REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CBK POWER COMPANY LIMITED, Petitioner,	**CTA CASE NO. 10157**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 12 2023 9:10 a.m.

x - x

AMENDED DECISION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration"[1] (**MR**) filed by petitioner CBK Power Company Limited (**petitioner/CBK**) on 13 July 2023, with "Comment/Opposition (to Petitioner's Motion for Reconsideration"[2] (**Comment**) filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 04 August 2023.

In the MR, petitioner prays for this Court to reconsider and reverse the Decision promulgated on 29 June 2023[3] (**assailed**

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1 Division Docket, Volume IV, pp. 1513-1562.
2 Id., pp. 1663-1666.
3 Id., pp. 1489-1512.

Decision), which denied its claim for value-added tax (**VAT**) refund. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner CBK Power Company Limited on 30 August 2019 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

As the records show, petitioner is seeking the refund or issuance of a tax credit certificate (**TCC**) in the total amount of ₱35,593,569.57, representing the excess and unutilized input VAT on its domestic purchases of goods and services attributable to zero-rated sales for the period of 01 April 2017 to 31 December 2017 (second [2^{nd}] to fourth [4^{th}] quarters) of calendar year (**CY**) 2017. It anchors its claim on Section 108(B)(7)[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

In denying the VAT refund or issuance of a TCC, the Court held in its assailed Decision that petitioner did not proffer in evidence the Certificate of Compliance (**COC**) that would have been relevant to its period of claim, *i.e.*, <u>01 April 2017 to 31 December 2017</u>. Thus, without any proof that it validly sold electricity to the National Power Corporation (**NPC**), the Court deemed that it failed to establish that it is engaged in zero-rated or effectively zero-rated sales. It also declared that petitioner's claim is based on Republic Act (**RA**) No. 9136 or the *Electric Power Industry Reform Act of 2001* (**EPIRA**) and thus, it should conform to the requisites thereof.

Dissatisfied with the Court's findings, petitioner filed the present MR and insists essentially that this Court erred in holding that its refund

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4 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

...

(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:

...

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

claim is based on RA 9136. According to it, the refund is based solely on Section 108(B)(7) of the NIRC of 1997, as amended and Bureau of Internal Revenue (**BIR**) Ruling No. [DA-146-06] dated 17 March 2006.[5]

In addition, petitioner avers that this Court erred in relying on the cases of *Commissioner of Internal Revenue v. Toledo Power Company*[6] (**Toledo**) and *Commissioner of Internal Revenue v. Team Energy Corporation (Formerly Mirant Pagbilao Corporation)*[7] (**Team Energy**) since in these cases, the claimants based their refund claims on Section 108(B)(3)[8] of the NIRC of 1997, as amended, in relation to RA 9136. Moreover, petitioner argues that in *Toledo*, the relevant COC there was issued *after* the period of claim; while, in this case, the proffered COCs indicated that they were *renewal* of those previously granted (which covered the subject period of claim). Petitioner also points out that in *Team Energy*, the sale of electricity therein did not involve power or fuel generated through renewable sources of energy; whereas, in herein case, the sale involves energy generated through hydroelectric power plant.

Petitioner further faults this Court for relying on the Negative Certifications[9] from the Department of Energy (**DOE**) to interpret that it was availing the zero percent (0%) VAT rating under RA 9136. Having thus argued the correct basis of its refund claim, petitioner then asserts that it has sufficiently established all the elements and/or requisites that would entitle it to a VAT refund or TCC under Section 112[10] of the NIRC of 1997, as amended.

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5 Issued by then Assistant Commissioner of Legal Service James H. Roldan. The ruling provides:

...

WHEREFORE, in view of the foregoing, this Office holds that the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. 9337. Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005.

...

6 G.R. No. 196415, 02 December 2015.

7 G.R. No. 230412, 27 March 2019.

8 **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

...

(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:

...

(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[.]

9 See Exhibits "P-5", "P-6" and "P-7", Division Docket, Volume III, pp. 944-946.

10 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

As for the absence of the supposed COC (relevant to its period of claim), petitioner alleges that under BIR Ruling No. [DA-146-06], the said COC is merely a corroborative document to prove that it is a hydropower generation company and is not a mandatory requisite for VAT refund as this Court has posited. Hence, it deems as sufficient the submission of the recent COCs which are valid from 19 July 2019 to 20 July 2024.

Despite its stance on the relevance of the COC, petitioner has, nevertheless, attached in its MR the certified machine copies of COC No. 14-07-GXT 49A-0050L (Kalayaan Hydro Pump Storage Power Plant)[11]; COC No. 14-07-GXT 49B-0051L (Caliraya Hydroelectric Power Plant)[12]; and, COC No. 14-07-GXT 49C-0052L (Botocan Hydroelectric Power Plant)[13], the validities of which were from 14 July 2014 to 20 July 2019, or within the subject period of claim. Petitioner proceeds to explain that the certified true copies of the said COCs were submitted to respondent's Large Taxpayer Service (**LTS**) office at the time it filed its administrative claim for refund. According to petitioner, the documents were already elevated to this Court as part of the BIR records.

In its Comment, respondent merely counters that petitioner's VAT refund claim is based on the RA 9136, thus, its failure to prove that it is engaged in zero-rated or effectively zero-rated sales warrants the dismissal of the petition and the denial of the MR.

We resolve.

After a careful consideration and evaluation of the parties' arguments, this Court finds partial merit in petitioner's MR.

PETITIONER'S CLAIM FOR VALUE-ADDED TAX (VAT) REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) SHALL BE DETERMINED WITH THE REQUISITES UNDER REPUBLIC ACT (RA) NO. 9136

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11 Division Docket, Volume IV, p. 1605.
12 Id., p. 1607.
13 Id., p. 1608.

IN RELATION TO SECTION 108(B)(7) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED.

As held in the assailed Decision, We have ruled that petitioner's claim under Section 108(B)(7) of the NIRC of 1997, as amended, involves the application of RA 9136 as evinced by the relevant provisions under Revenue Regulations (**RR**) No. 16-2005[14] (which implements the Tax Code), and the Implementing Rules and Regulation (**IRR**) of the EPIRA[15], to wit:

> ...
>
> Petitioner claims that during the 2nd to 4th quarters of CY 2017, it sold electric power generated through hydropower, a renewable source of energy pursuant to Section 108(B)(7) of the NIRC of 1997, as amended, which states:
>
> > ...
> >
> > **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties. —*
> >
> > ...
> >
> > (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.
> >
> > ...
> >
> > (7) **Sale of power** or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, **hydropower**, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.
> >
> > ...
>
> Section 4.108-3(f) of Revenue Regulations (**RR**) No. 16-2005, which implements the foregoing provision states that:
>
> > ...
> >
> > SEC. 4.108-3. *Definitions and Specific Rules on Selected Services. —*
> >
> > ...

[14] Consolidated Value-Added Tax Regulations of 2005.

[15] Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001", 27 February 2002.

> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; *Provided*, That **sale of power or fuel generated through renewable sources of energy** such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be **subject to 0% VAT**.
>
> "*Generation companies*" refer to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility **pursuant to the provisions of the RA No. 9136 (EPIRA).** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.
>
> ...

Anent thereto, Section 4(x) of RA 9136 or the *Electric Power Industry Reform Act of 2001* (**EPIRA**) defines a generation company as follows:

> ...
>
> SEC. 4. *Definition of Terms.* —
>
> (x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity[.]
>
> ...

Moreover, Section 6 of the EPIRA provides that a Certificate of Compliance (**COC**) from the Energy Regulatory Commission (**ERC**) is a prerequisite before a generation company could operate and henceforth avail of 0% VAT, to wit:

> ...
>
> SEC. 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, **any new generation company shall, <u>before it operates</u>, secure from the Energy Regulatory Commission (ERC) a <u>certificate of compliance</u>** pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> ...

Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value-added tax zero-rated.**

...

Corollarily, Section 4(a) Rule 5 of the Implementing Rules and Regulation (**IRR**) of the EPIRA provides:

...

RULE 5
GENERATION SECTOR

...

SEC. 4. Obligations of a Generation Company.

(a) **A <u>COC</u> shall be secured from the ERC <u>before</u> commercial operation of a new Generation Facility.** The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. **A COC shall be issued upon compliance with such standards and requirements.**

(i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3)-year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility.

...

From the foregoing, it is only upon the issuance of the prerequisite COC that a generation company, like petitioner, may be regarded as authorized by the ERC to operate a generation facility, and thus, entitled to VAT zero-rating of its sale of power or electricity.[16]

...

With the foregoing, and noting that petitioner did not previously offer as evidence the COCs which cover the subject period of claim, We have denied its claim for refund for its failure to comply with the *second requisite*, *i.e.*, that it is engaged in zero-rated or effectively zero-rated sales.

[16] Supra at note 3, pp. 1503-1506; Citations omitted, emphasis and underscoring in the original.

Generally, no evidentiary value can indeed be given to any piece of evidence unless it is formally offered in court. Pertinent to this rule is Section 34, Rule 132 of the Revised Rules on Evidence, as amended[17], which reads:[18]

> ...
>
> SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> ...

In some cases, the Supreme Court has relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered. However, extreme caution must be observed. In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[19] citing *Vda. de Oñate v. Court of Appeals*[20], the Supreme Court held:

> ...
>
> From the foregoing provision, ***it is clear that for evidence to be considered, the same must be formally offered. Corollarily***, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in *People v. Napat-a* [179 SCRA 403 (1989)] citing *People v. Mate* [103 SCRA 484 (1980)], **we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, *viz*: *first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.***
>
> ...

17 A.M. No. 19-08-15-SC.

18 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014.

19 Supra; Citation omitted, emphasis and italics in the original text.

20 G.R. No. 116149, 23 November 1995.

As it is, although not offered, any evidence, therefore, may be admitted provided that the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above; otherwise, the general rule in Section 34 of Rule 132 of the Revised Rules on Evidence, as amended, should prevail.[21]

The importance of the first requirement or the identification was elucidated in the case of *Ernesto L. Salas v. Sta. Mesa Market Corporation, et al.*[22], where the Supreme Court explained that as part of the authentication requirement, a witness should positively testify that a document being presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. In *Heirs of Jose Marcial K. Ochoa v. G & S Transport Corporation*[23] (**Heirs of Ochoa**), the Supreme Court, however, emphasized that the requirement of authentication only pertains to private documents and does not apply to public documents.

As to what a public document is, Section 19, Rule 132 of the Revised Rules on Evidence, as amended, provides:

> ...
>
> SEC. 19. *Classes of Documents.* — For the purpose of their presentation in evidence, documents are either public or private.
>
> Public documents are:
>
> (a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country[.]
>
> ...

Under Section 23 of the Rule, it is also provided —

> ...
>
> SEC. 23. *Public Documents as Evidence.* — Documents consisting of entries in public records made in the performance of a

21 Supra at note 18.
22 G.R. No. 157766, 12 July 2007.
23 G.R. No. 170071, 16 July 2012 (Resolution).

> duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.
>
> ...

Further, Section 24 of the same Rule provides that an accompanying certificate or an equivalent thereof is *prima facie* evidence of the due execution and genuineness of the public document:

> ...
>
> SEC. 24. *Proof of Official Record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
>
> ...
>
> A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. [...]
>
> ...

In *Heirs of Ochoa*[24], the Supreme Court advanced two (2) reasons for the exemption of the requirement of authentication to public documents: *first*, the said documents have been executed in the proper registry and are presumed to be valid and genuine until the contrary is shown by clear and convincing proof; and, *second*, because public documents are authenticated by the official signature and seals which they bear and of which seals, courts may take judicial notice thereof.

As to the second requirement or the inclusion of the document in the case records, the Supreme Court ruled that courts have the positive duty to consider and give due regard to everything on record that is relevant and competent to the resolution of the issue presented for adjudication despite not being formally offered as evidence.[25]

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24 Supra.

25 See *Commissioner of Internal Revenue v. Jerry Ocier*, G.R. No. 192023, 21 November 2018.

With the foregoing parameters, in its MR, this Court notes that petitioner has attached the COCs that are *certified machine copies of the documents and are indeed part of the BIR records.* Moreover, an examination of the said COCs show that these were certified copies issued by the Energy Regulatory Commission (**ERC**) and the validity period appears to be from 14 July 2014 until 20 July 2019, which covers the subject claim for the period of 01 April 2017 to 31 December 2017.

Indubitably, the subject COCs were issued by a public officer in the performance of official duties, hence, they come within the purview of what are deemed to be public documents, and are *prima facie* evidence of the facts stated therein pursuant to Section 23[26], Rule 132 of the Revised Rules on Evidence, as amended. Thus, even if none of petitioner's witnesses testified on the said COCs, they remain to be unassailed *prima facie* evidence. It helps to note that they are found to be included in respondent's own BIR records. Thus, in the absence of strong, complete and conclusive proof of its falsity or nullity, the evidentiary nature of the COCs must be sustained and considered.[27]

To reiterate, petitioner anchors its claim for refund on Section 110(B)[28], in relation to Section 112(A)[29] and (C)[30] of the NIRC of 1997, as

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26 Supra at pp. 9-10.

27 See *Heirs of Pedro Cabais, et al. v. The Honorable Court of Appeals, et al.*, G.R. Nos. 106314-15, 08 October 1999.

28 **Sec. 110.** *Tax Credits.* —

...

(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.

29 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

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

30 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* —

...

amended by RA 10963[31], otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**).

Relative thereto, in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[32] (**Deutsche Knowledge Services**), the Supreme Court has set forth the requisites for a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

In the assailed Decision, We have ruled that petitioner complied with the *first* and the *third requisites*. The relevant parts state:

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

31 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

32 G.R. No. 234445, 15 July 2020; Citations omitted.

...

THIRD (3[RD]) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES WERE MADE.

In accordance with Section 112(A) and (C) of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized 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 administrative claim subject of this case covers the 2[nd] to 4[th] quarters of CY 2017 hence, petitioner's last day for filing of its administrative claim therefor and the actual filing of its administrative claim for the said periods fell on the following dates:

Period Covered	**Last Day to File Administrative Claim**	**Actual Date of Filing of Administrative Claim**
April to June 2017 (2[nd] Quarter)	30 June 2019	31 May 2019
July to September 2017 (3[rd] Quarter)	30 September 2019	
October to December 2017 (4[th] Quarter)	31 December 2019	

As can be gleaned from the above, petitioner's administrative claim was filed within the reglementary period.

As to the timeliness of petitioner's judicial claim before this Court, pursuant to the TRAIN Law, amending Section 112(C) of the NIRC of 1997, as amended, respondent had ninety (90) days from the date of submission of the official receipts (**ORs**) or invoices and other documents in support of the administrative claim, or until 29 August 2019, to decide on petitioner's claim. On 31 July 2019, respondent denied petitioner's administrative claim.

Section 11 of RA 1125, as amended by RA 9282, states:

...

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by** a decision, ruling or **inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional

> Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...

Based on the foregoing, petitioner had 30 days from 31 July 2019, or until 30 August 2019, to appeal such decision to this Court. Evidently, petitioner's judicial claim for refund was likewise timely filed on 30 August 2019.

The Court shall now proceed with the determination of petitioner's compliance with the remaining requisites.

FIRST (1ST) REQUISITE:
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

The records indisputably show that petitioner is registered with the BIR as a VAT taxpayer, with Tax Identification Number (**TIN**) 205-760-474-00000 as evidenced by its COR No. OCN8RC0001649021E, with its TIN issue date of 10 April 2000.[33]

...

We shall now proceed to determine petitioner's compliance with the *second* and *fourth requisites.*

SECOND (2ND) REQUISITE:
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES.

Petitioner claims that during the 2nd to 4th quarters of CY 2017, it sold electric power generated through hydropower, a renewable source of energy pursuant to Section 108(B)(7) of the NIRC of 1997, as amended[34], which states:

> ...
>
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> ...

[33] Supra at note 3, pp. 1501-1503; Citations omitted; emphasis and underscoring in the original.
[34] Before amendments introduced by TRAIN.

(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.

...

(7) **Sale of power** or fuel generated through renewable source of energy such as, but not limited to, biomass, solar, wind, **hydropower**, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.[35]

...

From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, *i.e.*, generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the COC issued by the ERC that CBK is indeed a hydropower generation company. Thus, the billings of CBK for its sale of electricity to NPC, designated under the Build-Rehabilitate-Operate-Transfer (**BROT**) Agreement as Capital Recovery Fees and operation and maintenance (**O&M**) fees, are subject to zero percent (0%) VAT.

In addition, when a VAT-taxpayer claims to have zero-rated sales of services, such as the instant case, it must substantiate the same through valid VAT official receipts[36] (**ORs**) and must show its compliance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, as implemented by and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005 which provide:

...

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

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

...

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

[35] Emphasis and underscoring supplied.

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

(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:

...

(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[.][37]

...

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

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

...

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:

...

37 Emphasis supplied and italics in the original text.

> 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[.][38]
>
> ...

Moreover, the ORs supporting petitioner's sale of services must be duly registered with the BIR and must contain all the required information, pursuant to Section 237 of the NIRC of 1997, as amended. The provision states:

> ...
>
> 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.** *Provided, however,* That in the case of sales, receipts or transfers in the amount of One hundred pesos (P100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which **shall** show the **name, business style, if any, and address of the purchaser, customer or client**: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the **invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.**[39]
>
> ...

To summarize the foregoing requirements, the following information shall be indicated in the VAT invoice or OR:

1. A statement that the seller is a VAT-registered person, followed by its Tax 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 VAT, provided that (a) the amount of tax shall be shown as a separate item in the invoice or receipt, (b) if the sale is exempt

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[38] Emphasis supplied and italics in the original text.
[39] Emphasis supplied and italics in the original text.

from VAT, the term "VAT exempt sale" shall be written or printed prominently on the invoice or receipt, or (c) if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; (d) if the sale involves goods, properties or services, some of which are subject to and some of which are VAT-zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;

3. In the case of sales in the amount of one thousand pesos (P1,000) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client;

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Corollarily, Revenue Memorandum Circular (**RMC**) No. 42-03[40] expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax, as follows:

...

Q-13: *Should penalty be imposed on TCC application for failure of claimant to comply with certain* ***invoicing requirements****, (e.g., sales invoices must bear the TIN of the seller)?*

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

[40] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> If the claim for refund/[tax credit certificate] is based **on the existence of zero-rated sales by the taxpayer** but **it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[41]

...

Based on the Independent Certified Public Accountant's (**ICPA**'s) review and validation for VAT purposes, petitioner has declared its zero-rated sales/receipts on accrual basis and not based on gross receipts.[42] Consequently, there were receipts that were not supported by VAT zero-rated ORs dated within the period of claim, to wit:

Exhibit	Invoice Date	Invoice No.	OR Date	Amount
P-123-147	December 26, 2017	1000002485	January 06, 2018	₱39,730,434.60
P-123-148	December 26, 2017	1000002486	January 06, 2018	13,878,649.32
P-123-149	December 26, 2017	1000002487	January 06, 2018	39,730,434.60
P-123-150	December 26, 2017	1000002488	January 06, 2018	13,878,649.32
P-123-151	December 26, 2017	1000002489	January 06, 2018	40,122,767.06
P-123-152	December 26, 2017	1000002490	January 06, 2018	14,015,699.08
P-123-153	December 26, 2017	1000002491	January 06, 2018	40,164,647.00
P-123-154	December 26, 2017	1000002492	January 06, 2018	14,030,328.55
P-123-155	December 26, 2017	1000002493	January 06, 2018	4,252,856.25
P-123-156	December 26, 2017	1000002494	January 06, 2018	1,485,609.23
P-123-157	December 26, 2017	1000002495	January 06, 2018	4,225,074.18
P-123-158	December 26, 2017	1000002496	January 06, 2018	1,475,904.33
P-123-159	December 26, 2017	1000002497	January 06, 2018	2,370,604.16

[41] Emphasis and underscoring supplied and italics in the original text.
[42] ICPA Report, Exhibit "P-252", p. 11.

P-123-160	December 26, 2017	1000002498	January 06, 2018	828,100.25
P-123-161	December 26, 2017	1000002499	January 06, 2018	2,394,039.59
P-123-162	December 26, 2017	1000002500	January 06, 2018	836,286.83
P-123-163	December 26, 2017	1000002501	January 06, 2018	178,208.59
P-123-164	December 26, 2017	1000002502	January 06, 2018	62,251.96
-	-	1000002503	-	7,912,806.54[43]
-	-	1000002504	-	2,762,679.06[44]
-	-	1000002505	-	7,912,806.54[45]
-	-	1000002506	-	2,762,679.06[46]
-	-	1000002507	-	7,990,944.49[47]
-	-	1000002508	-	2,789,960.13[48]
-	-	1000002509	-	7,999,285.30[49]
-	-	1000002510	-	2,792,872.27[50]
-	-	1000002511	-	847,009.02[51]
-	-	1000002512	-	295,724.85[52]
-	-	1000002513	-	841,475.78[53]
-	-	1000002514	-	293,793.00[54]
-	-	1000002515	-	472,135.08[55]
-	-	1000002516	-	164,841.34[56]
-	-	1000002517	-	476,802.54[57]
-	-	1000002518	-	166,470.96[58]
-	-	1000002519	-	35,492.24[59]
-	-	1000002520	-	12,391.85[60]
Total				**₱280,190,714.95**

43 Exhibit "P-123", USB.
44 Id.
45 Id.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id.
59 Id.
60 Id.

Moreover, the Court noted the following receipts that were properly substantiated with VAT zero-rated ORs but were not reported in petitioner's VAT returns:

Exhibit	OR No.	OR Date	Amount
P125-73	2000002443	April 27, 2017	₱39,746,282.40[61]
P125-74	2000002444	April 27, 2017	39,746,282.40[62]
P125-75	2000002445	April 27, 2017	40,138,771.36[63]
P125-76	2000002446	April 27, 2017	40,180,668.00[64]
P125-77	2000002447	April 27, 2017	4,254,552.64[65]
P125-78	2000002448	April 27, 2017	4,226,759.49[66]
P125-79	2000002449	April 27, 2017	2,371,549.75[67]
P125-80	2000002450	April 27, 2017	2,394,994.54[68]
P125-81	2000002451	April 27, 2017	178,279.68[69]
P125-82	2000002452	April 27, 2017	13,695,997.37
P125-83	2000002453	April 27, 2017	13,695,997.37
P125-84	2000002454	April 27, 2017	13,831,243.47
P125-85	2000002455	April 27, 2017	13,845,680.40
P125-86	2000002456	April 27, 2017	1,446,057.65
P125-87	2000002457	April 27, 2017	1,456,480.48
P125-88	2000002458	April 27, 2017	817,201.92
P125-89	2000002459	April 27, 2017	825,280.76
P125-90	2000002460	April 27, 2017	61,432.69
Total			**₱232,913,512.37**

Thus, out of the ₱2,345,390,024.99 (*reported zero-rated receipts of ₱2,112,476,512.62 plus unreported zero-rated receipts of ₱232,913,512.37*) total zero-rated receipts for the 2nd to 4th quarters of CY 2017, only the amount of ₱2,065,199,310.04, as computed below, qualifies for VAT zero-rating.

---

61 Computed as follows: $792,390.00 x ₱51.60/$1 (exchange rate used by petitioner *per* Schedule of Zero-Rated Sale of Services).
62 Computed as follows: $792,390.00 x ₱51.60/$1.
63 Computed as follows: $800,214.74 x ₱51.60/$1.
64 Computed as follows: $801,050.00 x ₱51.60/$1.
65 Computed as follows: $84,819.63 x ₱51.60/$1.
66 Computed as follows: $84,265.54 x ₱51.60/$1.
67 Computed as follows: $47,279.70 x ₱51.60/$1.
68 Computed as follows: $47,747.10 x ₱51.60/$1.
69 Computed as follows: $3,554.22 x ₱51.60/$1.

	2nd Quarter	3rd Quarter	4th Quarter	Total
Declared Zero-Rated Receipts *Per* VAT Returns[70]	₱698,150,332.82	₱708,146,667.29	₱706,179,512.51	₱2,112,476,512.62
Add: Unreported receipts	232,913,512.37	-	-	-
Adjusted Total Zero-Rated Receipts	*₱931,063,845.19*	*₱708,146,667.29*	*₱706,179,512.51*	*₱2,345,390,024.99*
Less: Without BIR-registered VAT ORs	-	-	280,190,714.95	-
Total	**₱931,063,845.19**	**₱708,146,667.29**	**₱425,988,797.56**	**₱2,065,199,310.04**

<u>FOURTH (4TH) REQUISITE:</u>
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite*, the following conditions must be complied with:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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;

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[70] Exhibits "P-109", "P-106" and "P-107", USB.

c. 3rd **condition**: the input taxes are not transitional input taxes; and,

d. 4th **condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with the ***3rd*** and ***4th conditions***, considering that petitioner's input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons; thus, petitioner is deemed to have complied with the same and it was established that petitioner deducted the input VAT claim of ₱37,731,282.57 as "VAT Refund/TCC Claimed" in its Amended VAT Return for the 1st quarter of CY 2019[71], preventing the carry-over of the said amount in the succeeding taxable quarters.

As to the ***1st condition***, petitioner claims that for the 2nd to 4th quarters of CY 2017, it had a total allowable input tax of ₱37,978,467.43[72] arising from its current purchases of capital goods exceeding and not exceeding ₱1 Million, domestic purchases of goods other than capital goods, domestic purchases of services and amortization of input VAT on purchases of capital goods exceeding ₱1 Million, broken down as follows:[73]

	Input Tax
Domestic Purchases of Capital Goods Exceeding ₱1 Million	₱1,770,180.72
Domestic Purchases of Capital Goods Not Exceeding ₱1 Million	166,768.34
Domestic Purchases of Goods Other than Capital Goods	7,343,058.22
Importation of Capital Goods Exceeding ₱1 Million	2,600,391.00
Importation of Goods Other than Capital Goods	1,218,004.00
Domestic Purchases of Services	26,761,665.69
Services Rendered by Non-residents	529,172.36
Total	*₱40,389,240.33*
Input Tax deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	4,688,611.80

71 Exhibit "P-114-2-a", USB.
72 Discrepancy of ₱0.53.
73 Par. 27, Petition for Review, Division Docket, Volume I, pp. 21-23.

Input Taxes on Importation of Capital Goods exceeding ₱1 Million from Previous Quarter	5,017,215.00
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1Million deferred for the succeeding period	5,395,425.77
Input Taxes on Importation of Capital Goods exceeding ₱1Million deferred for the succeeding period	6,721,173.93
Total Allowable input Tax	**₱37,978,467.43**

Thereafter, petitioner deducted from the total available input VAT the output VAT and the amount that respondent has granted, *i.e.*, ₱2,137,713.00[74], to arrive at the net refundable amount of ₱35,593,569.04[75] as shown below, which is the subject of the instant *Petition for Review*[76]:

Total Input VAT for the period	₱37,978,467.43
Less: Output Tax	(247,185.39)
Excess Input Tax	37,731,282.04
Less: Amount partially granted by respondent	(2,137,713.00)
Net Refund Amount *per* Petition for Review	**₱35,593,569.04**

For purposes of satisfying the aforesaid condition, it is of crucial importance that petitioner provides supporting documents to prove that the input VAT claimed during the subject period is actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

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

[74] Exhibit "P-19", id., Volume II, p. 638.
[75] Discrepancy of ₱0.53.
[76] Prayer, Petition for Review, Division Docket, Volume I, p. 34.

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.

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

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

a. To the purchaser upon consummation of sale and on importation of goods or properties; and
b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, that the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *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, further*, That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized. *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 free.[77]

...

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 13-2018[78], which provide as follows:

[77] Emphasis supplied and italics in the original text.

[78] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

...

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

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

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

a. Purchase or importation of goods
   1. For sale; or
   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
   3. For use as supplies in the course of business; or
   4. For use as raw materials supplied in the sale of services; or
   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

b. Purchase of real properties for which a VAT has actually been paid;
c. Purchase of services in which a VAT has actually been paid;
d. Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;
e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
g. Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

a. To the importer upon payment of VAT prior to the release of goods from customs custody;
b. To the purchaser of the domestic goods or properties upon consummation of the sale; or

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

SEC. 4.110-3. ***Claims 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 (P1,000,000.00), 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 (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

...

(c) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, 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.[79]

...

Meanwhile, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

[79] Emphasis supplied and italics in the original text.

...

SEC. 4.110-8. ***Substantiation of Input Tax Credits.*** —

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

1. For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
2. For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
3. For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
4. For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.[80]

...

An examination of the ICPA Report[81] and petitioner's supporting documents shows that the input VAT claim of ₱307,806.32 must be disallowed:

Exhibit No.	Particulars	Input VAT Disallowance
P-134-8	Input tax on purchase of capital goods which should be deferred to succeeding years	₱210,844.20
P-134-3	Overclaimed input tax due to erroneous computation	7,090.16

[80] Emphasis supplied.
[81] Exhibit "P-134", USB.

Exhibit No.	Particulars	Input VAT Disallowance
P-134-4	Overclaimed input tax due to foreign exchange rate used	5,323.46
P-134-9	Input tax on purchase of goods supported by a VAT Invoice **not dated** within the VAT-taxable year	4,366.44
P-134-10	Input tax on purchase goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) **not issued in the name** of the Petitioner	3,694.53
P-134-11	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) but the VAT **was not separately indicated**	1,811.31
P-134-12	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) issued in the Petitioner's name but **without** the Petitioner's TIN and/or address	7,870.20
P-134-13	Input tax on purchase of services supported by documents other than a VAT OR	7,115.22
P-134-14	Input tax on purchase of goods supported by VAT invoice. However, the sentence "This document is not valid for claiming input tax" is printed in the VAT invoice.	700.73
P-134-15	Input tax on purchase of goods supported by documents other than a VAT Invoice	17,938.74
P-134-16	Input tax on purchase of service supported by a VAT OR and purchase of goods supported by a VAT Invoice but not an original copy	5,357.10
P-134-17	Input tax on purchase of goods and services without supporting documents	21,660.71
P-134-18	Input tax on purchase of goods and services supported by invoices (for goods) or ORs (for services) without BIR Permit to Print	28.92
P-134	Unaccounted difference	14,004.60
Total		**₱307,806.32**

Summarizing the above findings relative to petitioner's compliance with the *1st condition*, the Court finds that out of the ₱37,978,467.43 claimed total allowable input VAT for the 2nd to 4th quarters of CY 2017, only the amount of ₱37,670,661.11 represents petitioner's valid input VAT, as computed below:

Total Allowable Input VAT per Claim	₱37,978,467.43
Less: Disallowances	307,806.32
Valid Input VAT	**₱37,670,661.11**

Pursuant to the 2nd ***condition***, 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 valid input taxes of ₱37,670,661.11 shall be proportionately allocated on the basis of sales volume, as follows:

	Amount		Allocation Factor	Allocated Input VAT	
	[a]		*[c = a ÷ b]*	*[e= c x d]*	
VATable Sales/Receipts	₱2,059,878.13		0.09%	₱33,903.60	
Valid Zero-Rated Sales/Receipts	2,065,199,310.04		87.98%	33,142,647.64	
Invalid Zero-Rated Sales/Receipts	280,190,714.95		11.93%	4,494,109.87	
Total Reported Sales	**₱2,347,449,903.12**	*[b]*	**100.00%**	**₱37,670,661.11**	*[d]*

In *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) v. Commissioner of Internal Revenue*[82] (**Chevron**), the Supreme Court ruled that:

> ...
>
> ... [T]he input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.
>
> ...

[82] G.R. No. 215159, 05 July 2022; Citation omitted, emphasis in the original text and supplied.

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

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or

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

In the present case, petitioner is deemed to have chosen the first option. As stated earlier, petitioner's claimed input VAT attributable to zero-rated sales in the amount of ₱37,978,467.43 was partially applied against its reported output VAT liability to the extent of ₱247,185.39. Hence, only the excess amount of ₱37,731,282.04 was applied for refund before respondent.

Following the same computation, since petitioner's valid input VAT allocated to VATable sales/receipts of ₱33,903.60 is not enough to cover its output VAT liability of ₱247,185.39[83] for the said sales/receipts, the valid input VAT of ₱33,142,647.64 allocated to valid zero-rated sales/receipts[84] shall be utilized. The net refundable amount after deducting the amount partially granted by respondent is ₱30,791,652.85, computed as follows:

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[83] Exhibit "P-17", Line 15B, Division Docket, Volume II, p. 682.

[84] With respect to the valid input VAT allocated to invalid zero-rated sales, taxpayer may claim the same as expense pursuant to Q-13 and A-13 of RMC No. 42-03, which states:

...

Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/[tax credit certificate] is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN),its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. **Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable.** Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. (Emphasis supplied)

Output Tax Due on Vatable Sales/Receipts	₱247,185.39
Less: Valid Input VAT Allocated to Vatable Sales/Receipts	33,903.60
Output VAT Still Due	**₱213,281.79**
Valid Input VAT Allocated to Total Zero-Rated Sales/Receipts	₱33,142,647.64
Less: Output VAT Still Due	213,281.79
Net Refundable Amount	**₱32,929,365.85**
Less: Amount partially granted by respondent	2,137,713.00
Amount to be refunded	**₱30,791,652.85**

All told, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the amount of **₱30,791,652.85**, representing the excess and unutilized input VAT attributable to its zero-rated sales from the 2nd to the 4th quarters of CY 2017.

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioner CBK Power Company Limited on 13 July 2023 is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner CBK Power Company Limited in the amount of **₱30,791,652.85**, representing its excess and unutilized input value-added tax attributable to its zero-rated sales from the second (2nd) to the fourth (4th) quarters of calendar year 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice