REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ORICA PHILIPPINES INC., *Petitioner,*	**CTA Case No. 9974**
-versus-	Members:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**DEL ROSARIO**, *P.J., Chairperson, and* **MANAHAN**, *JJ.*
	Promulgated: JUL 16 2021 8:01 am

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by Orica Philippines, Inc. against respondent Commissioner of Internal Revenue on November 16, 2018, seeking the refund or issuance of a tax credit certificate (TCC) in the amount of ₱18,757,113.07, allegedly representing its unutilized input value-added tax (VAT) attributable to its export sales for the 3rd quarter of fiscal year (FY) ended September 30, 2016 or the period April 1, 2016 to June 30, 2016.[1]

THE PARTIES

Petitioner Orica Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at 11/F Tower 2 Rockwell Business Center, Ortigas Avenue, Ugong, Pasig City.[2] It is registered with

[1] Statement of the Case, Pre-Trial Order dated May 6, 2019, Docket, p. 240.
[2] Par. 1, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 59, respectively.

the Philippine Securities and Exchange Commission (SEC);[3] and with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 000-059-661-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is vested by law with the authority, among others, to decide, approve and grant applications for refund on the excess or unutilized input VAT,[5]and/or issuance of tax credit representing a taxpayer's excess internal revenue tax payments.[6]

THE FACTS

On June 28, 2018, petitioner filed an application/request for refund with the BIR of its alleged excess input VAT covering the period April 1, 2016 to June 30, 2016.[7]

On October 17, 2018, petitioner received the Letter dated September 19, 2018 from the BIR Assessment Service, denying its administrative claim for refund of unutilized input tax attributable to its export (zero-rated) sales in the amount of ₱18,757,113.07. Although the VAT Credit Audit Division recommended the grant of the refund in the amount of ₱14,563,456.59, respondent still denied the administrative claim due to the following reasons:

a. Disallowed input VAT attributable to sales without approved zero-rating certificates and the word "zero-rated" was not stamped on its official receipts; and
b. Disallowed ripened portion of deferred input tax on capital goods purchases exceeding ₱1 million.[8]

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[3] Par. 1(a), Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 203; Exhibits "P-1" and "P-2", Docket, pp. 367 to 381.

[4] Par. 1(c), Stipulation of Facts,JSFI, Docket, p. 203; Exhibit "P-3", Docket, pp. 382 to 383.

[5]Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 10 and 59, respectively.

[6] Par. 1(b), Stipulation of Facts,JSFI, Docket, p. 203.

[7] Par. 1(d), Stipulation of Facts,JSFI, Docket, p. 204; Exhibits "P-16" and "P-17", Docket, pp. 411 to 415.

[8]Par. 9, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 12 to 13, and 59, respectively; Refer also to Par. 1(e), Stipulation of Facts, JSFI, Docket, p. 204; Exhibit "P-19", Docket, p. 418; Exhibit "R-2", BIR Records, p. 245.

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The detailed computation upon which the denial was based is shown as follows, to wit:[9]

	LOCAL	BOC	TOTAL
AMOUNT OF CLAIM	₱5,859,221.72	₱12,897,891.35	₱18,757,113.07
ADJUSTMENTS AND DISALLOWANCES PER VERIFICATION			
Disallowed input tax per vouching – non-big ticket items			
Over-claimed input tax	13,889.83	-	13,889.83
No supporting documents	34,836.52	-	34,836.52
Out of period	200,856.21	-	200,856.21
TIN not indicated	942.04	-	942.04
VAT not separately indicated	243,363.08	-	243,363.08
VAT official receipt not attachment	130,188.28	-	130,188.28
VAT sales invoice not attached	40,456.54	-	40,456.54
Disallowed input tax per vouching – big ticket items			
Over-claimed input tax	131,785.81	-	131,785.81
Unripened portion of deferred input tax on capital goods purchased exceeding ₱1 Million	256,552.88		256,552.88
Difference between the amount per application versus per schedule – lower amount	2,201,278.05	939,507.24	3,140,785.29
TOTAL DEDUCTIONS	**3,254,149.24**	**939,507.24**	**4,193,656.48**
AMOUNT RECOMMENDED PER VCAD ADJUSTMENTS AND DISALLOWANCES PER REVIEW	2,605,072.48	11,958,384.11	14,563,456.59
Disallowed Ripened portion	(211,392.07)	-	(211,392.07)
Input VAT attributable to sales without approved zero-rating and word "zero-rated" on OR	(2,881,208.61)	(11,958,384.11)	(14,839,592.72)
TOTAL CLAIM RECOMMENDED FOR REFUND/(PAYABLE)	**₱(487,528.20)**	**-**	**₱(487,528.20)**

Due to the denial of its claim for refund, petitioner elevated an appeal by filing a Petition for Review with the Court on November 16, 2018.[10]

Respondent transmitted to the Court the BIR Records of the case on December 28, 2018.[11]

On January 7, 2019, respondent filed his Answer to the Petition for Review. [12]

The Pre-Trial Conference was set and held on March 7, 2019.[13] Prior thereto, respondent filed his Pre-Trial Brief on

[9]Refer to Par. 9, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket, pp. 13, and 59, respectively; Par. 1(f), Stipulation of Facts, JSFI, Docket, p. 204; Exhibit "P-19", Docket, p. 419.

[10] Docket, pp. 10 to 21; Par. 1(e), Stipulation of Facts,JSFI, Docket – Vol. I, p. 204.

[11]*Compliance* dated December 28, 2018, Docket, pp. 55 to 57.

[12] Docket, pp. 59 to 66.

[13]*Notice of Pre-Trial Conference* dated January 22, 2019, Docket, pp. 71 to 72; Minutes of the hearing held on, and Order dated, March 7, 2019, Docket, pp. 187 to 192, and 195 to 198.

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February 7, 2019.[14]The Pre-Trial Brief of petitioner was filed on March 1, 2019.[15]

On March 22, 2019, the parties submitted their Joint Stipulation of Facts and Issues (JSFI).[16]

In the Resolution dated April 1, 2019, [17] the Court approved the said JSFI and deemed the termination of the Pre-Trial.

The Court subsequently issued a Pre-Trial Order on May 6, 2019.[18]

During trial, petitioner presented its documentary and testimonial evidence. Petitioner presented the testimonies of the following individuals, namely: (1) Ms. Krista V. Bambao,[19] the Court duly-commissioned Independent Certified Public Accountant (ICPA); [20] and (2) Ms. Teresa S. Gonzales, [21] petitioner's Tax Specialist.

On April 8, 2019, the ICPA submitted her report.[22]

On June 17, 2019, petitioner filed its Formal Offer of Evidence. [23] Respondent submitted his Comment (RE: Petitioner's Formal Offer of Evidence) on June 18, 2019.[24] In the Resolution dated July 12, 2019,[25] petitioner's exhibits were admitted, *except* for the following:

1) Exhibits "P-582" and "P-1301", for not being found in the records of the case;

2) Exhibits "P-27", "P-27-1", "P-52" to "P-69", "P-71" to "P-86", "P-87", "P-615", "P-621", "P-625", "P-661", "P-662",

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[14] Docket, pp. 73 to 76.
[15] Docket, pp. 103 to 113.
[16] Docket, pp. 203 to 213.
[17] Docket, p. 228.
[18] Docket, pp. 240 to 249.
[19]*Judicial Affidavit of Krista V. Bambao*, Docket – Vol. I, pp. 307 to 343; Order dated May 28, 2019, Docket, pp. 346 to 348.
[20]*Oath of Commission* dated March 7, 2019, Docket, p. 193; Minutes of the hearing held on, and Order dated March 7, 2019, Docket, pp. 187 to 192, and 195 to 198.
[21] Exhibit "P-20", Docket, pp. 121 to 132; Minutes of the hearing held on, and Order dated, May 7, 2019, Docket, pp. 250 to 252.
[22] Docket, p. 234.
[23] Docket, pp. 352 to 366.
[24] Docket, pp. 420 to 422.
[25] Docket, pp. 426 to 428.

"P-728", "P-738", "P-769" to "P-773", "P-792" to "P-795", "P-838" to "P-843", "P-845" to "P-847", "P-1261", "P-1362", "P-1369" to "P-1373", "P-1375", "P-1543" to "P-1615", "P-1692", "P-1693", for failure to present the originals for comparison;

3) Exhibits "P-808", "P-809", "P-818", and "P-819", for being illegible; and

4) Exhibits "P-70", "P-659", and "P-844", for failure to present the originals for comparison and for being illegible.

On August 1, 2019, petitioner filed its Motion for Reconsideration with Leave of Court to Admit Evidence (RE: Resolution on the Formal Offer of Evidence dated 12 July 2019).[26] Respondent did not file any comment thereon.[27]

In the Resolution dated October 9, 2019,[28] the Court partially granted petitioner's Motion for Reconsideration, and admitted Exhibits "P-584" and "P-1031" in evidence.

Respondent likewise presented his documentary and testimonial evidence. He offered the sole testimony of Mr. Daniel Carlo S. Perez,[29] Revenue Officer II of the BIR.

On December 13, 2019, respondent filed his Formal Offer of Evidence.[30] Petitioner failed to comment thereon.[31]

In the Resolution dated February 7, 2020,[32] the exhibits of respondent were admitted, *except* Exhibit "R-3", for respondent's failure to identify the same.

On June 10, 2020, respondent posted his Memorandum,[33] while petitioner's Memorandum was filed on June 30, 2020.[34]

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[26] Docket, pp. 429 to 433.
[27] Records Verification dated September 16, 2019 issued by the Judicial Records Division of this Court, Docket, p. 437.
[28] Docket, pp. 443 to 445.
[29] Exhibit "R-5", Docket, pp. 84 to 88; Minutes of the hearing held on, and Order dated, December 10, 2019, Docket, pp. 449 to 453.
[30] Docket, pp. 456 to 459.
[31] Records Verification dated January 8, 2020 issued by the Judicial Records Division of this Court, Docket, p. 464.
[32] Docket, pp. 470 to 471.
[33] Docket, pp. 473 to 479.
[34] Docket, pp. 482 to 518.

On July 21, 2020, the instant case was submitted for decision.[35]

THE ISSUES

The parties stipulated the following issues to be resolved by this Court, to wit:

> "1. Whether the decision of the Commissioner of Internal Revenue is correct based on the documents submitted by petitioner to the respondent.
>
> 2. Whether petitioner is entitled to its claim for cash refund representing its excess and/or unutilized input VAT attributable to its zero-rated sales for the third quarter of FY 2016 (or the period 1 April 2016 to 30 June 2016) in the amount of Pesos: **Eighteen Million Seven Hundred Fifty Seven Thousand One Hundred Thirteen & 7/100 (₱18,757,113.07)**."[36]

Petitioner's arguments:

Petitioner asserts that it is a VAT-registered entity as required under Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended, and that it has sufficiently complied with all the requisites to be entitled to a refund or tax credit of input taxes attributable to zero-rated or effectively zero-rated sales under Section 112 (A) of the 1997 NIRC, as amended, to wit:

1. that the taxpayer is VAT-registered;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
5. that input taxes have not been applied against any output VAT liability; and
6. that the claim was filed within the prescribed periods both in the administrative and judicial levels.

Petitioner further claims that the export sales were paid for in acceptable foreign currency and that the proceeds have

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[35] Resolution dated July 21, 2020, Docket, p. 520.
[36] Stipulation of Issues, JSFI, Docket, pp. 204 to 205.

been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*. As to the factual aspect of its claim, petitioner asserts that the input taxes due from the purchases of goods and services directly attributable to its zero-rated sales were duly supported by VAT invoices or official receipts.

Respondent's counter-arguments:

In his Answer to the Petition for Review, respondent maintains that the claim for refund must be denied due to petitioner's failure to substantiate the same in the administrative level. Citing the Supreme Court decision in the case of *Pilipinas Total Gas, Inc., vs. CIR* (*Pilipinas Total* case) [37] where it was supposedly held that the Court of Tax Appeals (hereinafter referred to as the Court) as an appellate body should confine itself to the determination of whether the findings of the respondent in the administrative level are consistent with law. It further cites the *Pilipinas Total* case to support his theory that a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the Court. In fine, respondent avers that petitioner cannot submit documents to the Court that it did not submit at the administrative level. Following this reasoning, respondent opines that the Court is confined to a determination of a more limited issue of whether the denial of the claim for refund at the administrative level based on the documents submitted therein, is proper.

On the substantive merits of petitioner's claim for refund, respondent submits that it is not entitled to the amount of Php18,757,113.07 because the records allegedly do not show that an approved zero-rating was secured by petitioner which is a requirement set forth in Section 2.13 of the Revised Checklist of Mandatory Requirements under Annex A.1 of Revenue Memorandum Circular (RMC) No. 17-2018 (Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as amended by Republic Act (RA) No. 10963, known as the Tax Reform for Acceleration and Inclusion (TRAIN)).

[37] G.R. No. 207112, December 8, 2015.

In addition, respondent claims that the official receipts issued for the zero-rated sales of services to petitioner's foreign customers are not labeled "zero-rated" which is in violation of Section 113 (B) (2) of the 1997 NIRC, as amended.

Finally, respondent invokes the well-established and oft-repeated rule that the claimant has the burden of proof to establish the factual basis of its claim for refund and that tax refunds are strictly construed against the claimant and in favor of the taxing authority. Respondent asserts that petitioner failed to discharge the burden of proof necessary to warrant a grant of its claim for refund.

THE RULING OF THE COURT

We shall first resolve the issue raised by respondent that petitioner's claim for refund must be denied due to petitioner's failure to substantiate the same in the administrative level and that the role of this Court is confined to the determination of whether the denial by of the claim in the administrative level is proper.

We find respondent's assertions bereft of merit and espouses a limited view of the role of the Court over appeals filed from a decision of the CIR or its representatives, denying a taxpayer's claim for refund.

It is well-established that cases brought before this Court are litigated *de novo*.[38]

The Court is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level.

Section 8 of RA No. 1125, as amended, provides:

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

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[38] *CIR vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

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The Supreme Court in the case of *CIR vs. Manila Mining Corporation*,[39] quoted with approval the CTA decision which ruled, thus:

> **"Section 8 of RA 1125 (An Act Creating the Court of Tax Appeals), provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo)** where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration." (emphasis supplied)

The Court of Tax Appeals as a court of record has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice. To stretch this ruling further, the Court may even resolve issues that were not raised by both parties in both the administrative and judicial levels to achieve an orderly disposition of the case. We quote the decision of the Supreme Court in the case of *CIR vs. Lancaster*,[40] to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." xxx xxx xxx (emphasis supplied)

In the recently decided case of *CIR vs. Univation Motor Phils., Inc.*,[41] the Supreme Court acknowledged that the cases filed in the CTA are litigated *de novo*, when it ruled, thus:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. **The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
>
> Cases filed in the CTA are litigated *de novo* and as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting xxx to the Court of Tax Appeals all evidence xxx required for the successful prosecution of its administrative claim." **Consequently, the**

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[39]G.R. No. 153204, August 31, 2005.
[40]G.R. No. 183408, July 12, 2017.
[41]G.R. No. 231581, April 10, 2019.

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> **CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance."** (emphasis supplied)

In the Letter dated September 19, 2018,[42] respondent denied the petitioner's administrative claim for refund on the ground that it had excess deductions over the claim detailed as follows:

	LOCAL	BOC	TOTAL
AMOUNT OF CLAIM	₱5,859,221.72	₱12,897,891.35	₱18,757,113.07
ADJUSTMENTS AND DISALLOWANCES PER VERIFICATION			
Disallowed input tax per vouching – non-big ticket items			
Over-claimed input tax	13,889.83	-	13,889.83
No supporting documents	34,836.52	-	34,836.52
Out of period	200,856.21	-	200,856.21
TIN not indicated	942.04	-	942.04
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VAT official receipt not attachment	130,188.28	-	130,188.28
VAT sales invoice not attached	40,456.54	-	40,456.54
Disallowed input tax per vouching – big ticket items			
Over-claimed input tax	131,785.81	-	131,785.81
Unripened portion of deferred input tax on capital goods purchased exceeding ₱1 Million	256.552.88		256,552.88
Difference between the amount per application versus per schedule – lower amount	2,201,278.05	939,507.24	3,140,785.29
TOTAL DEDUCTIONS	**3,254,149.24**	**939,507.24**	**4,193,656.48**
AMOUNT RECOMMENDED PER VCAD	2,605,072.48	11,958,384.11	14,563,456.59
ADJUSTMENTS AND DISALLOWANCES PER REVIEW			
Disallowed Ripened portion	(211,392.07)	-	(211,392.07)
Input VAT attributable to sales without approved zero-rating and word "zero-rated" on OR	(2,881,208.61)	(11,958,384.11)	(14,839,592.72)
TOTAL CLAIM RECOMMENDED FOR REFUND/(PAYABLE)	**₱(487,528.20)**	**₱ -**	**₱(487,528.20)**

Apparently, respondent's denial of the claim for refund may be the subject of a judicial appeal wherein a taxpayer may present evidence to convince the Court that he had no reason to deny said claim.

Moreover, no value is given to documentary evidence submitted in the BIR unless it is formally offered in the Court of Tax Appeals [43]Thus, the review of the Court is not limited to whether or not the Commissioner committed grave abuse of

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[42] Exhibit "P-19", Docket, pp. 418 to 419.

[43] *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018.

discretion, fraud, or error of law, as argued by the CIR. As evidence is considered and evaluated again, the scope of the Court's review covers factual findings.[44]

Thus, the Court shall determine not only whether petitioner is entitled to a claim for cash refund in the amount of ₱18,757,113.07, allegedly representing its excess and/or unutilized input VAT attributable to its zero-rated sales for the third quarter of FY 2016, but also whether petitioner has satisfied all the documentary and evidentiary requirements for an administrative claim.

We now proceed to determine the substantive merits of petitioner's claim for refund.

Pursuant to the provisions of Sections 112(A) and (C) of the 1997 NIRC, as amended, jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[45]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 90 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 90-day period;

B. <u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[46]

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[44] *Id.*

[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.

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

C. In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[47]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[48]

D. As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[49]
7. the input taxes are due or paid;[50]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[51] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[52]

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers the 3rd quarter of FY ending September 30, 2016. Counting two (2) years from the close of

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

the said quarter, the last day for the filing of an administrative claim was on June 30, 2018, to wit:

Period	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
3rd Quarter of FY 2016 (April 1, 2016 to June 30, 2016)	June 30, 2016	June 30, 2018

Clearly, petitioner's administrative claim for refund/TCC for the subject period was timely filed on June 28, 2018.[53]

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the 1997 NIRC, as amended.

Accordingly, from the filing of petitioner's administrative claim on June 28, 2018, respondent had ninety (90) days or until September 26, 2018 to act on the said claim.

Respondent denied petitioner's claim for refund on September 19, 2018, a copy of which was received by petitioner on October 17, 2018.[54] As such, counting thirty (30) days from October 17, 2018, petitioner had until November 16, 2018 within which to file an appeal before this Court.

Considering petitioner filed the instant Petition for Review on November 16, 2018,[55] the same was timely filed.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered entity.

Petitioner complied with the *third* requisite considering that it is a VAT registered taxpayer with TIN 000-059-661-

[53] Exhibits "P-16" and "P-17", Docket, pp. 411 to 414 and 415.
[54] Exhibit "P-19", Docket, pp. 418 to 419; Exhibit "R-2", BIR Records, p. 245.
[55] Docket, p. 10.

00000, as evidenced by BIR Certificate of Registration No. OCN 8RC0000911345E.[56]

Petitioner was able to prove its zero-rated sales during the 3rd quarter of FY 2016 in the amount of ₱207,918,289.18.

The *fourth* and *fifth* requisites respectively require that the taxpayer be engaged in zero-rated or effectively zero-rated sales; and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In its Quarterly VAT Return for the 3rd quarter of FY 2016, [57] petitioner reported VATable and zero-rated sales amounting to ₱266,485,235.84 and ₱459,667,643.67, respectively, or for a total amount of ₱726,152,879.51.

Petitioner claims that the sales in the amount ₱459,667,643.67 are subject to VAT at zero percent (0%) as the said sales were made either to non-resident foreign corporations or manufacturers/producers registered with the Board of Investments (BOI) whose products were 100% exported, such as the following:

a. Non-resident foreign customers ("NRFC") who are not registered nor doing business in the Philippines, specifically –

    1. Orica International Pte Ltd. - Asia; and,
    2. Orica Singapore Pte Ltd.

b. Manufacturers/producers registered with the BOI and whose products are 100% exported, specifically –

    1. Carmen Copper Corporation;
    2. Greenstone Resources Corporation;
    3. Lepanto Consolidated Mining Company;
    4. Philex Mining Corporation; and,
    5. Oceanagold (Philippines) Inc. and its extension office located in Didipio Kasibu, Nueva Vizcaya.

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[56] Exhibit "P-3", Docket, pp. 382 to 383.
[57] Exhibit "P-4", Docket, p. 384.

The zero-rated sales amounting to ₱459,667,643.67, are classified as follows:

	Reference	Gross Sales	Adjustments[58]	Net Sales
Zero-rated sales to NRF:				
Goods	Annex 3 of Exhibit P-23	₱ 227,078,135.47	₱ -	₱ 227,078,135.47
Services	Annex 5 of Exhibit P-23	7,097,114.97	-	7,097,114.97
Zero-rated sales to BOI-registered entities	Annexes 4, 6, 7 and 8 of Exhibit P-23	288,944,421.67	(63,452,028.44)	225,492,393.23
Total		**₱523,119,672.11**	**₱(63,452,028.44)**	**₱459,667,643.67**

Sections 106(A)(2)(a)(1) and (5) of the 1997 NIRC, as amended, states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x
>
> (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
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the 'Omnibus Investment Code of 1987,' and other special laws."

Relative thereto, Section 4.106-5(a)(1) and (5) of Revenue Regulations (RR) No. 16-2005, as amended, which implements the foregoing provision, provides:

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

[58] Exhibit "P-23", ICPA Report (Annexes 7 to 8).

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 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

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

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact

> sold by the consignee: and *Provided, finally,* that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI."

Pursuant to the foregoing provisions, in order for a direct export sale to qualify for zero-rating under Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, the following essential elements must be present, to wit:

1) the sale was made by a VAT registered person;

2) there was sale and actual shipment of goods from the Philippines to a foreign country; and

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

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

1) the sale was made by a VAT registered person; and

2) the sale of goods was made to an entity which is entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

On the other hand, Section 108(B)(2) of the 1997 NIRC, as amended, states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* – x x x
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in

> business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the foregoing provision of Section 108(B)(2) of the 1997 NIRC, as amended, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1) The services fall under any of the categories under Section 108(B)(2), [59] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[60]

2) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[61]

3) The service must be performed in the Philippines[62] by a VAT-registered person; and,

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[63]

Further, in proving its sales are subject to zero-rating, petitioner shall issue a VAT invoice or official receipt which must contain all the information set out under Section 113(A) and (B) of the 1997 NIRC, as amended, to wit:

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[59] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[60] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

[61] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[62] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[63] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

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

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

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

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

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

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

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

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

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

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

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

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The afore-quoted provisions are further implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended, to wit –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It must be noted, however, that RR No. 16-05 dated September 1, 2005,[64] as amended by RR No. 04-07 dated February 7, 2007 no longer requires a pre-approved certificate as VAT Zero-Rated Enterprise for the admission of the VAT zero-rated transactions of petitioner, contrary to the claim of respondent. Besides, the period covered by this claim is for the 3rd quarter of TY 2016 which is before RMC No. 17-2018, thus the latter cannot be given a retroactive application. Furthermore, in the hierarchy of BIR administrative issuances, the revenue regulations, which have the force and effect of law, take precedence over RMCs. Thus, there was no obligation on the part of petitioner to submit a BIR Certificate of VAT Zero-Rated Enterprise.

In addition to the above requirements, the sales invoices ("SIs") and official receipts ("ORs") must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the 1997 NIRC, as amended, to wit:

"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 sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx"

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

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other

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64 Section 4.106-6.

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> things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

As for the *first* essential element under Section 106(A)(2)(a)(1) and (5) of the 1997 NIRC, as amended, it is settled that petitioner is a VAT-registered person.

Relative to the *second* essential element in establishing its direct export sales as subject to zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, petitioner must present, among others, the following documents:

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

Petitioner, however, submitted only the SIs[65] supporting the purported direct export sale of goods amounting to ₱227,078,135.47, which, apparently, is insufficient to prove its compliance with the *second* essential element, as prescribed above.

It is to be noted that while petitioner offered as evidence the bills of lading purportedly supporting its export sale of goods amounting to ₱227,078,135.47, the same were denied admission by the Court in a Resolution dated July 12, 2019[66] for petitioner's failure to present the originals for comparison.

Likewise, petitioner failed to prove that the payment for its alleged direct export sale of goods were paid for in acceptable foreign currency or its equivalent in goods or services and was accounted for in accordance with the rules and regulations of the BSP, as the certification of inward remittances issued by Hongkong and Shanghai Banking Corporation Limited (HSBC) was denied admission by the Court for petitioner's failure to present the original for comparison. Consequently, petitioner failed to satisfy the *third* essential element.

[65] Exhibits "P-34" to "P-51".
[66] Docket, p. 426.

Verily, for failure to comply with the required proof of actual export to a foreign country and to prove that these exports were paid for in acceptable foreign currency as accounted for in accordance with the rules and regulations of the BSP, the total declared zero-rated direct export sale of goods amounting to ₱227,078,135.47 for the 3rd quarter of FY 2016 must be disallowed for purposes of refund herein.

Moving on to the *second* essential element in establishing its export sales under Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended, it is imperative that petitioner present, among others, the following documents:

1.) the sales invoice and official receipt as proof of sale of goods and services, respectively; and
2.) a Certification issued by BOI that the registered entity exported 100% of its products.

Petitioner presented the SIs and ORs[67] issued to its BOI-registered customers and their respective BOI Certifications as 100% exporters [68] to prove its compliance with the aforementioned *second* essential element.

However, upon examination of the said documents, the sale of services to BOI-registered entities amounting to ₱17,574,104.05 must be disallowed for not being accordingly supported by VAT ORs, as detailed hereunder:

Exhibit No.	**Customer**	**Amount Disallowed**
"P-305"	Greenstone Resources Corp	₱ 1,440,811.06
"P-306"	Greenstone Resources Corp	7,888.00
"P-307"	Greenstone Resources Corp	437,400.00
"P-308"	Greenstone Resources Corp	1,302,597.70
"P-309"	Greenstone Resources Corp	1,361,335.26
"P-310"	Greenstone Resources Corp	437,400.00
"P-311"	Greenstone Resources Corp	1,096,321.12
"P-312"	Greenstone Resources Corp	150,220.00
"P-313"	Greenstone Resources Corp	1,423,925.50
"P-314"	Greenstone Resources Corp	80,660.00
"P-315"	Greenstone Resources Corp	1,421,829.68
"P-316"	Greenstone Resources Corp	437,400.00
"P-317"	Oceanagold (Philippines) Inc.	1,981,217.88

[67] Exhibits "P-88" to "P-302", and "P-305" to "P-324".
[68] Exhibits "P-29" to "P-33".

"P-318"	Oceanagold (Philippines) Inc.	160,278.30
"P-319"	Oceanagold (Philippines) Inc.	565,988.61
"P-320"	Oceanagold (Philippines) Inc.	276,908.00
"P-321"	Oceanagold (Philippines) Inc.	1,977,413.13
"P-322"	Oceanagold (Philippines) Inc.	1,964,307.88
"P-323"	Oceanagold (Philippines) Inc.	275,072.80
"P-324"	Oceanagold (Philippines) Inc.	775,129.13
	Total	**₱17,574,104.05**

Verily, out of the total declared zero-rated sales to BOI-registered entities amounting to ₱225,492,393.23 for the 3rd quarter of FY 2016, only the amount of ₱207,918,289.18[69] complied with the invoicing requirements under the 1997 NIRC, as amended, and RR No. 16-05, as amended.

Lastly, with regard to petitioner's effectively zero-rated sales under Section 108(B)(2) of the 1997 NIRC, as amended, amounting to ₱7,097,114.97, it was able to establish compliance with the *first* essential element by presenting the sales invoices issued to Orica International Pte Ltd.-Asia[70] and showing that the services performed by petitioner were overlabelling, palletizing, transport cost, and port charges, thereby qualifying these services as other than *"processing, manufacturing or repacking goods"* .

Anent the *second* essential element, petitioner presented the *Certification of Non-Registration of Company* dated June 1, 2018[71] issued by the SEC to the effect that its records do not show the registration of petitioner's client, Orica International Pte Ltd. - Asia, as a corporation or as a partnership.

However, said SEC *Certification of Non-Registration,* alone, is inadequate proof that petitioner's client is a non-resident foreign corporation doing business outside the Philippines.

As consistently ruled by this Court, to be considered as a non-resident foreign corporation doing business outside the Philippines, the same must be proved by presenting, at the very least, both (1) (a) *SEC Certification of Non-Registration of Corporation/Partnership* and (b) proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax

[69] ₱225,492,393.23 less ₱17,574,104.05.
[70] Exhibits "P-303" to "P-304".
[71] Exhibit "P-25-1".

Residence Certificate), and (2) that there is no other indication which would disqualify said entity on being classified as a non-resident foreign corporation.

While petitioner presented the Certificate Confirming Incorporation of Company issued by the Accounting and Corporate Regulatory Authority of Singapore,[72] the Court notes that the same was issued to Orica International Pte Ltd. No other evidence was presented to confirm that Orica International Pte Ltd. - Asia and Orica International Pte Ltd. are one and the same company.

Thus, since there is no proof of incorporation/registration of Orica International Pte Ltd. - Asia in a foreign country that was presented by petitioner, the latter's supposed client cannot be treated as non-resident foreign corporation doing business outside the Philippines. Thus, the *second* essential element was not satisfied by petitioner.

As regards the *third and fourth* essential elements, the same also have not been established, since petitioner failed to present or offer any evidence to show that the subject services were performed in the Philippines, and that the payments therefor are in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

As such, the total declared zero-rated sale of services to NRFCs amounting to ₱7,097,114.97 for the 3rd quarter of FY 2016 must be disallowed for failure to comply with the essential elements in proving zero-rated sales under Section 108(B)(2) of the 1997 NIRC, as amended.

In fine, and for purposes of compliance with the *fourth* and *fifth* requisites, out of the reported total zero-rated sales of ₱459,667,643.67, only the amount of ₱207,918,289.18 qualifies as zero-rated sales for the 3rd quarter of FY 2016, under Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended, computed as follows:

Zero-rated sales per VAT return		₱ 459,667,643.67
Less: Disallowances		
Sale of goods to NRFC	₱ 227,078,135.47	
Sale to BOI-registered entities	17,574,104.05	

[72] Exhibit "P-25".

Sale of services to NRFC	7,097,114.97	251,749,354.49
Valid zero-rated sales		**₱ 207,918,289.18**

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

In its Amended Quarterly VAT Return for the 3rd quarter of FY 2016, [73] petitioner declared a total input VAT of ₱50,735,341.36, out of which the amount of ₱18,757,113.06 is the subject of the present claim for refund, as shown below:

Input Tax Due on Capital Goods exceeding ₱1M	
Deferred from previous quarter	₱1,949,287.88
Less: Deferred for the succeeding period	1,737,895.86
Amortized input tax on capital goods exceeding ₱1M	**₱211,392.02**
Input Tax Due on Current Purchases of Goods other than Capital Goods	
Input tax on domestic purchases of goods other than capital goods	6,056,216.23
Input Tax Paid on:	
Importation of goods other than capital goods	34,886,974.24
Input tax on domestic purchases of services	8,815,602.52
Services Rendered by Non-Residents	765,156.35
Sub-total	*44,467,733.11*
Total input tax during the period	**₱50,735,341.36**
Less: Output tax	31,978,228.30
Excess input tax claimed for refund	**₱18,757,113.06**

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

"SEC. 111. *Transitional/Presumptive Input Tax Credits.* –

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

[73] Exhibit "P-4", Docket, p. 384.

added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[74]

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

Not all of the input taxes being claimed are due and paid.

Anent this *seventh requisite* in claiming VAT refund, it is of utmost importance for petitioner to provide supporting documents to prove that the input taxes claimed during the 3rd quarter of FY 2016 are actually due or paid in accordance with Section 110(A) of the 1997 NIRC, as amended, which provides that:

"SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

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

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

[74] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2009.

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

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

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

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-05, which provide as follows:

"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

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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;"

"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. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

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(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Meanwhile, Section 4.110-8 of RR No. 16-05 provides for the substantiation requirements of input tax credits, as follows:

"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."

Thus, in order for petitioner to prove that its input taxes were actually due or paid, its input VAT must be duly substantiated by supporting documents prescribed under Section 4.110-8 of RR No. 16-2005. Furthermore, said documents must likewise comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the 1997 NIRC, as amended, and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

In the instant case, petitioner submitted VAT SIs and ORs[75] to support its input taxes from domestic purchases of goods and services, Statements of Settlement of Duties and Taxes ("SSDT"), Import Entry and Internal Revenue Declaration ("IEIRD")[76] issued by the BOC to support its input taxes from importation of goods, and BIR Form No. 1600[77] to support the input taxes withheld from services rendered by non-residents. These documents were examined by the Court-commissioned ICPA, Krista Bambao & Associates, as represented by Ms. Krista V. Bambao, in order to verify petitioner's compliance with the substantiation and invoicing requirements prescribed by the 1997 NIRC, as amended, and its implementing rules.

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[75] Exhibits "P-595" to "P-1466.
[76] Exhibits "P-1467" to "P-1691".
[77] Exhibits "P-5" to "P-7".

The following table shows the summary of the ICPA's findings upon her examination of the supporting documents:[78]

	Exhibit Reference		
Total Input VAT Incurred for the Third Quarter Of FY 2016 (see Table 14 of this ICPA Report)			**₱50,735,341.36**
A. Exceptions Noted:			
1. Unaccounted Input VAT from the comparison of the amount per amended quarterly VAT returns and revalidated schedules of Petitioner **(see Table 17 of this ICPA Report)**:			
a. Domestic purchase of goods other than capital goods		₱37,852.54	
b. Importation of goods other than capital goods		939,507.24	
c. Domestic purchase of services		1,573,229.70	
d. Services rendered by non-residents		0.00	2,550,589.48
2. Unsubstantiated realized portion of the deferred input VAT from purchases of capital goods in excess of ₱1Million			211,392.02
3. Domestic purchase of goods supported by non-compliant documents **(see Annex 16 of this ICPA Report)**			
a. Unsubstantiated purchase of goods		₱681,560.23	
b. Purchase of goods supported by VAT sales invoice dated outside the period of the claim	**"P-595" to "P- 786"**	2,619,422.47	
c. Purchase of goods supported by O.R.s	**"P-787" to "P- 788"**	4,383.75	
d. Double/incorrect recognition of input VAT	**"P-887"**	3,851.79	
e. Purchase of goods supported by documents other than VAT sales invoice	**"P-789" to "P-797"**	13,650.82	
f. Purchase of goods supported by altered VAT sales invoices without countersignature	**"P-798" to "P-837"**	240,837.84	
g. Purchase of goods supported by photocopy of compliant altered VAT sales invoices with countersignature	**"P-838" to "P-847"**	23,709.91	3,587,416.81
4. Domestic purchases of service supported by non-compliant documents **(see Annex 17 of this ICPA Report)**			
a. Unsubstantiated claim of input VAT from purchase of service		₱41,289.27	
b. Double recognition of input VAT (double take-up)	**"P-1459"**	30,080.36	
c. Out of period claim	**"P-1123" to "P-1188"**	1,452,000.20	
d. Purchase of services supported by documents other than VAT O.R.	**"P-1189" to "P-1251"**	137,730.59	
e. Purchase of services supported by VAT O.R. without indicating the nature of the service/payment	**"P-1252" to "P-1303"**	768,795.62	
f. Purchase of services supported by VAT O.R. without/incomplete address	**"P-1304" to "P-1351"**	32,673.30	
g. Purchase of services supported by altered VAT O.R. without countersignature	**"P-1352"**	7,145.28	
h. Purchase of services supported by VAT O.R. without nature of service payment and/or VAT breakdown	**"P-1353" to "P-1364"**	194,541.32	

[78] Exhibit "P-23", ICPA Report (Table 19).

i. Purchase of services supported by VAT O.R. without Petitioner's name, TIN and/or address	**"P-1365" to "P-1368"**	1,223.40	
j. Purchase of services supported by photocopy of compliant altered VAT O.R. with countersignature	**"P-1369" to "P-1370"**	61,308.00	
k. Purchase of services supported by photocopy of compliant altered VAT O.R. with countersignature and vendor certification	**"P-1371" to "P-1374"**	120,370.87	
l. Purchase of services supported by photocopy of compliant VAT O.R.	**"P-1375"**	9,000.00	2,856,158.20
Subtotal (A)			**₱ 9,205,556.51**
B. Properly Substantiated:			
1. Domestic purchase of goods supported by compliant VAT invoices **(see Annex 16 of this ICPA Report)**			
a. Purchase of goods supported by compliant altered VAT sales invoice with countersignature	**"P-848" to "P-962"**	₱688,163.91	
b. Purchase of goods supported by compliant altered VAT sales invoice with countersignature and vendor certification	**"P-963" to "P-1013"**	710,966.21	
c. Purchase of goods supported by compliant VAT sales invoices	**"P-1014" to "P-1122"**	1,031,816.76	2,430,946.88
2. Domestic purchase of service supported by compliant VAT O.R.s **(see Annex 17 of this ICPA Report)**			
a. Purchase of services supported by compliant altered VAT O.R. with countersignature	**"P-1376" to "P-1402"**	₱322,966.08	
b. Purchase of services supported by compliant altered VAT O.R. with countersignature and vendor certification	**"P-1403" to "P-1458"**	3,947,962.82	
c. Purchase of services supported by compliant VAT O.R.	**"P-1459" to "P-1466"**	115,285.72	4,386,214.62
3. Importation of Goods Other than Capital Goods supported by non-compliant sales IEIRDs/SAD and ORs/SSDT **(see Annex 18 of this ICPA Report)**	**"P-1467" to "P-1691"**		33,947,467.00
4. Purchases of services from non-resident supplier supported by non-compliant BIR Form 1600 or Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld filed by Petitioner for the months of April to June 2016	**"P-5" to "P-7"**		765,156.35
Subtotal (B)			**₱41,529,784.85**
Total (A) + (B)			**₱50,735,341.36**

Based on the foregoing, the input VAT amounting to ₱9,205,556.51 must be disallowed for purposes of refund on such grounds as found by the ICPA.

In addition to the above exceptions found by the ICPA, the input VAT amounting to ₱674,881.36 must likewise be disallowed as listed in the following table:

Exhibit No.	Supplier	SI/OR No.	SI/OR Date[79]	Amount Disallowed

[79] Expressed in dd-mm-yyyy.

INPUT VAT FROM DOMESTIC PURCHASES OF GOODS				
Domestic purchase of goods outside the period of claim				
"P-899"	Macro Hardware & Construction Supply Co., Inc.	132219	02-Mar-2016	₱9,771.44
"P-905"	Macro Hardware & Construction Supply Co., Inc.	130591	17-Nov-2015	17,266.07
"P-906"	Macro Hardware & Construction Supply Co., Inc.	128142	09-Jul-2015	2,506.07
"P-907"	Macro Hardware & Construction Supply Co., Inc.	128222	14-Jul-2015	1,407.85
"P-908"	Macro Hardware & Construction Supply Co., Inc.	127077	18-May-2015	4,170.43
"P-909"	Mannparts Commercial	14764	14-Mar-2016	6,649.29
"P-910"	Mannparts Commercial	14763	14-Mar-2016	2,678.57
"P-924"	Manuel Stationery	54456A	10-Mar-2016	32,142.86
"P-942"	Nadal Enterprises	0599	21-Mar-2016	1,028.57
"P-943"	Nadal Enterprises	0597	07-Mar-2016	2,304.00
"P-964"	Nitro Asia Company, Inc.	009194	04-Mar-2016	158,160.00
"P-986"	Packagemakers, Inc.	72330	15-Jun-2015	38,571.43
"P-1034"	Charland Trading	0709	30-Mar-2016	2,410.71
"P-1036"	Charland Trading	0708	30-Mar-2016	3,407.14
	Subtotal			***₱282,474.43***
Domestic purchase of goods supported with VAT SI without Authority to Print				
"P-929"	Medical Center Trading Corporation	1230325	12-May-2016	***₱71,807.14***
Total disallowed input VAT from domestic purchases of goods				***₱354,281.57***
INPUT VAT FROM DOMESTIC PURCHASES OF SERVICES				
Overclaimed input VAT from domestic purchase of services				
"P-1402"	Toyota Shaw, Inc.	1S215234 *Amount per claim* *Amount per OR*	20-May-2016 *₱5,917.16* *3,495.73*	₱2,421.43
"P-1424"	G.A. Rueda Tracking	006074 *Amount per claim* *Amount per OR*	01-Jun-2016 *₱725,775.09* *593,989.38*	131,785.71
Total disallowed input VAT from domestic purchases of services				**₱134,207.14**
INPUT VAT FROM SERVICES TO NON-RESIDENTS				
Input VAT from services to non-residents paid outside the period of claim				
"P-7"[80]	N/A	BIR Form 1600	04-Jul-2016	***₱186,392.65***
TOTAL ADDITIONAL DISALLOWED INPUT VAT				**₱674,881.36**

Thus, out of the total claimed input VAT amounting to ₱50,735,341.36 for the 3rd quarter of FY 2016, only the amount of ₱40,854,903.49 represents petitioner's valid input VAT, as computed below:

	Domestic Purchases of Goods Other Than Capital Goods	**Importation of Goods Other Than Capital Goods**	**Domestic Purchases of Services**	**Services Rendered by Non-residents**	**Amortized Input VAT**	**Total**
Total claimed input VAT	*₱6,056,216.23*	*₱34,886,974.24*	*₱8,815,602.52*	*₱765,156.35*	*₱211,392.02*	*₱50,735,341.36*
Less: Disallowances						
Found by the ICPA	3,625,269.35	939,507.24	4,429,387.90	-	211,392.02	9,205,556.51
Found by the Court	354,281.57	-	134,207.14	186,392.65	-	674,881.36

[80] Docket, pp. 392 to 394.

Total disallowances	*3,979,550.92*	*939,507.24*	*4,563,595.04*	*186,392.65*	*211,392.02*	*9,880,437.87*
Valid input VAT	**₱2,076,665.31**	**₱33,947,467.00**	**₱4,252,007.48**	**₱578,763.70**	**₱-**	**₱40,854,903.49**

Since there are both taxable sales subject to 12% VAT and zero-rated sales, the valid input VAT of ₱40,854,903.49 shall be proportionately allocated on the basis of sales volume.

To reiterate, the *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sale and taxable sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

As earlier mentioned, for the subject period of the claim, petitioner had taxable sales subject to 12% VAT and zero-rated sales, in the respective amounts of ₱266,485,235.84 and ₱459,667,643.67, respectively, totaling ₱726,152,879.51.

However, since its input VAT cannot be directly or entirely attributed to any of the transactions, we shall allocate the valid input VAT of ₱40,854,903.49 proportionately on the basis of the volume of its sales. Thus:

Total Taxable Sales per VAT Returns	₱266,485,235.84
Divided by the Reported Total Sales per Quarterly VAT Returns	₱726,152,879.51
Multiplied by Total Valid Input VAT	₱40,854,903.49
Valid input VAT allocated to total sales subject to 12% VAT	**₱14,993,025.43**

Total Zero-Rated Sales per VAT Returns	₱459,667,643.67
Divided by the Reported Total Sales per Quarterly VAT Returns	₱726,152,879.51
Multiplied by Total Valid Input VAT	₱40,854,903.49
Valid input VAT allocated to total zero-rated sales	**₱25,861,878.06**

Thus, for purposes of, and with regard to petitioner's compliance with, the *eighth* requisite, only the amount of

₱25,861,878.06 represents valid input VAT attributable to total reported zero-rated sales.

Determination of the refundable amount.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, this Court shall now determine whether the same was applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

For the 3rd quarter of FY 2016, petitioner has output VAT liability in the amount of ₱31,978,228.30.[81] Since petitioner's valid input VAT allocated to sales subject to the 12% VAT in the amount of ₱14,993,025.43 is not enough to cover the said output VAT liability, the output VAT still due against petitioner is computed as follows:

Output VAT	₱31,978,228.30
Input VAT allocated to VATable sales	14,993,025.43
Output VAT still due	**₱ 16,985,202.87**

The valid input VAT attributable to total reported zero-rated sales in the amount of ₱25,861,878.06 shall then be utilized against the said remaining output VAT liability of petitioner in the amount of ₱16,985,202.87.

Consequently, only the remaining input VAT of ₱8,876,675.19 can be attributed to the entire zero-rated sales reported by petitioner in the amount of ₱459,667,643.67 and only the input VAT of ₱4,015,125.16 is attributable to the valid zero-rated sales of ₱207,918,289.18, as computed below:

Valid input VAT allocated to reported zero-rated sales	₱ 25,861,878.06
Output VAT still due	16,985,202.87
Valid input VAT allocated to reported zero-rated sales	**₱ 8,876,675.19**
Divide by declared zero-rated sales	₱ 459,667,643.67
Multiply by valid zero-rated sales	₱ 207,918,289.18
Excess input VAT attributable to valid zero-rated sales	**₱ 4,015,125.16**

[81] Exhibit "P-4", Line 19B, Docket, p. 384.

Although the input VAT claim of ₱18,757,113.07, which necessarily includes the amount of ₱4,015,125.16, was carried-over by petitioner in its succeeding Quarterly VAT Returns,[82] the same remained unutilized until the same was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT returns for the 2nd quarter of FY 2018.[83] Therefore, the subject claim no longer formed part of the excess input VAT of ₱182,954,555.05[84] as of the end of the 2nd quarter of FY 2018 that was carried over to the succeeding 3rd quarter of FY 2018.[85]

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

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND/ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner Orica Philippines, Inc. the amount of **₱4,015,125.16**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the 3rd quarter of FY 2016 or the period covering April 1, 2016 to June 30, 2016.

The Letter dated September 19, 2018 of the Assessment Service of the Bureau of Internal Revenue, denying petitioner's administrative claim for refund of unutilized input VAT attributable to zero-rated export sales in the amount of **₱18,757,113.07,** is **REVERSED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[82] Exhibit "P-8" to "P-14", Docket, pp. 395 to 408.
[83] Exhibit "P-14", Line 23D, Docket, p. 407.
[84] Exhibit "P-14", Line 29.
[85] Exhibit "P-15", Line 20A, Docket, p. 409.

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice