REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8245

Members:

Bautista, *Chairperson*
Cotangco-Manalastas, *JJ.*

Promulgated:

MAY 10 2013

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

STATEMENT OF THE CASE

This is a Petition for Review filed by CE Casecnan Water and Energy Company, Inc. (petitioner) to appeal the inaction of the Commissioner of Internal Revenue (respondent) over petitioner's administrative claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of P16,702,501.38, representing alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales of generated power to the National Irrigation Administration (NIA) for taxable year 2009.

STATEMENT OF FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija. It was incorporated on September 21, 1994, the primary purpose of which is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration and for the supply of water for agricultural purposes to the National Irrigation Administration (the 'Project'); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens".[1]

Petitioner's multi-purpose irrigation and power plant project with the power plant component, consisting of a hydro-electric powerhouse with an installed capacity of 140 MW, has been duly accredited and certified as a Private Sector Generation Facility (PSGF) by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation No. 95-07-12 issued by the DOE on July 20, 1995.[2] On July 27, 2005, petitioner was granted by the Energy Regulatory Commission (ERC) a Certificate of Compliance (COC) No. 05-07-GN8-10701. This COC is valid for a period of five years from the date of issuance, or until July 27, 2010.[3]

It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification Number 004-500-931-000.[4]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Original Quarterly VAT Returns for taxable year 2009, as well as their amendments through the

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[1] Pars. 1 and 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 138 and 139; Exhibits "B" and "B-1".
[2] Exhibit "C".
[3] Exhibit "E".
[4] Par. 4, Admitted Facts, JSFI, docket, p. 139; Exhibit "D".

BIR's Electronic Filing and Payment System (EFPS) on the following dates:

EXHIBIT	PERIOD COVERED	DATE OF FILING
F	Original Quarterly VAT Return for January to March 2009	April 27, 2009
G	Original Quarterly VAT Return for April to June 2009	July 27, 2009
H	Original Quarterly VAT Return for July to September 2009	October 26, 2009
I	Original Quarterly VAT Return for October to December 2009	January 25, 2010
J	Amended Quarterly VAT Return for January to March 2009	October 18, 2010
K	Amended Quarterly VAT Return for April to June 2009	October 18, 2010
L	Amended Quarterly VAT Return for July to September 2009	October 18, 2010
M	Amended Quarterly VAT Return for October to December 2009	October 27, 2010

On November 10, 2010, petitioner filed an administrative claim with the BIR Large Taxpayers Regular Audit Division I for the refund or issuance of TCC for its alleged unutilized input VAT in the amount of P16,702,501.38, attributable to its zero-rated sales of power to NIA, covering the first quarter to the fourth quarter of 2009.[5]

However, due to the inaction of respondent Commissioner on petitioner's administrative claim, petitioner filed the instant Petition for Review on March 30, 2011.

In her Answer[6] filed on May 19, 2011, respondent interposed the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 5. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

[5] Exhibit "N".
[6] Docket, pp. 97 to 103.

7. Taxes are essential to government's very existence; (**CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003**) hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)**

8. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications (**BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003**). The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. (**Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc. G.R. 163835 July 7, 2010**)

9. To support its claim, it is imperative for petitioner to prove the following, viz:

   a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of the judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P16,702,501.38 allegedly incurred by petitioner for the first to fourth quarter of taxable year 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase

Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

11. The amount of Sixteen Million Seven Hundred Two Thousand Five Hundred One and 38/100 (P16,702,501.38) being claimed by petitioner arising from alleged unutilized input value-added tax ('VAT') paid and incurred for the taxable year 2009 is not properly documented;

12. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

On October 17, 2011, upon Motion[7] of petitioner, this Court commissioned Mr. Abbet R. Barce of Reyes Tacandong & Co. as Independent Certified Public Accountant (CPA).[8]

During trial, petitioner presented Leilah Yasmin E. Alpad[9], Head of the Tax Services of CalEnergy International Services, Inc.-ROHQ; and Abbet R. Barce[10], the Independent CPA duly commissioned by this Court.

Thereafter, petitioner filed on March 2, 2012 its Formal Offer of Evidence[11], submitting Exhibits "B" to "N", "P", "R", "S", and "U" to "LLLL", inclusive of their sub-markings; which was admitted by this Court in the Resolution[12] dated March 23, 2012, except Exhibit "CCCC".

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[7] Docket, pp. 294 to 296.
[8] Minutes of Hearing dated October 17, 2011, docket, p. 303.
[9] Minutes of Hearing dated August 22, 2011 and September 19, 2011, docket, pp. 153 and 290.
[10] Minutes of Hearing dated February 2, 2012, docket, p. 342.
[11] Docket, pp. 361 to 400.
[12] Docket, pp. 602 to 606.

Subsequently, on July 6, 2012, petitioner filed its Supplemental Formal Offer of Evidence[13], submitting Exhibits "FF-1-1" to "FF-1-14", "FF-2-1" to "FF-2-8", "FF-3-1" to "FF-3-13", "FF-4-1" to "FF-4-12", "HH-1-1" to "HH-1-6", "HH-2-1" to "HH-2-6", "HH-3-1" to "HH-3-17", "HH-4-1" to "HH-4-12", "NN-1-1" to "NN-1-2", "NN-2-1" to "NN-2-3", "NN-3-1" to "NN-3-3", "NN-4-1" to "NN-4-3", "TT-1-1" to "TT-1-39", "TT-2-1" to "TT-2-15", "WW-1" to "WW-1532", "XX-1" to "XX-9", "YY-1" to "YY-54", "ZZ-1" to "ZZ-8", "AAA-1" to "AAA-16", "BBB-1" to "BBB-3", "CCC-1" to "CCC-8", "DDD-1" to "DDD-2", "FFF-1" to "FFF-2", "GGG-1" to "GGG-342", "HHH-1" to "HHH-17", "III-1" to "III-5", "JJJ-1" to "JJJ-15", "KKK-1" to "KKK-2", "LLL-1" to "LLL-115", "MMM-1" to "MMM-3", "NNN-1" to "NNN-23", "OOO-1" to "OOO-2", "PPP-1" to "PPP-10", "QQQ-1" to "QQQ-113", "RRR-1" to "RRR-300", "SSS-1" to "SSS-71", "UUU-1" to "UUU-12", "VVV-1" to "VVV-78", "WWW-1" to "WWW-3", "XXX-1" to "XXX-29", "YYY-1" to "YYY-42", "AAAA-1" to "AAAA-10", "BBBB-1" to "BBBB-138", "CCCC-2" to "CCCC-6", "DDDD-1" to "DDDD-2", "EEEE-1" to "EEEE-9", "FFFF-1" to "FFFF-90", "GGGG-1" to "GGGG-9", "HHHH-1" to "HHHH-2", "IIII-1" to "IIII-2", and "KKKK-1" to "KKKK-11", inclusive of their sub-markings; which were admitted by this Court in the Resolutions dated August 2, 2012[14] and September 27, 2012[15], except Exhibits "WW-834", "MMM-1" to "MMM-3", and "WWW-1" to "WWW-3".

On the other hand, during the hearing held on November 8, 2012, counsel for respondent manifested that she has no evidence to present. The Court then granted both parties thirty (30) days from said date to file their respective Memorandum.[16]

On December 27, 2012, this case was submitted for decision, considering petitioner's Memorandum filed on December 21, 2012 and respondent's Memorandum filed on November 22, 2012.[17]

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[13] Docket, pp. 636 to 650.
[14] Docket, pp. 657 to 659.
[15] Docket, pp. 689 to 690.
[16] Minutes of Hearing dated November 8, 2012, docket, p. 692.
[17] Docket, p. 758.

STATEMENT OF ISSUES

The following are the parties' jointly stipulated issues[18] submitted for this Court's resolution:

> "6. Whether or not Petitioner's alleged unutilized input VAT for the 1st to the 4th quarter of calendar year (CY) 2009 amounting to P16,702,501.38 is sufficiently substantiated by documentary evidence in the form of invoices and official receipts;
>
> 7. Whether or not Petitioner's alleged unutilized input VAT for the 1st to the 4th quarter of CY 2009 was applied or credited against any output VAT of the Petitioner in the same or subsequent quarter or quarters;
>
> 8. Whether or not Petitioner's alleged unutilized input VAT of P16,702,501.38 is attributable or allocable to zero-rated sales of power to the National Irrigation Administration (NIA);
>
> 9. Whether or not Petitioner filed its administrative and judicial claims for refund or tax credit within the prescriptive periods provided by law;
>
> 10. Whether or not Petitioner has complied with Section 112(C) of the Tax Code with respect to the submission of supporting documents; and
>
> 11. Whether or not Petitioner is entitled to a refund of and/or issuance of a tax credit certificate (TCC) in the amount of P16,702,501.38."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P16,702,501.38, representing its unutilized input VAT

[18] Docket, pp. 140 to 141.

incurred from its purchases of goods and services attributable to its zero-rated sales of power to NIA for taxable year 2009."

DISCUSSION/RULING

In *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue*[19], which involves the same parties, type of tax and case except for the taxable period, this Court has found, and is herein given judicial notice, that petitioner has sufficiently established that it is in the business of power generation and as such sold generated power to NIA; hence, it can treat its sale of generated power to NIA as VAT zero-rated sales. The pertinent portions of the decision are quoted below:

> "As correctly pointed out by petitioner, the law explicitly states that sales of generated power by generation companies are VAT zero-rated beginning June 26, 2001, the date of effectivity of Republic Act (R.A.) No. 9136[20]. The significant parts of Section 6 of R.A. No. 9136 read as follows:
>
> > 'SECTION 6. *Generation Sector.* - Generation of electric power, a business affected with public interest, shall be competitive and open.
> >
> > xxx xxx xxx
> >
> > Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated.**' *(Emphasis supplied)*
>
> Likewise, the Rules and Regulations to Implement Republic Act No. 9136, specifically, Section 6 of Rule 5 thereof states that:

[19] CTA Case Nos. 8041 and 8111, September 11, 2012.
[20] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes otherwise known as "Electric Power Industry Reform Act of 2001".

'SECTION 6. *Generation Charges and VAT.* -

xxx xxx xxx

(b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules.' *(Emphasis supplied)*

In order for a power generation company to qualify for VAT zero-rating in accordance with R.A. No. 9136, two (2) requirements must concur, namely, (1) it is a generation company; and (2) it derived sales from power generation.

However, the foregoing provision was expressly repealed by R.A. No. 9337[21]. The repealing clause of R.A. No. 9337 provides:

'SECTION 24. *Repealing Clause.* - The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

xxx xxx xxx

[21] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.

> (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and'

Notwithstanding the said repeal, the sale of power or fuel generated through renewable source of energy continued to be VAT zero-rated under Section 108(B)(7) of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 9337, which states:

> 'SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, **hydropower**, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.' *(Emphasis supplied)*

In this case, records show that petitioner's 140-megawatt hydro-electric power plant project has been accredited by the Department of Energy as a Private Sector Generation Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended. Likewise, the Energy Regulatory Commission issued Certificate of

Compliance No. 05-07GN8-10701 for its generation facility. Further, under the Amended and Restated Casecnan Project Agreement between petitioner and NIA, petitioner generates power and subsequently sells it only to NIA. Thus, petitioner has sufficiently established that it is in the business of power generation and as such sold corresponding generated power to NIA. Accordingly, it can treat its sale of generated power to NIA as VAT zero-rated sales."

As in the above-cited case, petitioner presented in evidence its DOE Certificate of Accreditation No. 95-07-12 dated July 20, 1995[22], its ERC Certificate of Compliance No. 05-07-GN8-10701 dated July 27, 2005[23], and the Amended and Restated Casecnan Project Agreement by and between petitioner and NIA dated June 26, 1995[24], which all proved that: (a) petitioner's 140-megawatt hydro-electric power plant project has been accredited by the Department of Energy as a Private Sector Generation Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended; (b) the Energy Regulatory Commission issued Certificate of Compliance No. 05-07-GN8-10701 for its generation facility; and (c) petitioner generates power through its hydro-electric power plant and subsequently sells it only to NIA. As such, petitioner has sufficiently established that it is in the business of power generation and sold corresponding generated power to NIA as VAT zero-rated sales.

This Court will now resolve the issue of whether petitioner's claim for a refund or issuance of tax credit certificate in the amount of P16,702,501.38, representing its unutilized input VAT incurred from purchases of goods and services attributable to its zero-rated sales to NIA for taxable year 2009, is duly substantiated.

Section 112(A) of the National Internal Revenue Code of 1997 lays down the requisites for refunds or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, quoted hereunder for easy reference:

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[22] Exhibit "C".
[23] Exhibit "E".
[24] Exhibit "V".

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* -
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx" *(Emphasis supplied)*

Thus, in order to be entitled to a refund or issuance of tax credit certificate for its unutilized input VAT attributable to zero-rated or effectively zero-rated sales, petitioner must comply with the following requisites:

1. that there must be zero-rated or effectively zero-rated sales;
2. that input taxes were incurred or paid;
3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;
4. that the input VAT payments were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

For the four taxable quarters of 2009, petitioner derived receipts from sales of power generation services to NIA in the total amount of P3,243,753,698.55 as evidenced by official receipts[25] issued by petitioner to NIA and declared in petitioner's Quarterly VAT Returns for the same period, as follows:

EXHIBIT	YEAR 2009	ZERO-RATED SALES/RECEIPTS
J[26]/Z-1	1st Quarter	P 537,904,551.13
K[27]/Z-2	2nd Quarter	664,713,902.37
L[28]/Z-3	3rd Quarter	1,336,299,982.50
M[29]/Z-4	4th Quarter	704,835,262.55
TOTAL		**P3,243,753,698.55**

This Court shall now determine the amount of input VAT attributable thereto.

Petitioner reported a total amount of P34,562,585.92 input VAT for the four quarters of 2009, arising from its domestic purchases and importation of non-capital goods, domestic purchase of services, services rendered by non-residents, and amortization of input VAT on capital goods exceeding P1 million, detailed as follows:

YEAR 2009	INPUT VAT				
	1ST QUARTER	**2ND QUARTER**	**3RD QUARTER**	**4TH QUARTER**	**TOTAL**
Exhibit	**Z-1**	**Z-2**	**Z-3**	**Z-4**	
Domestic purchases – Non-capital goods	P 557,514.83	P 546,412.31	P 1,030,732.02	P 910,173.34	P 3,044,832.50
Importation – Non-capital goods	74,220.44	220,175.97	109,258.19	204,534.42	608,189.02
Domestic purchase – Services	10,047,086.75	7,345,152.97	7,054,558.65	5,955,283.59	30,402,081.96
Services rendered by non-residents	216,781.49	-	-	50,318.93	267,100.42
Amortization of input VAT on capital goods exceeding P1 million	46,174.98	64,735.68	64,735.68	64,735.68	240,382.02
TOTAL INPUT VAT	**P10,941,778.49**	**P8,176,476.93**	**P8,259,284.54**	**P7,185,045.96**	**P34,562,585.92**

Out of the reported input VAT of P34,562,585.92, petitioner is claiming a refund in the amount of P16,702,501.38, computed as follows:

[25] Exhibits "FF-1-1" to "FF-1-14", "FF-2-1" to "FF-2-8", "FF-3-1" to "FF-3-13", and "FF-4-1" to "FF-4-12".
[26] Docket, pp. 438 to 439.
[27] Docket, pp. 440 to 441.
[28] Docket, pp. 442 to 443.
[29] Docket, pp. 444 to 445.

YEAR 2009	INPUT TAX	RATIO OF ZERO-RATED SALES OVER TOTAL SALES	INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES
1st Quarter	P 10,941,778.49	45.37%	P 4,964,389.39
2nd Quarter	8,176,476.93	51.72%	4,228,553.28
3rd Quarter	8,259,284.54	68.22%	5,634,863.96
4th Quarter	7,185,045.96	28.17%	2,023,695.52
TOTAL	**P34,562,585.92**		**P16,851,502.14**
Less: Input VAT applied to Miscellaneous Sales			(149,000.74)
Less: rounding-off difference			(0.03)
TOTAL INPUT VAT CLAIMED FOR REFUND/TCC			**P16,702,501.38**

Petitioner submitted in evidence various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts[30] in support of its P34,562,585.92 input taxes reflected in the Quarterly VAT Returns for the four quarters of 2009. The Court-commissioned Independent CPA examined and verified the aforesaid documents and summarized his findings as follows[31]:

Input VAT on purchase of goods and services which are properly substantiated for VAT purposes amounting to P33,424,468.59, as shown below:			
Nature	**Reference (Exhibit "BB")**	**Amount**	**Total**
Input VAT on domestic purchases of goods and services supported by original VAT invoices and VAT ORs, respectively, with BIR Registration, dated within the quarter (i.e., January 1 to March 31, 2009, April 1 to June 30, 2009, July 1 to September 30, 2009, and October 1 to December 31, 2009) issued in the name of the Company with Company's TIN and address (for purchases P1,000 and above)	*Annex N, Page 14*	P10,366,908.75	P 32,648,468.91
	Annex N, Page 27	7,725,917.49	
	Annex N, Page 40	7,963,338.96	
	Annex N, Page 55	6,592,303.71	
Input VAT amortization	*Annex O, Page 1*	32,942.85	187,453.50

[30] Exhibits "WW-1" to "WW-833", "WW-835" to"WW-1532", "XX-1" to "XX-9", "YY-1" to "YY-54", "ZZ-1" to "ZZ-8", "AAA-1" to "AAA-16", "BBB-1" to "BBB-3", "CCC-1" to "CCC-8", "DDD-1" to "DDD-2", "FFF-1" to "FFF-2", "GGG-1" to "GGG-342", "HHH-1" to "HHH-17", "III-1" to "III-5", "JJJ-1" to "JJJ-15", "KKK-1" to "KKK-2", "LLL-1" to "LLL-115", "NNN-1" to "NNN-23", "OOO-1" to "OOO-2", "PPP-1" to "PPP-10", "QQQ-1" to "QQQ-113", "RRR-1" to "RRR-300", "SSS-1" to "SSS-71", "UUU-1" to "UUU-12", "VVV-1" to "VVV-78", "XXX-1" to "XXX-29", "YYY-1" to "YYY-42", "AAAA-1" to "AAAA-10", "BBBB-1" to "BBBB-138", "CCCC-2" to "CCCC-6", "DDDD-1" to "DDDD-2", "EEEE-1" to "EEEE-9", "FFFF-1" to "FFFF-90", "GGGG-1" to "GGGG-9", "HHHH-1" to "HHHH-2", "IIII-1" to "IIII-2", and "KKKK-1" to "KKKK-11".

[31] Exhibit "BB", pp. 14 to 21.

on purchases of capital goods exceeding P1 million supported by original VAT invoices, with BIR Registration, issued in the name of the Company with Company's TIN and address	*Annex O, Page 1*	51,503.55	
	Annex O, Page 2	51,503.55	
	Annex O, Page 3	51,503.55	
Input VAT on importation of goods duly supported by original IEIRDs with machine validation and/or original BOC ORs and/or original Bank ORs	*Annex P, Page 1*	38,257.44	321,445.76
	Annex P, Page 1	77,447.13	
	Annex P, Page 1	95,649.79	
	Annex P, Page 1	110,091.40	
Input VAT on services rendered by non-residents duly supported by E-filed BIR Form No. 1600 and payment confirmation from the BIR	*Annex Q, Page 1*	216,781.49	267,100.42
	Annex Q, Page 1	-	
	Annex Q, Page 1	-	
	Annex Q, Page 1	50,318.93	
Total			**P33,424,468.59**

Input VAT which are substantiated by proper VAT documents with certain observations amounting to P48,382.78, as shown below:			
Nature	**Reference (Exhibit "BB")**	**Amount**	**Total**
Input VAT on domestic purchases of goods supported by VAT invoices with name of the Company written or stamped with countersignature but without letter of authorization from the supplier	*Annex R, Page 1*	P 983.90	P 3,149.40
	Annex R, Page 1	1,449.15	
	Annex R, Page 1	67.15	
	Annex R, Page 1	649.20	
Input VAT on domestic purchases of goods supported by VAT Invoices issued in the name of the Company but without the Company's TIN and/or address, or misstatements or alterations or additions (written or stamped) of the Company's TIN and/or address without countersignature	*Annex S, Page 1*	720.64	1,563.55
	Annex S, Page 1	842.91	
	Annex S, Page 1	-	
	Annex S, Page 1	-	
Input VAT on domestic purchases of goods supported by a VAT Invoice issued in the name of the Company but with misstatements or alterations or additions (written or stamped) of the Company's TIN and/or address with countersignature but without letter of authorization from the supplier	*Annex T, Page 1*	2,580.00	12,723.01
	Annex T, Page 1	5,343.01	
	Annex T, Page 1	-	
	Annex T, Page 1	4,800.00	
Input VAT on domestic	*Annex U, Page 1*	41.66	87.75

purchases of goods supported by VAT Invoices but with alterations in the name of the Company but without countersignature	*Annex U, Page 1*	-	
	Annex U, Page 1	-	
	Annex U, Page 1	46.09	
Input VAT on domestic purchases of goods supported by VAT invoices with alterations in the date but without countersignature	*Annex V, Page 1*	-	424.29
	Annex V, Page 1	424.29	
	Annex V, Page 1	-	
	Annex V, Page 1	-	
Input VAT on domestic purchases of services supported by VAT ORs with name of the Company written or stamped with countersignature but without letter of authorization from the supplier	*Annex W, Page 1*	-	1,714.28
	Annex W, Page 1	-	
	Annex W, Page 1	-	
	Annex W, Page 1	1,714.28	
Input VAT on domestic purchases of services supported by tape receipts with the Company's name written or stamped with countersignature but without letter of authorization from the supplier	*Annex X, Page 2*	2,237.62	18,353.36
	Annex X, Page 4	1,794.81	
	Annex X, Page 6	1,888.70	
	Annex X, Page 11	12,432.23	
Input VAT on domestic purchases of services supported by VAT ORs issued in the name of the Company but without the Company's TIN and/or address, or misstatements or alterations or additions (written or stamped) of the Company's TIN and/or address without countersignature	*Annex Y, Page 1*	-	6,858.85
	Annex Y, Page 1	1,409.74	
	Annex Y, Page 1	377.90	
	Annex Y, Page 1	5,071.21	
Input VAT on domestic purchases of services supported by VAT ORs issued in the name of the Company but with misstatements or alterations or additions (written or stamped) of the Company's TIN and/or address with countersignature but without letter of authorization of supplier	*Annex Z, Page 1*	-	1,615.29
	Annex Z, Page 1	185.74	
	Annex Z, Page 1	791.73	
	Annex Z, Page 1	637.82	
Input VAT on domestic purchases of services supported by VAT ORs but with alterations in the	*Annex AA, Page 1*	97.51	680.79
	Annex AA, Page 1	200.51	
	Annex AA, Page 1	201.42	
	Annex AA, Page 1	181.35	

name of the Company but without countersignature			
Input VAT on domestic purchases of services supported by VAT ORs but with alterations in the name of the Company with countersignature but without letter of authorization from the supplier	*Annex BB, Page 1*	-	1,212.21
	Annex BB, Page 1	-	
	Annex BB, Page 1	-	
	Annex BB, Page 1	1,212.21	
Total			**P 48,382.78**
Nature	**Reference (Exhibit "BB")**	**Amount**	**Total**
Input VAT on domestic purchases of goods supported by documents other than a VAT invoice	*Annex CC, Page 1*	P 12,330.35	P 74,388.62
	Annex CC, Page 2	2,588.99	
	Annex CC, Page 3	3,703.01	
	Annex CC, Page 4	55,766.27	
Input VAT on domestic purchases of goods supported by a VAT invoice but not an original copy	*Annex DD, Page 1*	-	11,262.09
	Annex DD, Page 1	438.42	
	Annex DD, Page 1	-	
	Annex DD, Page 1	10,823.67	
Input VAT on domestic purchases of goods supported by VAT invoices not issued in the name of the Company, or without name of the Company, or the name of the Company written or stamped without countersignature	*Annex EE, Page 1*	419.67	1,581.71
	Annex EE, Page 1	213.75	
	Annex EE, Page 1	575.77	
	Annex EE, Page 1	372.52	
Input VAT on domestic purchases of goods supported by VAT invoice in the name of CAL or CAL Energy	*Annex FF, Page 1*	-	215.49
	Annex FF, Page 1	-	
	Annex FF, Page 1	-	
	Annex FF, Page 1	215.49	
Input VAT on domestic purchases of goods supported by TIN # ONLY; TIN-V; TAN-V; TAN-VAT; TIN-NV/NON VAT invoice	*Annex GG, Page 1*	11,030.35	18,713.89
	Annex GG, Page 1	6.75	
	Annex GG, Page 1	132.86	
	Annex GG, Page 1	7,543.93	
Input VAT on domestic purchases of goods supported by tape receipts without the Company's name and/or TIN, or the Company's name is written or stamped without countersignature	*Annex HH, Page 1*	2,340.76	8,342.26
	Annex HH, Page 2	1,362.47	
	Annex HH, Page 3	1,189.81	
	Annex HH, Page 4	3,449.22	
Input VAT on domestic purchases of goods supported by tape receipts with the Company's name written or stamped with countersignature but without letter of authorization from the supplier	*Annex II, Page 2*	6,765.27	25,869.28
	Annex II, Page 6	7,077.93	
	Annex II, Page 8	4,522.75	
	Annex II, Page 10	7,503.33	
	Annex JJ, Page 1	210.96	12,106.83

Input VAT on domestic purchases of goods supported by TIN # only; TIN-V; TAN-V; TAN-VAT; TIN-NV/NON VAT; stamped or handwritten TIN-V/VAT tape receipts	*Annex JJ, Page 1*	210.96	12,106.83
	Annex JJ, Page 1	4,827.96	
	Annex JJ, Page 2	174.80	
	Annex JJ, Page 4	6,893.11	
Input VAT on domestic purchases of goods supported by VAT invoices but without invoice date	*Annex KK, Page 1*	-	278.25
	Annex KK, Page 1	278.25	
	Annex KK, Page 1	-	
	Annex KK, Page 1	-	
Input VAT on domestic purchases of goods supported by VAT invoices but not dated within the VAT taxable year (e.g., 2008, 2010, etc.)	*Annex LL, Page 1*	33,824.39	33,824.39
	Annex LL, Page 1	-	
	Annex LL, Page 1	-	
	Annex LL, Page 1	-	
Input VAT on domestic purchases of services supported by documents other than a VAT OR	*Annex MM, Page 1*	47,916.99	138,061.95
	Annex MM, Page 2	60,988.54	
	Annex MM, Page 2	12,190.03	
	Annex MM, Page 3	16,966.39	
Input VAT on domestic purchases of services supported by a VAT OR but not an original copy	*Annex NN, Page 1*	112.80	628.16
	Annex NN, Page 1	-	
	Annex NN, Page 1	515.36	
	Annex NN, Page 1	-	
Input VAT on domestic purchases of services supported by VAT ORs not issued in the name of the Company, or without name of the Company, or name of the Company written or stamped without countersignature	*Annex OO, Page 1*	307.61	1,474.66
	Annex OO, Page 1	74.11	
	Annex OO, Page 1	262.97	
	Annex OO, Page 1	829.97	
Input VAT on domestic purchases of services supported by VAT ORs in the name of CAL or CAL Energy	*Annex PP, Page 1*	60,008.63	239,850.57
	Annex PP, Page 1	71,272.31	
	Annex PP, Page 1	148.85	
	Annex PP, Page 2	108,420.78	
Input VAT on domestic purchases of services supported by TIN-NV/NON VAT ORs but stamped with "VAT"/"TIN VAT" or the word VAT NONE was erased	*Annex QQ, Page 1*	-	40.32
	Annex QQ, Page 1	40.32	
	Annex QQ, Page 1	-	
	Annex QQ, Page 1	-	
Input VAT on domestic purchases of services supported by TIN # ONLY; TIN-V; TAN-V; TAN-VAT; TIN-NV/NON VAT ORs	*Annex RR, Page 1*	30,528.94	30,709.47
	Annex RR, Page 1	-	
	Annex RR, Page 1	-	
	Annex RR, Page 1	180.53	
Input VAT on domestic purchases of services supported by a tape receipt without the Company's name and/or TIN , or the Company's name is written or stamped without countersignature	*Annex SS, Page 1*	801.43	10,977.64
	Annex SS, Page 2	807.03	
	Annex SS, Page 3	1,085.55	
	Annex SS, Page 5	8,283.63	
Input VAT on domestic purchases of services	*Annex TT, Page 1*	114.76	420.49
	Annex TT, Page 1	111.00	

supported by VAT ORs but without OR date	*Annex TT, Page 1*	4.02	
	Annex TT, Page 1	190.71	
Input VAT on domestic purchases of services supported by "ZERO-RATED" VAT ORs	*Annex UU, Page 1*	-	1,336.00
	Annex UU, Page 1	-	
	Annex UU, Page 1	-	
	Annex UU, Page 1	1,336.00	
Input VAT on domestic purchases of services supported by a VAT OR but not dated within the VAT taxable year (e.g., 2008, 2010, etc.)	*Annex VV, Page 1*	625.92	1,097.02
	Annex VV, Page 1	12.75	
	Annex VV, Page 1	-	
	Annex VV, Page 1	458.35	
Input VAT on domestic purchases of services supported by TIN # ONLY; TIN-V; TAN-V; TAN-VAT; TIN-NV/NON VAT ORs; stamped or handwritten TIN-V/VAT tape receipts	*Annex WW, Page 1*	1,425.63	4,066.41
	Annex WW, Page 2	566.35	
	Annex WW, Page 2	542.92	
	Annex WW, Page 3	1,531.51	
Input VAT on domestic purchases of services supported by VAT ORs printed with "NOT ALLOWED FOR CLAIMING INPUT VAT" (or similar wordings)	*Annex XX, Page 1*	3,057.50	4,761.50
	Annex XX, Page 1	-	
	Annex XX, Page 1	-	
	Annex XX, Page 1	1,704.00	
Input VAT on importation of goods not supported by original copy of the IEIRDs with machine validation or BOC ORs or LBP ORs	*Annex YY, Page 1*	-	2,102.00
	Annex YY, Page 1	2,102.00	
	Annex YY, Page 1	-	
	Annex YY, Page 1	-	
Input VAT on importation of goods supported with original IEIRDs with machine validation or BOC ORs or Bank ORs not issued in the name of the Company	*Annex ZZ, Page1*	-	3,055.00
	Annex ZZ, Page1	-	
	Annex ZZ, Page1	-	
	Annex ZZ, Page1	3,055.00	
Input VAT on importation of goods duly supported by original IEIRDs with machine validation but with pertinent BOC OR, issued pursuant to the Voluntary Disclosure Program of the BOC, not dated within the period of claim (i.e., dated 2010)	*Annex AAA, Page 1*	35,963.00	281,586.26
	Annex AAA, Page 1	140,626.84	
	Annex AAA, Page 1	13,608.40	
	Annex AAA, Page 1	91,388.02	
Overclaimed portion of input VAT arising from erroneous computation of input VAT on domestic purchases of goods/services (e.g., arithmetical error, rounding differences)	*Annex BBB, Page 1*	768.34	900.70
	Annex BBB, Page 2	3.27	
	Annex BBB, Page 3	55.14	
	Annex BBB, Page 3	73.95	
Overclaimed portion of input VAT arising from foreign exchange rate used on foreign currency denominated purchases of goods and services	*Annex CCC, Page 1*	10,335.09	10,562.46
	Annex CCC, Page 1	181.05	
	Annex CCC, Page 1	45.05	
	Annex CCC, Page 2	1.27	
	Annex DDD, Page 2	8,106.11	118,597.32

Input VAT on domestic purchases of goods and services where supporting documents were not available for verification	*Annex DDD, Page 2*	8,106.11	118,597.32
	Annex DDD, Page 3	3,146.38	
	Annex DDD, Page4	93,475.92	
	Annex DDD, Page 5	13,868.91	
Input VAT amortization on purchases of capital goods exceeding P1 million supported by TIN # Invoice supported by notarized certification from supplier that VAT paid by the Company was already remitted to the BIR *(Exhibit VV)*	*Annex EEE, Page 1*	13,232.13	52,928.52
	Annex EEE, Page 1	13,232.13	
	Annex EEE, Page 1	13,232.13	
	Annex EEE, Page 1	13,232.13	
Total			**P 1,089,739.26**
GRAND TOTAL			**P34,562,590.63**[32]

The Court finds the Independent CPA Report in order. The input taxes of P1,089,739.26 should be disallowed for failure to meet the substantiation requirements under Sections 110(A) and 113(A) of the National Internal Revenue Code of 1997, as amended by Republic Act (R.A.) No. 9337, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-2005.

Likewise, the input taxes of P48,382.78 should be denied because there were alternations or additions in the supporting invoice or official receipt without countersignature or with countersignature but it cannot be ascertained whether the person who countersigned the alterations was the authorized representative of the supplier.

The Court also found that aside from the Independent CPA's recommended disallowances of P48,382.78 and P1,089,739.26 in the total amount of P1,138,122.04, the input taxes of P173,842.15, should also be denied, as shown below:

Exhibit WW	VENDOR NAME (from Annex N of Exhibit "BB")	OR / INVOICE DATE	OR / INVOICE NUMBER	TOTAL AMOUNT OF INPUT VAT	Input VAT Allocable to Zero-Rated Sales
1. Input VAT on purchases of goods/services wherein the VAT amount was not separately shown in the invoice/OR.					
116	Freeway Motor Sales of Cabanatuan Corp.	03/23/09	27044	P 644.93	P 292.61
122	Global Restaurant Concepts Inc.	01/12/09	51470	461.00	209.16
	TOTAL FOR THE 1ST QUARTER			***P 1,105.93***	***P 501.77***
932	L.A. Photo Center	08/02/09	41005	P 57.21	P 39.03
940	Ma. Theresa J. Aguinaldo	08/23/09	23489	7.82	5.34

[32] This amount is over by P4.71 when compared with the reported input VAT of P34,562,585.92.

941	Ma. Theresa J. Aguinaldo	08/23/09	23490	15.96	10.89
942	Magellan's Garden & Resto Bar	07/24/09	6476	82.71	56.43
981	Noemi L. Andres	07/29/09	62887	32.14	21.93
981	Noemi L. Andres	08/01/09	63165	32.14	21.93
986	One Commerce International Corp.	09/24/09	950	46,741.07	31,888.91
990	Pancake House, Inc.	08/14/09	2319	34.21	23.34
1035	RFD Food Services Inc. Red Food Services Inc.	08/03/09	5330	13.39	9.14
1035	RFD Food Services Inc. Red Food Services Inc.	08/03/09	5333	9.64	6.58
1036	RFD Food Services Inc. Red Food Services Inc.	08/13/09	5388	8.14	5.55
1038	RFD Food Services Inc. Red Food Services Inc.	08/14/09	5387	10.50	7.16
1040	RFD Food Services Inc. Red Food Services Inc.	08/12/09	5373	13.82	9.43
1042	RFD Food Services Inc. Red Food Services Inc.	07/24/09	5246	7.82	5.34
1044	RFD Food Services Inc. Red Food Services Inc.	07/21/09	5232	8.04	5.49
1045	RFD Food Services Inc. Red Food Services Inc.	07/21/09	5230	15.96	10.89
1054	Roper Hardware TIN	08/06/09	2207	64.29	43.86
1055	Roper Hardware TIN	07/20/09	1943	64.29	43.86
1085	Teriyaki Boy	08/20/09	8489	28.93	19.74
1107	Wholesome Foods Inc.	08/11/09	10277	46.18	31.51
1108	Wilfredo R. Santos	07/11/09	5214	45.75	31.21
	TOTAL FOR THE 3RD QUARTER			***P 47,340.01***	***P 32,297.53***
1118	A-1 Agro Fertilizer & Chemical Supply	12/18/09	447862	P 250.71	P 70.61
1149	Caalibangbangan Caltex Service Station	10/18/09	70121	53.57	15.09
1150	Cabanatuan Fastfood Ventures, Inc.	10/17/09	3566	755.36	212.75
1160	Bistro Americano Corp	11/03/09	20425	499.57	140.71
1161	California Pizza Kitchen/Global Restaurant Concepts, Inc.	11/09/09	52719	331.45	93.35
1162	Caltex Super Station	10/27/09	40368	53.57	15.09
1162	Caltex Super Station	10/19/09	46052	3.75	1.06
1191	Diadem Court Inc.	11/13/09	18634	80.36	22.63
1194	DLC Foods (Balagtas) Inc.	12/02/09	36517	17.14	4.83
1201	Eleanor Santa Romana	12/12/09	0817	107.14	30.18
1203	Eleanor Santa Romana	12/12/09	0950	53.57	15.09
1213	Erle A. Fontanilla	11/13/09	0079	37.71	10.62
1226	Farragut's General Merchandise	11/25/09	0413	420.00	118.29
1227	Ferdinand V. Dysico	10/09/09	148779	32.14	9.05
1276	John DG Bernardo	12/12/09	73469	107.14	30.18
1278	John DG Bernardo	10/22/09	70292	53.57	15.09
1285	JSReyes Enterprises	11/15/09	127488	17.14	4.83
1290	Lourdes De Dios-Cruz	12/13/09	886974	53.57	15.09
1291	Lucullus Gourmet Products, Corp.	11/19/09	5536	1,177.01	331.51
1315	Mark Anthony Mendoza	11/13/09	2553	43.50	12.25
1347	New Synergy Garments Inc.	12/01/09	2909	43.93	12.37
1351	Noemi L. Andres	12/12/09	71726	156.30	44.02
1360	Pancake House	10/30/09	17488	371.71	104.69
1361	Pancake House	11/19/09	1674	63.43	17.87
1407	Remedios F. Ignacio	12/11/09	46817	160.71	45.26
1408	Remeng Food Serv	11/09/09	1535	617.57	173.94
1409	RFD Food Services Inc.	10/12/09	5629	9.64	2.72
1410	RFD Food Services Inc.	10/01/09	5588	9.11	2.57
1410	RFD Food Services Inc.	10/02/09	5592	9.21	2.59
1411	RFD Food Services Inc.	12/10/09	5842	13.71	3.86
1412	RFD Food Services Inc.	11/10/09	5739	8.36	2.35
1416	Rijovi Foods Corporation	11/19/09	5601	72.64	20.46
1423	Royce Motor Center Inc.	10/31/09	773562	154.71	43.57

1442	Smiley Chix Corporation	12/24/09	2324	160.71	45.26
1444	St. Cecilia's Caltex	10/22/09	08015	8.14	2.29
1495	Toby's Sports House	10/18/09	67069	410.89	115.73
	TOTAL FOR THE 4TH QUARTER			***P 6,418.74***	***P 1,807.86***
2. Purchase of goods supported by sales invoice dated outside the period of claim.					
173	Luminaire Printing & Publishing Corp	12/09/08	16141	P 910.71	P 413.20
	TOTAL FOR THE 1ST QUARTER			***P 910.71***	***P 413.20***
3. Discrepancy between input VAT per claim and input VAT per supporting documents.					
	Quisumbing Torres Law Offices OR#6716		P 11,103.87		
			12,338.47		
			12,918.13		
			15,425.68		
			21,975.32		
			56,904.99		
	Input VAT per claim		P130,666.46		
	Input VAT per official receipt OR#6716		12,599.70	P 118,066.76	P 61,059.50
	TOTAL FOR THE 2ND QUARTER			***P 118,066.76***	***P 61,059.50***
GRAND TOTAL				**P173,842.15**	**P 96,079.86**

Accordingly, out of petitioner's reported input tax of P34,562,585.92, only the amount of P33,250,621.73, as computed below, is duly substantiated in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as amended by R.A. No. 9337, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-2005:

	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
Input VAT per Quarterly VAT Returns	P 10,941,778.49	P 8,176,476.93	P 8,259,284.54	P 7,185,045.96	P 34,562,585.92
Less: Disallowances					
Per ICPA's report	286,887.96	321,608.76	148,792.24	380,833.08	1,138,122.04
Per this Court's findings	2,016.64	118,066.76	47,340.01	6,418.74	173,842.15
Total Disallowances	288,904.60	439,675.52	196,132.25	387,251.82	1,311,964.19
Substantiated Input VAT	**P10,652,873.89**	**P7,736,801.41**	**P8,063,152.29**	**P6,797,794.14**	**P33,250,621.73**

It is to be noted that the substantiated amount of P33,250,621.73 is not entirely attributable to petitioner's zero-rated sales, since petitioner had VATable sales to government and private entities for the year 2009. Allocating the substantiated input taxes of P33,250,621.73 among petitioner's zero-rated sales, VATable sales to government and VATable sales to private entities would result in the following: (a) input VAT attributable to VATable sales to private entities in the amount of P5,297.67; (b) input VAT attributable to VATable sales to government in the amount of

P16,995,165.02; and (c) input VAT attributable to zero-rated sales in the amount of P16,250,159.04, as computed below:

Year 2009	Input VAT Attributable to 12% VATable Sales to Private	Input VAT Attributable to 12% VATable Sales to Government	Input VAT Attributable to Zero-Rated Sales	Total
1st Quarter	-	5,819,563.28	4,833,310.61	10,652,873.89
2nd Quarter	-	3,735,631.07	4,001,170.34	7,736,801.41
3rd Quarter	5,297.67	2,556,801.11	5,501,053.51	8,063,152.29
4th Quarter	-	4,883,169.56	1,914,624.58	6,797,794.14
Total	**5,297.67**	**16,995,165.02**	**16,250,159.04**	**33,250,621.73**
Allocation was based on the percentage of each type of sales to total sales as shown below:				
Year 2009	**12% VATable Sales to Private**	**12% VATable Sales to Government**	**Zero-Rated Sales**	**Total**
1st Quarter		647,665,715.48	537,904,551.13	1,185,570,266.61
% to Total Sales		54.6290451%	45.3709549%	100.00%
2nd Quarter		620,599,898.45	664,713,902.37	1,285,313,800.82
% to Total Sales		48.2839209%	51.7160791%	100.00%
3rd Quarter	1,286,893.89	621,090,719.31	1,336,299,982.50	1,958,677,595.70
% to Total Sales	0.0657022%	31.7096964%	68.2246014%	100.00%
4th Quarter		1,797,652,733.76	704,835,262.55	2,502,487,996.31
% to Total Sales		71.8346196%	28.1653804%	100.00%

After deducting the input tax of P5,297.67 attributable to VATable sales to private entities from its output VAT liability of P154,427.27, petitioner still has a net amount of output VAT payable for 2009 in the amount of P149,129.60, computed as follows:

Output VAT Due	P 154,427.27
Less: Input VAT	5,297.67
Net Output VAT Payable	**P149,129.60**

Thus, by deducting the net amount of output VAT payable of P149,129.60 from petitioner's total input tax attributable to zero-rated sales of P16,250,159.04, a refundable amount of P16,101,029.44 is in order:

Input VAT Attributable to Zero-Rated Sales	P 16,250,159.04
Less: Net Output VAT Payable	149,129.60
Net Amount Refundable	**P16,101,029.44**

Even though the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns for year 2010[33], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[34] in its Quarterly VAT Return for the fourth quarter of 2010. Thus, the excess input VAT of P16,012,494.46[35] as of the end of the fourth quarter of 2010, which was to be carried over to the succeeding first quarter of 2011, no longer included the subject claim.

Finally, pursuant to Section 112(A) of the NIRC of 1997, as amended, a taxpayer must file an application for refund or tax credit of unutilized or excess creditable input VAT attributable to its zero-rated sales within two (2) years after the close of the taxable quarter when the sales were made.

In the instant petition, the subject of the claim for refund or issuance of tax credit certificate is petitioner's excess and unutilized creditable input VAT attributable to its zero-rated sales for the four quarters of taxable year 2009. Counting from March 31, 2009, June 30, 2009, September 30, 2009 and December 31, 2009, the close of the first, second, third and fourth quarters of 2009, respectively, petitioner had until March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, respectively, within which to file its administrative claim with respondent. Clearly, petitioner seasonably filed its administrative claim for the first to fourth quarters of 2009 on November 10, 2010[36].

Anent petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, states that:

[33] Exhibits "P", "R", "S", and "U", docket, pp. 450-457 and "AA-1", "AA-2", "AA-3", and "AA-4".
[34] Exhibits "U" and "AA-4", line 23D.
[35] Exhibits "U" and "AA-4", line 29.
[36] Exhibit "N", docket, pp. 446 to 449.

"SEC. 112. *Refunds or Tax Credits of Input Tax.-*

xxx xxx xxx

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

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

As stated above, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from inaction of the Commissioner of Internal Revenue after the lapse of the one hundred twenty (120)-day period via a Petition for Review.

Since petitioner's administrative claim for refund was filed on November 10, 2010, the 120-day period provided under Section 112(C) ended on March 10, 2011. Counting from March 10, 2011, petitioner may file its judicial claim within 30 days or until April 11, 2011[37]. Thus, the judicial claim of petitioner filed on March 30, 2011 was filed well within the prescriptive period.

[37] April 9, 2011 fell on a Saturday.

Respondent argues that petitioner must prove that it submitted the complete documents required under RMO No. 53-98 before the 120-day audit period shall apply and before judicial remedies as provided for in the law may be availed of. Respondent also alleges that perusal of the petition for review would show that petitioner never made mention that it submitted documents in support of its claim for refund. The allegation of submission of complete documents is a material fact necessary to invoke jurisdiction and to justify relief demanded. Having failed to allege submission of complete documents, respondent claims that she was evidently deprived of her opportunity to validate petitioner's claim for refund in the administrative level.

This Court disagrees.

In *Team Sual Corporation (formerly: Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, and *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)* [38], the Court *En Banc* discussed the proper interpretation of the term "complete documents" under Section 112 (D) of the NIRC of 1997, to wit:

> "The contention of the Commissioner that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law, deserves scant consideration. This issue boils down to the proper interpretation of the term 'complete documents' under Section 112 (D) of the NIRC of 1997.
>
> In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, the Supreme Court ruled:
>
> > 'The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents.

[38] CTA EB Nos. 649 and 651, Resolution dated March 21, 2012.

> The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.'

Although the foregoing ruling refers to the interpretation of the term *'relevant supporting documents'* under Section 228 of the NIRC of 1997 pertaining to *'Protesting of Assessment'*, We find no reason why the same doctrine cannot be applied in the interpretation of *'complete documents'* referred to under Section 112(D) of the same Code, for the following reasons:

1. If the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

2. It has been held that the Commissioner ought to know the tax records of all taxpayers, and thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection, nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof. Furthermore, said RMO is explicit, in its subject and objective, that it provides a checklist of documents to be submitted 'upon Audit', and that it was issued to '(i)dentify the documents to be required from a taxpayer during audit', respectively. In this case, it was not shown that the audit was ever conducted by the BIR in connection with Team Sual's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any *'report of investigation'* concerning Team Sual's administrative claim for refund or tax credit certificate. But even if We are to assume that an

audit was made, it was never established that the Commissioner ever required Team Sual to submit the documents stated in the said RMO.

Accordingly, the **term 'complete documents' under Section 112(D) of the NIRC of 1997 should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer. Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application**." *(Emphasis supplied and citations omitted)*

In the instant case, record shows that petitioner filed its administrative claim for refund on November 10, 2010 together with several documents[39] in support of its application. Notably, respondent neither sent any written notice informing petitioner that the aforesaid documents are incomplete nor required the latter to submit additional documents. Respondent cannot now belatedly argue that petitioner was not able to submit the complete documents in support of its claim for refund or tax credit certificate. In fact, perusal of the records show that there was no audit conducted on petitioner's application for refund or tax credit certificate as evidenced by lack of BIR records on petitioner's administrative claim. Since respondent failed to act on or respond to petitioner's claim within the 120-day period required by law, petitioner exercised its statutory right to appeal before this Court.

As earlier emphasized, the completeness of documents to support a claim is determined by a taxpayer. Should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund under Section 112, the 120-day period should be reckoned from the filing of the said

[39] List of documents submitted was enumerated in the claim for administrative refund filed on November 10, 2010 (Exhibit "N").

application. Moreover, the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level.[40]

The foregoing belies respondent's argument that petitioner should have alleged submission of complete documents. Nevertheless, contrary to respondent's allegation, petitioner did allege in its petition for review that "[O]n November 10, 2000, Petitioner filed with the Large Taxpayers Audit and Investigation Division I of the Bureau of Internal Revenue ('BIR LTAID I') an administrative claim for refund or tax credit of its unutilized input VAT for the period from the 1st quarter and to the 4th quarter of CY 2009, **together with supporting documents**." [41]

In recapitulation, the Court finds that petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate for its unutilized input VAT attributable to zero-rated sales for the year 2009, but in the reduced amount of P16,101,029.44.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of P16,101,029.44 to petitioner, representing unutilized input VAT attributable to its zero-rated sales to NIA for taxable year 2009.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

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[40] *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue,* CTA Case Nos. 8041 and 8111, Resolution dated November 29, 2012 citing *Commissioner of Internal Revenue vs. Toledo Power Company* (CTA EB Case No. 589, Resolution dated January 12, 2011).
[41] Docket, pp 2-3.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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