REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TETRA PAK PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10546**
	Members:
	RINGPIS-LIBAN, *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	AUG 2 0 2024 10:45 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* prays that judgment be rendered annulling, reversing and setting aside the decision of respondent in its *Notice of Denial* and thereby ordering respondent to refund and/or issue a tax credit certificate in favor of petitioner in relation to its excess and/or unutilized input value-added tax (VAT) credits in the total amount of ₱12,390,439.57.[1]

THE PARTIES

Petitioner Tetra Pak Philippines, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission, with principal place of business at the 19th Floor, Twenty-Five Seven McKinley, 25th Street corner 7th Avenue, Fort Bonifacio, City of Taguig,[2] and is registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 000-169-584-000.[3]

[1] Statement of the Case, Pre-Trial Order dated August 15, 2022, Docket – Vol. II, p. 1021.
[2] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 980.
[3] Exhibits "P-2" and "P-2-1", Docket – Vol. II, pp. 644 to 646.

Respondent is the duly appointed Commissioner of the BIR, who is tasked to assess and collect all national internal revenue taxes, fees, charges, and enforce all forfeitures, penalties and fines connected therewith. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS

On February 15, 2021, petitioner filed with the Regular Large Taxpayers Audit Division (RLTAD) III of the BIR a claim for refund of its excess and/or unutilized creditable input VAT, in the amount of ₱12,390,439.57, together with supporting documents, for the 4th quarter of calendar year (CY) 2018.[5]

Thereafter, on May 7, 2021, petitioner received an undated letter from the RLTAD III, informing petitioner of the denial of its claim for refund.[6]

The present *Petition of Review* was filed on June 4, 2021.[7] The case was raffled to this Court's Third Division.

On January 31, 2022, respondent posted his *Answer*,[8] interposing the following special and affirmative defenses, to wit: (1) the *Petition* must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and (2) petitioner is not entitled to the claim for refund or issuance of a tax credit certificate.

Respondent transmitted on May 27, 2022 the *BIR Records* for this case, consisting of thirty-five (35) folders.[9]

The Pre-Trial Conference was set and held on June 23, 2022.[10] Prior thereto, respondent's *Pre-Trial Brief* was submitted on June 20, 2022,[11] while petitioner's *Pre-Trial Brief* was filed on June 21, 2022.[12]

On July 22, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[13] which was admitted and approved by the Court in its Resolution dated August

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[4] Par. 1.2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 980.
[5] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 981; Exhibits "P-4" and "P-6", Docket – Vol. II, pp. 649 to 650.
[6] Par. 1.4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 981; Exhibits "P-39" and "P-39-1", Docket – Vol. I, pp. 48 to 52.
[7] Docket – Vol. I, pp. 6 to 44.
[8] Docket – Vol. II, pp. 509 to 521.
[9] Respondent's *Compliance* dated May 26, 2022, Docket – Vol. II, pp. 538 to 541.
[10] Resolution dated March 14, 2022, Docket – Vol. II, pp. 532 to 533; Minutes of the hearing held on, and Order dated, June 23, 2022, Docket – Vol. II, pp. 956, and 958 to 959, respectively.
[11] Docket – Vol. II, pp. 545 to 548.
[12] Docket – Vol. I, pp. 550 to 576.
[13] Docket – Vol. II, pp. 980 to 999.

2, 2022,[14] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated August 15, 2022 was issued by the Court.[15]

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Marielle C. Cadelina,[16] petitioner's Accounting Manager; and (2) Mr. Glenn Ian D. Villanueva,[17] the Court-commissioned independent certified public accountant (ICPA).[18]

The ICPA's *Partial ICPA Report* and *Final ICPA Report* were submitted on September 15, 2022,[19] and October 5, 2022,[20] respectively.

On November 10, 2022, petitioner filed its *Formal Offer of Documentary Evidence with Motion for Commissioner's Hearing*,[21] to which respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on November 21, 2022.[22] In the Resolution dated March 13, 2023,[23] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of Revenue Officer Riza F. Budaño.[24]

On May 7, 2023, respondent filed his *Formal Offer of Evidence*,[25] to which petitioner filed its *Comment/Opposition (To the Respondent's Formal Offer of Evidence dated 07 June 2023)* on June 23, 2023.[26] In the Resolution dated July 14, 2023,[27] the Court admitted all of respondent's offered evidence.

In the meantime, the present case was transferred to this Court's Second Division per the Resolution dated June 9, 2023.[28]

[14] Docket – Vol. II, pp. 1001 to 1002.
[15] Docket – Vol. II, pp. 1021 to 1029.
[16] Exhibit "P-49", Docket – Vol. II, pp. 585 to 631; Minutes of the hearing held on, and Order dated September 22, 2022, Docket – Vol. 3, pp. 1222 to 1223.
[17] Exhibit "P-78", Docket – Vol. 3, pp. 1228 to 1252; Minutes of the hearing held on, and Order dated, October 20, 2022, Docket – Vol. 3, pp. 1459 to 1461.
[18] *Oath of Commission* dated August 16, 2022, Docket – Vol. I, p. 1031; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket – Vol. II, pp. 1030, and 1032 to 1033, respectively.
[19] Exhibit "P-77", Docket – Vol. 3, pp. 1045 to 1116.
[20] Exhibit "P-48", Docket – Vol. 3, pp. 1120 to 1218.
[21] Docket – Vol. 3, pp. 1466 to 1491.
[22] Docket – Vol. 3, pp. 1680 to 1682.
[23] Docket – Vol. 3, pp. 1696 to 1697.
[24] Exhibit "R-4", Docket – Vol. II, pp. 526 to 529; Minutes of the hearing held on, and Order dated, May 23, 2023, Docket – Vol. 3, pp. 1698 to 1700.
[25] Docket – Vol. 3, pp. 1701 to 1704.
[26] Docket – Vol. 3, pp. 1707 to 1716.
[27] Docket – Vol. 3, p. 1722.
[28] Notice, Docket – Vol. 3, p. 1706.

Petitioner filed its *Memorandum* on August 22, 2023.[29] However, respondent failed to submit his memorandum.[30]

The present case was considered submitted for decision on September 12, 2023.[31]

Hence, this Decision.

ISSUE

The issue, for this Court's resolution, is:

> "Whether or not [petitioner] Tetra Pak is entitled to a refund and/or to the issuance of tax credit certificate in the amount of Php12,390,439.57[,] representing its excess and/or unutilized input VAT attributable to its zero-rated sales of goods and services for the fourth quarter of CY 2018."[32]

Petitioner's arguments:

Petitioner primarily argues that it is entitled to the refund or issuance of a tax credit certificate of the ₱12,390,439.57 input VAT, which is attributable and/or allocable to its zero-rated sales in the 4th quarter of CY 2018; that respondent's denial of its claim for refund for the said period is without legal basis; and that the BIR Records show that petitioner was denied due process as there was no proper evaluation of its application.

Respondent's counter-arguments:

To recall, in his *Answer*, respondent contends that the *Petition* must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and that petitioner is not entitled to the claim for refund or issuance of a tax credit certificate.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

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[29] Docket – Vol. 3, pp. 1723 to 1762.
[30] Records Verification dated September 4, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1765.
[31] Minute Resolution dated September 12, 2023, Docket – Vol. 3, p. 1766.
[32] Stipulation of the Issue, JSFI, Docket – Vol. II, p. 981.

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

Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963[33] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law)], provides 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (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

[33] 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.

> 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."

Pursuant to the above provision, jurisprudence has laid down requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT, as follows:

> <u>As to the timeliness of the filing of the administrative and judicial claims</u>:
>
> 1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[34]
>
> 2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;[35]
>
> <u>With reference to the taxpayer's registration with the BIR</u>:
>
> 3. the taxpayer is a VAT-registered person;[36]
>
> <u>In relation to the taxpayer's output VAT</u>:
>
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[37]
>
> 5. for zero-rated sales under Section 106(A)(2)(1) and (2);

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[34] *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.

[35] 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.

[36] *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.

[37] *Ibid.*

106(B); [38] and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations;[39]

As regards the taxpayer's input VAT being refunded:

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

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

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[42] and

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

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.[44] Thus, petitioner's compliance with all the

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[38] Section 106(B) cited in Section 112(A) of the NIRC of 1997, as embodied in RA No. 8424, was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads 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." (*Emphasis supplied*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

[39] *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.

[40] *Ibid.*

[41] *Ibid.*

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

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

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

VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[45] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[46] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[47]

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.[48]

Furthermore, 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.[49] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims 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 2018, which closed on December 31, 2018. Counting two (2) years from the said date, petitioner had until **December 31, 2020** within which to file its administrative claim for refund. On October 6, 2020, however, Revenue Regulations (RR) No. 27-2020[50] extended the deadline for filing claims for VAT refund for the calendar quarter ending December 31, 2018 to **February 15, 2021**. Thus, petitioner's

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[45] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[46] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[47] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[48] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.
[49] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.
[50] SUBJECT: Regulations Suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act.".

administrative claim was timely filed on **February 15, 2021**,[51] complying with the *first* requisite.

The *second* requisite 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 under Section 112(C) of the NIRC of 1997, as amended. Thus, from the filing of petitioner's administrative claim on February 15, 2021, respondent had ninety (90) days or until May 17, 2021,[52] to act on the said claim.

Notably, respondent is deemed to have acted on petitioner's administrative claim within the said ninety (90)-day period when OIC-ACIR Manuel V. Mapoy issued the letter denying the application for VAT refund of petitioner which was received by the latter on May 7, 2021.[53] Counting from this date, the present *Petition for Review* filed on June 4, 2021 was timely made within the prescribed thirty (30)-day period, hence, satisfying the above-stated *second* requisite.

Petitioner is a VAT-registered person.

Petitioner likewise complied with the *third* requisite, considering that it is shown that it is registered with the BIR as a VAT taxpayer, under TIN 000-169-584-000.[54]

Petitioner had zero-rated sales during the 4th quarter of CY 2018, but only in the amount of ₱113,339,416.38.

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

In its amended Quarterly VAT Return for the 4th quarter of CY 2018,[55] petitioner reported total sales/receipts of ₱960,487,569.57, consisting of VATable sales/receipts of ₱793,098,133.39, and zero-rated sales/receipts of ₱167,389,436.18, as shown below:

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[51] Par. 1.3, Stipulation of Facts, JSFI, Docket – Vol. II, p. 981; Exhibits "P-4" and "P-6", Docket – Vol. II, pp. 649 to 650.
[52] May 16, 2021 fell on a Sunday.
[53] Exhibit "P-33", Docket – Vol. I, pp. 377 to 379; and Exhibit "R-3", BIR Records, pp. 552 to 554.
[54] Exhibits "P-2" and "P-2-1", Docket – Vol. II, pp. 644 to 646.
[55] Exhibit "P-7", Docket – Vol. III, pp. 1534 to 1535.

VATable Sales/Receipts	₱ 793,098,133.39
Zero-Rated Sales/Receipts	167,389,436.18
Total Sales/Receipts	**₱960,487,569.57**

Petitioner's alleged zero-rated sales/receipts of ₱167,389,436.18, and its supporting documents were examined by the Court-commissioned ICPA, Mr. Glenn Ian D. Villanueva, and found that the zero-rated sales/receipts consisted of the following:[56]

Particulars	Reference	Amount
Zero-rated sale of goods to DTI-EMB accredited exporter, and Board of Investments (BOI)/Philippine Economic Zone Authority (PEZA)-registered entities	Exhibit "P-52-1"	₱ 150,745,620.04
Sale of services to PEZA-registered entities	Exhibit "P-52-2"	7,992,755.00
Zero-rated sale of service dated outside the 4th quarter of CY 2018	Exhibit "P-56"	6,162,875.00
Unsupported zero-rated sales	*(none)*	2,488,186.14
	Total	**₱167,389,436.18**

The amounts of ₱6,162,875.00 and ₱2,488,186.14 shall outrightly be denied of VAT zero-rating, being dated outside the period of claim and unsupported, respectively.

On the other hand, the amounts of ₱150,745,620.04 and ₱7,992,755.00 totaling ₱158,738,375.04 are further broken down as follows: [57]

Customer	Registered with/Accredited by	*Considered Export Sales*		
		Goods	Services	Total
Cardinal Agri Products, Inc.	PEZA	₱ 5,386,727.59	₱ 3,806,318.00	₱ 9,193,045.59
Del Monte Philippines, Inc.	PEZA	24,106,139.65	4,186,437.00	28,292,576.65
Eau de Coco Inc.	PEZA	52,310.79		52,310.79
Franklin Baker, Incorporated	PEZA	14,923,309.41		14,923,309.41
	Subtotal	₱ 44,468,487.44	₱ 7,992,755.00	₱ 52,461,242.44
		Export sales of goods to export-oriented enterprises whose export sales exceed 70% of total annual production		
Celebes Coconut Corporation	BOI	₱ 17,863,314.65		₱ 17,863,314.65
Century Pacific Agricultural Ventures Inc	BOI	51,007,614.29		51,007,614.29
Peter Paul Coconut Water Corp.	DTI-EMB	33,276,956.95		33,276,956.95

[56] Exhibit "P-48", par. 2.1 and 3, Docket – Vol. III, pp. 1125 to 1126.
[57] Par. 5.7, *Memorandum*, Docket – Vol. III, pp. 1734 to 1735; Annex A, Exhibit "P-48" (ICPA Report), Docket – Vol. III, p. pp. 1145 to 1148.

Superstar Coconut Products Co., Inc	DTI-EMB	4,129,246.71		4,129,246.71
	Subtotal	*₱ 106,277,132.60*		*₱ 106,277,132.60*
		₱150,745,620.04	**₱7,992,755.00**	**₱158,738,375.04**

Considered export sales of goods and/or services to PEZA-registered entities.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

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

(A) *Rate and Base of Tax.* – xxx

xxx xxx xxx

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

(a) *Export Sales.* - The term **'export sales'** means:

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**; and

xxx xxx xxx

(c) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate." *(Emphases added)*

Moreover, 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;** *(Boldfacing supplied)*

Relative thereto, Sections 4.106-5(a)(5) and 4.108-5(b)(3) of RR No. 16-2005, as amended by RR No. 4-2007, also provide:

> "**SEC. 4.106-5. *<u>Zero-Rated Sales of Goods or Properties</u>*.** – 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
>
> (5) 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 *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*;** (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA*

> *7227*; (4) 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); (5) 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.
>
> xxx xxx xxx
>
> (c) *Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement"* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, **sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate.**" *(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 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)*

One of the special laws mentioned in the above provisions, which specifically applies to this case, is RA No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof respectively provide as follows:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

> **The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin**, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphases supplied)*
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx." *(Emphases supplied)*

Since the Ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within an Ecozone are considered exports to a foreign country subject to 0% VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[58] to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a

[58] G.R. No. 150154, August 9, 2005.

> separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."[59] *(Emphases added)*

Based on the foregoing, sales of goods and services by a VAT-registered taxpayer, such as petitioner, 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)(5) and 4.108-5 of RR No. 16-2005, as amended.

Petitioner submitted PEZA Certifications[60] proving that its clients, namely, Cardinal Agri Products, Inc. (CAPI), Del Monte Philippines, Inc. (DMPI), Eau de Coco Inc. (EDCI), and Franklin Baker, Incorporated (FBI), are PEZA-registered entities and entitled to VAT zero-rating for CY 2018.

Accordingly, petitioner's sales to the aforementioned entities for the 4th quarter of CY 2018 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, as amended, provided that the same are supported by VAT zero-rated sales invoices (SIs) [for sales of goods] and ORs [for sales of services] issued in accordance with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which provides:

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

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[59] Now at 12% VAT rate.

[60] Exhibits "P-13", "P-12", "P-14" and "P-15", Docket – Vol. 3, pp. 1549, 1548, 1550 and 1551, respectively.

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

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

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

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

(b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address

and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

The foregoing provisions are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, which are all quoted hereunder:

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

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

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

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

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

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

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

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

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

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

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the SIs and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, *viz.*:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at One hundred pesos (P100.00) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

To support its zero-rated sales of goods and/or services to CAPI, DMPI, EDCI and FBI, petitioner submitted the following SIs and ORs it issued to the said PEZA-registered customers for the 4th quarter of CY 2018, to wit:

Customer Name	Considered Export Sales[61]		Supporting Documents (Exhibit Nos.)
	Goods	Services	
CAPI	₱5,386,727.59	₱3,806,318.00	"P-53-56", "P-53-58", "P-53-65", "P-53-89", "P-53-90", "P-53-107" (SIs for sales of goods); and "P-53-118" to "P-53-120" (ORs for sales of services)
DMPI	24,106,139.65	4,186,437.00	"P-53-2" to "P-53-6", "P-53-14" to "P-53-19", "P-53-23" to "P-53-26", "P-53-30" to "P-53-34", "P-53-36", "P-53-45", "P-53-46", "P-53-50", "P-53-57", "P-53-59", "P-53-108", "P-53-115" (SIs for sales of goods) and "P-53-117"; (OR for sales of services)
EDCI	52,310.79		"P-53-13", "P-53-111" (SIs for sales of goods)
FBI	14,923,309.41		"P-53-20", "P-53-35", "P-53-49", "P-53-55", "P-53-73", "P-53-96", "P-53-103", "P-53-104", "P-53-112" and "P-53-114" (SIs for sales of goods)
Total	**₱ 44,468,487.44**	**₱7,992,755.00**	

A scrutiny of the above-listed SIs and ORs shows that the SIs supporting the sales of goods amounting ₱44,468,487.44 are compliant with invoicing requirements under the law and regulations quoted earlier. However, the ORs supporting the sales of services in the amount of ₱7,992,755.00 did not indicate the nature of services paid, a clear violation of Section 113(B)(3) of the NIRC of 1997, as amended and the same are unsigned by the authorized signatory indicated therein, hence, must be disallowed.

Accordingly, only the amount of ₱44,468,487.44 representing petitioner's sales of goods to PEZA-registered entities for the 4th quarter of CY 2018 qualifies for VAT zero-rating.

[61] Amounts were based on the "Zero-Rated Sales per Schedule of Sales" column of *Annex A* of ICPA Report (Exhibit "P-48", Docket – Vol. III, pp. 1145 to 1148).

Export sale of goods to export-oriented-enterprise whose export sales exceed 70% of total annual production.

Pursuant to Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, in order for the sale of goods to an export-oriented enterprise whose export sales exceed 70% of total annual production be qualified as zero-rated sales, the following essential elements must be met:

1.) the sale was made by a VAT-registered person;
2.) the buyer must be considered as an export-oriented enterprise; and,
3.) the goods sold must be used as raw materials or packaging materials for the goods exported by the export-oriented enterprise.

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

As for the *second* essential element, Section 4.106-5(a)(3) of RR No. 16-2005 provides that any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise.

Petitioner claims that its sales to Export Marketing Bureau (EMB)-registered entities Superstar Coconut Product Co. Inc. (SCPCI) and Peter Paul Coconut Water Corp. (PPCWC) are considered export sales entitled to VAT zero-rating. In support thereto, petitioner presented the Certificate of Accreditation with Accreditation No. EMB-1829 of SCPCI as an eligible exporter under RA No. 7844, otherwise known as the Export Development Act, which was issued by the EMB on July 2, 2018 and is valid until July 1, 2019,[62] as well as the Certificate of Accreditation with Accreditation No. EMB-1802 of PPCWC as an eligible exporter under RA No. 7844 which was issued by the EMB on February 20, 2018 and is valid until February 19, 2019.[63] Thus, the above Certificates of Accreditation can be used as valid proof of entitlement to VAT zero-rating of petitioner's sales thereto in the 4th quarter of calendar year 2018 or for the period October to December 2018.

Nevertheless, RMC No. 17-96 dated February 20, 1996 had the occasion to clarify that an accreditation as an exporter under the Export Development Act is different from the requirement to qualify as an export-oriented enterprise, thus:

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[62] Exhibit "P-16", Docket – Vol. III, p. 1552.
[63] Exhibit "P-17", Docket – Vol. III, p. 1553.

"REVENUE MEMORANDUM CIRCULAR NO. 17-96

SUBJECT: *Clarification of Issues Affecting Zero-Rated Sales and Claims for Input Tax Credit/Refund under Republic Act No. 7716, Otherwise Known as the 'Expanded VAT Law'*

xxx xxx xxx

Q-12 Explain the distinction between the requirement for accreditation under the Export Development Act ('earns at least 50% of its normal operating revenues from the sale of its products or services abroad for foreign currency') and requirement to qualify as an export-oriented enterprise ('whose export sales exceed 70% of the total annual production of the preceding taxable year').

A-12 The 50% requirement is only for *accreditation as an exporter* under the Export Development Act while the *70%* requirement is for entitlement to apply for *effective zero-rating* of transactions under Sec. 100(2)(a)(3) (*now Sec. 106(A)(2)(a)(3) of the Tax Code*) and Sec. 102(2)(b)(5) (*now Sec. 108(B)(5) of the Tax Code*) by export oriented enterprises."

Prior to the enactment of RA No. 9337, which amended the NIRC of 1997, as amended, sales made to entities accredited under the Export Development Act falls under the zero-rated export sales under the then Section 100(2)(a)(3) *(now Sec. 106(A)(2)(a)(3))* of the NIRC, as implemented by Section 4.100-2(a)(3) of RR No. 7-95 (*now Section 4.106-5(a)(3) of RR No. 16-2005),* which provides that any enterprise whose export sale exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise **upon accreditation as such under the provisions of the Export Development Act (RA No. 7844) and its implementing rules and regulations.**

However, upon enactment of RA 9337 and its implementing RR No. 16-2005, the phrase *"upon accreditation as such under the provisions of the Export Development Act (R.A. 7844) and its implementing rules and regulations"* was omitted and the present tax laws and regulations in effect during CY 2018 is silent as to the zero-rating classification of sales made to an enterprise accredited under the Export Development Act and how it shall be entitled to VAT zero-rating.

The Court finds that the mere accreditation under the Export Development Act is not sufficient proof of entitlement to VAT zero-rating, especially considering that the tax laws and regulations in effect at the time petitioner made the sale is silent as to the treatment and entitlement to zero-rating of this type of sale. Thus, petitioner's reported sales of goods to PPCWC and SCPCI in the total amount of ₱37,406,203.66 shall be denied of VAT zero-rating for non-compliance with the *second* essential element.

As for petitioner's other customers, Celebes Coconut Corporation (CCC) and Century Pacific Agricultural Ventures Inc. (CPAVI), the respective BOI Letter Endorsement for VAT zero-rating were presented to prove that they are export-oriented enterprises whose export sales exceed 70% of the total annual production of the preceding taxable year, with details shown as follows:[64]

Export-Oriented Enterprise	Percentage of Export Sales to Total Sales	Period When Export Sales Were Made
Celebes Coconut Corporation	100.00%	January 1 to December 31, 2017
Century Pacific Agricultural Ventures, Inc.	82.2%	January to December 31, 2017

It can be noted from the above information provided in the BOI Letters that CCC and CPAVI are indeed considered export-oriented enterprises for making export sales exceeding 70% of their total annual production of the preceding taxable year 2017, thus, qualifying petitioner's sales thereto amounting to ₱68,870,928.94 during the 4th quarter of taxable year 2018 to VAT zero-rating.

Hence, petitioner complied with the *second* essential element, but only insofar as its sales of goods to CCC and CPAVI in the amount of ₱68,870,928.94 is concerned.

As for the *third* essential element, a VAT-registered person claiming VAT zero-rated sale of goods to export-oriented enterprise must present the following:

1.) the sales invoice as proof of sale of goods; and,
2.) the goods sold must be used as raw materials or packaging materials for the goods ultimately exported by the export-oriented enterprise.

With respect to the first item, petitioner presented the following SIs in support of its zero-rated sale of goods to its export-oriented customers, CCC and CPAVI, to wit:

[64] Exhibits "P-9" and "P-11", Docket – Vol. III, pp. 1539 and 1547, respectively.

Customer Name	Amount	SIs (Exhibit Nos.)
CCC	₱ 17,863,314.65	"P-53-37", "P-53-38", "P-53-54", "P-53-72", "P-53-93" to "P-53-95" and "P-53-113"
CPAVI	51,007,614.29	"P-53-8", "P-53-9", "P-53-27" to "P-53-29", "P-53-43", "P-53-44", "P-53-51" to "P-53-53", "P-53-60", "P-53-66" to "P-53-71", "P-53-74" to "P-53-82", "P-53-85" to "P-53-88", "P-53-92", "P-53-97", "P-53-100" to "P-53-102", "P-53-109" and "P-53-110"
Total	**₱68,870,928.94**	

An examination of the above-listed SIs issued to CCC and CPAVI shows that the same are compliant with the invoicing requirements under the VAT law and regulations.

With respect to the second item, the same SIs indicate that the description of goods sold pertain to packaging materials.

Verily, the total export sale of goods to export-oriented enterprises whose export sales exceed 70% of total annual production in the amount of ₱68,870,928.94 satisfied the *third* essential element and qualified as VAT zero-rated sales.

In fine, and for purposes of compliance with the *fourth* requisite, petitioner satisfactorily established that it had zero-rated sales for the 4th quarter of CY 2018, but only to the extent of ₱113,339,416.38, as determined below:

Considered zero-rated export sales to PEZA-registered entities	₱ 44,468,487.44
Zero-rated sales to export-oriented enterprise whose export sales exceed 70% of total annual production	68,870,928.94
Valid zero-rated sales	**₱113,339,416.38**

Notably, since the zero-rated sales in this case do not fall under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the *fifth* requisite does not apply and need not be complied with.

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

For the 4th quarter of CY 2018, petitioner declared total input VAT of ₱138,053,286.15, to wit:[65]

Input tax carried over from previous period		**₱ 24,524,572.37**
Current input tax:		

[65] Exhibit "P-7", Docket – Vol. III, pp. 1534 to 1535.

Amortized input tax on purchase of capital goods exceeding ₱1Million		
Input Tax on Purchase of Capital Goods exceeding ₱1Million	₱3,950,995.94	
Less: Input Tax on Purchase of Capital Goods exceeding ₱1Million deferred for the succeeding period	3,621,746.28	₱ 329,249.66
On domestic purchases of goods other than capital goods		814,308.65
On importation of goods other than capital goods		91,518,176.00
On domestic purchase of services		16,580,095.85
On services rendered by non-residents		4,286,883.62
Total current input tax		**₱113,528,713.78**
Total input VAT for the period		**₱138,053,286.15**

Of the total reported input VAT of ₱138,053,286.15, petitioner claims for refund the alleged excess input VAT of ₱12,390,439.57, broken down as follows:[66]

Input VAT on purchase of goods allocable to zero-rated sales	₱ 73,169.14
Input VAT on purchase of services allocable to zero-rated sales	1,762,957.08
Input VAT on purchase of capital goods allocable to zero-rated sales	16,766.64
Input VAT on importations directly attributable to zero-rated sales	10,537,546.71
Total input VAT claimed for refund	**₱12,390,439.57**

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

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[67]

[66] Exhibit "P-5", Docket – Vol. II, p. 653.
[67] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 158885 and 170680, April 2, 2009.

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

A portion of the input taxes being claimed are due or paid.

Relative to 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 during the 4th quarter of CY 2018 are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which 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:
>
> (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."

The above provisions are implemented by Sections 4.110-1 to 4.110.-3 of RR No. 16-2005, which states:

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

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

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

(a) Purchase or importation of goods

(1) For sale; or

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

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

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."

Additionally, Section 4.110-8 of RR No. 16-2005 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.

xxx xxx xxx

(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."

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by a VAT SIs or ORs issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended, which were quoted earlier.

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

Petitioner's refund claim in the amount of ₱12,390,439.57 arose from input VAT on domestic purchases of goods and services and importations of goods in the total amount of ₱19,599,424.78, broken down as follows:[68]

Particulars	**Before Allocation** (Exhibit "P-61" to "P-64")	**After Allocation**[69]
Domestic Purchases of Goods exceeding ₱1 Million before allocation[70] (Exhibit "P-63")	₱ 82,000.00	₱ 16,766.64

[68] Exhibit "P-48" (ICPA Report), Docket – Vol. 3, p. 1132, footnote 3.

[69] The amounts "After Allocation" for domestic purchases were computed by multiplying the amounts "Before Allocation" by the percentage allocation for zero-rated sales, derived by petitioner as follows:

Petitioner's basis of sales volume for input VAT allocation: *(Exhibit "P-5", Docket – Vol. II, p. 652.)*		
Vatable sales per administrative claim	₱ 617,597,865.02	79.55%
Zero-Rated sales per administrative claim	**158,738,375.04**	**20.45%**
Total Sales per administrative claim	₱ 776,336,240.06	100.00%

[70] The amounts After Allocation for the "Domestic Purchases of Goods exceeding ₱1Million" and "Domestic Purchases of Goods other than Capital Goods" were interchanged in the ICPA Report footnote.

Domestic Purchases of Goods Other than Capital Goods before allocation (Exhibit "P-61")	357,845.76	73,169.14
Importation of Goods Other Than Capital Goods before allocation (Exhibit "P-64")	10,537,546.72[71]	10,537,546.71
Domestic Purchases of Services (Exhibit "P-62")	8,622,032.30	1,762,957.08
Total	**₱19,599,424.78**	**₱12,390,439.57**

Accordingly, petitioner submitted VAT SIs and ORs[72] to support its input taxes from domestic purchases of goods and services, and SADs, SSDTs, IIDEs and BOC ORs[73] to support its importations.

The ICPA's examination of the aforesaid documents disclosed that the input VAT from domestic purchases of goods other than capital goods, and services, in the respective amounts of ₱54,676.18 and ₱1,757,089.55, must be disallowed for failure to comply with the invoicing and substantiation requirements under the NIRC of 1997, as amended, and its implementing regulations, to wit:[74]

Particulars	Reference	Input VAT
A. Purchase of goods		
a) Domestic purchases of goods supported by VAT Sales Invoice where the Company's address is not indicated/incorrect/incomplete	*Annex E-2*	₱ 39,466.55
b) Domestic purchase of goods supported by VAT Sales Invoice not signed by the authorized representative	*Annex E-3*	15,209.63
	Subtotal (A)	**₱ 54,676.18**
B. Purchase of services		
a. Domestic purchases of services supported by VAT ORs where the nature of service is not indicated and/or reference documents are indicated as services in the face of ORs not supported with reference documents	*Annex F-2*	₱ 2,877.60
b. Domestic purchases of services supported by VAT ORs where the nature of service is not indicated and/or reference documents are indicated as services in the face of ORs not supported with reference documents and the amount claimed is different from the amount per support	*Annex F-3*	917,492.26
c. Domestic purchases of services supported by VAT ORs where the Company's address is incomplete	*Annex F-4*	835,106.96
d. Domestic purchases of services supported by VAT ORs not signed by authorized representative and the amount claimed is different from the amount per support	*Annex F-5*	1,612.73

[71] Actual total amount is ₱10,537,546.71 per schedule.
[72] Exhibits "P-65-1" to "P-65-14", "P-66-1" to "P-66-103" and "P-67".
[73] Exhibits "P-69-1" to "P-69-45", "P-70-1" to "P-70-45", "P-72-1" to "P-72-11" and "P-73-1" to "P-73-11".
[74] Exhibit "P-48", Docket – Vol. III, p. 1134 to 1135.

Subtotal (B)	**₱1,757,089.55**
Total input VAT with exceptions	**₱1,811,765.73**

Moreover, the ICPA finds it proper to disallow the ₱82,000.00 input VAT from domestic purchase of capital goods for being not supported by VAT SIs, and the supporting document[75] did not indicate the description, unit cost and quantity of the capital goods being acquired.[76]

In addition to the above disallowances, this Court's further verification reveals that the following input VAT on domestic purchases of goods and services amounting to ₱1,792,292.94 must likewise be disallowed for the grounds stated hereunder:

Supplier Name	Exhibit No.	Input VAT
Purchase of goods		
Supported by VAT SIs but without the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as required under RR 10-2015, as amended by RR 16-2018, and/or lacking the signature of the authorized signatory		
HENKEL PHILIPPINES, INC.	"P-65-1"	₱ 34,994.40
HENKEL PHILIPPINES, INC.	"P-65-2"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-3"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-4"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-5"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-6"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-7"	30,419.25
HENKEL PHILIPPINES, INC.	"P-65-8"	15,209.63
HENKEL PHILIPPINES, INC.	"P-65-9"	15,209.63
HENKEL PHILIPPINES, INC.	"P-65-10"	15,209.63
MINOX VALVES AND FITTINGS PHILS., INC.	"P-65-11"	40,030.79
	Subtotal	**₱ 303,169.58**
Purchase of services		
Supported by VAT ORs but the nature of services was not indicated therein		
SGS PHILIPPINES, INC.	"P-66-43"	₱ 13,874.64
SGS PHILIPPINES, INC.	"P-66-44"	5,364.35
SPPS AUTOCAD AND ENGINEERING SERVICES	"P-66-45"	282,075.74
SPPS AUTOCAD AND ENGINEERING SERVICES	"P-66-46"	239,740.81
SPPS AUTOCAD AND ENGINEERING SERVICES	"P-66-47"	126,799.04
SPPS AUTOCAD AND ENGINEERING SERVICES	"P-66-48"	32,125.67
THEMIS ENTERPRISE INC	"P-66-49"	150,315.33
VIVENTIS SEARCH ASIA INC	"P-66-52"	12,085.49
GNS ENTERPRISES	"P-66-65"	17,259.48
CILBERLIFT FREIGHT INTERNATIONAL, INC	"P-66-67"	7,044.00
BENDED INDUSTRIAL SERVICES	"P-66-68"	144,377.56
THEMIS ENTERPRISE INC	"P-66-72"	22,227.50

[75] Exhibit "P-67".
[76] Exhibit "P-48", Docket – Vol. III, p. 1135.

SGS PHILIPPINES, INC.	"P-66-74"	9,279.78
SPPS AUTOCAD AND ENGINEERING SERVICES	"P-66-75"	53,448.64
THEMIS ENTERPRISE INC	"P-66-76"	172,077.04
SCHENKER PHILIPPINES, INC.	"P-66-87"	33,344.09
SCHENKER PHILIPPINES, INC.	"P-66-88"	29,416.97
SCHENKER PHILIPPINES, INC.	"P-66-89"	10,215.57
Supported by VAT OR but with alterations on details and the countersignature differs from that of the authorized signatory		
BPI CENTURY TOKYO RENTAL CORPORATION	"P-66-24"	108,160.10
Supported by VAT OR but without the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as required under RR 10-2015, as amended by RR 16-2018		
SGV & CO.	"P-66-22"	19,891.56
	Subtotal	**₱1,489,123.36**
	Total additional disallowances	**₱1,792,292.94**

Considering the foregoing, relative to petitioner's compliance with the *seventh* requisite, out of the ₱19,599,424.77 total input VAT before allocation, only the amount of ₱15,913,366.10, represents its valid input VAT due or paid for the 4th quarter of CY 2018, as computed below:

		Less: Disallowances		
	Input VAT before allocation	**Per ICPA findings**	**Per this Court's further verification**	**Valid Input VAT**
Amortized input tax on purchase of capital goods exceeding 1Million	₱ 82,000.00	₱ 82,000.00	-	-
Input VAT on domestic purchases of goods other than capital goods	357,845.76	54,676.18	₱ 303,169.58	-
Input VAT on importation of goods other than capital goods	10,537,546.71	-	-	₱ 10,537,546.71
Input VAT on domestic purchases of services	8,622,032.30	1,757,089.55	1,489,123.36	5,375,819.39
Total	**₱19,599,424.77**	**₱1,893,765.73**	**₱1,792,292.94**	**₱15,913,366.10**

A portion of the valid input VAT of ₱15,913,366.10 is attributable to petitioner's zero-rated sales for the 4th quarter of CY 2018.

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.

As determined earlier, the valid input VAT for the 4th quarter of CY 2018 amounting to ₱15,913,366.10, consisted of the following:

Input VAT on importation of goods other than capital goods	₱ 10,537,546.71
Input VAT on domestic purchase of services	5,375,819.39
Total	**₱15,913,366.10**

In the present case, petitioner, in its refund claim, specifically identified the input VAT on importations directly related to its zero-rated sales and allocated the input VAT on domestic purchases to its zero-rated sales.

Specifically identified input VAT on importations.

As regards the input VAT on importations specifically identified by petitioner as related to its zero-rated sales, the ICPA examined the importation documents and the corresponding zero-rated SIs per *Annexes I-1 to I-3* of its *Report*,[77] and verified whether the commercial invoices for the importations are the same invoice referenced in the SAD or the commercial invoices actually pertain to the importation using the AWB No. indicated in the IIDE, and that the details of items and other information in the said commercial invoices are the same with that indicated in the VAT zero-rated SIs.

However, a scrutiny of the said schedules tracing the specifically identified input VAT to the related zero-rated sales reveals that out of the ₱10,537,546.71 substantiated input VAT on importations, the amount of ₱2,067,015.51, as detailed below, was not proven as directly related to the valid zero-rated sales for the 4th quarter of CY 2018, *viz.*:

SAD/SSDT/IIDE/BOC OR/Invoices (importations)					**Related SIs (zero-rated sales) per schedule**		
Exhibit Nos.	**Customs/ IIDE Reference No.**	**Referenced Invoice No. (per SAD)/Airway Bill No. (per IIDE and BOC OR)**	**VAT Amount (per SSDT/BOC OR)**	**Invoice No. (importations)**	**Exhibit No.**	**Document No.**	**Client Name**
The details per the importation invoices do not match with the details per the related zero-rated SIs							
"P-69-5", "P-70-5", "P-71-5"	C156734	1940420179	₱ 7,314.00	1940420179	"P-53-19"	2110036411	DMPI
"P-69-12", "P-70-12", "P-71-12"	C160132	1940422099	11,039.00	1940422099	"P-53-49"	2110036710	FBI
"P-69-17", "P-70-17", "P-71-17"	C188708	1940430485	61,048.78[78]	1940430485	"P-53-89"	2110037375	CAPI

[77] Exhibit "P-48", Docket – Vol. III, pp. 1214 to 1218.
[78] Portion of ₱61,753.00 input VAT subject to allocation:

Total input VAT		₱61,753.00

"P-69-32", "P-70-32", "P-71-32"	C27710	1209196005	181,712.00	1209196005	"P-53-104"	2110037589	FBI
"P-72-11", "P-73-11", BIR Rec. Folder 19, p. 401	00538058885	6747408080	5,655.00	1940429540 (AWB No. 6747408080)	"P-74-5"	2110038044	DMPI
		Subtotal	***₱ 266,768.78***				
The details per the importation invoices matched with the details per the related zero-rated SIs but the related zero-rated sales were not made during the 4th quarter of CY 2018							
"P-69-17", "P-70-17", "P-71-17"	C188708	1940430485	704.22[79]	1940430485	"P-74-1"	2110038875	CAPI
"P-69-29", "P-70-29", "P-71-29"	C4129	1209197335 1209197336	₱ 177,788.00	1209197335 1209197336	"P-74-2" "P-74-3"	2110037939 2110037940	CPAVI
"P-69-30", "P-70-30", "P-71-30"	C4130	1909197278	193,478.00	1909197278	"P-74-4"	2110037938	CPAVI
		Subtotal	***₱ 371,970.22***				
The invoice purportedly supporting the importation does not pertain to the invoice referenced in the SAD, hence, the details to be matched cannot be verified							
"P-69-38", "P-70-38", "P-71-38"	C26705	1200895266	₱ 300,860.00	1200895267	"P-53-95"	2110037481	CCC
		Subtotal	***₱ 300,860.00***				
Input VAT directly related to the invalid zero-rated sales to EMB-registered entities, PPCWC and SCPCI							
"P-69-41", "P-70-41", "P-71-51"	C305785	1209187063	₱ 3,321.67	1209187063	"P-53-61"	2110036963	PPCWC
"P-69-41", "P-70-41", "P-71-54"		1209187067	183,013.91	1209187067	"P-53-62"	2110036964	PPCWC
"P-69-41", "P-70-41", "P-71-57"		1209187092	70,888.03	1209187092	"P-53-63"	2110036965	SCPCI
"P-69-42", "P-70-42", "P-71-69"	C14491	1209194252	71,412.57	1209194252	"P-53-99"	2110037537	SCPCI
"P-69-43", "P-70-43", "P-71-73"	C324577	1209191103	312,865.86	1209191103	"P-53-83"	2110037230	PPCWC
"P-69-44", "P-70-44", "P-71-82"	C324626	1209191114	66,817.20	1209191114	"P-53-84"	2110037267	PPCWC
"P-69-45", "P-70-45", "P-71-88"	15260	1209197618	328,160.63	1209197618	"P-53-106"	2110037603	PPCWC
"P-69-45", "P-70-45", "P-71-89"		1209197619	50,936.64	1209197619	"P-53-105"	2110037602	PPCWC
		Subtotal	***₱1,127,416.51***				
		Total	**₱2,067,015.51**				

The valid input VAT of ₱371,970.22 which were traced as related to zero-rated sales not made during the 4th quarter of CY 2018, cannot be refunded for being outside the period of claim.

It bears stressing that for purposes of determining when petitioner can be said to be legally entitled to claim a refund of input tax due or paid, what

Less: Portion of input VAT directly attributable to zero-rated sale made outside the period of claim	704.22
Input VAT subject to allocation	**₱61,048.78**

[79] Portion of ₱61,753.00 input VAT directly attributable to zero-rated sale made outside the period of claim:

Net Value per importation invoice [page 2 (12)]	US$110.58
Corresponding input VAT [US$110.58 x 12%]	US$ 13.27
Multiplied by conversion rate for 12/20/2018 per Annex A of ICPA Report	53.07
Input VAT directly attributable to zero-rated sale per SI No. 2110038875	**₱704.22**

matters is not the date when the purchases of goods and services were made, but rather, the date when petitioner's zero-rated sales were made. Indeed, it is only at the time of such sale that petitioner can establish with definiteness that the input taxes due or paid were, in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

The ₱1,127,416.51 valid input VAT directly related to the alleged zero-rated sales to PPCWC and SCPCI, likewise, cannot be refunded, since the sales to these clients are not qualified for VAT zero-rating, as determined earlier.

On the other hand, the valid input VAT of ₱266,768.78 and ₱300,860.00, or a total of ₱567,628.78, although not traced as directly attributable to zero-rated sales, may be refunded, but subject to allocation on the basis of petitioner's sales volume for the period.

Thus, only the input VAT of ₱8,470,531.20[80] is directly attributable to petitioner's valid zero-rated sales.

Not specifically identified input VAT on domestic purchase subject to allocation.

As to the remaining valid input VAT on the domestic purchases of services amounting to ₱5,375,819.39, and the valid input VAT on importations found as not directly related to zero-rated sales amounting to ₱567,628.78, considering that these amounts cannot be directly identified with specific sales, the same shall be allocated proportionately on the basis of petitioner's volume of sales, thus:

Valid input VAT on importations	₱ 567,628.78
Valid input Vat on domestic purchase of services	5,375,819.39
Total input VAT for allocation	**₱ 5,943,448.17**
Divided by total sales per amended VAT return	960,487,569.57
Multiplied by valid zero-rated sales	113,339,416.38
Input VAT allocated to valid zero-rated sales	**₱ 701,338.54**

Thus, only the input VAT of ₱701,338.54 is allocable to petitioner's valid zero-rated sales of ₱113,339,416.38.

In fine, with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱9,171,869.74 represents its valid input VAT directly attributable and allocable to its valid zero-rated sales, as summarized below:

[80] Validly substantiated input VAT on importations of ₱10,537,546.71 less input VAT on importations not proven as directly related valid zero-rated sales for the 4th quarter of CY 2018 in the amount of ₱2,067,015.51.

Input VAT on importations directly attributable to valid zero-rated sales	₱ 8,470,531.20
Input VAT on domestic purchase of services and importations allocated to valid zero-rated sales	701,338.54
Total Valid input VAT attributable to valid zero-rated sales	**₱9,171,869.74**

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

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

The Supreme Court, in *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) vs. Commissioner of Internal Revenue*[81] *("Chevron")*, 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 added)*

Clearly, concerning 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

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

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

In the present case, petitioner effectively opted to avail of the second option. Petitioner's output VAT liability for the 4th quarter of CY 2018 amounting to ₱95,171,776.01 was offset against the input VAT carried-over from previous period in the amount of ₱24,524,572.37 and a portion of its input VAT from current purchases attributable to its VATable sales in the amount of ₱70,647,203.64. Hence, the input VAT allegedly attributable to its zero-rated sales in the amount of ₱12,390,439.57 is undiminished by any output VAT liability during the subject period and was claimed for refund or issuance of tax credit certificate in its entirety, as shown below:

		Per amended Quarterly VAT Return for the 4th quarter of 2018 (Exhibit "P-7")[82]	**Input VAT Attributable to**		
			VATable Sales ***(a less b)***		**Zero-Rated Sales (refund claim)**
Output VAT due		₱ 95,171,776.01			
Less: Input VAT carried over from previous period		24,524,572.37			
Output VAT still due		₱ 70,647,203.64			
Input VAT from current transactions					
Domestic purchases of capital goods exceeding ₱1 Million (Amortized portion)	*(a)*	₱ 329,249.66	₱ 312,483.02	*(b)*	₱ 16,766.64
Domestic purchases of goods other than capital goods		814,308.65	741,139.51		73,169.14
Importation of goods other than capital goods		91,518,176.00	80,980,629.29		10,537,546.71
Domestic purchases of services		16,580,095.85	14,817,138.77		1,762,957.08
Services rendered by non-residents		4,286,883.62	4,286,883.62		
Total		₱ 113,528,713.78	₱ 101,138,274.21		₱ 12,390,439.57
Less: Output Vat still due		70,647,203.64	70,647,203.64		
Excess input VAT as of 4th quarter of CY 2018		**₱42,881,510.14**	**₱30,491,070.57**		**₱12,390,439.57**

Moreover, although the claimed input VAT of ₱12,390,439.57, which included the ₱9,171,869.74 valid input VAT attributable to zero-rated sales, was carried-over by petitioner in its succeeding amended Quarterly VAT Returns,[83] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[84] in its amended Quarterly VAT Return for the 1st quarter of CY 2020, thereby preventing the carry-over or application of such input taxes in the following taxable periods. Thus, petitioner is deemed to have fulfilled the *ninth* requisite for the grant of its claim for refund/tax credit of input VAT.

Correspondingly, out of the total claim of ₱12,390,439.57, petitioner has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate only in the amount of ₱9,171,869.74 representing its excess and/or

[82] Docket – Vol. III, pp. 1534 to 1535.
[83] Exhibits "P-28" to "P-32", Docket – Vol. III, pp. 1562 to 1571.
[84] Exhibit "P-32" (Line 23D), Docket – Vol. III, p. 1571.

unutilized input VAT attributable to its zero-rated sales for the 4th quarter of CY 2018.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND**, in favor of petitioner, the amount of **₱9,171,869.74** representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 4th quarter of CY 2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice