REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AXELUM RESOURCES CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9969

Members:

CASTAÑEDA, JR., *Chairperson,* **and**
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 15 2021 3:00 Pm

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DECISION

CASTAÑEDA, JR., ***J.*:**

STATEMENT OF THE CASE

Before this Court is a Petition for Review filed by petitioner Axelum Resources Corporation ("petitioner") on November 5, 2018, seeking review of the administrative claim for tax refund in the amount of ₱34,253,645.58, allegedly representing the excess unutilized input value-added taxes (VAT) attributable to petitioner's zero-rated sales for the period April 1 to June 30, 2016, which was partially denied through a VAT Refund Notice dated September 25, 2018. In this case, petitioner prays to refund the amount of ₱34,253,645.58 less

₱2,768,079.51 which is the amount of refund partially granted by the BIR,[1] or ₱31,485,566.07.

THE FACTS

Petitioner Axelum Resources Corporation, is a corporation duly organized and existing under Philippine laws.[2] The primary purpose of this corporation is "to enter into direct manufacturing and/or toll manufacturing of coconut water and other coconut products for domestic and international market."[3]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with pleadings, notices, and other processes at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[4]

On July 25, 2016, petitioner filed its Second Quarterly VAT Return for calendar year (CY) 2016.[5] However, on August 4, 2017, petitioner filed its Amended Second Quarterly VAT Return for CY 2016.[6]

On June 29, 2018, petitioner filed with the Bureau of Internal Revenue (BIR) an administrative claim for tax refund for the amount of ₱43,713,177.11[7] in relation to its VAT zero-rated sales for the Second Quarter of CY 2016.

On June 29, 2018, a Tax Verification Notice (TVN) was issued by the Chief of the VAT Credit Audit Division of the BIR.[8]

On October 10, 2018, petitioner received the VAT Refund Notice issued by the BIR partially granting the claim for refund in the amount of ₱2,768,079.51.[9]

[1] Prayer, Petition for Review, Docket, p. 27.
[2] Exhibit "P-1", Docket, p. 346; Exhibits "P-2", Docket, p. 348.
[3] "P-2-a", Docket, p. 348.
[4] Joint Stipulation of Facts and Issued (JSFI), par. 1, Docket, p. 266.
[5] Exhibit "P-4", Docket, p. 366.
[6] Exhibit "P-4-a", Docket, p. 367.
[7] Exhibit "P-5", Docket, p. 370.
[8] Exhibit "P-7", Docket, p. 372.
[9] Exhibit "P-8", Docket, p. 373.

On October 12, 2018, petitioner filed a Reply Letter to said VAT Refund Notice.[10]

On November 5, 2018, petitioner filed its judicial claim *via* Petition for Review.

Within the last extension of time granted by the Court, respondent filed an Answer[11] dated February 1, 2019, stating Special and Affirmative Defenses that petitioner's Claim for VAT Refund/Credit has no factual and legal basis;[12] administrative claim for refund is exclusively cognizable by the Commissioner of Internal Revenue (CIR) that is subject to the exclusive appellate jurisdiction of the Honorable Court of Tax Appeals;[13] and that claims for refund are construed strictly against the taxpayer and in favor of the government.[14]

On March 7, 2019, respondent transmitted the BIR Records.[15]

The Pre-trial Conference was set and held on March 14, 2019.[16] *Respondent's Pre-Trial Brief* and petitioner's *Pre-Trial Brief* were submitted on March 7, 2019,[17] and on March 8, 2019,[18] respectively.

On March 28, 2019, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[19] The Court issued the Pre-Trial Order on April 3, 2019.[20]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following witnesses, who testified on direct examination by way of Judicial Affidavits: (1) Mr. Saturnino D. Agas,[21] Projects/BIR Compliance Officer of petitioner; (2) Ms. Maria Theresa Z. Paguirigan,[22] Chief Financial Officer (CFO) of

[10] Exhibit "P-9", Docket, p. 375.
[11] Docket, pp. 97-106.
[12] *Id.*, pp. 98-102.
[13] *Id.*, pp. 102-103.
[14] *Id.*, pp. 103-104.
[15] *Id.*, p. 126.
[16] *Id.*, p. 108; *Id.*, p. 247.
[17] *Id.*, pp. 110-113.
[18] *Id.*, pp. 135-145.
[19] *Id.*, pp. 266-272.
[20] *Id.*, pp. 274-277.
[21] Exhibits "P-17" and "P-17-A", Docket, pp. 151-158.
[22] Exhibit "P-18" and "P-18-A", Docket, pp. 188-197

petitioner; and (3) Ms. Sonia D. Segovia,[23] Independent Certified Public Accountant (ICPA).

On September 5, 2019, petitioner filed an Omnibus Motion (Re: i. Motion to Admit Formal Offer of Evidence; and ii. Motion for Remarking), with attached Formal Offer of Evidence (FOE).[24] No comment was filed by respondent.[25] On December 4, 2019, the Court granted the said Omnibus Motion and admitted the FOE.[26]

On January 30, 2020, the Court acted on petitioner's FOE, without respondent's comment, and admitted Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-4", "P-4-A", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-A", "P-18", "P-18-A", "P-21", "P-21-A", "P-22" to "P-41", "P-43 to P-88", "P-89", "P-89-A" and "P-90".[27] Exhibits "P-5", "P-6", and "P-42" were denied.[28] Thereafter, petitioner filed a Motion for Partial Reconsideration (To Admit Petitioner's Exhibits).[29]

On February 26, 2020, during the hearing, the Court granted petitioner's motion, without objection from respondent, thus, Exhibits "P-5", "P-6", and "P-42" were admitted.[30]

Subsequently, of even date, respondent proceeded with the presentation of his evidence, and offered the testimony of his lone witness Revenue Officer Dexter C. Bustillos,[31] who testified on direct examination by way of Judicial Affidavit and whose testimony was completed after cross-examination.[32]

On June 24, 2020, without petitioner's comment, the Court acted on respondent's FOE which was filed on March 2, 2020, and admitted respondent's exhibits.[33] The Court also granted the parties a period of thirty (30) days from receipt of the resolution within which to file their respective Memoranda.[34]

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[23] Exhibit "P-89" and "P-89-A", Docket, pp. 311-315.
[24] Docket, pp. 327-344.
[25] *Id.*, p. 397.
[26] *Id.*, pp. 401-402.
[27] *Id.*, p. 408.
[28] *Id.*, p. 409.
[29] *Id.*, pp. 415-419.
[30] *Id.*, p. 423.
[31] *Id.*, pp. 119-125.
[32] *Id.*, p. 423.
[33] *Id.*, pp. 431-432.
[34] *Id.*

On July 30, 2020, respondent filed his Memorandum,[35] while petitioner filed its Memorandum on August 20, 2020.[36]

On September 11, 2020, this case was submitted for decision.

Hence, this decision.

THE ISSUE

The main issue to be resolved by the Court is:[37]

WHETHER PETITIONER IS ENTITLED FOR TAX REFUND FOR THE EXCESS UNUTILIZED INPUT VALUE ADDED TAX (VAT) ALLOCABLE TO ITS VAT ZERO RATED SALES FOR THE PERIOD FROM 01 APRIL 2016 TO 30 JUNE 2016 AMOUNTING TO THIRTY-FOUR MILLION TWO HUNDRED FIFTY-THREE THOUSAND SIX HUNDRED FORTY-FIVE AND 58/100 PESOS (PHP34,253,645.58).

Petitioner argues that its claim for tax refund should be granted because all the elements necessary for the granting of the tax refund claim are present. It alleges that it has sufficiently established and proven all the requirements before a taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT,[38] as follows:

a. the taxpayer is VAT registered;
b. that the claim for refund was filed within the prescriptive period both in the administrative and judicial levels;
c. that there must be zero-rated or effectively zero-rated sales'
d. that input taxes were incurred or paid;
e. that the input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales; and
f. that the input taxes were not applied against any output VAT liability.

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[35] *Id.*, pp. 433-443.
[36] *Id.*, pp. 445-469.
[37] Joint Stipulation of Facts and Issues, (JSFI), Docket, pp. 266-267.
[38] *Carmen Copper Corporation v. Commissioner of Internal Revenue,* CTA Case Nos. 9124 and 9200, October 1, 2018.

On the other hand, respondent counter-argues, among others, that petitioner's claim for VAT refund/tax credit has no factual and legal basis.

RULING

The petition is partially granted.

Section 112(A) of the NIRC of 1997, as amended, provides:

> (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.

From the foregoing, to claim for a refund or tax credit under Section 112(A), petitioner must comply with the following criteria:[39]

(1) the taxpayer is VAT registered;
(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; ju

[39] See also *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

(3) the input taxes are due or paid;
(4) the input taxes are not transitional input taxes;
(5) the input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
(8) 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; and
(9) the claim is filed within two years after the close of the taxable quarter when such sales were made.

First, we will determine the timeliness of the claim.

Pursuant to the pertinent provision of the law previously quoted, petitioner has 2 years from the close of the taxable quarter, or until June 30, 2018, to file a claim for refund with the BIR. Records show that petitioner filed its administrative claim for refund in the amount of ₱43,713,177.11 by submitting BIR Form No. 1914 on June 29, 2018.[40] Thus, petitioner's claim has been filed within the prescribed period.

In relation thereto, Section 112(C) of the NIRC of 1997, as amended by Republic Act No. 10963[41], provides:

> *(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. ge

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[40] Exhibit "P-5", Docket, p. 370 and BIR Records, Exhibit "R-3", p. 273.
[41] "Tax Reform for Acceleration and Inclusion (TRAIN)" law which took effect on January 1, 2018.

> **"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. *(Emphasis supplied.)*

Perusal of the records of the case reveals that when petitioner filed its claim for refund with respondent's bureau, it also submitted sworn certifications that the documents submitted are complete and authentic for purposes of processing its claim.[42] Hence, counting from June 29, 2018, respondent had 90 days, or until September 27, 2018, to act on petitioner's claim. On September 25, 2018, a VAT Refund Notice partially denying its claim by granting only the amount of ₱2,768,079.5 was issued.[43] Thus, respondent acted within the period prescribed by law.

On October 10, 2018, petitioner received the said VAT Refund Notice. Counting 30 days from October 10, 2018, petitioner had until November 9, 2018 within which to file a judicial claim with the Court of Tax Appeals (CTA). The instant Petition for Review was filed on November 5, 2018,[44] which is well within the prescribed period.

Petitioner is a VAT-registered taxpayer with TIN 007-851-927-000 as evidenced by its Certificate of Registration with the Bureau of Internal Revenue (BIR) with OCN 2RC0001330532.[45] It is engaged in direct manufacturing and/or toll manufacturing of coconut water and other coconut products for domestic and international market.[46]

For the second quarter of the year 2016, petitioner reported the following in its Quarterly VAT Return:[47]

	Sales/Receipts	**Output Tax**
Vatable Sales/Receipt	₱ 184,273,183.77	₱ 22,112,782.05
Zero Rated Sales/Receipts	670,892,633.08	

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[42] BIR Records, Exhibit "R-3", pp. 292-294.
[43] Exhibit "P-8", Docket, pp. 373-374.
[44] Petition for Review, Docket, pp. 12-27.
[45] Exhibit "P-3", Docket, p. 365.
[46] Exhibit "P-2-A", Docket, p. 348.
[47] Exhibits "P-4" and "P-4-A", Docket, pp. 366-369.

Exempt Sales/Receipts	1,044,713.21	
Total Sales/Receipts	₱ 856,210,530.06	
	Purchases	**Input Tax**
Input tax carried over from previous period		₱ 57,404,679.80
Input tax deferred on purchases of Capital Goods > P1M from previous quarter		28,861,175.36
Total		₱ 86,265,855.16
Purchases of capital goods > P1M	₱ 597,059,499.26	₱ 71,647,139.91
Domestic purchases of goods	462,222,051.63	55,466,646.20
Importation of goods	5,620,191.67	674,423.00
Domestic purchases of services	40,064,630.58	4,807,755.67
Total current purchases	₱1,104,966,373.14	₱ 132,595,964.78
Total available input tax		₱ 218,861,819.94
Less: Input tax on purchases of capital goods > P1M deferred to succeeding period		95,631,180.98
Total allowable input tax		₱ 123,230,638.96
Net VAT Payable		**₱(101,117,856.91)**

Petitioner's claim for refund with the BIR amounting to ₱43,713,177.11 includes all of its excess input taxes for the second quarter of 2016 computed as follows:[48]

Input tax deferred on purchases of Capital Goods > P1M from previous quarter	₱ 28,861,175.36
Input tax from current purchases of capital goods > P1M	71,647,139.91
Total deferred input tax	₱ 100,508,315.27
Less: Input tax on purchases of capital goods > P1M deferred to succeeding period	(95,631,180.98)
Total allowable deferred input tax	₱ 4,877,134.29
Add: Input tax on current purchases of goods and services	60,948,824.87
Total allowable input tax	₱ 65,825,959.16
Less: Output tax for the quarter	22,112,782.05
Total excess input tax	**₱43,713,177.11**

However, petitioner recomputed the refundable amount after allocating the total excess input taxes to its VATable, zero rated and exempt sales/receipts based on the volume of sales as declared in its VAT Return for the subject taxable period, in accordance with Section 112(A) of the NIRC of 1997, as amended, thus:[49]

	Total Sales/Receipts	**Percentage**	**Allocation of Excess Input Tax**
VATable	₱ 184,273,183.77	21.52%	₱ 9,407,075.71

[48] See also Paragraphs 6 to 9, Memorandum for the Petitioner, Docket, pp. 447-448.
[49] Paragraph 13, *Id.*, p. 449.

Zero Rated	670,892,633.08	78.36%	34,253,645.58
Exempt	1,044,713.21	0.12%	52,455.81
Total	**₱856,210,530.06**	**100.00%**	**₱43,713,177.11**

Hence, the claim for refund per Petition for Review is the amount of input tax allocated to petitioner's zero-rated sales in the amount of ₱34,253,645.58.[50]

It is represented that petitioner's sales of coconut water and other coconut products to the international market are subject to zero-rated VAT pursuant to Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended:

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

Likewise, Section 4.106-5 of Revenue Regulations (RR) No. 16-2005, as amended, provides:

> SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.* — A zero-rated sale of goods or properties (by

[50] Paragraph 5 and Prayer, Petition for Review, *Id.*, pp. 13 & 27.

a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

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

(a) *Export sales.* — "Export Sales" shall mean:

(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, 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);

Pursuant to the foregoing provisions, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

a) the sales invoice as proof of sale of goods;

b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and

c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

The Court commissioned an Independent Certified Public Accountant (ICPA)[51] to perform a special audit on petitioner's claim

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[51] Ms. Sonia D. Segovia of Sycip Gorres Velayo & Co.

and verify its voluminous supporting documents. The ICPA report dated June 21, 2019[52] shows the following:[53]

Table 8. Observations on VAT zero-rated sale of goods

Ref	Exhibit No.	Particulars	Amount
1	P-35	VAT zero-rated sale of goods which are properly supported by: (1) VAT zero-rated invoices; (2) export declaration certified as true copy by Bureau of Customs (BOC) and bill of lading/airway bill/seaway bill supporting the shipment of goods from the Philippines to foreign country; and (3) proof of foreign currency inward remittances (i.e., local bank certifications/export settlement/foreign currency passbook credits/ and where applicable, the photocopies of the corresponding statement of no-book transactions detailing the breakdown of the passbook credits)	649,294,352.92
2	P-36	VAT zero-rated sale of goods which are supported by: (1) VAT zero-rated invoices; (2) bill of lading/airway bill/seaway bill supporting the shipment of goods from the Philippines to foreign country; and (3) proof of foreign currency inward remittances (i.e., local bank certifications/export settlement/foreign currency passbook credits/ and where applicable, the photocopies of the corresponding statement of no-book transactions detailing the breakdown of the passbook credits)	14,119,871.59
3	P-37	VAT zero-rated sale of goods which are supported by: (1) VAT zero-rated invoices; (2) export declaration certified as true copy by the BOC; and (3) proof of foreign currency inward remittances (i.e., local bank certification)	844,416.90

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[52] Exhibit P-21.
[53] Exhibit P-21, pp. 7-8.

4	P-38	Adjustments to zero-rated sales due to differences in forex rates used (excluding the observation in Item no. 5 below)	4,538,131.54
5	P-39	VAT zero-rated sale of goods which are supported by: (1) VAT zero-rated invoices; and (2) export declaration certified as true copy by BOC and bill of lading/airway bill/seaway bill supporting the shipment of goods from the Philippines to foreign country; but without valid proof of foreign currency inward remittances	2,095,860.13
	Total Sales Subject to 0% VAT per VAT Return		**670,892,633.08**

The ICPA found that petitioner's zero-rated sales amounting to ₱670,892,633.08 for the 2nd quarter of 2016 pertain to direct export of goods.[54]

Upon cursory review of the foregoing, the Court finds that Items 2, 3, 4 and 5 should be disallowed for being not properly supported by the required documents previously mentioned. Thus, of the ₱670,892,633.08 declared zero-rated sales, only ₱649,294,352.92 is properly supported, computed as follows:

Declared zero-rated sales (per VAT Return)	₱ 670,892,633.08
Less: Disallowed zero-rated sales—	
Item 2. With bill of lading or airway bill as proof of actual shipment of goods but no export declaration	₱ 14,119,871.59
Item 3. With Certified True Copy (CTC) of export declaration but no bill of lading or airway bill as proof of actual shipment of goods	844,416.90
Item 4. Adjustments to zero-rated sales due to differences in forex rates used	4,538,131.54
Item 5. Without valid proof of foreign currency inward remittances	2,095,860.13
Total disallowed zero-rated sales	₱ 21,598,280.16
Properly substantiated zero-rated sales	**₱649,294,352.92**

Inasmuch as only a portion of petitioner's zero-rated sales is properly substantiated, the substantiated excess unutilized input taxes shall be multiplied to this portion to determine the refundable amount for petitioner:

[54] Exhibit P-21, p. 8.

Substantiated zero-rated sales	₱ 649,294,352.92
Divided by total declared zero-rated sales	₱ 670,892,633.08
Percentage of substantiated zero-rated sales	**96.78%**

The ICPA likewise examined supporting documents for petitioner's domestic purchases and reported the following observations:[55]

Table 11. Observations on domestic purchases of goods and services

Ref	Exhibit No.	Particulars	Amount
1	P-44	Domestic purchase of goods properly supported by VAT invoices/purchase of services properly supported by VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP and are dated in the same quarter when the input VAT is claimed	11,376,206.77
2	P-45	Projects in progress properly supported by deeds of sale, VAT invoices and VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP, dated in the same quarter when the input VAT is claimed and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	7,092,857.14
3	P-46	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, and with valid ATP but are dated in the prior quarter falling in the same taxable year	975,552.34
4	P-47	Projects in progress supported by deeds of sale, VAT invoice and VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP, and are recorded in the Petitioner's books under the Construction in Progress account but are dated in the prior quarter falling in the same taxable year	17,025,000.00
5	P-48	Projects in progress not supported by VAT ORs but with deeds of sale, VAT invoices, and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	1,714,285.71
6	P-49	Projects in progress not supported by VAT ORs and deeds of sale but with VAT invoices and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	2,635,714.29

[55] Exhibit P-21, pp. 9-11.

7	P-50	Domestic purchase of goods supported by VAT invoices/purchases of services supported by VAT ORs not dated within the same taxable year or dated in the subsequent quarter (i.e., advance claiming of input VAT)	1,955,437.28
8	P-51	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs without date	22,926.33
9	P-52	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs without valid authority to print (ATP)	115,152.54
10	P-53	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs with the statement "This document is not valid for claiming input taxes."	1,752,442.28
11	P-54	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs with incorrect/missing/incomplete Petitioner's name	387,761.34
12	P-55	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs with incorrect/missing/incomplete TIN	516,992.96
13	P-56	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs with incorrect/missing/incomplete registered address	6,025,682.20
14	P-57	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs where VAT is not separately shown	529,952.81
15	P-58	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs without original copy	122,964.44
16	P-59	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs with corrections but without counter signature	4,175,214.96
17	P-60	Domestic purchase of goods not properly supported by VAT invoices/purchase of services not properly supported by VAT ORs	1,224,517.09
18	P-61	Domestic purchases without any supporting documents presented	2,625,741.32
Total input VAT on domestic purchases of goods and services			**60,274,401.80**

Regarding petitioner's importation of goods, the ICPA found the following:[56]

Table 13. Observations on importation of goods

Exhibit No.	Particulars	Amount
P-63	Importation of goods supported by Single Administrative Document (SAD) allocable between	674,423.00

[56] Exhibit P-21, p. 12.

	VATable and VAT zero-rated sales but without Statement of Settlement of Duties and Taxes (SSDT)	
Total input VAT from importation per VAT return		**674,423.00**

For its purchases of capital goods exceeding P1 Million for the subject taxable quarter as well as for the prior quarters, the ICPA reported:[57]

Table 14. Observations on capital goods exceeding P1 Million purchased from current quarter

Ref	Exhibit No.	Particulars	Amount
1	P-64	Purchases of capital goods exceeding P1 Million supported by VAT invoices that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP and are dated in the same quarter when the initial amortization of input VAT is claimed	2,993,571.43
2	P-65	Purchases of capital goods with embedded services exceeding P1 Million supported by VAT invoices that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP and are dated in the same quarter when the initial amortization of input VAT is claimed but without official receipts	293,006.97
3	P-66	Purchases of capital goods exceeding P1 Million supported by VAT invoices without date	1,800.00
4	P-67	Purchases of capital goods exceeding P1 Million supported by VAT invoices with missing and/or incorrect registered address	49,400.54
5	P-68	Purchases of capital goods exceeding P1 Million supported by VAT invoices with corrections but without counter signature	21,731.43
Total amortized input VAT on capital goods exceeding P1 Million purchased from the current quarter			**3,359,510.37**

Table 15. Observations on capital goods exceeding P1 Million purchased in prior quarters

Ref	Exhibit No.	Particulars	Amount
1	P-69	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters supported by VAT invoices that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP and are dated in the same quarter when the initial amortization of input VAT is claimed	1,427,678.57

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[57] Exhibit P-21, pp. 12-13.

2	P-70	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters supported by VAT invoices with a statement "This document is not valid for claiming input taxes".	18,900.00
3	P-71	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters supported by VAT invoices without TIN	7,500.00
4	P-72	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters supported by VAT invoices with incorrect registered address	40,761.16
5	P-73	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters supported by VAT invoices without original copy	13,158.48
6	P-74	Amortization of input taxes on capital goods exceeding P1 Million purchased in previous quarters without supporting VAT invoices presented	9,625.71
Total amortized input VAT on capital goods exceeding P1 Million purchased in prior quarters			**1,517,623.92**

Thus, the ICPA examined and verified petitioner's total available input taxes for the second quarter of 2016 in the total amount of ₱65,825,959.09. Per its Quarterly VAT Return, petitioner has total available input taxes amounting to ₱65,825,959.16. The Court notes the ₱0.07 difference.

The Court likewise notes that petitioner's domestic purchases of goods and services includes projects in progress as identified in Items 2, 4, 5, and 6 of Table 11, with corresponding input taxes in the aggregate amount of ₱28,467,857.14:

Ref	Exhibit No.	Particulars	Amount
2	P-45	Projects in progress properly supported by deeds of sale, VAT invoices and VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP, dated in the same quarter when the input VAT is claimed and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	₱ 7,092,857.14
4	P-47	Projects in progress supported by deeds of sale, VAT invoice and VAT ORs that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid ATP, and are recorded in the Petitioner's books under the Construction in Progress	17,025,000.00

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		account but are dated in the prior quarter falling in the same taxable year	
5	P-48	Projects in progress not supported by VAT ORs but with deeds of sale, VAT invoices, and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	1,714,285.71
6	P-49	Projects in progress not supported by VAT ORs and deeds of sale but with VAT invoices and the pertinent purchase price is recorded in the Petitioner's books under the Construction in Progress account	2,635,714.29
		TOTAL	**₱28,467,857.14**

Scrutiny of the foregoing reveals that these pertain to petitioner's acquisition of property, plant and equipment collectively known in the Deeds of Sale as Projects in Progress.[58] As found by the ICPA, the same were properly recorded as Construction in Progress and forms part of petitioner's Property, Plant and Equipment account in its books.[59]

Pertinent thereto is Section 4.110-3 of Revenue Regulations (RR) No. 16-2005, as amended by RR 04-2007, which provides:

> 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 (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 a capital good. The claim for input tax credit shall

[58] Exhibits P-75-a to P-75-d.
[59] Exhibit P-21, p. 11 and Exhibit P-77, p. 34.

commence in the 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 (P 1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

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

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

xxx xxx xxx

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

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

> In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a *[sic]* progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.
>
> Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated. *(Emphasis supplied)*

Based on the foregoing, the Court finds that of the input taxes amounting to ₱17,025,000.00 which pertain to petitioner's projects in progress, ₱1,650,000.00 is not properly supported by ORs dated within the period of claim:

Claimed input tax per ICPA report (Exh. P-47)			**₱17,025,000.00**
Properly supported by ORs			
Exh.	**OR Date**	**OR No.**	
P-47-b	5/4/2016	2286	₱ 2,828,571.43
P-47-c	5/4/2016	2287	7,982,142.86
P-47-d	5/4/2016	2288	4,564,285.71
Subtotal			***₱15,375,000.00***
Not properly supported by ORs			**₱ 1,650,000.00**

In sum, for failure to comply with the substantiation requirements set forth in Sections 110(A) and 113(A) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-3, 4.110-5, 4.110-8 and 4.113-1 of RR 16-2005, as amended by RR 04-2007, petitioner's input taxes for the 2nd quarter of 2016 amounting to ₱27,560,645.25 should be disallowed, leaving ₱38,265,313.91 properly substantiated input taxes, computed as follows:

Ref	**Particulars**	**Amount**
Total allowable input VAT for the 2nd quarter of 2016 per VAT return		₱ 65,825,959.16
Less: Disallowances		
Table 11 Item 4	Input VAT from projects in progress not supported by ORs/supported by ORs not dated within the period of claim	₱ (1,650,000.00)

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Ref	Particulars	Amount
Table 11 Item Nos. 3, and 5 to 18	Input VAT from domestic purchases of goods and services	(24,780,337.89)
Table 13	Input VAT from importation	(674,423.00)
Table 14 Item Nos. 2 to 5	Input VAT from capital goods exceeding P1 Million purchased from current quarter	(365,938.94)
Table 15 Item Nos. 2 to 6	Input VAT from capital goods exceeding P1 Million purchased in prior quarters	(89,945.35)
	Difference between total available input taxes per VAT Return and total input taxes examined by the ICPA	(0.07)
Total disallowances		(27,560,645.25)
Total Substantiated Input VAT		**₱38,265,313.91**

Attributing the foregoing total substantiated input taxes to petitioner's VATable, zero-rated and exempt sales using the percentages computed previously results to the following:

Particulars	Declared Sales per VAT Return	Percentage	Allocation of Substantiated Input VAT
VATable	₱ 184,273,183.77	21.52%	₱ 8,235,440.90
Zero Rated	670,892,633.08	78.36%	29,983,183.23
Exempt	1,044,713.21	0.12%	46,689.78
Total	**₱856,210,530.06**	100.00%	**₱38,265,313.91**

It is noted that petitioner's output tax due for the subject taxable quarter is ₱22,112,782.05.[60] The input taxes attributable to VATable sales amounting to ₱8,235,440.90 are clearly not enough to cover the output tax liability. Thus, the input taxes attributable to zero-rated sales need to be utilized to cover the output tax liability. As a result, petitioner's unutilized excess input taxes for the quarter amount to ₱16,105,842.08, as shown in the following computation:

Input taxes attributable to VATable sales	₱ 8,235,440.90
Less: Output tax due	22,112,782.05
Balance of output tax	₱ (13,877,341.15)
Less: Input tax attributable to zero-rated sales	29,983,183.23
Excess input tax attributable to zero-rated sales	**₱16,105,842.08**

Considering that petitioner's substantiated zero-rated sales is 96.78% of its declared zero-rated sales, the input taxes corresponding to that sales in the amount of ₱15,587,233.97 is refundable: Jr

60 Line 15B, Exhibits "P-4" and "P-4-A", Docket, pp. 366-369.

Excess input taxes attributable to declared zero-rated sales	₱ 16,105,842.08
Proportion of substantiated zero-rated sales	x 96.78%
Excess input taxes attributable to substantiated zero-rated sales	**₱15,587,233.97**

The excess input taxes above were carried over to the succeeding taxable quarter which is included in the amount ₱101,117,856.91[61] until it was included in the amount ₱43,713,177.11 deducted as "TCC Claimed for refund" on petitioner's quarterly VAT return for 1st quarter of 2018.[62]

Hence, the refundable excess input taxes in the amount of ₱15,587,233.97 remained unutilized. Since respondent already granted petitioner's claim in the partial amount of ₱2,768,079.51, the Court finds that petitioner is entitled to an additional amount of ₱12,819,154.46 (₱15,587,233.97 less ₱2,768,079.51).

WHEREFORE, premises considered, the Petition for Review filed by petitioner Axelum Resources Corporation on November 5, 2018, is **PARTIALLY GRANTED in the reduced amount of ₱12,819,154.46.**

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[61] Line 25, Exhibit "P-4-A", Docket, pp. 368-369. See also Exhibit P-81-d.
[62] Line 23D, Exhibit "P-16", Docket, pp. 388-389. See also Exhibit P-81-f.

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice