REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NO. 9592**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 01 2020 10:17 a.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

This case involves an *Amended Petition for Review* filed by petitioner Carmen Copper Corporation against respondent Commissioner of Internal Revenue on November 17, 2017, seeking the refund of ₱21,962,748.77 representing its alleged excess and unutilized input value-added tax (VAT) attributable to zero-rated sales on its purchases of goods and services, and importation of goods, for the 4th quarter of 2014.[1]

THE PARTIES

Petitioner Carmen Copper Corporation is a domestic corporation duly organized and existing under the laws of the Philippines, with office address at Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia

[1] Statement of the Case, Pre-Trial Order dated February 20, 2018, Docket – Vol. 1, p. 383.

Complex, Barangay 76, Pasay City.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number 233-903-100-00000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law. He may be served with summons, pleadings and other processes at his office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

THE FACTS OF THE CASE

On December 29, 2016, petitioner filed with the BIR an *Application for Tax Credits/ Refunds* (BIR Form No. 1914) claim refunds or tax credits of input VAT in the amount of ₱60,158,190.74 for the period from October 1, 2014 to December 31, 2014.[5]

Petitioner received on April 17, 2017, a copy of the undated letter of respondent through Ms. Teresita M. Angeles, OIC-Assistant Commissioner for Large Taxpayers Service of the BIR informing petitioner that after verification of the documents submitted to substantiate the refund claim, it was ascertained that only the amount of ₱38,195,441.97 was recommended for the issuance of of tax credit certificate (TCC),[6] computed as follows:

	BIR	Bureau of Customs (BOC)	Total
Amount applied for TCC	₱ 6,488,990.58	₱53,669,200.16	₱60,158,190.74
Less: Disallowances			
Non compliance of invoicing requirements, Section 113, IRC	1,672,761.49		1,672,761.49
Input tax allocable to exempt sales	22,728.76		22,728.76
VAT Payment-NRFC	4,055,331.41		4,055,331.41
Capital Goods - Importation		11,440,580.00	11,440,580.00
Deferred Input Tax – Capital Goods	308,713.65	2,731,777.38	3,040,491.03
Discrepancy between Schedule vs claim		1,730,856.08	1,730,856.08
Sub-Total	6,059,535.31	15,903,213.46	21,962,748.77
Amount recommended for TCC	**₱429,455.27**	**₱37,765,986.70**	**₱38,195,441.97**

On May 17, 2017, petitioner filed the instant *Petition for Review.*[7] The case was originally raffled to this Court's First Division.

[2] Exhibit "P-1", Docket – Vol. 1, pp. 452 to 465.
[3] Exhibits "P-2" and "P-3", Docket – Vol. 1, pp. 466 and 469.
[4] Admitted Fact, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 370.
[5] Exhibits "P-6" to "P-6-3", Docket – Vol. 1, pp. 472 to 475.
[6] Exhibit "P-9", Docket – Vol. 1, p. 479 to 480.
[7] Docket – Vol. 1, pp. 10 to 24.

Respondent filed his *Answer* on August 16, 2017.[8]

The Pre-Trial Conference was initially set on February 1, 2018.[9] However, the same was reset to and held on November 16, 2017.[10] In the meantime, respondent's *Pre-Trial Brief* was filed on November 8, 2017,[11] while *Petitioner's Pre-Trial Brief* was submitted on November 10, 2017.[12]

On November 10, 2017, respondent submitted the *BIR Records* for the instant case.[13]

At the Pre-Trial Conference, petitioner's counsel, Atty. Adan T. Delamide manifested that there is a need to amend petitioner's *Petition for Review* and *Pre-Trial Brief* in order to reflect the 4th quarter of 2014 instead of the 3rd Quarter of 2014, and to change the amount stated therein to ₱21,962,748.77 (representing petitioner's alleged excess and unutilized input VAT attributable to zero-rated sales on its purchases of goods and services, and importation of goods, for the 4th quarter of 2014). Thus, the Court gave Atty. Delamide a period of four (4) days, or until November 20, 2017, within which to submit petitioner's *Amended Petition for Review* and *Amended Pre-Trial Brief.*[14]

Thus, petitioner submitted both its *Amended Petition for Review* [15] and *Amended Pre-Trial Brief*[16] on November 17, 2017.

On November 22, 2017, respondent filed a *Compliance with Manifestation,*[17] stating that respondent is adopting the *Answer* that he filed on August 16, 2017 as his *Answer to the Amended Petition for Review.*

On January 22, 2018, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[18] In the Resolution dated January 29, 2018,[19] this Court approved the said JSFI, and deemed the termination of the Pre-Trial. Subsequently, on February 20, 2018, the Pre-Trial Order was issued by this Court.[20]

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[8] Docket – Vol. 1, pp. 78 to 82.
[9] *Notice of Pre-Trial Conference* dated August 23, 2017, Docket – Vol. 1, pp. 84 to 85.
[10] *Notice of Resetting* dated September 14, 2017, Docket – Vol. 1, p. 88; Minutes of the Hearing held on, and Order dated, November 16, 2017, Docket – Vol. 1, pp. 170 to 174.
[11] Docket – Vol. 1, pp. 96 to 99.
[12] Docket – Vol. 1, pp. 245 to 261.
[13] *Compliance* dated November 10, 2017, Docket – Vol. 1, pp. 167 to 168.
[14] Minutes of the Hearing held on, and Order dated, November 16, 2017, Docket – Vol. 1, pp. 170 to174.
[15] *Compliance (Submission of Amended Petition for Review)* dated November 17, 2017, Docket – Vol. 1, pp. 176 to 177; *Amended Petition for Review,* Docket – Vol. 1, pp. 178 to 190.
[16] *Compliance (Submission of Amended Pre-Trial Brief)* dated November 16, 2017, Docket – Vol. 1, pp. 204 to 205; *Amended Petitioner's Pre-Trial Brief,* Docket – Vol. 1, pp. 206 to 221.
[17] Docket – Vol. 1, pp. 240 and 242.
[18] Docket – Vol. 1, pp. 370 to 377.
[19] Docket – Vol. 1, p. 380.
[20] Docket – Vol. 1, pp. 383 to 388.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Fernando A. Rimando,[21] Chief Finance Officer of petitioner; (2) Ms. Ms. Michelle E. Paray,[22] one of petitioner's authorized persons to transact with, receive or submit documents to the BIR pertinent to the claim of petitioner; and (3) Mr. Emmanuel Y. Mendoza,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the ICPA was submitted to the Court on May 7, 2018.[25]

On August 28, 2018, petitioner filed its *Formal Offer of Evidence.*[26] However, respondent failed to file his comment thereto.[27]

In the Order dated September 25, 2018,[28] the instant case was transferred to this Court's Third Division.

In the Resolution dated November 5, 2018,[29] the Court admitted petitioner's Exhibits, *except* for the following:

1. Exhibits "P-29-146", "P-29-159", "P-29-302" to "P-29-344", "P-34-28" to "P-34-34", "P-34-38" to "P-34-41", and "P-36-1", for not being found in the records; and

2. Exhibits "P-22-50", "P-24-1", "P-24-8", "P-24-9", "P-28-1", "P-29-225", "P-30-293", "P-30-294", "P-30-431", "P-30-432", "P-30-434", "P-30-435", "P-30-450", "P-31-7", "P-31-9", "P-31-25", "P-31-36", "P-31-53", "P-31-59", "P-31-89", "P-32-1", "P-32-3", "P-32-12", "P-32-18", "P-32-45", "P-32-57", "P-34-47", "P-34-179", "P-34-322", "P-34-352", "P-35-1", "P-35-6" to "P-35-10", "P-35-14", "P-35-15", "P-35-17", "P-35-18", "P-35-22", "P-35-45", "P-37-8" to "P-37-12", "P-38-1", "P-38-3" to "P-38-7", and "P-38-10" to "P-38-31", for being blurred, unreadable, and not properly scanned.

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[21] Exhibit "P-13", Docket – Vol. 1, pp. 109 to 125; Order dated May 29, 2018, Docket – Vol. 1, pp. 410 to 411.
[22] Exhibit "P-14", Docket – Vol. 1, pp. 263 to 276; Order dated July 26, 2018, Docket – Vol. 1, pp. 439 to 440.
[23] Exhibit "P-41", Docket – Vol. 1, pp. 428 to 486; Order dated July 26, 2018, Docket – Vol. 1, pp. 439 to 440.
[24] *Oath of Commission* dated March 22, 2018, Docket – Vol. 1, p. 393; Exhibit 'P-13", Docket – Vol. 1, pp. 359 to 365; Minutes of the hearing held on, and Order dated, March 22, 2018, Docket – Vol. 1, pp. 393-a to 393-c, and 395 to 396, respectively.
[25] Docket – Vol. 1, pp. 398 to 399.
[26] Docket – Vol. 1, pp. 441 to 451.
[27] Records Verification dated September 20, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 508.
[28] Docket – Vol. 2, p. 509.
[29] Docket – Vol. 2, pp. 511 to 513.

Petitioner then filed an *Omnibus Motion (i. For partial reconsideration of the Court's Resolution dated November 5, 2018 (ii. For a setting of a Commissioner's Hearing for the presentation of the actual exhibits marked by the ICPA)* on November 23, 2018,[30] praying for the following:

> "(i) Remarking of the duplicate Exhibit 'P-29-145' as **'P-29-146'**;
>
> (ii) Allowing Petitioner to submit the originally marked Exhibits **'P-29-159', 'P-29-302 to P-29-344', 'P-34-28 to P-34-34', 'P-34-38 to 'P-34-41',** and **'P-36-1'; and**
>
> (iii) Allowing Petitioner to submit the originally marked Exhibits **'P-22-50', 'P-24-1', 'P-24-8', 'P-24-9', 'P-28-1, 'P-29-225', 'P-30-293', 'P-30-294', 'P-30-431', 'P-30-432', 'P-30-434', 'P-30-435', 'P-30-450', 'P-31-7', 'P-31-9', 'P-31-25', 'P-31-36', 'P-31-53', 'P-31-59', 'P-31-89', 'P-32-1', 'P-32-3', 'P-32-12', 'P-32-18, 'P-32-45', 'P-32-57', 'P-34-47', 'P-34-179', 'P-34-322', 'P-34-352', 'P-35-1, 'P-35-6 to P-35-10', 'P-35-14', 'P-35-15', 'P-35-17', 'P-35-18', 'P-35-22', 'P-35-45', 'P-37-8 to P-37-17', 'P-35-18', 'P-35-22', 'P-35-45', 'P-37-8 to P-37-12', 'P-38-1', 'P-38-3 to 'P-38-7'** and **'P-38-10 to 'P-38-31',** and, if necessary, to compare it with the originals."

Respondent filed his *Comment Re: Petitioner's Omnibus Motion* on December 17, 2018.[31]

In the Resolution dated January 7, 2019,[32] the Court (1) noted the filing of respondent's *Comment Re: Petitioner's Omnibus Motion*; (2) granted the setting of Commissioner's Hearing for the presentation of the actual exhibits allegedly marked by the ICPA on January 22, 2019; and (3) cancelled the initial presentatation of respondent's evidence previously set on January 31, 2019.

In the Resolution dated March 29, 2019,[33] the Court partially granted petitioner's *Motion for Partial Reconsideration*, and admitted the Exhibits subject of the said *Motion* except for Exhibits "P-38-4" to "P-38-5", "P-38-11" to "P-38-15", "P-38-18", and "P-38-23", for being blurred and unreadable.

Respondent likewise presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent offered the testimony of Mr. Dalisay Umlas,[34] Revenue Officer IV of the BIR.

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[30] Docket – Vol. 2, pp. 514 to 519.
[31] Docket – Vol. 2, pp. 573 to 576.
[32] Docket – Vol. 2, pp. 578 to 579.
[33] Docket – Vol. 2, pp. 732 to 735.
[34] Exhibit "R-4", Docket – Vol. 1, pp.104 to108; Minutes of the hearing held, and Order dated, June 25, 2019, Docket – Vol. 2, pp. 736 to 738.

On June 26, 2019, respondent filed his *Formal Offer of Evidence*.[35] Without objection on the part of petitioner, the Court admitted respondent's Exhibits in the Resolution dated July 30, 2019.[36]

In view of the filing of respondent's *Memorandum* on August 30, 2019,[37] and that of the *Memorandum for Petitioner* on October 9, 2019,[38] the case was deemed submitted for decision on October 14, 2019.[39]

THE ISSUE RAISED BY THE PARTIES

The parties submitted this lone issue for this Court's resolution, to wit:

> "WHETHER OR NOT THE PARTIAL DENIAL OF PETITIONER'S EXCESS AND UNUTILIZED INPUT TAXES ARISING FROM PURCHASES OF GOODS AND SERVICES AND IMPORTATION OF GOODS FOR THE 4TH QUARTER OF TAXABLE YEAR 2014 IN THE AMOUNT OF PHP21,962,748.77 WAS PROPER."[40]

The ARGUMENTS OF THE PARTIES

Petitioner argues that substantive law supports its entitlement to the refund claimed for; that it complied with the requisites for a valid claim for input tax refund; that petitioner is VAT-registered and is engaged in zero-rated sales, which facts remain uncontested by respondent; that the input taxes were due or paid and were not transitional input taxes; that the input taxes have not been applied against output taxes during and in the succeeding quarters; that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; that the acceptable foreign currency exchange proceeds from petitioner's export sales have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that the input taxes which cannot be directly and entirely attributable to any of the zero-rated or effectively zero-rated sales and taxable or exempt sales shall be proportionately allocated on the basis of sales volume; and that the claim is filed within two years after the close of the taxable quarter when such sales were made.

On the other hand, respondent counter-argues that the instant *Petition* must be dismissed for failure of petitioner to substantiate its administrative

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[35] Docket – Vol. 2, pp. 739 to 741.
[36] Docket – Vol. 2, pp. 747 to 748.
[37] Docket – Vol. 2, pp. 749 to 755.
[38] Docket – Vol. 2, p. 758 to 774.
[39] Resolution dated October 14, 2019, Docket – Vol. 2, p. 776.
[40] Stipulated Issue, JSFI, Docket – Vol. 1, p. 371.

claim for refund; and that petitioner is not entitled to its claim for refund in the amount of ₱21,962,748.77.

THE RULING OF THE COURT

After a careful and thorough evaluation of the arguments of both parties, as well as the evidence they presented to support their respective positions, this Court finds partial merit in the present petition.

Petitioner is allowed to present new and additional evidence before this Court.

Before delving on the merits of this case, the Court finds it imperative to resolve respondent's proposition that since a Decision has been rendered in this case partially denying petitioner's administrative claim for failure to substantiate the same, petitioner may no longer submit documents before this Court that may not have been presented at the administrative level; and that this Court should only resolve the issue of whether the denial was proper given the evidence submitted at the administrative level.

The Court does not agree.

Section 8 of Republic Act (RA) No. 1125,[41] as amended by RA No. 9282,[42] explicitly provides that this Court is a court of record, to wit:

> "SEC. 8. *Court of record; seal; proceedings.* — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but **such proceedings shall not be governed strictly by technical rules of evidence.**" *(Emphases added)*

It is very clear from the foregoing that, as court of record, this Court is not governed strictly by technical rules of evidence. Thus, this Court is not precluded from considering evidence not presented at the administrative level.

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[41] AN ACT CREATING THE COURT OF TAX APPEALS.

[42] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

The case of *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,*[43] is instructive:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. **Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund**.
>
> **Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim.' Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance**." *(Emphases and underscoring added)*

Applying the foregoing jurisprudence, there is no doubt that this Court may consider all evidence formally offered and admitted in this case, even if some of them has not been presented at the administrative level.

Having resolved the foregoing procedural matter, the Court shall now resolve the main issue in this case.

Requisites for the grant of the refund or issuance of TCC under the law

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337,[44] 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

[43] G.R. No. 231581, April 10, 2019.
[44] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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: xxx.

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 a 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 to the above provisions, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[45]

[45] *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.

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[46]

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

3. the taxpayer is a VAT-registered person;[47]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[48]
5. for zero-rated sales under Section 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;[49]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[50]
7. the input taxes are due or paid;[51]
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;[52] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[53]

To reiterate, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[54] Thus, it behooves petitioner to show compliance with each of the foregoing requisites.

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[46] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

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

[53] *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.

[54] *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*,

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers the 4th quarter of 2014, which closed on December 31, 2014. Counting two (2) years from the said date, petitioner had until December 31, 2016, within which to file its administrative claim for refund. Considering that petitioner's administrative claim for the said quarter was filed on December 29, 2016,[55] the same was timely filed.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Considering that petitioner received a copy of the Decision rendered by OIC-Assistant Commissioner Teresita M. Angeles on April 17, 2017 (which is within the said 120-day period), petitioner has thirty (30) days, or until May 17, 2017, within which to file its judicial claim. Considering that the instant *Petition for Review* was filed on May 17, 2017,[56] petitioner's judicial claim was likewise timely filed.

Petitioner is a VAT-registered person.

Petitioner likewise complied with the *third* requisite, since it was proven that it is duly registered with the BIR as a VAT taxpayer, with TIN No. 233-903-100-001.[57]

Petitioner was able to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 4th quarter of 2014.

The *fourth* and *fifth* requisites respectively require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales

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.

[55] Exhibits "P-6" to "P-6-3", Docket – Vol. 1, pp. 472 to 475.

[56] Exhibit "P-2", Docket – Vol. 1, p. 466.

[57] Exhibits "P-2" and "P-3", Docket – Vol. 1, pp. 466 and 469.

under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Records show that petitioner's primary purpose, as stated in its Certificate of Registration with the SEC, is to carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the relevant mining laws and other relevant laws.[58]

Petitioner is also registered with the Board of Investments (BOI) as a New Producer of Copper Concentrate under BOI Certificate of Registration No. 2006-158.[59]

In the present claim, petitioner alleges that for the 4th quarter of 2014, its zero-rated sales of goods were generated from exports to various customers abroad, the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, as well as to customers enjoying fiscal incentives.[60]

In its Amended Quarterly VAT Return for the 4th quarter of 2014,[61] petitioner's total sales in the amount of ₱3,593,834,209.78, include zero-rated sales in the amount of ₱3,591,062,072.74, as shown below:

[58] Exhibit "P-1", Docket – Vol. 1, p. 452.
[59] Exhibit "P-12", Docket – Vol. 1, pp. 497 to 506.
[60] Par. 8, Statement of Facts, *Memorandum for Petitioner*, Docket – Vol. 2, pp. 759 to 760.
[61] Exhibit "P-5", Docket – Vol. 1, p. 471.

Vatable Sales	₱ 1,418,157.04
Zero-Rated Sales	3,591,062,072.74
Exempt Sales	1,353,980.00
Total Sales	**₱3,593,834,209.78**

In his *Report*, the ICPA, Mr. Emmanuel Y. Mendoza, classified petitioner's zero-rated sales into the following:

Particulars	Amounts
Direct Exportations	₱ 1,553,809,599.13
Indirect Exportations	854,232,332.07
Accrual of Direct Exportations	1,170,196,851.88
Foreign Exchange Adjustments	12,823,289.66
Total	**₱ 3,591,062,072.74**

A. Direct Exportations

With regard to petitioner's direct exportations, the governing provision is Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x
>
> 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:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng* Pilipinas (BSP);"

Based on the foregoing provision, in order for an export sale to qualify as zero-rated, the following essential elements must be present:

1.) the sale was made by a VAT registered person;
2.) there was sale and actual shipment of goods from the Philippines to a foreign country; and,

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

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

As for the *second* essential element, any VAT registered person claiming VAT zero-rated direct or considered export sales must present, among others, the following documents:

1.) the sales invoice as proof of sale of goods; and,
2.) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first type of document, the said sales invoices must comply with the pertinent invoicing requirements provided under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> "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;

xxx xxx xxx

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

This is further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended, *viz*:

"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;" *(Underscoring ours)*

In addition to the above requirements, the sales invoices must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx" *(Underscoring supplied)*
>
> "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."

Thus, only the export sales supported by the above stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

As confirmed from the ICPA's verification per the Schedule of *Zero-rated sales from exportation of goods supported by VAT invoices, bill of lading and/or export declaration,*[62] petitioner's direct exportations amounting to US$34,545,213.52 or ₱1,553,809,599.13 were duly supported with VAT zero-rated sales invoices, bills of lading and other export documents.[63]

On the other hand, the direct exportations described by the ICPA as "accrual of direct exportations" amounting to US$26,167,192.58 or ₱1,170,196,851.88, as shown below, cannot be traced to the supporting sales invoices; and the said sales invoices were dated outside the subject period of claim. Thus, shall be denied VAT zero-rating. The details of which are as follows:

[62] Exhibit "P-40", ICPA Report Binder, Annex A-1.
[63] Exhibits "P-17-1" to "P-17-40".

Name of Customer	Provisional Invoice			Final Invoice			Amount in US$	Peso Equivalent
	Exhibit No.	Doc. No.	Date	Exhibit No.	Doc. No.	Date		
MRI Trading AG	"P-17-47"	1810000001	10-Jan-2015	"P-17-56"	1820000082	02-Jun-2015	8,871,744.56	396,744,416.61
MRI Trading AG	"P-17-51"	1810000002	11-Jan-2015	"P-17-50"	1820000083	02-Jun-2015	8,595,917.30	384,409,421.56
MRI Trading AG	"P-17-55"	1810000003	25-Jan-2015	"P-17-54"	1820000084	02-Jun-2015	8,699,530.72	389,043,013.71
Total							**26,167,192.58**	**1,170,196,851.88**

Verily, petitioner's direct exportations to the extent of US$34,545,213.52 or ₱1,553,809,599.13 satisfied the *second* essential element.

Moving on to the *third* essential element, and in relation to the *fifth* requisite, petitioner submitted the Summary of inward remittances of zero-rated sales[64] and the Certification[65] issued by BDO Unibank, Inc. – Trust and Investments Group purportedly showing the payments for its direct exportations are in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

A scrutiny of the summary of inward remittances *vis-à-vis* the amounts per the certificate of inward remittances reveals that out of the direct exportations of US$34,545,213.52 or ₱1,553,809,599.13, the amount of US$16,086,025.58 or ₱721,878,233.35 cannot be traced to the inward remittances per bank certification, as detailed hereunder:

Invoice No.	Amount Declared during the quarter (in US$)	Amount per Invoice (in US$)	Treatment Cost/ Refining Cost per Invoice (in US$)	Net Amount (in US$)	Remittances per Cert. of inward remittance		Amount not traced to inward remittance per bank cert. (in US$)
					Date	Amount (in US$)	
5204	9,501,126.28	9,501,126.28	701,142.97	8,799,983.31	12-Nov-2014	*180,643.93*	8,619,339.38
					07-Oct-2014	415,354.37	
					08-Oct-2014	3,144,466.97	
					13-Oct-2014	2,251,179.06	
					15-Oct-2014	2,052,696.40	
					12-Nov-2014	86,453.33	
5205	9,319,968.10	9,319,968.10	678,450.14	8,641,517.96		*7,950,150.13*	691,367.83
					20-Oct-2014	1,858,820.59	
					03-Nov-2014	611,705.27	
					14-Nov-2014	17,157.63	
5206	9,059,027.10	9,059,027.10	690,447.77	8,368,579.33		*2,487,683.49*	5,880,895.84
5212	(31,222.72)						
					03-Nov-2014	1,230,463.08	
					07-Nov-2014	2,022,205.34	
					12-Nov-2014	1,830,952.03	
					13-Nov-2014	2,381,203.06	
5214	9,004,761.31	9,004,761.31	697,852.71	8,306,908.60	02-Dec-2014	11,374.24	830,710.85

[64] Exhibit "P-40", ICPA Report Binder, Annex A-2.
[65] Exhibit "P-16-1".

						7,476,197.75	
					25-Jun-2014	2,724,799.32	
					02-Jul-2014	2,588,969.19	
					14-Jul-2014	2,739,129.95	
					04-Dec-2014	910,948.43	
5220	23,077.22	9,664,714.51	693,859.72	8,970,854.79		*8,963,846.89*	7,007.90
					02-Jul-2014	1,803,578.87	
					08-Jul-2014	1,669,031.44	
					09-Jul-2014	3,643,081.09	
					17-Jul-2014	718,602.75	
					28-Jul-2014	166,291.53	
					04-Dec-2014	651,992.00	
5221	34,710.42	9,682,590.73	757,967.76	8,924,622.97		*8,652,577.68*	34,710.42[66]
					14-Jul-2014	2,668,160.79	
					17-Jul-2014	4,247,529.43	
					23-Jul-2014	1,024,631.57	
					30-Jul-2014	227,031.47	
					04-Dec-2014	749,298.39	
5222	21,993.36	9,818,939.49	720,365.88	9,098,573.61		*8,916,651.65*	21,993.36[67]
5223	(577,599.20)						
5226	(1,063,809.33)						
5227	(746,819.02)						
Total	**34,545,213.52**						**16,086,025.58**

	Amount not traced to inward remittance per bank certification		
Invoice No.	**Amount in US$**	**Forex rate[68]**	**Amount in Php**
5204	8,619,339.38	44.880	386,835,951.37
5205	691,367.83	44.880	31,028,588.21
5206	5,880,895.84	44.880	263,934,605.30
5214	830,710.85	44.920	37,315,531.38
5220	7,007.90	43.650	305,894.83
5221	34,710.42	43.410	1,506,779.33
5222	21,993.36	43.235	950,882.92
Total	**16,086,025.58**		**721,878,233.35**

Consequently, only the direct exportations in the amount of US$18,459,187.94 or ₱831,931,365.78[69] satisfied the *third* essential element and the *fifth* requisite.

Thus, petitioner was able to establish that its direct exportations in the amount of US$18,459,187.94 or ₱831,931,365.78 qualify as VAT zero-rated sales pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

[66] The sales amount of ₱34,710.42 formed part of the unremitted amount of ₱272,045.29 (Net Amount of ₱8,924,622.97 less remittances of ₱8,652,577.68).

[67] The sales amount of ₱21,993.36 formed part of the unremitted amount of ₱181,921.96 (Net Amount of ₱9,098,573.61 less remittances of ₱8,916,651.65).

[68] Based on the rate used per ICPA's "Schedule of Zero-rated sales from exportation of goods supported by VAT invoices, bill of lading and/or export declaration" (Annex A-1 of ICPA Report).

[69] Direct exportations of US$34,545,213.52 or ₱1,553,809,599.13 less sales without inward remittances of US$16,086,025.58 or ₱721,878,233.35.

B. Indirect Exportations

According to the ICPA, petitioner's indirect exportations of ₱854,232,332.07 pertained to sales of copper concentrates to Philippine Associated Smelting & Refining Corporation (PASAR), a company registered with the Philippine Economic Zone Authority (PEZA).

Anent the VAT zero-rating of sales to a PEZA-registered entity, Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provides:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> 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**." *(Emphases added)*

In relation thereto, Section 4.106-5 (a)(5) of RR No. 16-2005, as amended, also provides:

> "SECTION 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." *(Emphasis supplied)*

The special law applicable 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 read:

> "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." *(Emphasis supplied)*
>
> "SECTION 24. *Exemption from 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.** x x x" *(Emphasis 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 the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*,[70] 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 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**

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

> **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[71]." *(Emphasis supplied)*

Based on the foregoing, the following essential elements must be present in order for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended:

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

As regards the *first* essential element, as already pointed out earlier, petitioner is a VAT-registered person.

As for the *second* essential element, in relation to the above stated Section 113(A) and (B) of the NIRC of 1997, as amended, and Section 4.113-1 (A) and (B) of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated sale under other special laws must present, among others, the following documents:

1. the sales invoice as proof of sale of goods; and
2. any proof of the buyer's entitlement to tax incentives under other special laws (*i.e.* Certificates of Registration with the PEZA pursuant to RA 7916, for the corresponding taxable year).

Petitioner fulfilled the *second* essential element when it submitted the following: (1) the corresponding VAT zero-rated sales invoices[72] issued to PASAR for the sales amounting to ₱854,232,332.07, which were compliant with the invoicing requirements prescribed under the above-mentioned Section 113(A) and (B) of the NIRC of 1997, as amended, in relation to Section 4.113-1 (A) and (B) of RR No. 16-2005; and (2) the Certification[73] issued by PEZA showing that its client, PASAR, is registered as an Ecozone Export Enterprise under Registration Certificate No. 82-40 dated September 23, 1982, and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services for the year 2014.

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[71] Now at 12% VAT rate.
[72] Exhibits "P-17-41", "P-17-43" and "P-17-45".
[73] Exhibit "P-16-3".

Thus, petitioner sufficiently established that its indirect exportations in the total amount of ₱854,232,332.07 qualify as VAT zero-rated sales, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, in relation to Section 4.106-5 of RR No. 16-2005.

C. Foreign Exchange Adjustments

A portion of the total zero-rated sales declared by petitioner in its Amended Quarterly VAT Return for the 4th quarter of 2014 allegedly pertains to foreign exchange adjustments amounting to ₱12,823,289.66. According to the ICPA, the said foreign exchange adjustments were recorded by petitioner based on the proposed adjustments by its external auditors.

However, other than the schedule[74] purportedly showing the sales adjustments due to forex rates for certain shipments, no other document was presented by petitioner that could justify the said foreign exchange adjustments. Thus, the Court is constrained to disallow the total amount of ₱12,823,289.66 for VAT zero-rating.

In fine, and for purposes of compliance with the *fourth* requisite, only the amount of ₱1,686,163,697.85 represents petitioner's valid zero-rated sales for the 4th quarter of 2014, computed as follows:

Direct exportation	₱ 831,931,365.78
Indirect exportation (sale to PEZA-registered entity)	854,232,332.07
Valid Zero-Rated Sales	**₱1,686,163,697.85**

Having found that petitioner had valid zero-rated sales in the total amount of ₱1,686,163,697.85 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

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

In its Amended Quarterly VAT Return for the 4th quarter of 2014,[75] petitioner reported total input VAT of ₱60,158,190.74 from its domestic purchases and importation of goods and services, out of which the amount of ₱21,962,748.77 is the subject of the present claim for refund, as shown below:

[74] Exhibit "P-17-58".
[75] Exhibit "P-5", Docket – Vol. 1, p. 471.

Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 260,450,804.52
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	1,873,438.43
Total Allowable Input Tax	₱ 262,324,242.95
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	240,283,465.34
Amortized Input Tax on Capital Goods exceeding ₱1 Million	₱ 22,040,777.61
Add: Input Tax on:	
Domestic Purchases of Goods Other than Capital Goods	364,559.33
Importation of Goods Other than Capital Goods	32,185,222.00
Domestic Purchase of Services	1,682,479.24
Services Rendered by Non-Residents	4,055,331.41
Total	₱ 38,287,591.98
Total Input Taxes for the period	**₱60,328,369.59**
Less: Output Tax Due	170,178.85
Excess Input VAT	**₱60,158,190.74**
Less: Allowable Input VAT for TCC/Refund per BIR Decision[76]	38,195,441.97
Excess Input VAT claimed for refund per Petition for Review	**₱21,962,748.77**

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 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 for 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.[77]

[76] Exhibit "P-9", Docket – Vol. 1, p. 479.
[77] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

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

A portion of the input taxes being claimed are paid.

Prior to proceeding with the verification of petitioner's input VAT due or paid, the Court deems it proper to first discuss the legal merits particular to petitioner's circumstance as a BOI-registered entity, in relation to its input VAT on domestic purchases.

Pursuant to Section 3 of Revenue Memorandum Order (RMO) No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements,*viz*:

> "SECTION 3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec.4.108-1(5) of

> Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, record shows that petitioner was issued a Certification[78] by the BOI attesting to the fact that it is a BOI-registered entity with 100% exports for the year covering January 1 to December 31, 2014.

Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner for the year 2014. On the basis of said Certification, no output tax should be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to a refund of input VAT from the said domestic purchases.

In *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue,*[79] the Supreme Court affirmed the ruling of this Court *En Banc* in stating that the refund-claimant's recourse is not against the government but against the seller who shifted the output VAT, thus:

> "xxx the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
> > In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
> >
> > In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek

[78] Exhibit "P-12", Docket – Vol. 1, pp. 505 to 506.
[79] G.R. No. 190506, June 13, 2016.

> reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.**" *(Emphasis and underscoring added)*

Applying the foregoing jurisprudential pronouncements to the instant case, the proper party to seek the tax refund or credit should not be petitioner, but its suppliers. In fact, to allow petitioner a refund of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enriched himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640).* The said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

Correspondingly, only petitioner's input VAT arising from its importations and from services rendered by non-residents shall be considered in determining the amount that may be refunded.

Thus, in relation to the *seventh* requisite in claiming VAT refund, petitioner must provide supporting documents to prove that the input taxes claimed from importation of goods and input taxes withheld from services rendered by non-residents during the 4th quarter of 2014 are actually paid in accordance with Section 110(A)(1)(a) and (2)(b) of the NIRC of 1997, as amended, which provides that:

> "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:
>
> (i) 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.

xxx xxx xxx

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

xxx xxx xxx

(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(a), 4.110-2(a) and 4.110-3 of RR No. 16-2005, which provide as follows:

"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

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;

xxx xxx xxx

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."

In addition, Section 4.110-8(a)(1) and (d) of RR No. 16-2005 provides for the substantiation requirements of input tax credits from importation of goods and input taxes withheld from services rendered by non-residents, 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.
>
> xxx xxx xxx
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor."

As gleaned from the undated letter of respondent on petitioner's administrative claim for refund for the 4th quarter of 2014,[80] the total disallowed input VAT for the same period amounted to ₱21,962,748.77.

Based on the examination conducted by the ICPA, out of the said disallowance of ₱21,962,748.77, the total amount of ₱18,252,300.73 pertains to input tax from importation of goods and from services rendered by non-residents. However, only the amount of ₱18,233,684.33 was validly supported by proper documents. The ICPA's findings are summarized hereunder:

Particulars	Reference to ICPA Report	Supporting documents (Exh. No.)	Properly Substantiated	Not Properly Substantiated	Total
From Importations of Goods:					
Input tax on importation considered as capital goods	Annex B-1	"P-20-1" to "P-20-102"	₱ 11,440,580.00		₱ 11,440,580.00
No IED/Proof of payments	Annex B-2	"P-22-1" to "P-22-124"	2,389,808.81		2,389,808.81

[80] Exhibits "P-9" and "P-11", Docket – Vol. 1, p. 479 and 483, respectively.

Out of period	Annex B-3	"P-23-1" to "P-23-22"	251,206.96	₱ 18,616.40	269,823.36
Double claim	Annex B-5	"P-25-1" to "P-25-20"	96,757.15		96,757.15
From Services Rendered by Non-Residents:					
No supporting documents for payment for NRFC		"P-21-1" to "P-21-4"	4,055,331.41		4,055,331.41
Total			**₱18,233,684.33**	**₱18,616.40**	**₱18,252,300.73**

As ascertained by the ICPA,[81] the *input tax on importation considered as capital goods* in the amount of ₱11,440,580.00, pertains to importation of minor spare parts (liners, back liners, nuts and shafts) and high value consumables (fuel, oil, explosives, tires, steel balls, lime and regents) that were not capitalized as fixed assets by petitioner but were recognized as expense upon their utilization or consumption based on petitioner's fixed asset capitalization policy.[82] This is duly supported by *Statements of Settlement of Duties and Taxes* (SSDTs) and *Import Entry and Internal Revenue Declarations* (IEIRDs).

The input tax on importations described as *no IED/proof of payments* in the amount of ₱2,389,808.81, pertains to the amortized portion of input tax on petitioner's importation of capital goods which is duly supported by SSDTs or Bank official receipts and IEIRDs.

The input tax on importations described as *out of period* in the amount of ₱269,823.36, actually pertains to the remaining two months amortization of input tax on importation of capital goods during the prior taxable year. However, out of the said input tax only the amount of ₱251,206.96 is duly supported by Bank/BOC official receipts and IEIRDs. Hence, the remaining amount of ₱18,616.40 shall be disallowed for being unsupported.

As aptly found by the ICPA, the input tax described as *double claim* in the amount of ₱96,757.15, represents the proper amortization of input tax on petitioner's importation of capital goods during the prior quarters of the year 2014 that were recognized as depreciable assets and amortized over the period of 60 months. The said importation of capital goods is duly supported by SSDTs and IEIRDs.

The input tax from services rendered by non-residents in the amount of ₱4,055,331.41 is duly supported by *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* (BIR Form No. 1600) with the corresponding eFPS payment confirmations.

[81] Exhibit "P-40", ICPA Report Binder, p. 9, par. a.
[82] Exhibit "P-20".

Thus, in compliance with the *seventh* requisite, only the amount of ₱18,233,684.33 represents petitioner's valid input VAT paid on importations and services rendered by non-residents for the 4th quarter of 2014.

Since there are types of sales other than zero-rated or effectively zero-rated sales, the said amount of ₱18,233,684.33 shall be proportionately allocated on the basis of sales volume.

The *eight* requisite requires 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.

In this case, for the subject period of the claim, petitioner declared zero-rated sales, exempt sales, and taxable sales subject to 12% VAT, to wit:

Vatable Sales	₱ 1,418,157.04
Zero-Rated Sales	3,591,062,072.74
Exempt Sales	1,353,980.00
Total Sales	**₱ 3,593,834,209.78**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the said transactions, the valid input VAT of ₱18,233,684.33 shall be allocated proportionately on the basis of the volume of petitioner's total sales. However, since the respondent, in his undated letter,[83] already disallowed the total input VAT allocable to exempt sales in the amount of ₱22,728.76,[84] the valid input VAT of ₱18,233,684.33 shall be allocated only to petitioner's zero-rated sales and taxable sales subject to 12%, in this wise:

Total VATable Sales per VAT Return	₱ 1,418,157.04
Divided by the sum of Reported VATable Sales and Zero-Rated Sales (₱1,418,157.04 plus ₱3,591,062,072.74)	3,592,480,229.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid Input VAT allocated to Reported Sales subject to 12%	**₱ 7,197.88**

[83] Exhibit "P-9", Docket – Vol. 1, p. 479.
[84] Computaition of input tax allocable to exempt sales: (details per VAT return Exhibit "P-5")

Sales exempt from 12% output VAT	₱ 1,353,980.00
Divided by Total Sales	3,593,834,209.78
Multiplied by Total Available input tax	60,328,369.59
Input tax allocable to exempt sales	**₱ 22,728.76**

Total Zero-Rated Sales per VAT Return	₱ 3,591,062,072.74
Divided by the sum of Reported VATable Sales and Zero-Rated Sales	3,592,480,229.78
Multiplied by Total Valid Input VAT	18,233,684.33
Valid Input VAT allocated to Reported Zero-Rated Sales	**₱ 18,226,486.45**

Thus, for purposes of, and with regard to petitioner's compliance with, the *eighth* requisite, only the amount of ₱18,226,486.45 represents valid input VAT attributable to total reported zero-rated sales.

Determination of the refundable amount

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, this Court shall now determine whether the same was 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.

For the 4th quarter of 2014, petitioner has an output VAT liability in the amount of ₱170,178.85.[85] Since petitioner's valid input VAT allocated to sales subject to the 12% VAT in the amount of ₱7,197.84 is not enough to cover the said output VAT liability, the output VAT still due against petitioner amounted to ₱162,980.97, as computed below:

Output Tax Due	₱ 170,178.85
Less: Valid input VAT allocated to sales subject to 12% VAT	7,197.88
Output Tax Still Due	**₱ 162,980.97**

The valid input VAT attributable to total reported zero-rated sales in the amount of ₱18,226,486.45 shall then be utilized against the said remaining output VAT liability of petitioner in the amount of ₱162,980.97. Consequently, only the remaining input VAT of ₱18,063,505.48 can be attributed to the entire zero-rated sales reported by petitioner in the amount of ₱3,591,062,072.74 and only the input VAT of ₱8,481,620.92 is attributable to the valid zero-rated sales of ₱1,686,163,697.85, as computed below:

Valid input VAT allocated to Reported Zero-Rated Sales	₱ 18,226,486.45
Output VAT still due	162,980.97
Excess Input VAT allocated to Reported Zero-Rated Sales	**₱ 18,063,505.48**
Divided by Reported Zero-Rated Sales	3,591,062,072.74
Multiplied by Valid Zero-Rated Sales	1,686,163,697.85
Excess input VAT attributable to valid zero-rated sales	**₱ 8,481,620.92**

[85] Exhibit "P-5", Line 19B, Docket – Vol. 1, p. 471.

Moreover, the excess input VAT of ₱60,158,190.74 as of the end of the 4th quarter of 2014, which includes the valid input VAT claim of ₱8,481,620.92 was not carried-over to the succeeding taxable periods (4th quarter of 2014 to 1st quarter of 2018).[86] Thus, the said valid input VAT claim of ₱8,481,620.92 was not utilized or applied against any output tax liabilities in the succeeding periods.

In fine, petitioner is deemed to have fulfilled the *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

However, since respondent had already issued a TCC[87] in the amount of ₱429,455.27 in favor of petitioner, for its input VAT on domestic purchases, albeit the latter is not entitled thereto, the said amount of ₱429,455.27 shall be offset against the refundable input VAT of ₱8,481,620.92, as found by this Court, to account for the proper amount of input VAT refund that must be rightfully accorded to petitioner for the 4th quarter of 2014.

Thus, for the 4th quarter of 2014, petitioner is entitled to the refund of only the amount of ₱8,052,165.65 (₱8,481,620.92 less ₱429,455.27).

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** petitioner the amount of **₱8,052,165.65**, representing the latter's excess and unutilized input VAT from importation of goods and from services rendered by non-residents attributable to its zero-rated sales for the 4th quarter of 2014.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[86] Exhibits "P-39-1" to"P-39-13", Line 20A.
[87] Exhibit "P-9", Docket – Vol. 1, pp. 479 to 480.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
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