned ICPA, the said total remittances included the amount of US$2,965,000.00, representing the foreign currency proceeds of the ₱156,096,934.50 export sales to Sun Jin.[84]

To recapitulate, out of the ₱156,283,869.50 export sales disallowed by the CIR, the Court finds that the amount of

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[79] Exhibit "P-52134".
[80] Exhibit "P-99".
[81] Exhibit "P-505".
[82] Exhibit "P-4"/"R-5", Annex F.1, Docket - Vol. II, p. 751.
[83] Exhibit "P-40".
[84] Exhibit "P-23", Annexes 1-1Q-b, 1-1Q-c, 1-2Q-c, 1-3Q-b, and 1-4Q-b. *an*

₱156,096,934.50 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Only the remaining amount of ₱186,935.00 shall be denied VAT zero-rating.

B. *Export sales with unsupported commission fees - ₱17,775,500.80*

Records show that the subject disallowance relates to PMSC's export sales of goods to JFE Shoji Trade Corporation (JFE Shoji).[85] In paying for the exported goods, JFE Shoji deducted the amount of ₱17,775,500.80 representing commission fees it earned and due from PMSC. The CIR disallowed the said amount for being unsupported by the proper invoice and bill of lading/airway bill.

The Court finds the disallowance improper.

Based on the "Service Agreements for shipments in Taiwan"[86] entered into by PMSC with JFE Shoji, a corporation organized and existing under the laws of Japan, the latter has concluded a Comprehensive Agreement with PMSC for the supply of limestone and dolomite to China Steel Corporation (CSC) and Dragon Steel Corporation (DSC) which are the buying entities. JFE Shoji shall receive from PMSC pertinent shipping documents and shall make and send the necessary shipping documents to CSC and DSC on behalf of PMSC.

The respective Service Agreements also state in Article 2.1 thereof that "(t)he following necessary functions required by PMSC from JFE Shoji, including but not limited to coordination with CSC and DSC, arrangement efforts, and marketing efforts, shall all be performed out of the territory of the Philippines."

For services to be rendered by JFE Shoji to PMSC as enumerated in Article 2.1 of the agreements, JFE Shoji shall be paid commissions as follows: [87]

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[85] Exhibit "P-4"/"R-5", Annex "F.1", Docket – Vol. II, p. 750.
[86] Exhibits "P-5" and "P-5-A", Docket – Vol. II, pp. 752 to 759.
[87] Exhibits "P-5" and "P-5-A", Article 3 Commission Payments, Docket – Vol. II, pp. 754 and 758. an

> "3.1 PMSC shall pay JFE Shoji commission income for the above services, based on the final quantity shipped to CSC and DSC, at the rate of US$0.50/MT for both Limestone and Dolomite."

Aside from the aforementioned service agreements, which served as the basis for calculating the commissions due to JFE Shoji, PMSC was also able to present relevant documents proving its export sales to JFE Shoji, such as shipping invoices, export declarations, bills of lading, bank certification of foreign currency inward remittances which were summarized in Annexes 1-1Q-d, 1-2Q-e, 1-3Q-e and 1-4Q-c of the ICPA report.[88]

Verily, offsetting arrangements as proof that zero-rated sales are paid for in acceptable foreign currency accounted for in accordance with BSP rules is acceptable pursuant to Revenue Memorandum Circular (RMC) No. 42-03. It provides:

> **"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

[88] Exhibit "P-23".

the liabilities which were offset against receivables from export sales;

c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
d. Documents or correspondence regarding offsetting arrangements;
e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
f. Documents to prove actual export of goods;
g. Documents to prove that the sales are zero-rated sales.

Thus, the CIR had no basis to disallow the export sales of ₱17,775,500.80 which were paid for or offset against the commissions due and payable by PMSC to JFE Shoji.

In sum, out of the ₱1,391,571,100.05 total zero-rated sales declared by PMSC for CY 2018, only the amount of ₱186,935.00 shall be denied VAT zero-rating.

Having found that PMSC had valid zero-rated sales in the total amount of ₱1,391,384,165.05 (₱1,391,571,100.05 less ₱186,935.00) for the subject period of claim, the Court shall proceed to determine whether PMSC complied with the following remaining requisites:

a. *sixth requisite*: the input taxes are not transitional input taxes;

b. *seventh requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

c. *eighth requisite*: the input taxes are due or paid; and

d. *ninth requisite*: 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 attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

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

Section 111(A) of the NIRC of 1997, as amended, provides:

> "**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.[89]

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

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

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

In *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) v. Commissioner of Internal Revenue*[90] (Chevron), the Supreme Court ruled that:

> "xxx, 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 supplied*)

Clearly, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) 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

[90] G.R. No. 215159, July 5, 2022.

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

In the present case, PMSC effectively opted to avail of the first option. For the CY 2018, PMSC reported an aggregate amount of ₱176,164,872.02 input taxes arising from its current purchases of capital goods not exceeding ₱1Million, purchases of capital goods exceeding ₱1Million, domestic purchases of goods other than capital goods, importation of goods other than capital goods, domestic purchases of services and services rendered by non-residents, broken down as follows:

	INPUT VAT				
	1st Quarter *Exh. "P-6-B"*	**2nd Quarter** *Exh. "P-6-E"*	**3rd Quarter** *Exh. "P-6-H"*	**4th Quarter** *Exh. "P-6-K"*	**CY 2018**
Purchase of Capital Goods not exceeding P1Million	₱ 137,053.24	₱ 105,905.03	₱ 199,011.30	₱ 69,852.40	₱ 511,821.97
Purchase of Capital Goods exceeding P1Million	458,590.35	414,764.99		145,111.38	1,018,466.72
Domestic Purchases of Goods Other Than Capital Goods	11,379,605.02	13,513,253.17	13,971,450.93	14,026,583.21	52,890,892.33
Importation of Goods Other Than Capital Goods	7,458,808.00	1,678,398.00	18,320,256.00	888,936.00	28,346,398.00
Domestic Purchases of Services	26,503,574.76	23,014,742.89	18,591,109.09	20,302,464.60	88,411,891.34
Services Rendered by Non-Residents		1,991,959.46	-	2,993,442.20	4,985,401.66
Total	**₱45,937,631.37**	**₱40,719,023.54**	**₱51,081,827.32**	**₱38,426,389.79**	**₱176,164,872.02**

For the said taxable year, PMSC's alleged output VAT liability in relation to its sales subject to VAT amounted to ₱42,248,970.43, against which input VAT attributable to sales subject to VAT for the same year amounting to ₱35,567,687.66 was applied. This resulted in output VAT still payable in the amount of ₱6,681,282.77. PMSC's remaining output VAT liability was then deducted from its input VAT attributable to zero-rated sales resulting in an excess/unutilized VAT in the amount of ₱133,915,901.59, as shown below, for which PMSC filed an administrative claim for refund:[91]

Total Input VAT for CY 2018		**₱176,164,872.02**
Percentage of sales attributable to zero-rated sales		79.81%
Input VAT attributable to zero-rated sales		₱ 140,597,184.36
Less: Output VAT payable		(6,681,282.77)
Total Output VAT	₱42,248,970.43	
Less: Input VAT attributable to sales subject to VAT	35,567,687.66	
Unutilized input VAT attributable to zero-rated sales, net of output VAT payable		**₱ 133,915,901.59**

Clearly, PMSC's VAT refund claim for CY 2018 which was filed at the administrative level, is already net of its reported output VAT liability for the same period.

Moreover, the CIR, in arriving at the partial refund of ₱99,146,898.93, deducted the following amounts:

a) ₱598,545.57[92] representing output VAT on interest income and rental income from related parties in the amount of ₱4,987,879.71; and

b) ₱2,094,345.36 representing final withholding VAT on the commission payments made by PMSC to JFE Shoji.

With regard to the output VAT due of ₱598,545.57, PMSC conceded to the said deduction.

On the other hand, PMSC objected to the deduction of the alleged final withholding VAT due of ₱2,094,345.36 as the same forms part of the ₱24,643,307.43, subject of the present appeal.

The CIR computed the alleged final withholding VAT due of ₱2,094,345.36 as follows:[93]

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[91] Petition for Review, par. 10, Docket – Vol. I, p. 10.
[92] Exhibit "P-4"/"R-5", Annexes "A" and "E", Docket – Vol. I, pp. 723 and 748.
[93] Exhibit "P-4"/"R-5", Annex "E", Docket – Vol. II, p. 748.

Commission on 2018	₱17,964,353.00
Beginning Balance	2,751,776.00
Ending Balance	(3,263,251.00)
Total Payment of Commission to JSTC on TY 2018	17,452,878.00
Corresponding Withholding VAT on Payment @12%	**₱2,094,345.36**

PMSC argued that it was erroneous for the CIR to assess final withholding VAT on the commissions earned by JFE Shoji and deduct this alleged liability from PMSC's claim for tax refund since the commissions which JFE Shoji earned were for services it rendered outside the Philippines.[94]

The Court agrees with PMSC.

Based on the "Service Agreements for Shipments in Taiwan" between PMSC and JFE Shoji: [95]

1. JFE Shoji is a corporation organized and existing under the laws of Japan;

2. The PMSC shall pay JFE Shoji commission income;

3. The PMSC required JFE Shoji to coordinate with CSC; and DSC, arrangement efforts and marketing efforts and will be performed out of the territory of the Philippines.

Moreover, the Certificate of Non-Registration of Company issued by the Philippine Securities and Exchange Commission[96] states that JFE Shoji is not registered in the Philippines as a corporation, partnership of One Person Corporation.[97]

Considering that the subject services were performed outside the Philippines by JFE Shoji, the same are beyond the jurisdiction of Philippine taxation. It bears stressing that the sale or exchange of services subject to 12% VAT under Section

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[94] Petitioner's Memorandum, par. 92, Docket – Vol. II, p. 1029.
[95] Exhibits "P-5" and "P-5-A", Docket – Vol. II, pp. 752 to 759.
[96] Docket – Vol. II, p. 809.
[97] Exhibit "P-52227".

108() of the NIRC of 1997, as amended, pertains to services performed in the Philippines.

In imposing the 12% final withholding VAT on commissions against PMSC, the CIR invoked Section 4.114-2(b) of RR No. 16-05, which pertinently provides:

> "SECTION 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —
>
> xxx xxx xxx
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold ten percent (10%) VAT with respect to the following payments:
>
> (1) Lease or use of properties or property rights owned by non-residents;
>
> (2) Services rendered to local insurance companies, with respect to reinsurance premiums payable to non-residents; and
>
> (3) **Other services rendered in the Philippines by non-residents**.
>
> In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.
>
> **VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent** upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary

> substantiation for the claimed input tax or input VAT."

From the foregoing provisions, the VAT withheld and remitted on behalf of the non-resident foreign corporation may be claimed as input tax credit on the part of the resident withholding agent. Thus, granting, for the sake of argument, that the CIR was correct in imposing the 12% final withholding VAT against PMSC, the same amount may be claimed by PMSC as input tax credit. Consequently, the result is that the transaction shall have no effect on PMSC's VAT refund claim.

Finally, PMSC's Amended Quarterly VAT Return for the 2nd quarter of CY 2019[98] shows that the aforesaid claim of ₱133,915,901.59 was deducted as "VAT Refund/TCC claimed" (under Line 23D), preventing the carry-over or application of such input taxes in the next taxable quarter/s. Hence, PMSC is deemed to have fulfilled the *seventh* requisite for the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended

Not all input VAT being claimed were due or paid

With respect to the *eight requisite* in claiming VAT refund, it is incumbent upon PMSC to provide supporting documents to prove that the input taxes claimed for the CY 2018 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended. It provides:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> (1) Any **input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:

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[98] Exhibit "P-33". *am*

(1) For sale; or

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

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

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

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

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

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

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

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

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

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-05. It provides:

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

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

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

(a) Purchase or importation of goods

(1) For sale; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee."

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

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

xxx xxx xxx

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

Moreover, Section 4.110-8 of RR No. 16-05 provides for the substantiation requirements of input tax credits, as follows:

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

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

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

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

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

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

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

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

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."*(Emphasis supplied)*

Thus, in order to be entitled to input tax credits, the same must be evidenced by a VAT sales invoice (SI) or an official receipt (OR) issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended.

To prove entitlement to credits for input taxes due and paid, PMSC must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-05, but it must also 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. 16-05.

As shown earlier, PMSC's excess input VAT claim of ₱133,915,901.59 emanated from PMSC's reported input VAT for the CY 2018 in the amount of ₱176,164,872.02, detailed as follows:

	INPUT VAT				
	1st Quarter ***Exh. "P-6-B"***	**2nd Quarter** ***Exh. "P-6-E"***	**3rd Quarter** ***Exh. "P-6-H"***	**4th Quarter** ***Exh. "P-6-K"***	**CY 2018**
Purchase of Capital Goods not exceeding P1Million	₱ 137,053.24	₱ 105,905.03	₱ 199,011.30	₱ 69,852.40	₱ 511,821.97
Purchase of Capital Goods exceeding P1Million	458,590.35	414,764.99		145,111.38	1,018,466.72
Domestic Purchases of Goods Other Than Capital Goods	11,379,605.02	13,513,253.17	13,971,450.93	14,026,583.21	52,890,892.33
Importation of Goods Other Than Capital Goods	7,458,808.00	1,678,398.00	18,320,256.00	888,936.00	28,346,398.00
Domestic Purchases of Services	26,503,574.76	23,014,742.89	18,591,109.09	20,302,464.60	88,411,891.34
Services Rendered by Non-Residents		1,991,959.46	-	2,993,442.20	4,985,401.66
Total	**₱45,937,631.37**	**₱40,719,023.54**	**₱51,081,827.32**	**₱38,426,389.79**	**₱176,164,872.02**

Out of the aforesaid input tax of ₱176,164,872.02, the CIR found only the amount of ₱160,037,490.61 as PMSC's valid or allowable input tax and denied the remaining amount of ₱16,127,381.41, as shown below:[99]

Available Input VAT for the Period		₱176,164,872.02
Less: Disallowances Overclaimed input tax per BIR Form No. 1914 as against Quarterly VAT Returns (QVRs)	₱ 68,884.01	
Not in compliance with the invoicing requirements	6,023,907.45	
Big-ticket disallowances	3,026,553.52	
ITS verification	42,916.81	
Deferred input tax not reflected in the VAT returns	949,582.71	
Additional deferred input tax from purchases of capital goods > 1M	6,015,536.91	16,127,381.41
Allowable Input Tax		**₱160,037,490.61**

99 Exhibit "P-4"/"R-5", Annexes "A" and "F", Docket – Vol. II, pp. 723 and 749.

The foregoing findings are the results of the CIR's verification of PMSC's sources of input VAT against the original copies of VAT invoices or official receipts, in the case of local purchases of goods and services, respectively, in compliance with the invoicing requirements under Section 113 in relation to Section 110(A) of the NIRC. The CIR's verification also included importation documents, Certificate of VAT Payment issued by the Bureau of Customs (BOC) Revenue Accounting Division (RAD) together with the BOC-authenticated copies of Import Entry and Internal Revenue Declarations (IERDs) and/or Single Administrative Documents (SADs), Statements of Settlement of Duties and Taxes (SSDTs) and Commercial Invoices.[100]

However, PMSC disagrees with the disallowance of the following input taxes in the amount of ₱6,625,231.76 (part of the ₱24,643,307.43 refund claim, subject of the instant *Petition for Review*):

Item	**Reason for disallowance/deduction**	**Disallowed Input VAT**
A	Big ticket disallowance since the OR date is before ATP approval	₱1,207,419.49
B	Big ticket disallowance; non-compliance with invoicing requirements due to missing sales invoice	217,282.68
C	Deferred Input Tax (DIT) not reflected in VAT returns	949,582.71
D	Additional DIT for capital goods - importations	4,250,946.88
		₱6,625,231.76

As such, the Court shall now determine whether the above disallowances are correct.

A. *<u>Big ticket disallowance since the OR date is before ATP approval - ₱1,207,419.49.</u>*

The CIR identified and examined the invoices and/or official receipts supporting PMSC's big-ticket purchases. Based on Revenue Memorandum Order (RMO) No. 16-07, "big-ticket" items of purchases refer to purchases made from

[100] Exhibit "R-4", BIR Records, p. 454.

suppliers whose individual gross annual cumulative sales to the particular taxpayer-purchaser accounts to more than five percent (5%) of said taxpayer-purchaser's annual gross purchases covering the period under audit.

Finding that the official receipts supporting PMSC's big-ticket purchases of services from Vercon Development Corporation (Vercon) were dated during such time when Vercon **did not have a valid and existing Authority to Print (ATP) from the BIR**, the CIR denied PMSC's corresponding input claim in the amount of ₱1,207,419.49.[101]

The Court agrees with the input VAT disallowance of ₱1,207,419.49.

As shown below, a scrutiny of the ORs supporting the claimed input VAT of ₱1,207,419.49 shows that Vercon's ATP was issued only on October 11, 2018. Considering that these ORs were dated prior to October 11, 2018, Vercon **had no duly registered ORs** at the time the purchase transactions were made by PMSC.

EXHIBIT REFERENCE	OR No.	Date of OR	Total Amount of Purchases	Claimed Input Tax
"P-50144", p. 1 of 2	2532	Aug. 1, 2018	₱ 401,785.71	₱ 48,214.29
"P-50818", p. 1 of 2	2527	Aug. 1, 2018	112,500.00	13,500.00
"P-50820", p. 1 of 2	2526	Aug. 1, 2018	937,500.00	112,500.00
"P-50921", p. 1 of 2	2524	Oct. 1, 2018	3,226,607.17	387,192.86
"P-50969", p. 1 of 2	2525	Oct. 1, 2018	280,000.00	33,600.00
"P-50970", p. 1 of 2	2523	Oct. 1, 2018	735,307.00	88,236.84
"P-50971", p. 1 of 2	2522	Oct. 1, 2018	203,370.33	24,404.44
"P-51078", p. 1 of 2	2529	Sept. 12, 2018	2,035,714.44	244,285.56
"P-50808", p. 1 of 2	2520	Aug. 1, 2018	544,040.33	65,284.84
"P-50912", p. 1 of 2	2521	Aug. 20, 2018	1,585,005.47	190,200.66
			₱ 10,061,830.45	**₱ 1,207,419.49**

It is clear under Sections 237 and 238 of the NIRC of 1997, as amended, that entities engaged in business are required to secure from the BIR an ATP to issue duly registered receipts or invoices. As such, the ORs supporting PMSC's purchases of services from Vercon must be duly registered at the time the transactions were made. For

[101] Exhibit "P-9", Q&A No. 52, Docket – Vol. I, pp. 274 to 275.

PMSC's failure to present duly registered VAT ORs, the input VAT claim of ₱1,207,419.49 must be denied.

B. <u>Big ticket disallowance; non-compliance with invoicing requirements due to missing sales invoice - ₱217,282.68</u>

The CIR denied the amount of ₱217,282.68 from PMSC's total claim on the ground that the supporting sales invoice relative to PMSC's payment to Dolomite Mining Corporation (DMC) cannot be found.[102]

PMSC, on the other hand, alleged that the the CIR erroneously referred to a sales invoice rather than that of an official receipt because the transaction pertains to a purchase of services specifically lease payment.[103]

The Court finds the disallowance proper and in order.

An examination of the OR[104] issued by DMC to PMSC shows that the input VAT ₱217,282.68 pertains to PMSC's payment for 2018 land rental in the amount of ₱1,810,689.01. As correctly pointed out by PMSC, such lease payment must be supported by an OR pursuant to Section 113(A)(2) of the NIRC of 1997, as amended. However, the Court noted that the said OR bears serial number OR-11000883 which is **outside** the "Series No: 000001 to 999999" per BIR Permit No: 1210-ETRD-CAS-00097 reflected on the lower right-hand portion of the same OR. This means that the OR is not duly registered with the BIR in violation of Sections 237 and 238 of the NIRC of 1997, as amended.

C. <u>DIT not reflected in VAT returns - ₱949,582.71</u>

The amount of ₱949,582.71 allegedly representing deferred input tax was denied on the ground that said amount was not reflected in the PMSC's VAT returns.

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[102] Petitioner's Memorandum, par. 111, Docket – Vol. II, p. 1034.
[103] Petitioner's Memorandum, par. 112, Docket – Vol. II, p. 1034.
[104] Exhibit "P-51359". *cm*

PMSC countered that while the input VAT is not explicitly stated in the VAT returns, this amount can be derived because the VAT returns clearly show the beginning and ending values of the input tax deferred on capital goods exceeding ₱1Million per quarter, as well as the purchases of capital goods exceeding ₱1Million made by PMSC for the relevant quarter.[105]

The Court agrees with PMSC and finds the disallowance improper.

The subject amount of ₱949,582.7 represents the amortized portion of the input tax on PMSC's purchases of capital goods exceeding ₱1Million and is clearly reflected in PMSC's Amended Quarterly VAT Returns[106] for CY 2018, as follows:

	1st Quarter *"P-6-B"*	**2nd Quarter** *"P-6-E"*	**3rd Quarter** *"P-6-H"*	**4th Quarter** *"P-6-K"*	**CY 2018**
Input tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱3,314,490.82	₱3,550,365.75	₱3,730,900.04	₱3,487,000.30	₱14,082,756.91
Add: Current Purchases of Capital Goods Exceeding ₱1Million	456,590.35	414,764.99	-	145,111.38	1,016,466.72
Subtotal	₱3,771,081.17	₱3,965,130.74	₱3,730,900.04	₱3,632,111.68	₱15,099,223.63
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1Million deferred to succeeding period	3,550,365.75	3,730,900.04	3,487,000.30	3,383,374.83	14,151,640.92
Total Input VAT- locally purchased capital goods exceeding ₱1 million from previous quarter/year	**₱ 220,715.42**	**₱ 234,230.70**	**₱ 243,899.74**	**₱ 248,736.85**	**₱ 949,582.71**

A. *<u>Additional DIT for capital goods – importations ₱4,250,946.88</u>*

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[105] Par. 107, Petitioner's Memorandum, Docket – Vol. II, pp. 1032.
[106] Exhibits "P-27", "P-29", "P-31" and "P-32".

The amount of ₱4,250,946.88 was deducted from PMSC's claim as the BIR classified the imported assets and materials purchased from JFE Shoji Machinery & Materials Corporation (JSMMC) during the taxable year 2018 as capital goods or properties in accordance with Section 4.110-3 of RR No. 16-05, as amended. This classification means that the input VAT related to the acquisition cost of these assets and materials should be amortized.[107] Below is the breakdown of the disallowed input VAT of ₱4,250,946.88:[108]

Name of Supplier	Asset Acquired	Statement of Settlement of Duties and Taxes (SSDT)/Bureau of Customs (BOC) OR[109]		Amortized Input VAT	Deferred Input VAT
		OR No.	Date		
JFE Shoji Machinery and Materials Corp	Jumping Screen	R-13136	02-Mar-18	₱ 514,008.00	₱ 2,570,040.00
JFE Shoji Machinery and Materials Corp	1 set used generator	R-15385	15-Mar-18	49,859.67	224,298.33
JFE Shoji Machinery and Materials Corp	1 set belt weighter	R-22569	18-Apr-18	54,982.35	311,566.65
JFE Shoji Machinery and Materials Corp	1 set steel frame	R-44593	24-Jul-18	10,940.30	98,462.70
JFE Shoji Machinery and Materials Corp	1 set rubber fender	R-44887	25-Jul-18	11,344.50	102,100.50
JFE Shoji Machinery and Materials Corp	1 set Eriez permanent magnet/electromagnet	R-53309	31-Aug-18	22,411.93	313,767.07
JFE Shoji Machinery and Materials Corp	Vibrating screen SH616DD	R-57413	18-Sep-18	45,050.87	630,712.13
Rounding Difference					*0.50*
Total				**₱ 703,597.62**	**₱ 4,250,946.88**

PMSC pointed out that Section 4.110-3 of RR No. 16-2005, as amended by RR No. 04-2007, defines and differentiates capital goods or properties (CGP) from construction in progress (CIP), as follows:

[107] Exhibit "P-9", Q&A No. 41, Docket – Vol. I, p. 272.
[108] Exhibit "P-4"/"R-5", Annex "D", Docket – Vol. II, p. 747.
[109] Exhibits "P-49279", "P-49280", "P-49329", "P-49349", "P-49350", "P-49351", and "P-49354".

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

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

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

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

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

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

PMSC explained that the distinction between CGP and CIP is important since, according to Section 4.110-3 of RR 16-2005, as amended, the input VAT on the purchase of CIP "can be recognized in the month the payment was made: Provided, that an official receipt of payment has been issued based on the progress billings."

PMSC elaborated that CGP is presumed ready for use and/or actually being used by the taxpayer since it is already considered as a depreciable asset, whose acquisition cost and corresponding input VAT is subject to amortization over the course of its useful life. From its acquisition, its useful life is already considered running and its worth depreciating.

This is allegedly in contrast with CIP, which represents the cost of construction work which is not yet completed. It is neither subjected to depreciation, nor its acquisition cost or corresponding input VAT subject to amortization. It is only subject to depreciation and amortization once construction has been completed and is thereafter categorized as CGP.

However, PMSC stated that if the materials and the labor component are supplied by different suppliers, the same Section also provides that:

> "[I]nput tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billing while **input tax on the purchase of materials shall be recognized at the time the materials were purchased**. (*Emphasis supplied*)

Thus, PMSC opined that Section 4.110-3 of RR No. 16-2005, as amended, allows the taxpayer to recognize and claim the entire amount of input VAT incurred and paid at the time these assets were purchased, provided that the following circumstances are present:

a. The asset has yet to be placed in service; and

b. The labor to place the asset in service will be supplied by a contractor/supplier different from that supplying the asset/materials.

According to PMSC, the subject input VAT of ₱4,250,946.88 pertains to PMSC's purchases of assets and materials such as jumping screen, generator, belt weighter, steel frame, rubber fender, electro magnet, and vibrating screen to be used for sorting raw materials and other minerals and ores. However, the equipment purchased requires installation work prior to being put into service and operation. Thus, PMSC treated the mechanized equipment as CIP since it had yet to be installed and JSMMC would not provide the labor for the installation of the equipment so it recognized the input VAT amounting to ₱4,250,946.88 related to its purchase and importation in its entirety in taxable year 2018.

The Court finds that the input VAT disallowance of ₱4,250,946.88 is in order.

Indeed, the input VAT on purchases classified as CIP as contemplated under Section 4.110-3 of RR No. 16-2005, as amended, can be claimed in its entirety at the time of purchase. However, in the instant case, PMSC failed to present documents or records by which the Court can trace that the subject purchases actually formed part of the "Construction in Progress" reflected under its "Property, Plant and Equipment" account per its 2018 Audited Financial Statements.[110] Thus, the subject purchases shall be considered as CGP and the input VAT thereon is subject to amortization.

Summarizing the above findings relative to PMSC's compliance with the *eighth* requisite, the Court finds that petitioner's declared current input VAT for the CY 2018 in the amount of ₱176,164,872.02 should be reduced by the following input VAT disallowances amounting to ₱15,177,798.71, detailed as follows:

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[110] Exhibit "R-6" (BIR Records), p. 51.

Reason for disallowance	Amount of Input VAT
Not in compliance with the invoicing requirements	₱ 6,023,907.45
Big-ticket disallowances	3,026,553.52
ITS verification	42,916.81
Overclaimed input VAT	68,884.01
Additional deferred input tax from purchases of capital goods > 1M	6,015,536.91
Total Disallowances	**₱15,177,798.71**

A portion of the valid input VAT is attributable to PMSC's valid zero-rated sales for the CY 2018

To reiterate, the *ninth* requisite requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sale and taxable sales, and the input taxes are not directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In the present case, since PMSC had sales subject to 12% VAT aside from zero-rated sales, the total declared current input VAT for CY 2018 amounting to ₱176,164,872.02 shall be proportionately allocated as follows:

Particulars	Input VAT Attributable to VATable Sales	Input VAT Attributable to Zero-rated Sales
Amount of VATable Sales / Zero-rated Sales	₱ 357,062,633.22	₱ 1,391,571,100.05
Divided by Total Sales	1,748,633,733.27	1,748,633,733.27
Multiplied by Total Available Input VAT	176,164,872.02	176,164,872.02
Input VAT Attributable to VATable Sales / Zero-rated Sales	₱ 35,972,023.12[111]	₱140,192,848.89[112]

The amount of ₱140,192,848.89 representing the input VAT attributable to zero-rated sales shall be further reduced by the Court's disallowances amounting to ₱15,177,798.71 and Output VAT still due in the amount of ₱6,875,492.88, computed as follows:

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[111] (20.42% * ₱176,164,872.02).
[112] (79.58% * ₱176,164,872.02).

Output VAT attributable to VATable Sales	₱	42,248,970.43
Less: Input VAT attributable to VATable sales		35,972,023.12
Output VAT still due	₱	(6,276,947.31)
Additional Output VAT		(598,545.57)
Total Output VAT still due	₱	(6,875,492.88)
Input VAT attributable to Zero-rated Sales		140,192,848.89
Refundable Balance of Input VAT attributable to Zero-rated Sales	₱	133,317,356.02
Less: Disallowances		15,177,798.71
Valid Available Input VAT attributable to Zero-rated Sales	₱	118,139,557.31

Since the amount of ₱118,139,557.31 represents the input taxes attributable to zero-rated sales, the same shall be allocated proportionally on the basis of petitioner's total zero-rated sales, as follows:

Valid Zero-rated Sales[113]	₱1,391,384,165.05
Divided by Total Zero-rated Sales	1,391,571,100.05
Multiplied by valid input taxes attributable to zero-rated sales	118,139,557.31
Input tax attributable to zero-rated sales	**₱ 118,123,687.17**

The above-computed amount of ₱118,123,687.17 pertains to petitioner's unutilized input VAT attributable to its zero-rated sales for the CY 2018. However, in order to determine the amount of petitioner's entitlement to the subject refund claim, said amount of ₱118,123,687.17 shall be further reduced by the amount of ₱99,146,898.92 pertaining to petitioner's administrative claim approved by the BIR and ₱25,000.00 which pertains to the amount of compromise penalty charged by the BIR and admitted by petitioner, viz.:

Refundable Amount	₱ 118,123,687.17
Less: Amount Approved by BIR	99,146,898.92
Net Refundable Amount	₱ 18,976,788.25
Less: Compromise Penalty	25,000.00
Total Net Refundable Amount	₱ 18,951,788.25

[113] Total zero-rated sales of ₱1,391,571,100.0 less disallowed zero-rated sales of ₱186,935.00.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the net amount of ₱18,951,788.25, representing its remaining unutilized input VAT attributable to its zero-rated sales for the CY 2018, net of the refund amount approved by BIR and compromise penalty.

Accordingly, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱18,951,788.25**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the CY 2018.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes - Fajardo

MARIAN IVY F. REYES-FAJARDO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice