REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 9480** For: Refund
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 20 2019 1:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on December 17, 2018 is a Petition for Review filed by petitioner Vestas Services Philippines, Inc. against respondent Commissioner of Internal Revenue on October 7, 2016.

Petitioner seeks for the refund of or the issuance of a Tax Credit Certificate (TCC) in the amount of One Hundred Eighty Five Million Seventy One Thousand Eight Hundred Forty One and 63/100 Pesos (₱185,071,841.63) representing petitioner's excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 2nd quarter of calendar year (CY) 2014.

Petitioner Vestas Services Philippines, Inc. (VSPI) is a domestic corporation engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (i.e. Wind Turbine Generators, Spare Parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific Region.[1]

Petitioner is registered with the Bureau of Internal Revenue (BIR) for Value-Added Tax (VAT) purposes, with Certificate of Registration No. OCN 9RC0000382508.[2]

Respondent is the Chief of the BIR and is empowered by law to act upon and approve claims for refund, or for the issuance of tax credit.[3]

Petitioner states that for the second quarter of CY 2014, VSPI's income was sourced from the following transactions:

1) Engineering, Procurement and Construction (EPC) Contract[4] with EDC Burgos Wind Power Corporation (EDC), a Renewable Energy Developer (RE Developer) of wind energy resource[5], located in the Municipality of Burgos, Province of Ilocos Norte[6];

2) Intercompany Service Agreement with Vestas Wind Systems A/S (Vestas Denmark), a non-resident foreign corporation not doing business in the Philippines[7]; and

3) Sublease Agreement with Bayview Technologies, Inc. (Bayview), a Cagayan Special Economic Zone and Freeport enterprise currently registered with the Cagayan Economic Zone Authority (CEZA)[8]

Moreover, petitioner reported zero-rated sales for the second quarter of CY 2014 as follows[9]:

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1 Par. 1.1, Joint Stipulation of Facts and Issue (JSFI), Docket, volume (vol.) II, p. 871.
2 Par. 1.2, JSFI, Docket, vol. II, p. 871.
3 Par. 1.3, JSFI, Docket, vol. II, p. 872.
4 Exhibits "P-53" and "P-35"
5 Exhibits "P-8" to "P-9" and "P-32"
6 Exhibit "P-30", ICPA Report, p. 5.
7 Exhibits "P-11" to "P-15", Docket, vol. II, pp. 681-721; Exhibit "P-28", pp. 518-548; and Exhibit "P- 30", p. 5.
8 Exhibits "P-16" to "P-19, Docket pp. 721-747; Exhibit "P-46"; and Exhibit "P-30", p. 4.
9 Exhibits "P-6" to "P-7" and "P-30", pp. 4-5.

Client	Amount
EDC	₱ 2,035,150,294.24
Vestas Denmark	62,659,044.87
Bayview	4,094,204.34
TOTAL	**₱ 2,101,903,543.45**

Petitioner also avers that a portion of the zero-rated sales reported constituted accrued revenue[10] and that it did not report any VATable or VAT-exempt sales or receipts for the second quarter of 2014[11].

VSFI imported and/or purchased goods and services in the amount of ₱1,673,531,238.66, for which it paid input VAT in the amount of ₱200,823,748.64.[12]

VSPI filed with Revenue District Office (RDO) No. 50 of the BIR a claim for refund of its excess and/or unutilized creditable input VAT for the taxable period covering April 2, 2014 to June 30, 2014, with supporting documents on June 30, 2016.[13]

The BIR issued a letter dated July 25, 2016 denying the administrative claim for refund.[14]

Hence, petitioner filed a Petition for Review with the Court of Tax Appeals (CTA) on October 7, 2016.[15]

In his Answer[16], respondent interposed the following Special and Affirmative Defenses:

> " xxx xxx xxx
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> 5. Petitioner's claim for refund or issuance of tax credit certificate was denied for their failure to submit the mandatory requirements under Annex "A" of Revenue Memorandum Circular No. 54-2014.

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10 Exhibit "P-30", pp. 5-7.
11 Exhibits "P-6" to "P-7".
12 Exhibit "P-6"; "P-20; "P-21" and "P-30", pp. 12-14.
13 Exhibit "P-4" and "P-5", Docket, vol. II, p. 584-585.
14 Exhibit "P-27", Docket, vol. II, p. 862.
15 Docket, vol. I, pp. 10-29.
16 Docket, vol. I, pp. 81-84.

6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of P185,071,841.63 representing it's alleged excess and unutilized input VAT paid or the second quarter of 2014 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claim for refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

9. it is incumbent upon the latter to show that it has complied with the provisions under section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

In a Resolution[17] dated January 11, 2017, the Court set the case for Pre-Trial Conference on March 16, 2017. Accordingly, petitioner filed its Pre-Trial Brief[18] on March 13, 2017 and Amended Pre-Trial Brief[19] on June 7, 2017. Respondent filed his Pre-Trial Brief[20] on March 16, 2017.

Pre-trial conference proceeded on July 6, 2017. The parties submitted their Joint Stipulation of Facts and Issues (JSFI)[21] on July 13, 2017. Thereafter, the Court issued the Pre-Trial Order[22] on August 2,

17 Docket, vol. I, p. 108.
18 Docket, vol. I, pp. 109-129.
19 Docket, vol. II, pp. 491-511.
20 Docket, vol. I, pp. 484-486.
21 Docket, vol. II. pp. 871-876.
22 Docket, vol. II, pp. 885-892.

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2017, approving and adopting the joint stipulations filed by the parties and the pre-trial was deemed terminated.

During trial, petitioner presented its witness, Mr. Ian Jasper E. Monteras[23], the Accounting Assistant of VSPI as well as the Court commissioned Independent Certified Accountant (ICPA), Mr. Glenn Ian D. Villanueva.[24] Thereafter, petitioner formally offered its evidence[25] on February 23, 2018. The Court admitted all of petitioner's exhibits[26], to wit:

Exhibit:	Description:
P-1	Certificate of Incorporation with Company Registration No. CS200919421 issued by the Security and Exchange Commission on 14 December 2009
P-2	Amended Articles of Incorporation (Amending Article III), issued by the Security and Exchange Commission on 29 June 2016
P-3	Certificate of Registration with COR No. OCN 9RC0000382508 issued by the Bureau of Internal Revenue (BIR)
P-4	BIR Form No. 1914 (Application for Tax Credits/Refunds) which was filed with RDO 50 on 30 June 2016
P-5	Checklist of Mandatory Requirements for Claims for VAT Credit/Refund which was attached to the BIR Form No. 1914 and filed with RDO 50 on 30 June 2016
P-6	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2014 which was filed on 10 March 2015
P-7	Summary List of Sales (SLS) for the second quarter of CY 2014
P-8	Certificate of Registration No. WESC 2009-09-004 issued by the Department of Energy (DOE) to EDC on 04 February 2011
P-9	Certificate of Registration No. 2011-135 issued by Board of Investment (BOI) to EDC on 29 June 2011
P-11	Service Agreement between Vestas Denmark and VSPI executed on 16 April 2010

[23] Minutes of the Hearing dated July 19, 2017, Docket, vol. II, pp. 879-880.
[24] Minutes of the Hearing dated September 14, 2017, Docket, vol. II, pp. 921-922; Minutes of the Hearing dated October 26, 2017, Docket, vol. II, pp. 977-979.
[25] Docket, vol. III, pp. 1014-1035.
[26] Resolution dated August 15, 2018 Docket, vol. III, pp. 1367-1369; Resolution dated November 5, 2018 Docket, vol. III, pp. 1402-1405.

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P-12	Articles of Association of Vestas Denmark with Company Registration No. 10403782
P-13	Certificate of Residency/Certificat de Residence/Certificado de Residencia issued by the tax authorities of Denmark to Vestas Denmark on 02 November 2016
P-14	Certification of Non-Registration of Company issued by the Securities and Exchange Commission on 21 November 2016
P-15	Document issued by the Danish Business Authority to Vestas Denmark on 31 October 2016
P-16	Sublease Agreement executed by VSPI and Bayview in May 2013
P-17	Renewal Agreement executed by VSPI and Bayview in 03 December 2013
P-18	Memorandum of Understanding executed by VSPI and Bayview in 07 April 2014
P-19	Certificate of Registration with CSEZFP Enterprise No. CF-006 issued by the Cagayan Economic Zone Authority (CEZA) to Bayview on 01 December 2011
P-20	Summary List of Purchases for the second quarter of CY 2014
P-21	Summary List of Importations for the second quarter of CY 2014
P-22-1	Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of CY 2014
P-22-2	Quarterly VAT Return (BIR Form No. 2550Q) for the fourth quarter of CY 2014
P-23-1	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2015
P-23-2	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2015
P-23-3	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of CY 2015
P-23-4	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the fourth quarter of CY 2015
P-24-1	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the first quarter of CY 2016
P-24-2	Amended Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of CY 2016
P-25	Audited Financial Statements for CY 2014
P-26	Audited Financial Statements for CY 2015
P-27	Letter dated 25 July 2016 from RDO 50, signed by Revenue District Officer Rosita U. Meniano, received by VSPI on 08 September 2016
P-28	Judicial Affidavit of Ian Jasper E. Monteras dated 06 June 2017
P-28-1	Signature of Mr. Ian Jasper E. Monteras
P-29	Judicial Affidavit of Mr. Glenn Ian D. Villanueva (In Question and Answer Form) dated 04 August 2017

P-29-1	Signature of Mr. Glenn Ian D. Villanueva
P-30	Independent Certified Public Accountant Report dated 16 October 2017
P-31	Petition for Review filed on 07 October 2016
P-32	EDC's BIR Certificate of Registration
P-33-1	VSPI Official Receipts issued to EDC
P-33-1-1	VSPI Sales Invoices issued to EDC
P-33-2	VSPI Official Receipts issued to Vestas Wind
P-33-3	VSPI Official Receipts issued to Bayview
P-34-A to P-34-AA	ORs and Sales Invoices for Domestic Purchases of Goods and Services
P-35	First Amendment to the Onshore EPC Contract
P-36-1	Sales Receipts Schedule (EDC)
P-36-2	Sales Receipts Schedule (Vestas Wind)
P-36-3	Sales Receipts Schedule (Bayview)
P-37	Billing Statements and Sales Invoices for Variation Orders
P-38	Chart of Accounts for Construction Revenue
P-39	Authority to Print (BIR Form No. 1921)
P-40	Certificate of Inward Remittances from JP Morgan
P-41	Consularized Bank Certification from Nordea Bank
P-42	Account No. 272120 (Input VAT on Domestic Purchases)
P-43	Account No. 152540 (Input VAT on Importations)
P-44	BIR Form No. 1600 with Payment Details
P-45	Monthly Alphalist of Payees for Withholding VAT
P-46	Audited Financial Statements of Bayview for the year 2014
P-47-1	GL Account No. 310010 (Revenues from EDC based on EPC Contract)
P-47-2	GL Account No. 320010 (POC Method/PAS 11 Adjustments in Revenue)
P-48	Sample Journal Entries for Recognizing Revenues and Collection
P-49	Journal Entries to Record POC Method/PAS 11 Adjustments
P-50	Summary List of Sales for the Third and Fourth Quarters of CY 2014
P-51	Schedule of Inward Remittances from Vestas Wind for July and August 2014
P-52	Sworn Statements of Correction from Suppliers
P-53	Original EPC Onshore Contract with EDC Burgos Wind Power Corporation
P-54	IEIRDs, Assessment Notices and Bank Settlement Advice on Importations
P-55	Transmittal Letter providing for the submission of the ICPA Report with all relevant annexes and exhibits
P-56	Judicial Affidavit of Mr. Glenn Ian D. Villanueva dated 20 October 2017

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P-56-1	Signature of Mr. Glenn Ian D. Villanueva

Meanwhile, respondent manifested that he will no longer present evidence.[27]

In view of the filing of respondent's Memorandum[28] on October 2, 2018 and petitioner's Memorandum[29] on November 28, 2018, the case was submitted for decision on December 17, 2018.[30]

ISSUE[31]

Whether VSPI is entitled to a refund or to the issuance of a tax credit certificate in the amount of ₱185,071,841.63 representing its excess and/or unutilized input VAT attributable to its zero-rated sales of goods and services for the second quarter of CY 2014.

Petitioner's claim finds legal basis under Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, which states:

> "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: Provide, 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

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27 Minutes of the Hearing dated October 26, 2017, Docket, vol. II, p. 979.
28 Docket, vol. III, pp. 1393-1397.
29 Docket, vol. III, pp. 1406-1434.
30 Resolution dated December 17, 2018, Docket, vol. III, p. 1435.
31 Par. 2.1, Stipulation of the Issue, JSFI, Docket, vol. II, p. 872.

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> amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratabl*y between his zero-rated and non-zero-rated sales.*
>
> 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."

From the foregoing provisions of Section 112, in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The taxpayer-claimant must be VAT-registered;
2. There must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;
4. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
6. The claim for refund was filed within the prescriptive period both in administrative and judicial levels.

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6th Requisite: **Petitioner's administrative and judicial claims were timely filed.**

Before delving on the first five (5) requisites, we shall first address the sixth requisite which pertains to the timeliness of petitioner's administrative and judicial claims considering that claims filed beyond the reglementary period provided by law will not prosper.

Pursuant to the above-quoted Section 112(A), the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The present claim covers the second quarter of CY 2014 which closed on 30 June 2014. Counting from this date, petitioner had until 30 June 2016 within which to file its administrative claim for refund/TCC. Thus, petitioner's administrative claim was seasonably filed on 30 June 2016.[32]

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that the Commissioner of Internal Revenue (CIR) has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or tax credit certificate within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days.

Accordingly, from the filing of petitioner's administrative claim on 30 June 2016, respondent had one hundred twenty (120) days or until 28 October 2016 to act on the said claim. However, on 08 September 2016, petitioner received a letter dated 25 July 2016 from the BIR stating the denial of petitioner's claim.[33] Therefore, the judicial appeal filed on 07 October 2016 is well within the 30 days from receipt of the denial letter on 08 September 2016.

Hence, petitioner timely filed both its administrative and judicial claims.

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[32] Exhibits "P-4" and "P-5", Docket, vol. III, p. 1072-1073.

[33] Exhibit "P-27", Docket, vol. III, p. 1280.

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We shall now ascertain petitioner's compliance with the other requisites.

1st Requisite: **Petitioner is a VAT-registered entity.**

It is undisputed that petitioner is registered with the Bureau of Internal Revenue (BIR) as Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the 1997 NIRC under Certificate of Registration No. 0CN9R0000382508 effective 05 January 2010 with Tax Identification Number (TIN) 007-533-154-000.[34]

2nd requisite: **Petitioner had zero-rated sales/receipts for the subject period**

Petitioner Vestas Services Philippines, Inc. is engaged in the business of installation and construction services (except contracts for the construction of locally funded public works and contracts for the construction of defense related structures), including entering into subcontracting arrangements, and service of wind power systems (*i.e.* Wind Turbine Generators, Spare Parts, and activities related thereto). It also acts as a business development and information technology center that provides services to its affiliates in the Asia Pacific Region.[35]

In its Amended Quarterly VAT Return[36] for the second quarter of CY 2014, petitioner reflected a total amount of ₱2,101,903,543.45 zero-rated sales/receipts, which the Court-commissioned Independent Certified Public Accountant (ICPA)[37] accounted as follows:[38]

CUSTOMER	AMOUNT
EDC Burgos Wind Power Corporation	₱ 2,035,150,294.24
Vestas Wind System A/S	62,659,044.87
Bayview Technologies, Inc.	4,094,204.34
Total	**₱2,101,903,543.45**

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34 JSFI, Stipulation of Facts, par. 1.2, Docket, vol. II, p. 871; Exhibit "P-3", Docket, vol. III, p. 1071.
35 Exhibit "P-2", Docket, vol. III, p. 1062.
36 Exhibits P-6, Docket, vol. III, p. 1074-1075.
37 Reyes, Tacandong & Co. through its Partner, Mr. Glenn Ian D. Villanueva of Reyes.
38 Exhibit "P-30", p. 2, Docket, vol. III, p. 1326.

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The ICPA reported that petitioner's sales revenues for the second quarter of CY 2014 pertain only to the VAT zero-rated revenues from (i) Engineering, Procurement and Construction (EPC) Contract with EDC Burgos Wind Power Corporation (EDC), (ii) sale of IT services to Vestas Wind System A/S, and (iii) the sublease of office space located in RCBC Plaza, Makati City to Bayview Technologies, Inc.. [39]

Per the ICPA report,[40] the zero-rated sales per VAT return which tally with the total sales per Summary List of Sales (SLS) during the 2nd quarter of CY 2014 also corresponds with the amount per Petition for Review. Results of the comparison are as follows:

Total Zero-Rated Sales	**Exhibit No**	**Amount**
Per Quarterly VAT Return	P-6	₱2,101,903,543.45
Per Summary List of Sales	P-7	2,101,903,543.45
Difference		-

Registered Name	**Zero-Rated Sales per Petition for Review**	**Zero-Rated Sales per SLS**	**Difference**
EDC	₱ 2,035,150,294.24	₱ 2,035,150,294.24	-
Vestas Wind A/S	62,659,044.87	62,659,044.87	-
Bayview Technologies, Inc.	4,094,204.34	4,094,204.34	-
Total	**₱2,101,903,543.45**	**₱2,101,903,543.45**	-

However, a comparison of the sales per schedule which represents the amount of VAT zero-rated sales supported with official receipts and other sales documents for the 2nd quarter of CY 2014 *vis-à-vis* the amount per SLS/Petition for review revealed the following differences:

Registered Name	**Zero-Rated Sales per Petition for Review**	**Zero-Rated Sales per Schedules (Annex A)**	**(Under) Over-statement of Sales**
EDC	₱ 2,035,150,294.24	₱ 1,797,732,299.69	₱ 237,417,994.55
Vestas Wind A/S	62,659,044.87	62,659,044.87	-
Bayview Technologies, Inc.	4,094,204.34	8,136,086.56	-4,041,882.22
Total	**₱2,101,903,543.45**	**₱1,868,527,431.12**	**₱233,376,112.33**

[39] Exhibit "P-30", p. 2, Docket, vol. III, p. 1326.
[40] Exhibit "P-30", pp. 4 and 5, Docket, vol. III, p. 1328 and 1329.

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(i) EDC Burgos Wind Power Corporation - ₱2,035,150,294.24

With regard to petitioner's sales to EDC, records show that the latter is a Renewable Energy (RE) Developer of wind energy source as evidenced by its Certificates of Registration with the Department of Energy dated February 4, 2011[41] and Board of Investments dated June 29, 2011.[42]

Based on the original and amended Onshore EPC Contract entered into by petitioner with EDC,[43] petitioner undertook to perform the engineering, design, supply, construction, installation, testing, commissioning, and all other activities necessary for the completion of EDC's BOI-registered two-stage 86 MW Wind Farm Project located in the Municipality of Burgos, Ilocos Norte. Such services are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, 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
>
> "(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; (*Emphasis supplied*)

The special law applicable in petitioner's case is Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008, which was approved on December 16, 2008. Among the incentives provided under the law is that all renewable energy (RE) developers are entitled to zero-rated value-added tax on their purchases of local supply of goods, properties

[41] Exhibit "P-9", Docket, vol. III, p. 1097.
[42] Exhibit "P-8", Docket, vol. III, p. 1077 - 1095.
[43] Exhibits "P-35" and "P-53".

and services needed for the development, construction and installation of their plant facilities. Chapter VII, Section 15(g) of the law provides, thus:

> **"CHAPTER VII**
>
> **GENERAL INCENTIVES**
>
> **Section 15.** ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.
>
> **All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services <u>needed for the development, construction and installation of its plant facilities.</u>**
>
> This provision shall **also apply to the <u>whole process of exploring and developing renewable energy sources up to its conversion into power</u>,** including but not limited to the services performed by subcontractors and/or contractors." (*Emphasis and underscoring supplied*)

The same is being implemented by Part III, Rule 5, Section 13(G)(b) of Department Circular (DC) No. DC2009-05-0008 issued by the Department of Energy (DOE) on May 25, 2009, which provides as follows:

> **"PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES**
>
> **RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT**

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SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers;

(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors." (*Emphasis supplied*)

Clearly, from the foregoing, petitioner's sales of services to EDC qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Chapter VII, Section 15(g) RA No. 9513 or the Renewable Energy Act of 2008 .

However, per examination of the official receipts issued by the petitioner to EDC, the ICPA found that there were construction revenues amounting to ₱237,417,994.55 which were reported in the SLS and VAT return but were not supported with VAT zero-rated ORs, resulting to the difference computed as follows:

Exhibit No	OR No	OR Date	Amount per OR	Amount
P-33-2, Page 1 of 16	030	5/1/2014	₱ 305,951,211.57	₱ 305,951,211.57
P-33-2, Page 2 of 16	031	5/1/2014	20,815,338.00	20,815,338.00
P-33-2, Page 3 of 16	032	5/1/2014	112,817.00	5,014,016.18
P-33-2, Page 4 of 16	033	5/1/2014	969,290.00	43,078,930.91
P-33-2, Page 5 of 16	034	6/4/2014	3,754,140.08	162,592,970.64
P-33-2, Page 6 of 16	035	6/5/2014	651,125,607.03	651,125,607.03
P-33-2, Page 7 of 16	036	6/6/2014	1,211,012.93	52,449,345.42
P-33-2, Page 8 of 16	037	6/9/2014	210,040,518.40	210,040,518.40

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P-33-2, Page 9 of 16	038	6/23/2014	78,920,616.75	78,920,616.75
P-33-2, Page 10 of 16	039	6/23/2014	484,405.17	20,979,738.08
P-33-2, Page 11 of 16	040	6/23/2014	765,458.73	33,152,254.88
P-33-2, Page 12 of 16	041	6/24/2014	5,095,590.60	5,095,590.60
P-33-2, Page 13 of 16	042	6/24/2014	11,804,726.63	11,804,726.63
P-33-2, Page 14 of 16	043	6/25/2014	360,702.00	16,030,967.55
P-33-2, Page 15 of 16	044	6/26/2014	74,998,061.00	74,998,061.00
P-33-2, Page 16 of 16	045	6/27/2014	2,440,121.21	105,682,406.05
TOTAL				**₱1,797,732,299.69**
Less: Sales per SLS/VAT Return				**2,035,150,294.24**
Difference				**(₱ 237,417,994.55)**

The ICPA verified that the difference of ₱237,417,994.55 pertains to the ending balance of the GL Account No. 320010,[44] which resulted from the Philippine Accounting Standard (PAS) 11 net adjustments on petitioner's revenues from the EPC contract with EDC but were inadvertently included as zero-rated sales during the 2nd quarter of 2014. The said GL account is being used to record audit adjustments to the revenues from the EPC Contract with EDC in order to comply with PAS 11 Construction Contracts for financial statement purposes. The ICPA stated that since the amount of ₱237,417,994.55 does not represent actual revenues and/or receipts during the said period, the same should be not considered as zero-rated sales for VAT purposes.

However, without an amended return filed to reflect such adjustment, the same shall be disregarded. Consequently, the reported zero-rated sales/receipts of ₱237,417,994.55 shall be disallowed.

(ii) Vestas Wind System A/S - ₱62,659,044.87

Petitioner claims that its sale of services to Vestas Wind is subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997 which provides as follows:

> "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-

[44] Exhibit "P-47".

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);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[45], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the recipient of such services is doing business outside the Philippines; and
3. Payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

As disclosed in its 2014 Audited Financial Statements, petitioner rendered IT services such as IT operations and support including surveillance, service desk, operations, support and programming to its parent company, Vestas Wind Systems A/S ("VWS")[46]. These IT services clearly fall within the scope of "services other than processing, manufacturing or repacking of goods" contemplated by the aforementioned provision, hence, satisfying the first requisite.

Petitioner likewise complied with the second requisite.

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[45] G.R. No.153205, January 22, 2007.

[46] Exhibit "P-25", Notes to Financial Statements, Note 1 General Information, Docket, vol. III, p. 1201 and Note 20.1 Service revenue, Docket, vol. III, p.1228 .

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This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC certificate of non-registration of corporation/partnership **and** proof of foreign incorporation/association/business registration.

Petitioner submitted the following documents proving that VWS is a non-resident foreign corporation doing business outside the Philippines:

a. Certificate of Non-Registration of Company issued by the Securities and Exchange Commission (SEC)[47];
b. Consularized Articles of Association of VWS[48];
c. Certificate of Tax Residency issued by the Central Customs and Tax Administration of Denmark[49]; and
d. Company Extract from the Danish Business Authority[50]

In relation to the third requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05 provides that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**

47 Exhibit P-14, Docket, vol. III, p. 1127.
48 Exhibit P-12, Docket, vol. III, p. 1108-1123.
49 Exhibit P-13, Docket, vol. III, p. 1124-1126.
50 Exhibit P-15, Docket, vol. III, p. 1128-1137.

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

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

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

xxx xxx xxx

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

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

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

(A) VAT-registered person shall issue: —

xxx xxx xxx

(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:

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(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:

(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;" (*Emphasis supplied*)

Pursuant to the foregoing provisions, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must be supported by VAT zero-rated official receipts ("ORs").

To prove its reported sales/receipts from VWS for the second quarter of CY 2014 in the amount of ₱62,659,044.87, petitioner presented the certificate of inward remittance issued by J.P. Morgan Chase N.A. and consularized bank certification issued by Nordea Bank of Denmark,[51] as well as the official receipts issued by petitioner to VWS, listed as follows:

Exhibit No	OR No.	OR Date	Amount	Amount
P-33-1, Page 1 of 3	046	7/7/2014	$ 466,693.59	₱ 20,892,898.58
P-33-1, Page 2 of 3	047	7/7/2014	490,297.51	21,858,418.79
P-33-1, Page 3 of 3	048	8/13/2014	454,191.66	19,907,727.50
Total			**$1,411,182.76**	**₱62,659,044.87**

However, as correctly observed by the ICPA[52], the aforesaid ORs were all dated during the third quarter of 2014, which is outside the period of claim. Hence, petitioner's reported zero-rated sales/receipts from VWS in the amount of ₱62,659,044.87 shall be disallowed.

(iii) Bayview Technologies, Inc. - ₱4,094,204.34

With reference to the reported zero-rated sales/receipts in the amount of ₱4,094,204.34, the same pertains to the rental fees received by petitioner from subleasing a portion of its office space to Bayview Technologies, Inc. ("Bayview").[53]

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[51] Exhibits "P-40" and "P-41".
[52] Exhibit "P-30", p. 10, Docket, vol. III, p. 1334.
[53] Exhibits "P-16" to "P-18", Docket, vol. III, pp. 1138 to 1163.

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It was established that Bayview is registered with the Cagayan Economic Zone Authority ("CEZA") as a Cagayan Special Economic Zone and Freeport Enterprise ("CSEZFP") as evidenced by its Certificate of Registration dated December 1, 2011[54]. As such, Bayview is exempt from national (including VAT) and local taxes except for the preferential tax rate of 5% on gross income pursuant to Section 4(c) of RA No. 7922 otherwise known as An Act Establishing a Special Economic Zone and Free Port in the Municipality of Santa Ana and the Neighboring Islands in the Municipality of Aparri, Province of Cagayan, Providing Funds Therefore, and for other purposes, thus:

> SECTION 4. Governing Principles. — The Cagayan Special Economic Zone shall be managed and operated under the following principles:
>
> xxx xxx xxx
>
> (c) Any provision of existing law, rules or regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the Zone. In lieu of paying taxes, said business establishments shall pay and remit to the national government five per centum (5%) of their gross income, xxx

Consequently, the rental fees received by petitioner from Bayview are effectively subject to 0% VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, which provides that sales of services rendered to persons or entities whose exemption is provided for under special laws (in the instant case, RA No. 7922) are VAT zero-rated.

Per examination of the official receipts issued by petitioner to Bayview, the ICPA found that there were advance rental payments from Bayview amounting to ₱4,041,882.22 which are supported with VAT zero-rated ORs but were not reported in the SLS and VAT return,[55] resulting to the difference computed as follows:

Exhibit No	OR No	OR Date	Amount
Exhibit P-33-1, Page 1 of 2	028	4/1/2014	₱ 4,094,204.34
Exhibit P-33-1, Page 2 of 2	029	4/1/2014	4,041,882.22
Total			**₱8,136,086.56**

[54] Exhibit P-19, Docket, vol. III, p. 1164.
[55] Exhibit P-7, Docket, vol. III, p. 1076.

Less: Sales per SLS/VAT Return	4,094,204.34
Difference	**₱4,041,882.22**

Pursuant to Section 114(A) of the NIRC of 1997, as amended, petitioner should have declared the zero-rated receipts of ₱4,041,882.22 in its Quarterly VAT Return for the second quarter of 2014. Thus, petitioner's input VAT claim corresponding to the undeclared zero-rated receipts of ₱4,094,204.34 shall be denied.

Thus, only the amount of ₱4,094,204.34 shall be allowed as petitioner's valid zero-rated sales to Bayview for the 2nd Quarter of CY 2014.

In all, the total amount of ₱300,077,039.42 shall be disallowed as zero-rated sales/receipts for the 2nd Quarter of CY 2014. On the other hand, petitioner's total valid zero-rated sales/receipts for the 2nd Quarter of CY 2014 amounted to ₱1,801,826,504.03, broken down as follows:

Registered Name	**Amount**
EDC	₱ 1,797,732,299.69
Bayview	4,094,204.34
Total	**₱1,801,826,504.03**

3rd requisite: Petitioner paid/incurred input VAT

In its amended Quarterly VAT Return for the 2nd quarter of CY 2014, petitioner's reported input tax arising from its domestic purchases of non-capital goods and services, purchase of services rendered by non-residents, and importation of non-capital goods amounted to ₱200,823,748.64, of which the amount of ₱185,071,841.63 is being claimed for refund. Below is the breakdown of the ₱200,823,748.64 declared input VAT:[56]

Particulars	**Input VAT per VAT Return**
Domestic purchase of services/goods	₱ 196,090,235.05
Importation of non-capital goods	4,228,228.00
Purchase of services from non-residents	505,285.59
Total	**₱200,823,748.64**

56 Exhibit "P-6", Docket, vol. III, pp. 1074-1075.

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In support of these input taxes, petitioner presented its Summary List of Purchases[57], Summary List of Importations[58], suppliers' sales invoices and official receipts[59], BIR Forms No. 1600 with payment details[60], Bureau of Customs Import Entry and Internal Revenue Declarations ("IEIRDs") and the corresponding Assessment Notices and Bank Settlement Advice on Importations[61]. Upon examination of the aforesaid documents, the ICPA noted the following exceptions on petitioner's claimed input VAT:

Particulars	Reference to Exh. "P-30"	Amount
A. Input VAT on domestic purchase of services		
a) Purchase of services supported by original ORs with incorrect name, TIN and/or address	Annex F-1	₱ 20,442.62
b) Purchases of services supported by certified true copy of OR where name, TIN, and/ or address is incorrect	Annex F-2	1,028.57
c) Purchase of services supported by original ORs with no TIN and/or address indicated	Annex F-3	18,380.90
d) Purchase of services supported by certified true copy of OR with no TIN and/or address indicated	Annex F-4	1,028.57
e) Purchase of services supported by original ORs where VAT base and/or amount of VAT is not indicated separately	Annex F-5	139,182.96
f) Purchase of services supported by original ORs where nature of services is not indicated	Annex F-6	134,826.81
g) Purchase of services supported by certified true copy of OR where nature of service is not indicated	Annex F-7	3,557.28
h) Purchase of services supported by original ORs dated outside the period of claim	Annex F-8	18,218,288.31
i) Purchase of services supported by certified true copy of ORs dated outside the period of claim	Annex F-9	11,608,302.46
j) Unsupported purchases	Annex F-10	10,068,145.95
k) Domestic purchases of services improperly supported with original VAT ORs but the amount of input VAT per SLP is understated (amount of underclaim)	Annex F-11	(317,689.86)
Sub-total (A)		**₱39,895,494.57**
B. Input VAT on domestic purchase of goods		

57 Exhibit "P-20".
58 Exhibit "P-21".
59 Exhibits "P-34-A" to "P-34-AA".
60 Exhibit "P-44".
61 Exhibit "P-54".

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a) Purchase of goods supported by original sales invoices with incorrect name, TIN and/or address	Annex F-12	₱	5,287.50
b) Purchase of goods supported by original sales invoices with no TIN and/or address indicated	Annex F-13		8,152.20
c) Purchase of goods supported by original sales invoices dated outside the period of claim	Annex F-14		22,094.85
Sub-total (B)		**₱**	**35,534.55**
C. Input VAT on Importations			
a) Importation of goods supported by photocopies of IEIRDs	Annex G-1	₱	3,272,325.00
b) Importation of goods supported by photocopy of IEIRDs dated outside the period of claim	Annex G-2		3,685.00
c) Importation of goods supported by photocopies of IEIRDs but the import entry number is unreadable or not indicated	Annex G-3		919,190.00
d) Importation of goods supported by photocopies of Import Entry and Internal Revenue Declaration (IEIRD) with incorrect IEIRD Number indicated per E2M Assessment notice and Settlement Advice	Annex G-4		33,028.00
Sub-total (C)		**₱**	**4,228,228.00**
Total			**₱44,159,257.12**

The Court finds the ICPA report in order. The above input VAT of ₱44,159,257.12 must be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110 (A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05, as amended. Accordingly, out of the ₱200,823,748.64 reported input VAT for the second quarter of CY 2014, only the amount of ₱156,664,491.52 represents petitioner's valid input VAT, computed as follows:

Amount of input VAT per Quarterly VAT Return	₱ 200,823,748.64
Less: Disallowances	44,159,257.12
Valid input VAT for the 2nd Qtr of CY 2014	**₱156,664,491.52**

4th and 5th Requisites: **Petitioner's claimed input taxes were unutilized and attributable to its zero-rated sales/receipts.**

Petitioner had no output tax liability against which the input VAT of ₱156,664,491.52 may be applied or credited, since it had no other sales/receipts but zero-rated sales/receipts for the second quarter of CY 2014. Moreover, the input VAT of ₱156,664,491.52 is attributable to the entire declared zero-rated sales/receipts of ₱2,101,903,543.45. However, only the input VAT of ₱134,298,376.32 is attributable to the properly substantiated zero-rated sales/receipts of ₱1,801,826,504.03, computed as follows:

Particulars	Amount
Total unutilized/excess input VAT	₱ 156,664,491.52
Divided by Declared Zero-Rated Sales	÷2,101,903,543.45
Multiply by Valid Zero-Rated Sales	×1,801,826,504.03
Unutilized/excess input VAT attributable to Valid Zero-Rated Sales/Receipts	**₱134,298,376.32**

Finally, it was established that the input VAT of ₱134,298,376.32 was not carried-over nor applied against any output VAT in the succeeding quarters[62].

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱134,298,376.32 representing its unutilized excess input VAT for the second quarter of CY 2014 which is attributable to its zero-rated sales/receipts for the same period.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTFICATE** in favor of petitioner in the amount of **₱134,298,376.32** representing unutilized excess input VAT attributable to its zero-rated sales/receipts for 2nd Quarter of CY 2014.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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62 Exhibits"P-22-1" to "P-22-2", "P-23-1" to "P-23-4", "P-24-1" to "P-24-2", Docket, vol. III, pp. 1170 to 1191.

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice