REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION[1]

MAXIMA MACHINERIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9210

Members:

Castañeda, Jr., *Chairperson, and*
Manahan, *JJ.*

Promulgated:

JAN 3 0 2019

1:00 p.m.

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DECISION

CASTAÑEDA, JR., ***J.*:**

THE CASE

Before this Court is a Petition for Review filed by Maxima Machineries, Inc. on November 27, 2015, praying for the issuance of tax credit certificate (TCC) in the amount of ₱22,242,848.81 representing unutilized input value-added tax (VAT) arising from its zero-rated transactions for the period covering the first quarter of fiscal year (FY) ending March 31, 2014.

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[1] Section 1, Rule VIII of the Internal Rules of the Court of Tax Appeals: "Section 1. *Case assigned to a justice for study and report.* --- Every Division Case, whether appealed or original, assigned to a Justice for study and report shall be retained by him even if he is transferred to another Division. The Justice, though transferred, shall write the report with the other members of the Division to which the case was originally submitted for decision. Their Division shall be called Special (No.) Division."

THE FACTS

Petitioner Maxima Machineries, Inc. is a domestic corporation duly organized under and by virtue of the laws of the Philippines, with principal business address at 871 Quezon Avenue, Bgy. Sta. Cruz, Quezon City. It is a VAT-registered taxpayer, with Tax Identification No. (TIN) 006-618-023-000.[2]

As stated in its Amended Articles of Incorporation,[3] its primary purpose is:

> "To buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesaler, importers and exporters, except the manufacture of food, drugs and cosmetics. xxx"

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 22, 2013, petitioner filed with the BIR its Quarterly VAT Return for the period covering April 1, 2013 to June 30, 2013 (first quarter of FY ending March 31, 2014).[4] Petitioner claims that it made zero-rated sales amounting to ₱260,115,930.50, and that for the current period, petitioner made domestic purchases of goods other than capital goods and domestic purchases of services in the total amount of ₱893,497,256.47; in which it generated input taxes in the total amount of ₱107,219,670.78. Petitioner also points out that for the period April 1, 2013 to June 30, 2013, the accumulated excess input VAT credit of petitioner from its domestic purchases of goods other than capital goods, importation of goods other than capital gz

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[2] Docket (Vol. II), Exhibit "P-3", p. 955.
[3] Docket (Vol. II), Exhibit "P-1", pp. 942-953.
[4] Docket (Vol. II), Exhibit "P-49", pp. 1008-1009.

goods, and domestic purchases of services that is allocated to its VAT zero-rated transactions is in the aggregate amount of ₱22,242,848.81, which has not been applied against output tax in the succeeding quarters/years.[5]

On June 30, 2015, petitioner filed with the BIR, through the Large Taxpayers Service-Regular LT Audit Division I, an administrative claim for the issuance of tax credit certificate totaling ₱22,242,848.81 representing excess input VAT that is allocable to its VAT zero-rated sales for the first quarter of FY 2014.[6]

Petitioner alleges that respondent did not act on its administrative application for refund or tax credit, and with the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended, on October 28, 2015, petitioner filed the instant Petition for Review on November 27, 2015, which is within 30 days from October 28, 2015.

On December 28, 2015, respondent filed a Motion for Extension of Time to File Answer,[7] which the Court granted in an Order[8] dated January 5, 2016.

On February 1, 2016, respondent filed an Answer,[9] containing the following arguments and Special and Affirmative Defenses:

> "4. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.
>
> 5. Respondent submits that petitioner failed to demonstrate that the amount of ₱22,242,848.81 which is the subject of the case at bar was erroneously or illegally collected. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law. ge

[5] Docket (Vol. I), pp. 15-16.
[6] Docket (Vol. II), Exhibits "P-52" and "P-53", pp. 1099 and 1100-1118, respectively.
[7] Docket (Vol. I), pp. 317-321.
[8] Docket (Vol. I), p. 323.
[9] Docket (Vol. I), pp. 324-337.

6. Before the instant Petition for Review should be given due course, petitioner should prove that it submitted the relevant pieces of documents to substantiate its claim and had observed the procedure laid down in Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

> **'(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.** – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

7. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of one hundred twenty (120) day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

8. Clearly, the law requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

9. Furthermore, Section 112 (C) of the 1997 NIRC clearly states that there should be a prior administrative claim filed with respondent before judicial resort can be had in the Court of Tax Appeals, where relevant documents must be submitted by the taxpayer to support its claim for refund. Failure on the part of the taxpayer to file the administrative claim and submit relevant documents on administrative level, makes the administrative claim for tax refund or credit pro-forma and shall be construed as if no administrative claim was filed at all.

10. In case such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the

administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny it claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credits.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' *(Emphasis and underscoring supplied)*

11. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of ₱22,242,848.81 representing unutilized input taxes that is allocable to its VAT zero-rated transactions as declared in its Quarterly VAT Return for the period April 1, 2013 to June 30, 2013 for its Fiscal Year ending March 31, 2014.

12. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

xxx xxx xxx

13. In the case entitled ***Commissioner of Internal Revenue vs. Rosemarie Acosta***, the Honorable Supreme Court had the occasion to say: ge

'xxx Noteworthy, the requirements under Section 230 (now Section 204) for refund claims are as follows:

1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;

2. The claim for refund must be a **categorical demand** for reimbursement;

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.**

In our view, the law is clear. A claimant must first file a written claim for refund, **categorically demanding recovery of overpaid taxes** with the CIR, before resorting to an action in court. This obviously is intended, first, **to afford the CIR an opportunity to correct the action of subordinate officers;** and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure xxx.' (Emphasis and understanding supplied)

14. In the present case, petitioner failed to submit all the necessary documents needed for the application of its VAT refund.

15. The purpose of requiring the filing of the administrative claim for refund/tax credit and submission of supporting documents relevant to a claim for tax refund/credit is to give the administrative agency concerned the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with a condition precedent renders the Petition for Review dismissible.

16. In this case, the revenue officers who audited petitioner's claim for refund made the following findings:

'To validate their claims, verification of the import entry and internal revenue declaration (IERD), local purchases invoices of goods and services disclosed the following audit findings, to wit:

a. The summary of importation as revised totaled ₱99,175,781.58. However, the IEIRD attached was not in sequence with the schedule, various copies were not readable, the computation of the input tax differs from the actual input tax as shown per sampling;

b. The original attachment of the application showed loose photocopies for the domestic purchases.

In as much as the subject taxpayer still failed to submit the complete import entry and internal revenue declaration, complete sales invoices and official receipts in sequence with the required schedule, the revenue officer has no other recourse but to deny the claim. A letter of denial will be sent to the subject taxpayer. Considering that the subject taxpayer also filed a 'Petition for Review with the CTA'

17. Based on the above findings of the revenue officers who conducted the audit, they recommended for the denial of the tax credit/refund for failure to submit the additional documents material to the granting of the tax credit/refund.

18. The failure of petitioner to substantiate its claim for refund before the office of the respondent and the filing of the instant petition before this Honorable Court deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of ***Jariol vs. Commission on Elections***, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

19. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad of activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames.

20. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

21. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

22. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'

23. Taxes collected are presumed to be in accordance with laws and regulations.

24. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

25. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be denied for lack of merit."

On February 9, 2016, the Court set the pre-trial conference of the instant case on March 17, 2016 and ordered both parties to submit their respective Pre-Trial Briefs.[10] Respondent submitted his Pre-Trial Brief[11] on March 11, 2016; while petitioner submitted its Pre-Trial Brief[12] on April 11, 2016.

The parties then filed their Joint Stipulation of Facts and Issues[13] on April 29, 2016, which was subsequently approved by this Court in the Pre-Trial Order[14] promulgated on May 10, 2016.

On July 13, 2016, upon motion of petitioner pursuant to Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals, this Court commissioned Mr. Neil U. Sison as the Independent Certified Public Accountant (ICPA) for the case.[15]

Petitioner, aside from the ICPA, presented as witnesses Ms. Marlene D. Manuel and Mr. Yusuke Yamada, petitioner's Finance Officer and Chief Finance Officer, respectively.

Thereafter petitioner filed its Formal Offer of Evidence[16] on October 27, 2016. On January 12, 2017, the Court resolved to admit all of petitioner's exhibits except for Exhibits "P-8", "P-28", "P-34" and "P-41", for failure of the exhibits formally offered and identified to correspond with the documents actually marked; Exhibits "P-55" and "P-72, for failure to present the originals for comparison; and Exhibits "P-78-J-1" to "P-78-J-2", "P-78-P-141", "P-78-P-755", "P-78-P-1512", "P-78-P-2069", "P-78-P-2323", "P-78-P-2421", "P-78-P-2462", "P-78-V-9", "P-78-V-15", "P-78-V-24", "P-78-V-25", "P-78-X-162", "P-78-AD-2", "P-78-AD-3", "P-78-AD-217", "P-78-AI-204", "P-78-AI-205", "P-78-AL-190", "P-78-AL-191", "P-78-AQ-2", "P-78-AR-9", "P-78-AR-10", "P-78-AU-3", "P-78-AU-6", "P-78-AU-7", "P-78-AU-9", "P-78-AW-12" to "P-78-AW-118", "P-78-BA-928", "P-78-BA-1025", "P-78-BA-1315", "P-78-BA-1367", "P-78-BA-1700", "P-78-BA-1701", "P-78-BA-1702", "P-78-BA-1707", "P-78-BA-1708", "P-78-BA-1863", "P-78-BA-1874" to "P-78-BA-1886", "P-78-BA-1888", "P-78-BA-1996", "P-78-BA-1997", "P-78-BA-1998", "P-78-BB-363", "P-78-BC-1" to "P-78-BC-7", "P-78-BC-9" to "P-78-BC-12", "P-78-BC-30" to "P-78-BC-41", "P-78-BC-43" to "P-

[10] Docket (Vol. I), Notice of Pre-Trial Conference, pp. 338-339.
[11] Docket (Vol. I), pp. 340-344.
[12] Docket (Vol. I), pp. 414-437.
[13] Docket (Vol. II), pp. 690-707.
[14] Docket (Vol. II), pp. 709-716.
[15] Docket (Vol. II), Order dated July 13, 2016, p. 796.
[16] Docket (Vol. II), pp. 898-1241.

78-BC-45", and "P-78-BC-48", for not being found in the records of the case.[17]

On February 8, 2017, petitioner filed a Supplemental ICPA Report.[18]

Petitioner filed a Motion for Reconsideration to the Resolution dated January 12, 2017[19] on February 17, 2017.

During the hearing on February 13, 2017 for the presentation of respondent's lone witness, Revenue Officer Felina Guimbao, counsel for respondent orally offered Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", and "R-7-1". The Court admitted all of respondent's evidence, there being no objections interposed by petitioner's counsel.[20]

In the Resolution[21] dated September 8, 2017, the Court set a hearing on October 11, 2017 for the identification of the Supplemental ICPA Report filed on February 8, 2017, subject to the payment of a fine of ₱5,000.00, and held in abeyance the resolution of petitioner's Motion for Reconsideration to the Resolution dated January 12, 2017.

After petitioner's presentation of additional evidence on October 11, 2017, petitioner filed its Supplemental Formal Offer of Evidence[22] on October 18, 2017.

In the Resolution[23] dated November 28, 2017, the Court partially granted petitioner's Motion for Reconsideration to the Resolution dated January 12, 2017. Accordingly, the Court admitted petitioner's Exhibits "P-8", "P-28", "P-34", "P-41", "P-55", "P-72, "P-78-J-1" to "P-78-J-2", "P-78-P-141", "P-78-P-1512", "P-78-P-2069", "P-78-P-2323", "P-78-P-2421", "P-78-P-2462", "P-78-V-9", "P-78-V-15", "P-78-V-24", "P-78-V-25", "P-78-X-162", "P-78-AD-2", "P-78-AD-3", "P-78-AD-217", "P-78-AI-204", "P-78-AI-205", "P-78-AL-190", "P-78-AL-191", "P-78-AQ-2", "P-78-AR-9", "P-78-AR-10", "P-78-AU-3", "P-78-AU-6", "P-78-AU-7", "P-78-AU-9", "P-78-BA-1315", "P-78-BA-1367", "P-78-BA-1700", "P-

[17] Docket (Vol. III), Resolution dated January 12, 2017, pp. 1248-1251.
[18] Docket (Vol. III), pp. 1254-1260.
[19] Docket (Vol. III), pp. 1274-1285.
[20] Docket (Vol. III), p. 1272.
[21] Docket (Vol. III), pp. 1290-1293.
[22] Docket (Vol. III), pp. 1330-1340.
[23] Docket (Vol. III), pp. 1343-1344.

78-BA-1701", "P-78-BA-1702", "P-78-BA-1707", "P-78-BA-1708", "P-78-BA-1863", "P-78-BA-1874" to "P-78-BA-1886", "P-78-BA-1888", "P-78-BB-363", "P-78-BC-1" to "P-78-BC-7", "P-78-BC-9" to "P-78-BC-12", and "P-78-BC-30" to "P-78-BC-39". However, the Court still denied Exhibits "P-78-P-755", "P-78-BA-928", "P-78-BA-1025", "P-78-BA-1996", "P-78-BA-1997", "P-78-BA-1998", "P-78-BC-40" to "P-78-BC-41", "P-78-BC-43" to "P-78-BC-45", and "P-78-BC-48", for not being found in the records of the case.

Thereafter, petitioner filed its Memorandum[24] on June 25, 2018; while respondent filed his Memorandum[25] on February 1, 2018. Subsequently, in the Resolution[26] dated February 6, 2018, the Court declared the instant case submitted for decision.

THE ISSUE

The parties submitted the following issue[27] for the Court's resolution:

> "Whether Petitioner is entitled for the issuance of tax credit certificate in the amount of ₱22,242,848.81 representing its excess and/or unutilized input VAT allocable to its VAT zero-rated sales for the period April 1, 2013 to June 30, 2013 (1st Quarter of fiscal year ending March 31, 2014)."

THE COURT'S RULING

Pertinent to the resolution of the case at bench are Sections 112(A) and (C) of the NIRC of 1997, as amended, which read:

> "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

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[24] Docket (Vol. III), pp. 1354-1404.
[25] Docket (Vol. III), pp. pp. 1405-1413.
[26] Docket (Vol. III), p. 1414.
[27] Docket (Vol. II), Joint Stipulation of Facts and Issues, Item 5, p. 691.

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 or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant thereto, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, it is imperative to prove the following:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period both in the administrative and judicial levels;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that the input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales; and

6. that the input taxes were not applied against any output VAT liability.

First Requisite: Petitioner is a VAT-registered entity.

Petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Taxpayer Identification No. 006-618-023-000, as evidenced by its BIR Certificate of Registration.[28]

Second Requisite: Petitioner timely filed its administrative and judicial claims.

Pursuant to the above-quoted Section 112(A) of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the first quarter of FY ending March 31, 2014, which closed on June 30, 2013. Counting two years therefrom, petitioner had until June 30, 2015 within which to file its administrative claim for refund or issuance of TCC. Clearly, petitioner's administrative claim[29] was timely filed on June 30, 2015.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that respondent has 120 days from the date of the submission of the complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by respondent, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of respondent. However, if after the 120-day period, respondent fails to act on the application for refund or tax

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[28] Docket (Vol. II), Exhibit "P-3", p. 955.
[29] Docket (Vol. II), Exhibits "P-52", "P-53", and "P-54", pp. 1099-1119.

credit, the remedy of the taxpayer is to appeal the inaction of respondent to this Court within 30 days.

Accordingly, from the filing of petitioner's administrative claim, together with the supporting documents, on June 30, 2015, respondent had 120 days or until October 28, 2015 to act on the said claim. Considering that respondent failed to act on the said claim within the 120-day period, petitioner had 30 days or until November 27, 2015 within which to file a judicial claim before this Court. Evidently, petitioner's judicial appeal by way of a Petition for Review was, likewise, timely filed on November 27, 2015.

Third Requisite: Petitioner is engaged in zero-rated or effectively zero-rated sales.

As stated in its Amended Articles of Incorporation, petitioner's primary purpose is to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesalers, importers and exporters, except the manufacture of food, drugs and cosmetics.[30]

Petitioner maintains that its sales of goods and services to entities registered with the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Authority (CDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC) and Board of Investments (BOI) during the period covering April 1, 2013 to June 30, 2013 are subject to zero percent (0%) VAT, pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended.

The pertinent provisions of Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, state: *gr*

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[30] Docket (Vol. II), Exhibits "P-1" and "P-1-A", p. 942.

"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

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

xxx xxx xxx

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

xxx 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."

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* –

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;"

Relative thereto, Sections 4.106-5 and 4.108-5 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-07, also provide:

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

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

(a) *Export sales.* – '*Export Sales*' shall mean:

xxx xxx xxx

(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.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and ***Provided, finally,*** **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**

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**." *(Emphasis supplied)*

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

xxx xxx xxx

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

xxx xxx xxx

SEC. 2. Section 15 of the Republic Act No. 7227, as amended, is hereby amended to read as follows:

> 'SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ)*. – Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.
>
> The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. xxx
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. xxx
>
> xxx xxx xxx
>
> Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones."

"REPUBLIC ACT NO. 7916
(as amended by Republic Act No. 8748)

AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR 9z

Further, the special laws specific to this case are Republic Act (RA) No. 7227, as amended by RA No. 9400, otherwise known as "Bases Conversion and Development Act of 1992", RA No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995", and RA No. 7922, otherwise known as "Cagayan Special Economic Zone Act of 1995". The relevant portions of said laws are quoted hereunder for ready reference:

"REPUBLIC ACT NO. 9400

AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES

SECTION 1. Section 12 of Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, is hereby amended to read as follows:

'SEC. 12. *Subic Special Economic Zone.* – xxx

xxx xxx xxx

(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. xxx

THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) AND FOR OTHER PURPOSES.

xxx xxx xxx

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.

xxx xxx xxx

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"

"REPUBLIC ACT NO. 7922

AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT IN THE MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* – This Act shall be known as the 'Cagayan Special Economic Zone Act of 1995'.

xxx xxx xxx

SEC. 3. *The Cagayan Special Economic Zone and Free Port.* – In accordance with the foregoing declared policy, there is hereby established a special economic zone and free port, to be known as the Cagayan Special Economic zone, hereinafter known as the Zone, which shall cover the entire area embraced by the Municipality of Santa Ana and the islands of Fuga, Barit, and Mabbag in the Municipality of Aparri, Province of Cagayan. *ge*

SEC. 4. *Governing Principles.* – The Cagayan Special Economic Zone shall be managed and operated under the following principles:

xxx xxx xxx

(b) Business establishments operating within the Zone shall be entitled to the existing fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority (EPZA), or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987;

(c) Any provision of existing law, rules or regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the Zone. xxx"

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 the 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.*,[31] 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 —

> ... [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.

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

> 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 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[32]." (*Emphasis supplied*)

Evidently, sales of goods and services by a VAT-registered taxpayer, such as herein petitioner, to entities located in the Ecozones, as well as, to BOI-registered entities whose products are 100% exported are considered "export sales" subject to 0% VAT rate pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5 and 4.108-5 of RR No. 16-05, as amended.

To prove that its clients are duly registered with the PEZA, SBMA, CDC, CEZA and BOI, petitioner submitted various Certifications issued by said agencies. Likewise, petitioner presented the letters of PEZA Director General, Ms. Lilia B. de Lima, and PEZA Deputy Director General for Finance and Administration, Mr. Justo Porfirio Li. Yusingco, dated June 6, 2016[33] and July 26, 2016[34], respectively, addressed to petitioner's Chief Financial Officer, Mr. Yusuke Yamada and a Certification issued by the BOI Director-Incentives Service, Ms. Erlinda

[32] Now at 12% VAT rate.
[33] Docket (Vol. II), Exhibit "P-76", pp. 1224-1226.
[34] Docket (Vol. II), Exhibit "P-77", pp. 1227-1229.

F. Arcellana, on June 7, 2016[35] confirming the issuance of VAT zero-rating certifications to certain clients of petitioner. Listed below are petitioner's clients with the corresponding proof of VAT zero-rating:

Name of Customer	Proof of VAT zero-rating	Exhibit No.	Registration Date	Validity Period
ADNAMA MINING RESOURCES	BOI Certification Letter issued on Jun 7, 2016	P-75		
ASIA INTERNATIONAL AUCTIONEERS INC	SBMA Cert. of Registration and Tax Exemption	P-78-O-1; P-5		May 24, 2013 to May 23, 2014
ASIAN DEVELOPMENT BANK	BIR Ruling No. ITAD - 49-07 dated April 13, 2007 confirming and validating ADB's Cert. of VAT Exemption dated Nov. 29, 1989	P-78-O-2		
ATLANTIC GULF AND PACIFIC COMPANY OF MANILA, INCORPORATED (AG&P)	PEZA Cert. No. 2013-0563; Confirmation Letters from PEZA	P-6; P-76; P-77	Aug 6, 2008	TY 2013
BERONG NICKEL CORPORATION	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-3; P-75	May 28, 2007	January 1, 2013 to December 31, 2013
BIGLIFT PROPERTIES & DEVELOPMENT CORPORATION	SBMA Cert. of Tax Exemption	P-78-O-4; P-13		July 27, 2012 to July 26, 2013
CAGDIANAO MINING CORP.	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-5; P-75	Sep 13, 1999	January 1, 2013 to December 31, 2013
CARMEN COPPER CORP.	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-6; P-15; P-75	Dec 13, 2006	January 1, 2013 to December 31, 2013
CEBU TOYO CORPORATION (CTC)	PEZA Certificate No. 2013-1630; Confirmation Letters from PEZA	P-16; P-76; P-77	Feb 8, 1995	TY 2013
CLARK INTERNATIONAL AIRPORT CORPORATION	CDC Cert. of Registration and Tax Exemption	P-78-O-7		April 6, 2013 to April 5, 2016
CORAL BAY NICKEL CORPORATION (CBNC)	PEZA Cert. No. 2013-0301; Confirmation Letters from PEZA	P-78-O-8; P-76; P-77	Dec 27, 2002	TY 2013
C.T.P. CONSTRUCTION AND MINING CORPORATION	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-9; P-18; P-75	Apr 17, 2008	January 1, 2013 to December 31, 2013
FCF MINERAL CORP.	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-10; P-20; P-75	Nov 4, 2010	January 1, 2013 to December 31, 2013
HINATUAN MINING CORPORATION	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-11; P-75	Oct 6, 1980 / May 27, 1991	January 1, 2013 to December 31, 2013
HONDA PARTS MANUFACTURING CORPORATION (HPMC)	PEZA Cert. No. 2013-0121; Confirmation Letters from PEZA	P-78-O-12; P-22; P-76; P-77	Jan 18, 1993	TY 2013
HOUSE TECHNOLOGY INDUSTRIES PTE., LTD. (HTIPL)	PEZA Cert. No. 2013-0059; Confirmation Letters from PEZA	P-78-O-13; P-23; P-76; P-77	Jan 5, 1996	TY 2013

[35] Docket (Vol. II), Exhibit "P-75", p. 1223.

HYS-YACHT PHILS. LTD. CO. INC.	SBMA Cert. of Tax Exemption	P-78-O-14; P-9		July 15, 2013 to July 14, 2014
INTEVALUE SERVICES INC.	CEZA Certification	P-10		September 9, 2013 to August 15, 2014
JAE PHILIPPINES, INC. (JAEPI)	PEZA Cert. No. 2013-0114; Confirmation Letters from PEZA	P-25; P-76; P-77	Nov 11, 1999	TY 2013
JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC	SBMA Cert. of Tax Exemption	P-78-O-15; P-26		Oct 3, 2012 to October 2, 2013
MAJESTIC LANDSCAPE CORPORATION (MLC)	PEZA Cert. No. 2013-0047; Confirmation Letters from PEZA	P-78-O-16; P-27; P-76; P-77	July 18, 2002 / Mar 8, 2012	TY 2013
PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR)	PEZA Cert. No. 2013-0334/ 2013-0391; Confirmation Letters from PEZA	P-78-O-17; P-28; P-76; P-77	Sep 23, 1982	TY 2013
PHIL. BATTERIES INCORPORATED (PBI)	PEZA Cert. No. 2013-1364; Confirmation Letters from PEZA	P-78-O-18; P-29; P-76; P-77	Jun 7, 2006	TY 2013
PHILIPPINE MAKOTO CORPORATION (PMC)	PEZA Cert. No. 2013-0073; Confirmation Letters from PEZA	P-33; P-76; P-77	Oct 1, 1993	TY 2013
PHILIPPINE SINTER CORPORATION (PSC)	PEZA Cert. No. 2013-0860; Confirmation Letters from PEZA	P-78-O-19; P-30; P-76; P-77	Jan 31, 2011	TY 2013
PLATINUM GROUP METALS CORPORATION (PGMC)	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-20; P-32; P-75	Nov 16, 2007	January 1, 2013 to December 31, 2013
REDONDO QUARRY AND DEVELOPMENT CORPORATION	SBMA Cert. of Tax Exemption	P-78-O-21; P-35		August 24, 2012 to August 23, 2013
RIO TUBA NICKEL MINING CORPORATION	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-22; P-75	Mar 1, 1974 / Aug 16, 2004	January 1, 2013 to December 31, 2013
SCAD SERVICES (S) PTE., LTD. (PHIL. BRANCH) (SSPL)	PEZA Cert. No. 2013-0046; Confirmation Letters from PEZA	P-78-O-23; P-36; P-76; P-77	Oct 4, 1995	TY 2013
ST. LUKE'S MEDICAL CENTER (GLOBAL CITY) INC. (SLMCGCI)	PEZA Cert. No. 2013-1014; Confirmation Letters from PEZA	P-78-O-24; P-8; P-76; P-77	Sep 1, 2008	until June 30, 2013
SUBIC CONSOLIDATED PROJECTS INC	SBMA Cert. of Tax Exemption	P-78-O-25; P-37		January 4, 2013 to January 3, 2014
SUNWEST WATER AND ELECTRIC CO (SUWECO) INC.	BOI Cert. of Registration No. 2010-206 (as RE Developer)	P-78-O-26; P-39	Nov 24, 2010	
TAGANITO HPAL NICKEL CORPORATION (THPAL)	PEZA Cert. No. 2013-1288; Confirmation Letters from PEZA	P-78-O-27; P-40; P-76; P-77	Jan 7, 2010	TY 2013
TAGANITO MINING CORPORATION	BOI Certification; BOI Certification Letter issued on Jun 7, 2016	P-78-O-28; P-75	Jul 23, 1998	January 1, 2013 to December 31, 2013
TRANS ASIA CONSTRUCTION DEVELOPMENT CORP.	CDC Cert. of Registration and Tax Exemption	P-78-O-29; P-41		April 1, 2013 to March 31, 2016
TRAVELLERS INTERNATIONAL HOTEL GROUP, INC (TIHGI)	PEZA Cert. No. 2013-0120/2013-1719; Confirmation Letters from PEZA	P-78-O-30; P-34; P-76; P-77	Dec 16, 2008	TY 2013
UNICHAMP MINERAL PHILIPPINES INC. (UMPI)	PEZA Cert No. 2013-1619; Confirmation Letters from PEZA	P-43; P-76; P-77	May 3, 2013	TY 2013

VISAYAS SLAKED LIME CORP (VSLC)	PEZA Cert. No. 2013-0908; Confirmation Letters from PEZA	P-78-O-31; P-76; P-77	Aug 11, 2010	TY 2013
WU KONG SINGAPORE PTE. LTD. (PHIL. BRANCH) (WKSPL)	PEZA Cert. No. 2013-0055; Amended Cert. of Registration No. 95-21; Confirmation Letter from PEZA	P-78-O-32; P-44; P-77	Feb 17, 1995 / Nov 9, 2011	TY 2013

Thus, petitioner's sales to the afore-mentioned entities for the period covering the first quarter of FY 2014 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, provided that the same comply with the invoicing requirements under Sections 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-05, which are all quoted hereunder:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

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

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

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

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

(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:

xxx xxx xxx

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

xxx xxx xxx

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

"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:

xxx xxx xxx

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

In its Quarterly VAT Return for the 1st quarter of FY 2014[36], petitioner reported total sales of ₱1,208,918,976.53, that included zero-rated sales in the amount of ₱260,115,930.50, to wit:

VATable Sales	₱ 932,114,519.60
Sale to Government	16,688,526.43
Zero-Rated Sales	260,115,930.50
Total Sales	**₱1,208,918,976.53**

In support of its declared zero-rated sales of ₱260,115,930.50, petitioner presented its Schedule of Zero-Rated Sales[37] and the related invoices and official receipts (ORs),[38] which were examined by the Court-commissioned ICPA, Mr. Neil U. Sison.

In his report, the ICPA ascertained that the sales in the amount of ₱212,860,730.90 qualify for VAT zero-rating, while the remaining amount of ₱47,255,199.60 does not qualify as zero-rated sales. The ICPA's findings are summarized as follows:[39]

Exhibit Reference	Description	Amount
P-78-R	Charge Sales Invoices properly classified as zero-rated sales with permit on zero-rating expiring on December 31, 2013 printed in the invoice	₱ 96,343,683.96
P-78-S	Charge Sales Invoices properly classified as zero-rated sales with permit on zero-rating expiring on March 31, 2014 printed in the invoice	28,872.00
P-78-T	Official Receipt and Charge Sales invoices properly stamped "zero-rated"	101,921,656.91
P-78-U	Charge Sales Invoices properly classified as zero-rated sales with permit on zero-rating expiring on December 31, 2012 printed in the invoice but supported by Certification of Zero-rating expiring on December 31, 2013	14,566,518.03
Total Valid Zero-rated Sales		**₱ 212,860,730.90**
P-78-V	Charge Sales invoices supporting sales of goods not properly classified as zero-rated sales	₱ 24,415,188.21
P-78-W	Official Receipts supporting sales of services not properly classified as zero-rated sales	2,524,339.28
P-78-X	Zero-rated sales supported by documents other than sales invoice and official receipt	3,489,894.57
P-78-Y	Zero-rated sales which should be declared as Vatable Sales	6,258,501.00

gr

[36] Docket (Vol. II), Exhibit "P-49", pp. 1008-1009.
[37] Docket (Vol. II), Exhibit "P-69", pp. 1178-1194.
[38] Exhibits "P-78-R-1" to "P-78-R-233", "P-78-S-1", "P-78-T-1" to "P-78-T-48", "P-78-U-1" to "P-78-U-279", "P-78-V-1" to "P-78-V-31", "P-78-W-1" to "P-78-W-10", "P-78-Y-1" to "P-78-Y-104", and "P-78-Z-1".
[39] Docket (Vol. II), Exhibit "P-79", ICPA Report, pp. 867-868, par. 5.d.1 and 2.

P-78-Z	Zero-rated sales without Certificates of VAT zero-rating from customers	3,064.00
	Zero-rated sales not supported by any document	10,564,212.54
Total Invalid Zero-rated Sales		**₱ 47,255,199.60**
Total		**₱ 260,115,930.50**

Based on the foregoing, the Court adopts the above findings of the ICPA insofar as the denial of VAT zero-rating on the amount of ₱47,255,199.60 for petitioner's failure to comply with the invoicing requirements as prescribed under the afore-quoted law and regulations.

In addition, the reported zero-rated sales in the amount of ₱109,062,764.53 shall be denied VAT zero-rating for the following reasons:

Exhibit No.	Customer Name	Amount
1. Sales of goods supported by charge sales invoices with unreadable details		
P-78-R-157	Carmen Copper Corp.	₱ 84,606.00
P-78-R-158	Carmen Copper Corp.	800,264.50
P-78-R-159	Carmen Copper Corp.	800,264.50
P-78-R-160	Carmen Copper Corp.	777,426.00
P-78-R-161	Carmen Copper Corp.	601,512.00
P-78-R-162	Carmen Copper Corp.	311,336.00
P-78-R-163	Carmen Copper Corp.	156,200.00
P-78-R-164	Carmen Copper Corp.	183,076.00
P-78-R-165	Carmen Copper Corp.	140,390.70
P-78-R-166	Carmen Copper Corp.	51,510.00
P-78-R-167	Carmen Copper Corp.	43,808.00
P-78-R-168	Carmen Copper Corp.	43,316.50
P-78-R-169	Carmen Copper Corp.	21,736.00
P-78-R-170	Carmen Copper Corp.	81,791.50
P-78-R-171	Carmen Copper Corp.	7,040.00
P-78-R-172	Carmen Copper Corp.	26,752.00
P-78-R-173	Carmen Copper Corp.	13,952.00
P-78-R-174	Carmen Copper Corp.	105,140.00
P-78-R-175	Carmen Copper Corp.	296,744.00
P-78-R-176	Carmen Copper Corp.	406,140.50
P-78-R-177	Carmen Copper Corp.	840,736.00
P-78-R-178	Carmen Copper Corp.	11,707.74
P-78-R-179	Carmen Copper Corp.	508,800.00
P-78-R-180	Carmen Copper Corp.	24,688.00
P-78-R-181	Carmen Copper Corp.	800,264.50
P-78-R-182	Carmen Copper Corp.	669,940.00
P-78-R-183	Carmen Copper Corp.	318,260.00
P-78-R-184	Carmen Copper Corp.	157,397.00
P-78-R-185	Carmen Copper Corp.	106,134.00
P-78-R-186	Carmen Copper Corp.	98,020.00
P-78-R-187	Carmen Copper Corp.	95,298.48
P-78-R-188	Carmen Copper Corp.	82,516.00
P-78-R-189	Carmen Copper Corp.	67,760.52
P-78-R-190	Carmen Copper Corp.	40,616.00
P-78-R-191	Carmen Copper Corp.	35,713.00
P-78-R-192	Carmen Copper Corp.	31,788.00

P-78-R-193	Carmen Copper Corp.	31,001.50
P-78-R-194	Carmen Copper Corp.	27,938.00
P-78-R-195	Carmen Copper Corp.	20,179.00
P-78-R-196	Carmen Copper Corp.	3,502.00
P-78-R-197	Carmen Copper Corp.	685,240.00
P-78-R-198	Carmen Copper Corp.	173,796.50
P-78-R-199	Carmen Copper Corp.	284,032.00
P-78-R-200	Carmen Copper Corp.	391,186.15
P-78-R-201	Carmen Copper Corp.	663,452.50
P-78-R-202	Carmen Copper Corp.	306,312.00
P-78-R-203	Carmen Copper Corp.	264,457.50
P-78-R-204	Carmen Copper Corp.	62,688.00
P-78-R-205	Carmen Copper Corp.	35,734.00
P-78-R-206	Carmen Copper Corp.	20,295.00
P-78-R-207	Carmen Copper Corp.	5,448.00
P-78-R-208	Carmen Copper Corp.	20,144.00
P-78-R-209	Carmen Copper Corp.	5,748.00
P-78-R-210	Carmen Copper Corp.	183,313.00
P-78-R-211	Carmen Copper Corp.	786,592.56
P-78-R-212	Carmen Copper Corp.	804,747.56
P-78-R-213	Carmen Copper Corp.	3,429,702.40
P-78-R-214	Carmen Copper Corp.	1,386,196.88
P-78-R-215	Carmen Copper Corp.	1,169,242.08
P-78-R-216	Carmen Copper Corp.	1,315,238.04
P-78-R-217	Carmen Copper Corp.	771,750.12
P-78-R-218	Carmen Copper Corp.	1,474,358.96
P-78-R-225	Jamjle Equipment and Gen. Mdse.	8,705.00
P-78-R-229	Taganito HPAL Nickel Corporation	3,890.00
P-78-T-6	CTP Construction and Mining Corp.	1,768.00
P-78-T-7	CTP Construction and Mining Corp.	2,720.00
P-78-T-8	CTP Construction and Mining Corp.	210,640.00
P-78-T-9	CTP Construction and Mining Corp.	2,184.00
P-78-T-10	CTP Construction and Mining Corp.	6,496.00
P-78-T-11	CTP Construction and Mining Corp.	1,768.00
P-78-T-12	CTP Construction and Mining Corp.	1,768.00
P-78-T-13	CTP Construction and Mining Corp.	3,600.00
P-78-T-14	CTP Construction and Mining Corp.	7,488.00
P-78-T-15	CTP Construction and Mining Corp.	8,080.00
P-78-T-16	CTP Construction and Mining Corp.	11,456.00
P-78-T-18	CTP Construction and Mining Corp.	2,864.00
P-78-T-19	CTP Construction and Mining Corp.	1,360.00
P-78-T-25	CTP Construction and Mining Corp.	229,316.00
P-78-T-26	CTP Construction and Mining Corp.	101,105.00
P-78-T-27	CTP Construction and Mining Corp.	459,668.00
P-78-T-28	CTP Construction and Mining Corp.	395,693.00
P-78-T-29	CTP Construction and Mining Corp.	102,284.00
P-78-T-30	CTP Construction and Mining Corp.	898,512.00
P-78-U-92	Platinum Group Metals Corp	140,472.00
P-78-U-93	Platinum Group Metals Corp	4,136.00
P-78-U-94	Platinum Group Metals Corp	4,136.00
P-78-U-95	Platinum Group Metals Corp	4,136.00
P-78-U-96	Platinum Group Metals Corp	6,640.00
P-78-U-97	Platinum Group Metals Corp	4,136.00
P-78-U-98	Platinum Group Metals Corp	4,136.00
P-78-U-99	Platinum Group Metals Corp	4,136.00
P-78-U-100	Platinum Group Metals Corp	4,136.00
P-78-U-101	Platinum Group Metals Corp	4,136.00
P-78-U-102	Platinum Group Metals Corp	4,136.00
	subtotal	***₱ 25,810,642.19***

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2. Sales of goods supported by charge sales invoices dated outside the period of claim			
P-78-T-4	CTP Construction and Mining Corp.	₱	241,792.00
P-78-T-5	CTP Construction and Mining Corp.		101,938.91
P-78-T-46	Sunwest Water and Electronic Co Inc		12,144,000.00
	subtotal	***₱***	***12,487,730.91***
3. Sales of goods supported by charge sales invoices without the words "zero-rated sales" written or imprinted therein			
P-78-T-31	CTP Construction and Mining Corp.	₱	892,162.50
P-78-U-111	Platinum Group Metals Corp		10,088.00
	subtotal	***₱***	***902,250.50***
4. Sales to entities not registered with PEZA, SBMA, CDC, CEZA or BOI; without proof of VAT zero-rating			
P-78-T-39	Marubeni Corporation	₱	4,199,427.36
P-78-T-40	Marubeni Corporation		2,514,399.73
P-78-T-41	Marubeni Corporation		2,630,901.10
P-78-T-42	Marubeni Corporation		45,463,375.56
P-78-T-48	Orix Metro Leasing & Finance Corp		2,901,785.71
	subtotal	***₱***	***57,709,889.46***
5. Sales to entities with proof of VAT zero-rating but outside the validity period or without validity period indicated			
P-78-Y-3	Clark International Airport Corporation	₱	8,251.47
P-78-T-46	Sunwest Water and Electric Co Inc		12,144,000.00
		₱	***12,152,251.47***
	Grand Total	**₱**	**109,062,764.53**

Thus, only the amount of ₱103,797,966.37 represents petitioner's valid zero-rated sales, computed as follows:

Total Reported Zero-Rated Sales		₱ 260,115,930.50
Less: Disallowances		
Per ICPA report	₱ 47,255,199.60	
Additional disallowances by this Court	109,062,764.53	156,317,964.13
Valid Zero-Rated Sales		**₱103,797,966.37**

Fourth and Fifth Requisites: Petitioner incurred input taxes during the 1st quarter of FY 2014 which are attributable to its zero-rated or effectively zero-rated sales for the same period.

For the first quarter of FY 2014, petitioner declared input taxes in the total amount of ₱109,078,927.32, out of which the amount of ₱22,242,848.81 is the subject of petitioner's claim for refund, to wit: 𝒻𝓁

	As declared per VAT Return[40]	As claimed for refund[41]
Input Tax Deferred on Capital Goods exceeding ₱1M from Previous Quarter	₱ 3,317,356.48	
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period	3,122,141.02	
Amortized input tax on capital goods exceeding ₱1M from previous period	₱ 195,215.46	
Add: Current input taxes:		
On Domestic Purchases of Goods Other than Capital Goods	₱ 1,747,063.63	₱ 1,747,063.63
On Importation of Goods Other than Capital Goods	99,175,780.86	97,511,739.78
On Domestic Purchases of Services	7,960,867.37	7,960,867.37
Total current input taxes	₱ 108,883,711.86	**₱107,219,670.78**
Total input taxes for the period	**₱109,078,927.32**	
Less: Input tax directly allocable to Vatable Sales		₱ 4,061,978.62
Input tax directly allocable to Government Sales		1,208,528.19
Input tax available for allocation		**₱101,949,163.97**
Multiply by declared Zero-Rated Sales		x 260,115,930.50
Divide by Total of declared Vatable and Zero-Rated Sales		÷1,192,230,450.10
Claimed Input tax allocable to zero-rated sales		**₱ 22,242,848.81**

In support of its total reported input taxes of ₱109,078,927.32, petitioner submitted various sales invoices, ORs and other related documents[42] and Import Entry and Internal Revenue Declarations (IEIRDs) with Bank Certificate/Confirmation.[43]

Upon examination of the said documents, the ICPA noted exceptions in the total amount of ₱11,390,208.54, as summarized below, which shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:[44]

Exhibit Reference	Description	Amount
a. On Domestic Purchase of Goods and Services		
P-78-AE	Domestic purchases of goods and services with no supporting documents	₱ 3,537,659.38
P-78-AF	Domestic purchases of goods supported by documents other than VAT invoices	358,720.44
P-78-AG	Domestic purchases of services supported by documents other than VAT official receipts	1,287,688.34
P-78-AH	Domestic purchases of goods and services supported by VAT invoices claimed outside the taxable period/year	1,158,995.87
P-78-AI	Domestic purchases of goods and services supported by VAT invoices and official receipts with missing/outdated ATP	335,053.08

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[40] Docket (Vol. II), Exhibit "P-49", p. 1008.
[41] Docket (Vol. III), Memorandum for the Petitioner, pp. 1392-1394.
[42] Exhibits "P-78-AA-1" to "P-78-AO-5", "P-78-AT-1" to "P-78-AW-11", and "P-78-AX-1" to "P-78-AY-26".
[43] Exhibits "P-78-AP-1" to "P-78-AS-1".
[44] Docket (Vol. II), Exhibit "P-79", ICPA Report, pp. 869-872, pars. 6.a.2, b.2 and c.2.

P-78-AJ	Domestic purchases of goods supported by VAT invoices issued in the name of the petitioner wherein VAT amount was not separately disclosed	84,558.90
P-78-AK	Domestic purchases of services supported by VAT ORs issued in the name of the petitioner wherein VAT amount was not separately disclosed	1,157,718.03
P-78-AL	Domestic purchases of goods and services supported by VAT invoices/ VAT ORs issued in the name of the petitioner but without or with incorrect name, TIN and/or address of the petitioner	1,431,260.29
P-78-AM	Domestic purchases of services supported by VAT official receipts with unreadable date or with no date indicated	66,957.22
P-78-AN	Domestic purchases of goods and services supported by VAT sales invoices and official receipts with unreadable details	5,506.69
P-78-AO	Domestic purchases of goods and services supported by Non-VAT sales invoices and official receipts	14,953.13
	Total input tax disallowed on local purchases	**₱ 9,439,071.37**
b. On Importations of Goods		
P-78-AS	Importation of goods supported by Import Entry Declarations	₱ 61,092.00
	Importation of goods with no supporting document	100,975.29
	Input VAT difference per return vs. per petition filed	1,664,041.40
	Total disallowed input tax on importations	**₱ 1,826,108.69**
c. On Deferred Input Tax on Domestic Purchase of Capital Goods exceeding One Million Pesos (claimed in 1Q of FY 2014)		
P-78-AU	Input tax deferred on purchases of capital goods exceeding ₱1M supported by sale invoices but not in compliance with invoicing requirements	₱ 77,537.49
P-78-AV	Deferred Input VAT from purchases of capital goods exceeding ₱1M supported by unreadable tape receipts/invoices	110.73
P-78-AW	Input VAT on purchases of goods other than capital goods classified as input VAT on purchases of capital goods exceeding ₱1 Million	959.40
P-78-AX	Input VAT on purchases of services classified as input VAT on purchase of capital goods exceeding ₱1 Million	1,682.59
P-78-AY	Deferred Input VAT from purchases of capital goods exceeding ₱1M supported by documents other than sales invoices	12,648.79
	Deferred input VAT from purchases of capital goods exceeding ₱1 Million without supporting documents	32,089.48
	Total disallowed deferred input tax	**₱ 125,028.48**
Total disallowances found by ICPA		**₱11,390,208.54**

In addition to the above disallowances made by the ICPA, input VAT in the amount of ₱10,795,971.58 shall likewise be disallowed for the reasons stated hereunder:

Exhibit No.	Name of Supplier	Input VAT Amount	Reason for disallowance
a. On Domestic Purchases of Goods and Services			
P-78-AA-1	J & R Appliance Center	₱ 375.00	Supported by VAT invoice but dated outside the period of claim
P-78-AA-8	Morse Hydraulics System Corp	110.68	Supported by VAT invoice but without BIR's Authority to Print (ATP)
P-78-AA-9	Morse Hydraulics System Corp	685.71	Supported by VAT invoice but without BIR's ATP
P-78-AA-13	Pilipinas Shell Petroleum Corp	7,402.38	Supported by VAT invoice but without BIR's ATP
P-78-AB-1	Cortes & Reyna Law Firm	1,392.86	Supported by VAT OR wherein the input VAT amount was not separately shown

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P-78-AB-4	Philippine Airlines	171.43	Supported by document with unreadable details
P-78-AB-5	Philippine Long Distance Telephone Company (PLDT)	480.00	Supported by VAT OR but without BIR's ATP
P-78-AB-6	Star Communications Holdings Corp	144.00	Supported by VAT OR with notation "NOT VALID AS SOURCE OF INPUT TAX"
P-78-AC-11	Manila Golf & Country Club Inc	1,975.71	Supported by VAT OR but without the address of petitioner
P-78-AC-12	Sure Weld Canvas Trading Corp.	6,428.57	Supported by VAT invoice issued not in the name of petitioner
P-78-AC-13	Visayan Electric Company	2,445.88	Supported by VAT OR issued not in the name of petitioner
P-78-AC-14	Visayan Electric Company	331.81	Supported by VAT OR issued not in the name of petitioner
	subtotal	***₱ 21,944.03***	
b. On Importations of Goods			
P-78-AP-2	Bangkok Komatsu Co. Ltd (₱3,927,760.77 per claim less ₱3,904,267.00 per doc.)	₱ 23,493.77	Supported by IEIRDs with Bank Cert/Confirmation but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-14	Bangkok Komatsu Co. Ltd (₱552,210.16 per claim less ₱548,059.00 per doc.)	4,151.16	Supported by IEIRDs with Bank Cert/Confirmation but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-15	Bangkok Komatsu Co. Ltd (₱2,075,231.61 per claim less ₱2,062,489.00 per doc.)	12,742.61	Supported by IEIRDs with Bank Cert/Confirmation but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-19	BOMAG	4,962.00	Supported by IEIRD but without machine validation
P-78-AP-25	BOMAG FAYAT Group	12,230.00	Supported by IEIRD but without machine validation
P-78-AP-26	BOMAG FAYAT Group	30,264.00	Supported by IEIRD but without machine validation
P-78-AP-27	BOMAG FAYAT Group	17,317.00	Supported by IEIRD but without machine validation
P-78-AP-28	Daewoo International	385,988.00	Supported by IEIRD but without machine validation
P-78-AP-30	Daewoo International	492,996.00	Supported by IEIRD but without machine validation
P-78-AP-31	Daewoo International	2,790,408.00	Supported by IEIRD but without machine validation
P-78-AP-32	Daewoo International	1,052,190.00	Supported by IEIRD but without machine validation
P-78-AP-40	Hensley Industries Inc	11,025.00	Supported by IEIRD but without machine validation
P-78-AP-41	Hensley Industries Inc	480,700.00	Supported by IEIRD but without machine validation
P-78-AP-74	Hyundai Corporation (₱2,362,880.79 per claim less ₱2,289,784.00 per doc.)	73,096.79	Supported by SSDT but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-75	Hyundai Corporation	328,139.93	Supported by IEIRD but without machine validation and dated outside the period of claim
P-78-AP-76	Hyundai Corporation	3,257,703.00	Supported by IEIRD but without machine validation
P-78-AP-77	Hyundai Corporation	1,634,812.15	Supported by IEIRD but without machine validation
P-78-AP-78	Hyundai Mobis (₱75,223.26 per claim less ₱74,114.00 per doc.)	1,109.26	Supported by SSDT but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-82	Hyundai Mobis (₱221,302.32 per claim less ₱219,727.00 per doc.)	1,575.32	Supported by SSDT but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AP-97	Hyundai Mobis	99,781.39	Supported by IEIRD but without machine validation
P-78-AP-101	Komatsu Diesel Co Ltd	3,356.00	Supported by IEIRD but without machine validation

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P-78-AP-132	Komatsu Ltd	34,484.99	Supported by SSDT but the amount per supporting document is lower than the amount claimed (Overclaim)
P-78-AQ-2	Hyundai Mobis	2,699.00	Supported by IEIRD but without machine validation and the VAT amount claimed does not tally with that the VAT amount per IEIRD
P-78-AR-1	BOMAG	14,650.00	Supported by document with unreadable details
P-78-AR-3	Hyundai Mobis	1,160.00	The document per exhibit reference do not refer to the amount claimed
P-78-AR-13	Komatsu Ltd	2,281.00	Supported by document with unreadable details
	subtotal	***₱10,773,316.37***	
c. On Deferred Input Tax on Purchase of Capital Goods exceeding ₱1M			
P-78-AT-5	J & R Appliance Center	₱ 10.18	Supported by VAT invoice but without the TIN of petitioner
P-78-AT-16	Golden Bat (Far East) Inc.	676.09	Supported by VAT invoice but without the TIN of petitioner
P-78-AT-31	J & R Appliance Center	24.91	Supported by VAT invoice issued not in the name of petitioner
	subtotal	***₱ 711.18***	
Total		**₱10,795,971.58**	

In sum, out of the reported input VAT of ₱109,078,927.32, only the amount of ₱86,892,747.20 represents petitioner's valid input VAT for the first quarter of FY 2014, computed as follows:

Input VAT per Returns		₱ 109,078,927.32
Less: Disallowances		
Per ICPA report	₱ 11,390,208.54	
Per Court's further verification	10,795,971.58	22,186,180.12
Total Valid Input VAT		**₱ 86,892,747.20**

Petitioner also maintains that from the total input taxes on current purchases and importations, the amounts of ₱4,061,978.62 and ₱1,208,528.19 are directly attributable to its VATable sales and sales to government, respectively, and thus, not included in the subject input VAT claim. However, considering that petitioner failed to identify from among the declared input VAT the specific input VAT directly attributable to such sales, it cannot be determined with certainty whether the same is already included in the valid or the disallowed input VAT. As such, the exclusion of the same from the subject amount of its claim shall be disregarded.

Considering further that petitioner is engaged in taxable sales subject to 0% and 12% rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱86,892,747.20 shall be allocated proportionately on the basis of the volume of its sales. Thus:

VAT Sales to Private Entities (a)	**Sales to Gov't (b)**	**Zero-Rated Sales (c)**	**Total Sales (d = a+b+c)**
₱938,373,020.60[45]	₱16,688,526.43	₱253,857,429.50[46]	₱1,208,918,976.53
Substantiated Input VAT attributable to:			
VAT Sales to private entities *(a/d x ₱86,892,747.20)*			₱ 67,446,877.12
Sales to Gov't *(b/d x ₱86,892,747.20)*			1,199,511.25
Zero-Rated Sales *(c/d x ₱86,892,747.20)*			18,246,358.83
Total			**₱ 86,892,747.20**

Sixth Requisite: Petitioner has no excess input VAT available for refund.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, the Court will now determine whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales to private entities in the amount of ₱67,446,877.12 from its output VAT liability of ₱112,604,762.47 from the said sales, petitioner still has a net output VAT payable of ₱45,157,885.35, as computed below:

Output VAT Per Return	₱ 111,853,742.35
Add: Adjustment of output tax on vatable sale treated as zero-rated sale (₱6,258,501.00 x 12%)	751,020.12
Adjusted Output VAT liability	112,604,762.47
Less: Input VAT attributable to VATable sales to private entities	67,446,877.12
Net Output VAT Payable	**₱45,157,885.35**

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Amount per VAT Return	₱ 932,114,519.60
Add: Reported as zero-rated sales which should be declared as Vatable sales as found by the ICPA (Exh. P-78-Y)	6,258,501.00
Adjusted amount of VAT sales to private entities	**₱938,373,020.60**

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Amount per VAT Return	₱ 260,115,930.50
Less: Reported as zero-rated sales which should be declared as Vatable sales as found by the ICPA (Exh. P-78-Y)	6,258,501.00
Adjusted amount of zero-rated sales	**₱253,857,429.50**

Considering that petitioner's input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability of ₱45,157,885.35. However, the input VAT attributable to zero-rated sales of ₱18,246,358.83 is significantly lower than the net output VAT payable of ₱45,157,885.35. Consequently, petitioner still has net output VAT due of ₱26,911,526.51, computed as follows:

Net Output VAT Payable	₱ 45,157,885.35
Less: Input VAT attributable to zero-rated sales	18,246,358.83
Net Output VAT Still Due	**₱26,911,526.51**

Petitioner posits that its input tax carried over from the previous period in the amount of ₱331,752,463.44 and the deferred tax on capital goods in excess of ₱1 million from previous quarters in the amount of ₱3,317,356.48 or the aggregate amount of ₱335,069,819.92 may be credited against its output tax due on its VATable sales for the instant period of claim.

However, the Court finds that although petitioner's Quarterly VAT return for the 1st quarter of FY 2014 reflected the amount of ₱331,752,463.44[47] as "Input Tax Carried Over from Previous Period", petitioner failed to fully substantiate the same.

Moreover, as can be gleaned from petitioner's Quarterly VAT Returns for the 2nd, 3rd and 4th quarters of FY 2013, petitioner declared total input VAT of ₱586,724,287.23, detailed as follows:

	2nd Quarter (Exh. P-78-AZ-1)	**3rd Quarter (Exh. P-78-AZ-2)**	**4th Quarter (Exh. P-78-AZ-3)**	**Total**
Input Tax Deferred on Capital Goods exceeding ₱1M from Previous Quarter	₱ 1,282,220.03	₱ 2,105,986.54	₱ 3,137,744.89	₱ 6,525,951.46
Add: Input Tax on Purchases of Capital Goods exceeding ₱1M during the quarter	924,196.39	1,187,255.47	374,827.01	2,486,278.87
Total	₱ 2,206,416.42	₱ 3,293,242.01	₱ 3,512,571.90	₱ 9,012,230.33
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period	2,105,986.54	3,137,744.89	3,317,356.48	8,561,087.91
Amortized input VAT on purchase of capital goods exceeding ₱1M	₱ 100,429.88	₱ 155,497.12	₱ 195,215.42	₱ 451,142.42
Add: Current Input Taxes				
On Domestic Purchase of goods other than Capital Goods	3,247,152.18	1,517,752.22	6,577,537.79	11,342,442.19
On Importation of Goods other than Capital Goods	192,547,254.30	215,598,702.19	147,311,862.44	555,457,818.93

[47] Docket (Vol. II), Exhibit "P-49", p. 1008, Line 20A.

On Domestic Purchase of Services	7,321,742.14	6,953,172.94	5,197,968.61	19,472,883.69
Total Input VAT for the period	**₱203,216,578.50**	**₱ 224,225,124.47**	**₱159,282,584.26**	**₱586,724,287.23**

In his report, the ICPA ascertained that out of the reported input VAT amount of ₱586,724,287.23, only the input VAT on importation in the amount of ₱406,653,353.92[48] was verified. Even assuming that the amount of ₱406,653,353.92 was valid input VAT attributable to VATable sales to private entities and zero-rated sales, still, the same is not enough to cover its reported output VAT on VATable sales to private entities for the same period in the aggregate amount of ₱466,422,198.30[49], thereby resulting in net output VAT payable of ₱59,768,844.38 (₱466,422,198.30 less ₱406,653,353.92). Needless to say, petitioner failed to prove that it has excess input VAT carried over from previous period.

Consequently, the input tax carry-over of ₱331,752,463.44, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, to wit:

> "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:
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."[50] *jc*

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[48] Docket (Vol. II), Exhibit "P-79", ICPA Report, par. 8.d), p. 873.

[49]

2nd Quarter (Exh. P-78-AZ-1)	₱ 84,819,335.25
3rd Quarter (Exh. P-78-AZ-2)	₱ 125,260,567.74
4th Quarter (Exh. P-78-AZ-3)	₱ 256,342,295.31
Total Output VAT on Vatable Sales-Private	**₱466,422,198.30**

[50] As amended by RA No. 9361, November 21, 2006.

Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the instant claim must be denied.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[51] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[52] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[53] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[54]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[51] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[52] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[53] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[54] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

I CONCUR:

CATHERINE T. MANAHAN
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's Division.

JUANITO C. CASTAÑEDA, JR.
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