REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

RESTORED ENERGY DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NOS. 9775, 9827, and 9854**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN, MODESTO-SAN PEDRO,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 16 2021 2:30pm

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DECISION

MANAHAN, *J.*:

Before this Court are consolidated cases involving three (3) Petitions for Review[1] filed by Restored Energy Development Corporation (*petitioner*) against the Commissioner of Internal Revenue (*respondent*), praying that judgment be rendered ordering respondent to grant petitioner a refund or issue a tax credit certificate in the aggregate amount of ₱1,696,133.49, representing input Value Added Tax (VAT) attributable to its zero-rated sales for the third (3rd) and fourth (4th) quarters of taxable year (TY) 2015, and first (1st) quarter of TY 2016, broken down as follows:

CTA Case No.	Taxable Period	Amount Involved
9775	3rd quarter of TY 2015	₱509,842.01
9827	4th quarter of TY 2015	₱591,646.31
9854	1st quarter of TY 2016	₱594,645.17
TOTAL		**₱1,696,133.49**

* Assigned as Special Member
[1] CTA Case No. 9775 Docket Vol. I, pp. 10-233 (*inclusive of annexes*); CTA Case No. 9827 Docket Vol. I, pp. 10-413 (*inclusive of annexes*); CTA Case No. 9854 Docket, pp. 10-288 (*inclusive of annexes*).

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THE PARTIES

Petitioner is a corporation organized and existing under Philippine laws with Certificate of Incorporation issued by the Securities and Exchange Commission (SEC) on October 24, 2014.[2] Its business address is at 770 E. Rodriguez Extension, Malibay, Pasay City.[3] It is engaged in the business of generating and supplying electricity and other forms of thermal energy such as heat or steam for distribution to utilities and end-users using a co-generation facility, and constructing, developing, testing and commissioning power plants.[4] Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT-registered taxpayer[5] with Tax Identification Number (TIN) 006-930-473-003 under BIR Certificate of Registration No. OCN 9RC0000499397 dated April 13, 2010 issued by the BIR Revenue District 53B, Revenue Region 008.[6]

Respondent is the Commissioner of the BIR (CIR) vested with power and authority to implement and enforce the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended and other tax laws, and in particular, decide claims for refund of internal revenue taxes. His office address is at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

THE FACTS

On March 23, 2015, the Board of Investments (BOI) issued Certificate of Registration No. 2015-068, certifying that it has duly registered petitioner as a Renewable Energy (RE) Developer of Biomass Energy Resources for its plant in Barangay Tunasan, Muntinlupa City, pursuant to the provisions of the Omnibus Code of 1987, enjoying among others as tax incentives, income tax holiday and VAT zero-percent rate on its sale of power in relation to its registered biomass project.[8]

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[2] Exhibit "P-1", CTA Case No. 9775 Docket Vol. I, p. 389.
[3] Exhibit "P-1", CTA Case No. 9775 Docket Vol. I, p. 389; Item No. 2, A. Admitted Facts, Joint Stipulation of Facts and Issues ("JSFI"), CTA Case No. 9775 Docket Vol. I, p. 329.
[4] Item No. 5, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 330; Exhibit "P-2", CTA Case No. 9775 Docket Vol. I, p. 392.
[5] Item No. 6, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 330;
[6] Exhibit "P-3", CTA Case No. 9775 Docket Vol. I, p. 402.
[7] Item No. 2, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 329.
[8] Item No. 7, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 330; Exhibit "P-4", CTA Case No. 9775 Docket Vol. I, p. 403.

On December 9, 2015, petitioner and the Department of Energy (DOE) executed a Biomass Renewable Energy Operating Contract (No. 2013-09-039).[9]

The DOE, through its Letters dated April 11, 2016, confirmed to the BIR and BOI, petitioner's entitlement to income tax holiday and VAT zero-percent rate on its sale of power in relation to its registered biomass project.[10]

On June 14, 2016, the DOE issued Certificate of Registration No. RE-B2013-09-074a, certifying that it has duly registered petitioner as an RE Developer.[11]

Under a Steam Supply Agreement dated May 4, 2010, petitioner supplied Pepsi-Cola Products Philippines, Inc. with steam power generated through petitioner's biomass energy plant.[12]

On the following dates, petitioner filed its administrative claims for refund of input VAT paid for the 3rd and 4th quarters of TY 2015, and 1st quarter of TY 2016:

Taxable Quarter	**Date of Filing Administrative Claim**
3rd Quarter of 2015	September 29, 2017[13]
4th Quarter of 2015	January 3, 2018[14]
1st Quarter of 2016	March 2, 2017[15]

On April 2, 2018, petitioner received from respondent an undated Letter denying its administrative claim for refund for the 4th quarter of TY 2015.[16]

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[9] Item No. 8, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 331; Exhibit "P-8", CTA Case No. 9775 Docket Vol. II, pp. 757-779.
[10] Item No. 9, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 331.
[11] Item No. 8, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 331; Exhibit "P-4", CTA Case No. 9775 Docket Vol. I, p. 403; Exhibit "P-7", CTA Case No. 9775 Docket Vol. I, p. 410.
[12] Item No. 10, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 331; Exhibit "P-9", CTA Case No. 9775 Docket, p. 416.
[13] Exhibit "P-25", CTA Case No. 9775 Docket Vol. I, p. 578.
[14] Item No. 5, C. Allegations Showing Jurisdiction of This Honorable Court, Petition for Review, CTA Case No. 9827 Docket, p. 11; Admitted in Item No. 1, Answer, CTA Case No. 9827 Docket, p. 421.
[15] Exhibit "P-27", CTA Case No. 9775 Docket Vol. II, p. 582.
[16] Item No. 13, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 332; Exhibit "P-29", CTA Case No. 9775 Docket Vol. I, p. 585.

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On May 11, 2018, petitioner received from respondent an undated Letter denying its administrative claim for refund for the 1st quarter of TY 2016.[17]

Petitioner filed the present Petitions for Review before the Court on the following dates:

CTA Case No.	Date of Filing of Petition for Review	Amount of Claim
9775	February 26, 2018	₱509,842.01
9827	April 27, 2018	₱591,646.31
9854	June 13, 2018	₱594,645.17

On April 24, 2018, within the extended period granted by the Court,[18] respondent posted his Answer in CTA Case No. 9775,[19] interposing the following special and affirmative defenses:

(i) petitioner's claim for refund or issuance of tax credit certificate was denied for failure of petitioner to show that the amount of ₱509,842.01 was deducted from the available input tax in its VAT Return pursuant to Revenue Memorandum Circular (RMC) No. 54-2014;

(ii) taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

(iii) petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱509,842.01 representing alleged excess and unutilized input VAT for the third quarter of TY 2015 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations (RR) No. 7-95, in relation to Section 113 and 237 of the NIRC of 1997, as amended;

(iv) in an action for refund/credit, the burden of proof is on petitioner to establish its right to claim refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

(v) it is incumbent upon petitioner to show that it has complied with Section 204(c), in relation to Section 229, of the NIRC of 1997, as amended; and,

[17] Item No. 14, A. Admitted Facts, JSFI, CTA Case No. 9775 Docket Vol. I, p. 332; Exhibit "P-30", CTA Case No. 9775 Docket Vol. I, p. 586.
[18] Resolution dated April 20, 2018, CTA Case No. 9775 Docket Vol. I, p. 240.
[19] CTA Case No. 9775 Docket Vol. I, pp. 242-244.

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(vi) claims for refund are construed strictly against petitioner since the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

Petitioner filed its Reply[20] thereto on May 9, 2018.

On August 10, 2018, within the extended period granted by the Court,[21] respondent posted his Answer in CTA Case No. 9854,[22] interposing the following special and affirmative defenses:

(i) taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

(ii) petitioner's claim for refund evidently failed to comply with the substantiation requirements prescribed under RR No. 16-2005, in relation to Sections 113 and 237 of the NIRC of 1997, as amended, as well as the conditions/requirements prescribed under Section 112(A)(C) thereof;

(iii) petitioner has the burden of proof to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim;

(iv) petitioner failed to comply with the prescribed conditions/requirements to qualify its sales of power generation as VAT zero-rated under Section 108(B)(7) of the NIRC of 1997, as amended; and,

(v) claims for refund are construed strictly against petitioner for the same partakes the nature of exemption from taxation, and as such, they are looked upon with disfavor.

Petitioner filed its Reply[23] thereto on September 4, 2018.

On August 14, 2018, within the extended period granted by the Court,[24] respondent posted his Answer in CTA Case No.

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[20] Reply (To Respondent's Answer dated April 24, 2018), CTA Case No. 9775 Docket Vol. I, pp. 249-256.
[21] Resolution dated July 25, 2018, CTA Case No. 9854 Docket Vol. I, p. 295.
[22] CTA Case No. 9854 Docket Vol. I, pp. 296-299.
[23] Reply (To Respondent's Answer dated August 8, 2018), CTA Case No. 9854 Docket, pp. 304-320.
[24] Resolution dated July 31, 2018, CTA Case No. 9827 Docket Vol. I, p. 420.

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9827,[25] interposing the following special and affirmative defenses:

(i) petitioner failed to demonstrate that the tax, which is the subject of the case, was erroneously or illegally collected;

(ii) taxes paid and collected are presumed to be made in accordance with laws and regulations, hence, not refundable;

(iii) it is incumbent upon petitioner to show that it has complied with Section 204(C), in relation to Section 229, of the NIRC of 1997, as amended;

(iv) petitioner's claim for refund or issuance of tax credit certificate in the aggregate amount of ₱591,646.31 as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the period October 1, 2015 to December 31, 2015 was denied per investigation done by RDO No. 51, Pasay City for failure to provide/submit complete mandatory requirements pursuant to Section II of RMC No. 54-2014 dated June 17, 2014;

(v) based on the documents submitted, petitioner failed to show that the amount of tax credit certificate or refund claimed amounting to ₱591,646.31 was deducted from available input tax in its Quarterly VAT Return;

(vi) input tax for the period October 1, 2015 to December 31, 2015 amounting to ₱2,609,195.05 was carried over in full amount in the First Quarter 2016 VAT Return, and said act of carrying over to the next quarter the amount sought to be refunded disqualifies petitioner from claiming refund thereof;

(vii) in an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim; and,

(viii) claims for refund are construed strictly against the claimant as the same partake the nature of exemption from taxation, and as such, they are looked upon with disfavor.

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[25] CTA Case No. 9827 Docket, pp. 421-424.

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Petitioner filed its Reply[26] thereto on September 6, 2018.

Petitioner filed a Motion to Consolidate[27] on July 19, 2018, while respondent filed his Comment[28] thereto on August 7, 2018. In the Resolution dated August 30, 2018, the Court granted petitioner's Motion and the present cases were consolidated.[29]

In view of the reorganization of the three (3) Divisions of the Court, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, the consolidated cases were transferred to this Division in the Order dated September 25, 2018.[30]

Respondent's Pre-Trial Brief[31] and petitioner's Pre-Trial Brief[32] were both filed on March 4, 2019.

During the March 7, 2019 Pre-Trial Conference, the parties were ordered to file their Joint Stipulation of Facts and Issues.[33]

On March 22, 2019, the parties filed their Joint Stipulation of Facts and Issues.[34] In the Resolution dated March 29, 2019,[35] the Court approved the parties' Joint Stipulation of Facts and Issues, terminated the Pre-Trial, and directed the issuance of a Pre-Trial Order. On June 4, 2019, the Court issued the Pre-Trial Order.[36]

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[26] Reply (To Respondent's Answer dated August 13, 2018), CTA Case No. 9827 Docket, pp. 432-448.
[27] Motion to Consolidate with Motion to Defer Pre-Trial Conference, CTA Case No. 9775 Docket Vol. I, pp. 259-262.
[28] Comment (to the Motion to Consolidate filed on July 19, 2018), CTA Case No. 9775 Docket Vol. I, pp. 273-274.
[29] Resolution dated August 30, 2018, CTA Case No. 9775 Docket Vol. I, pp. 277-278.
[30] Order dated September 25, 2018, CTA Case No. 9775 Docket Vol. I, p. 279.
[31] CTA Case No. 9775 Docket Vol. I, pp. 292-296.
[32] CTA Case No. 9775 Docket Vol. I, pp. 300-307.
[33] Minutes of the Hearing dated March 7, 2019, CTA Case No. 9775 Docket Vol. I, pp. 321-323; Order dated March 7, 2019, CTA Case No. 9775 Docket Vol. I, pp. 324-325.
[34] CTA Case No. 9775 Docket Vol. I, pp. 329-337.
[35] CTA Case No. 9775 Docket Vol. I, p. 339.
[36] CTA Case No. 9775 Docket Vol. II, pp. 623-635.

During trial, petitioner presented Mr. Alexis S. Mendoza,[37] tax specialist of petitioner, and Mr. Floyd C. Paguio,[38] the Court-Commissioned Independent Certified Public Accountant (ICPA).

Petitioner's formally offered exhibits, as contained in its Amended Formal Offer of Evidence[39] filed on February 14, 2020, were admitted in the Court's Resolution dated July 8, 2020,[40] except Exhibits "P-3.2.23," "P-3.2.25", "P-3.2.57", "P-3.2.58", "P-3.2.59", "P-3.2.60", "P-3.2.61", "P-3.2.62", "P-3.63", "P-3.64", "P-3.2.65", "P-3.2.68", "P-3.3.12", "P-3.3.13", "P-3.4.19", and "P-3.5.9" for not being found in the records of the case; and, Exhibit "P-4.2" for failure of the exhibit formally offered and identified to correspond with the document actually marked.

In the same Resolution, the parties were given a period of thirty (30) days from receipt thereof within which to file their respective memoranda,[41] considering respondent's earlier manifestation that he would not be presenting any evidence.[42]

On August 11, 2020, the Memorandum for Respondent[43] was posted, while petitioner posted its Memorandum on August 26, 2020.[44] In the Resolution dated September 17, 2020,[45] the case was submitted for decision.

THE ISSUE

The parties stipulated on the following issue for consideration of the Court, *viz.*:

> Whether or not petitioner is entitled to refund of input VAT incurred and paid in relation to its VAT

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[37] Minutes of the Hearing dated June 4, 2019, CTA Case No. 9775 Docket Vol. II, pp. 636-637; Order dated June 4, 2019, CTA Case No. 9775 Docket Vol. II, p. 638.
[38] Minutes of the Hearing dated May 9, 2019, CTA Case No. 9775 Docket Vol. I, pp. 377-379; Order dated May 9, 2019, CTA Case No. 9775 Docket Vol. I, pp. 381-382; Minutes of the Hearing dated September 3, 2019, CTA Case No. 9775 Docket Vol. II; Order dated September 3, 2019, CTA Case No. 9775 Docket Vol. II, pp. 689-690.
[39] CTA Case No. 9775 Docket Vol. II, pp. 797-859.
[40] CTA Case No. 9775 Docket Vol. II, pp. 874-880.
[41] *Id.*
[42] Minutes of the Hearing dated September 3, 2019, CTA Case No. 9775 Docket Vol. II; Order dated September 3, 2019, CTA Case No. 9775 Docket Vol. II, p. 689.
[43] CTA Case No. 9775 Docket Vol. II, pp. 910-915.
[44] CTA Case No. 9775 Docket Vol. II, pp. 917-944.
[45] CTA Case No. 9775 Docket Vol. II, p. 947.

zero-rated sales for the 3rd and 4th quarters of TY 2015 and 1st quarter of TY 2016 in the aggregate amount of ₱1,696,133.49.[46]

PETITIONER'S ARGUMENTS[47]

Petitioner argues that it is entitled to the refund of the ₱1,696,133.49 input VAT it paid and incurred in relation to its VAT zero-rated sales for the 3rd and 4th quarters of TY 2015, and 1st quarter of TY 2016. According to petitioner, its sales of steam power generated from renewable biomass energy to Pepsi-Cola Products Philippines, Inc. for said periods are VAT zero-rated.

Petitioner further insists that it was able to substantiate the input VAT indicated in its VAT returns, by submitting invoices and official receipts. Moreover, it avers that said input taxes have not been applied against output taxes. Finally, petitioner asserts that its refund claims were filed within two (2) years after the close of the taxable quarters when zero-rated sales were made.

RESPONDENT'S ARGUMENTS[48]

Respondent counters that the present judicial claim should be denied for lack of factual and legal basis. According to respondent, it is incumbent upon petitioner to show that it has complied with the provisions of Section 112(A) of the NIRC of 1997, as amended.

Respondent maintains that he had already notified petitioner that the claim for tax refund/credit for the 3rd quarter of TY 2015 has been denied for failure to show that the amount of ₱509,842.01 was deducted from the available input tax in their corresponding Quarterly VAT Return pursuant to RMC No. 54-2014.

Anent petitioner's claim for tax refund/credit for the 4th quarter of TY 2015, respondent avers that he had also notified petitioner that the same has been denied for failure to submit

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[46] B. Issues to be Resolved, JSFI, CTA Case No. 9775 Docket, Vol. I, p. 332.
[47] D. Discussion, Memorandum, CTA Case No. 9775 Docket Vol. II, pp. 927-942.
[48] Discussion, Memorandum for Respondent, CTA Case No. 9775 Docket Vol. II, pp. 912-913.

the complete mandatory requirements pursuant to Section II of RMC No. 54-2014 in reference to Annex "A" of said RMC, particularly item 2.3. Said provision requires petitioner to submit certified true copies of Quarterly VAT Returns corresponding to the period of claim showing that the amount of refund being claimed was deducted from the available input tax. Moreover, returns show that the whole input tax for the said period amounting to ₱2,609,195.05 was carried over to the succeeding quarter.

In petitioner's application for tax refund for the 1st quarter of TY 2016, the amount claimed was indicated as ₱594,645.17, while in the Schedule of Purchases for the period, the amount was ₱716,535.85. Furthermore, a perusal of VAT Returns disclosed that petitioner failed to show that the amount of refund claimed amounting to ₱594,645.17 was deducted from available input tax in the Quarterly VAT Return for the succeeding period/quarter.

Finally, respondent stresses that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against petitioner. According to respondent, for petitioner's failure to fully substantiate its refund claims with proper documents, the present Petition for Review must be denied.

THE COURT'S RULING

Timeliness of the filing of the administrative and judicial claims

Before delving into the merits of petitioner's claim for refund, the Court shall make a determination on the timeliness of the filing of petitioner's administrative and judicial claims.

Section 112(A) of the NIRC of 1997, as amended, specifically requires that the taxpayer's administrative claim for refund or issuance of tax credit certificate (TCC) of unutilized and/or excess input VAT attributable to its zero-rated sales, must be filed within 2 years after the close of the taxable quarter when the sales were made, *viz.*:

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

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 1 06(A)(2)(1), (2) and (b) and Section 108(8)(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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."

The date of reckoning of the 2-year period within which to file an administrative claim, the deadline to file the administrative claim, and the date of filing of petitioner's administrative claim for refund or issuance of TCC for the 3rd and 4th quarters of TY 2015, and 1st quarter of TY 2016 are shown below:

CTA Case No.	Taxable Quarter	Reckoning of the 2-year period	Deadline for Filing an Administrative Claim	Date of Filing of Administrative Claim
9775	Third Quarter – ending September 30, 2015	September 30, 2015	September 30, 2017	September 29, 2017[49]
9827	Fourth Quarter – ending December 31, 2015	December 31, 2015	December 31, 2017[50]	January 3, 2018[51]
9854	First Quarter – ending March 31, 2016	March 31, 2016	March 31, 2018	March 2, 2017[52]

[49] Supra note 13.
[50] December 31, 2017 was a regular holiday. The next working day was January 3, 2018.
[51] Supra note 14.
[52] Supra note 15.

Section 28, Chapter 7, Book I of the Administrative Code provides that when the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day. Relatedly, Section 1, Rule 22 of the Rules of Court provides that if the last day of the period falls on a Saturday, a Sunday, or a legal holiday, the time shall not run until the next working day.

The Court takes judicial notice of Memorandum Circular No. 37 dated December 13, 2017 issued by Executive Secretary Salvador C. Medialdea suspending work on January 2, 2018 in government offices, including government-owned or controlled corporations, government financial institutions, state universities and colleges, local government units, and other agencies and instrumentalities. Since December 31, 2017 and January 1, 2018 were holidays, and considering that there was a declared suspension of work in the government on January 2, 2018, the last day to file the administrative claim for refund in CTA Case No. 9827, covering the 4th quarter of TY 2015, fell on January 3, 2018, the next succeeding working day following the holidays and work suspension.

It must be noted that in the Petition for Review for CTA Case No. 9854 pertaining to the 1st quarter of TY 2016, petitioner alleges that it filed an administrative claim for refund before the BIR on March 2, 2018.[53] In his Judicial Affidavit dated March 4, 2019, petitioner's witness, Mr. Mendoza also testified that petitioner filed its administrative claim for refund on March 2, 2018 and that the BIR incorrectly stamped March 2, 2017 on the same.[54]

Perusal of the evidence presented by petitioner and the BIR records shows, however, that the administrative claim for refund for said taxable quarter indicates March 2, 2017 as the date of filing. It has been settled that in weighing evidence, documentary evidence prevails over testimonial evidence.[55] Hence, the Court shall consider March 2, 2017 as petitioner's date of filing of the administrative claim for refund for the 1st quarter of TY 2016.

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[53] Item No. 22, D. Statement of Facts, Petition for Review, CTA Case No. 9854 Docket, p. 15.
[54] Exhibit "P-44", CTA Case No. 9775 Docket Vol. I, p. 314.
[55] Dick L. Go vs. Court of Appeals and Security Bank & Trust Company, G.R. No. 112550, February 5, 2001.

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Based on the foregoing, the administrative claims for the 3rd and 4th quarters of TY 2015, and 1st quarter of TY 2016 were filed well within the 2-year prescriptive period under Section 112(A) of the NIRC of 1997, as amended.

The Court shall proceed to determine the timeliness of petitioner's judicial claims.

Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides for the period of limitation within which to file an appeal before the CTA, *viz:*

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
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> Appeal should be made by filing a **petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.** xxx" *(Boldfacing supplied)*

CTA Case No. 9775

Section 112(C) of the NIRC of 1997, as amended by RA No. 9337,[56] which was in effect from July 1, 2005 to December 31, 2017, provides:

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

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[56] 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.

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."

Respondent had one hundred twenty (120) days from the date of submission of complete documents in support of the application for tax refund/credit within which to grant or deny the claim. If after the 120-day period respondent fails to act on the application for tax refund/credit, petitioner may seek judicial intervention within 30 days from the expiration of the 120-day period.

Counting 120 days from September 29, 2017, the date when petitioner filed its administrative claim for refund/issuance of TCC together with the supporting documents covering the 3rd quarter of TY 2015, respondent had until January 27, 2018 to act on the said claim; otherwise, such application is deemed denied. Considering that respondent failed to render its decision on petitioner's claim, petitioner had a period of 30 days from January 27, 2018, or until February 26, 2018 within which to file its judicial claim for the period covering the 3rd quarter of TY 2015. Hence, **the Petition for Review filed on February 26, 2018 in CTA Case No. 9775 was timely filed.**

CTA Case No. 9827

Anent petitioner's claim for refund for the 4th quarter of TY 2015, petitioner asserts that pursuant to Section 112(C) of the NIRC of 1997, as amended, respondent had a period of 120 days from petitioner's submission of its supporting documents on January 3, 2018, or until May 2, 2018, to render its decision, otherwise, such application is deemed denied. Petitioner avers that on April 2, 2018, it received from respondent an undated Letter, denying its administrative claim for refund for the 4th quarter of TY 2015,[57] and thus, it had a period of 30 days from receipt of the decision, or until May 2, 2018, to appeal the denial of its administrative claim for refund to the Court.[58]

With the effectivity of the Tax Reform Acceleration and Inclusion Law (TRAIN Law)[59], however, on January 1, 2018, Section 112(C) of the NIRC of 1997, was amended to read, as follows:

> "SEC. 112. Refunds or Tax Credits of Input Tax
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> xxx xxx xxx
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> *(C) Period within which Refund of Input Taxes shall be Made.* – In proper cases, **the Commissioner shall grant a refund for creditable input taxes within <u>ninety (90) days</u> from the date of submission of the official receipts or invoices and other documents in support of the application** filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within ninety (90) days period shall be punishable under Section 269 of this Code. *(Boldfacing and underscoring supplied)*

Also, Section 4.112-1 of RR No. 13-2018[60] provides that the judicial claim for refund or credit of input taxes shall be made within 30 days from receipt of the decision denying the claim, *viz.*:

> "d) Period within which refund/credit of input taxes shall be made

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[57] Item No. 7, C. Allegations Showing Jurisdiction of this Honorable Court, Petition for Review, CTA Case No. 9827 Docket, Vol. I, p. 12.
[58] Item Nos. 6-8, C. Allegations Showing Jurisdiction of this Honorable Court, Petition for Review, CTA Case No. 9827 Docket Vol. 1, pp. 11-12.
[59] Republic Act No. 10963.
[60] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

> In proper cases, the Commissioner of Internal Revenue shall grant refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with subsections (A) and (B) hereof: Provided, That, **should the Commissioner find that the grant of refund is not proper**, the Commissioner **must state in writing the legal and factual basis for the denial**.
>
> The 90-day period to process and decide, pending the establishment of the enhanced VAT Refund System shall only be up to the date of approval of the Recommendation Report on such application for VAT refund by the Commissioner **or his duly authorized representative**: Provided, That all claims for refund/tax credit certificate filed prior to January 1, 2018 will be governed by the one hundred twenty (120)-day processing period.
>
> In case of **full or partial denial of the claim for tax refund**, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, that failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of the Tax Code, as amended." *(Boldfacing supplied)*

RA No. 1125, as amended by RA No. 9282, categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within 30 days after the receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2).[61]

Stated otherwise, starting January 1, 2018, the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim **or** it may file the appeal within 30 days from the expiration of the 90-day period if there is inaction on the part of the CIR.

On April 2, 2018, petitioner received from respondent an undated Letter signed by Revenue District Officer (RDO)

[61] Sec. 11, RA No. 1125 as amended by RA 9282.

Honorata S. Aguilar, denying its administrative claim for refund for the 4th quarter of TY 2015.[62]

RMC No. 17-2018, which took effect on February 27, 2018, provides that the denial letter for VAT claims **shall be signed by the CIR, Deputy Commissioner – Operations Group (DCIR-OG), Assistant Commissioner (ACIR), or Regional Director (RD)**, and that claims for VAT refund by other zero-rated taxpayers and indirect exporters **shall be subject to approval or disapproval by the RD or ACIR-Large Taxpayers Service**, as the case may be, *viz.*:

> "I. Claims for value-added tax (VAT) refund
>
> A. General Policies
>
> xxx
>
> 5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office to the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.
>
> **Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. The denial letter shall be signed by the <u>Commissioner (CIR)/Deputy Commissioner – Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/Regional Director</u>**, as the case may be.
>
> xxx
>
> C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended by R.A. No. 10963
>
> 1. All claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, shall be filed with and processed by the **concerned Revenue District Office and LT Audit**

[62] Supra note 16.

> **Division having jurisdiction over the taxpayer-claimant.**
>
> 2. **The docket with report on said claims shall be** reviewed by the Assessment Division/Office of the Head Revenue Executive Assistant (HREA), and shall be **subject to approval/disapproval by the <u>Regional Director/ACIR-LTS</u>, as the case may be, irrespective of amount.**
>
> xxx" *(Boldfacing and underscoring supplied)*

From the foregoing, it appears that RDO Aguilar is not among those authorized to sign a denial letter for VAT claims. Hence, the letter signed by RDO Aguilar, and received by the petitioner on April 2, 2018, denying petitioner's administrative claim is not the "Denial Letter" contemplated in RMC No. 17-2018, which is appealable to this Court, pursuant to R.R. No. 13-2018. In fine, respondent failed to render its decision on petitioner's claim.

Counting 90 days from January 3, 2018, the date when petitioner filed its administrative claim for refund/issuance of TCC together with the supporting documents covering the 4th quarter of TY 2015, respondent had until April 3, 2018 to act on the said claim, otherwise, such application is deemed denied. Considering that no decision was rendered by respondent or his duly authorized representative, petitioner had a period of 30 days from the lapse of the 90-day period on April 3, 2018, or until May 3, 2018 within which to file its judicial claim for the period covering the 3rd quarter of TY 2015. Hence, **the Petition for Review filed on April 27, 2018 in CTA Case No. 9827 was timely filed.**

<u>CTA Case No. 9854</u>

Anent petitioner's administrative claim for refund for the 1st quarter of TY 2016, petitioner asserts that the 30-day period within which to file its judicial claim must be reckoned from May 11, 2018, the date when it received from respondent an undated Letter signed by RDO Aguilar, denying its administrative claim. Thus, petitioner insists that its Petition for Review filed was timely filed on June 13, 2018.

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Having settled that petitioner's claim for refund for the 1st quarter of TY 2016 was filed on March 2, 2017, the NIRC, as amended by RA No. 9337,[63] which was in effect from July 1, 2005 to December 31, 2017, is still the law that governs on petitioner's refund claim in CTA Case No. 9854 for the 1st quarter of TY 2016.

Counting 120 days from March 2, 2017, the date when petitioner filed its administrative claim for refund/issuance of TCC together with the supporting documents covering the 1st quarter of TY 2016, respondent had until **June 30, 2017** to act on the said claim, otherwise, such application is deemed denied. Considering that respondent failed to render its decision on petitioner's claim within the 120-day period, petitioner had a period of 30 days from the lapse of the 120-day period on June 30, 2017, or until July 30, 2017 within which to file its judicial claim for the period covering the 1st quarter of TY 2016. Hence, **the Petition for Review in CTA Case No. 9854 was filed out of time on June 13, 2018.**

Considering that the administrative and judicial claims for refund for the **3rd and 4th quarters of TY 2015 in CTA Case Nos. 9775 and 9827 were timely filed**, the Court shall proceed to determine whether petitioner complied with the following requisites for the refund or issuance of tax credit of input VAT attributable to zero-rated or effectively zero-rated sales:

1. The taxpayer-claimant must be VAT-registered;

2. There must be zero-rated or effectively zero-rated sales;

3. Input VAT were incurred or paid;

4. Such input VAT are attributable to zero-rated or effectively zero-rated sales; and,

5. Said input VAT were not applied against any output VAT liability.

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[63] Supra note 56.

Petitioner is a VAT-registered entity

Anent the **first requisite**, petitioner has proven its compliance therewith through its BIR Certificate of Registration,[64] which shows that it is a VAT-registered taxpayer with TIN No. 006-930-473-003.

Petitioner is engaged in zero-rated sales, and had zero-rated sales, during the subject periods in the amount of ₱35,312,010.97

Petitioner maintains that its sales of power generated through renewable sources of energy are subject to zero percent (0%) VAT, pursuant to Section 108(B)(7) of the NIRC, as amended, which states:

> "**SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> 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." (*Boldfacing supplied.)*

Relative thereto, Section 4.108(b)(7) of R.R. No. 16-2005, as amended by R.R. No. 04-07, also provides:

> "**SEC. 4.108-5**. ***Zero-Rated Sales of Services***. –
>
> xxx xxx xxx

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[64] Supra note 6.

> (b) *Transaction Subject to Zero Percent (0%) VAT Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) VAT 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 and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels. *Provided, however*, That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance of operation of plants generating said power."

Corollary to the above provisions, Section 4.108-3(f) of R.R. No. 16-2005 states:

> **"SEC. 4.108-3**. ***Definition and Specific Rates on Selected Services***. –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> *Generation companies* refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

As aforementioned, petitioner is a domestic corporation which is primarily engaged in the business of generating and supplying electricity and other forms of thermal energy such as heat or steam for distribution to utilities and end-users using a co-generation facility, and constructing, developing, testing and commissioning power plants.[65] Petitioner generates electricity through its biomass energy plant in Barangay Tunasan, Muntinlupa City.[66]

As a corporation engaged in the business of generating power through renewable sources of energy, petitioner is thus entitled to zero percent VAT pursuant to Section 108(B)(7) of the NIRC of 1997, as amended.

Considering that only the judicial claims for the 3rd and 4th quarters of taxable 2015 were timely filed, the Court shall proceed with the determination of the valid zero-rated sales made by petitioner for the said periods.

In its Amended 3rd and 4th Quarterly VAT Returns for TY 2015,[67] and the corresponding Summary List of Sales (SLS), petitioner reported total sales of ₱56,660,629.72, which included zero-rated sales in the amount of ₱35,312,010.97, as shown below:

Sales Declared per VAT Return/SLS	3rd Quarter	4th Quarter	Total
VATable Sales	₱ 9,759,538.75	₱ 9,385,219.50[68]	₱ 19,144,758.25
Zero-rated Sales	17,726,185.10	17,585,825.87	35,312,010.97
Total Sales	**₱ 27,485,723.85**	**₱ 26,971,045.37**	**₱ 54,456,769.22**

For the 3rd and 4th quarters of TY 2015, petitioner derived receipts from zero-rated sales of power generation services to Pepsi-Cola Products Philippines, Inc. (PCPPPI) under a Steam Supply Agreement[69] in the amount of ₱17,726,185.10 and ₱17,585,825.87, respectively, as declared in petitioner's 3rd and 4th Quarterly VAT Returns for TY 2015 and evidenced by sales invoices which were summarized in its SLS for the said periods, as follows:

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[65] Supra note 4.
[66] Supra note 8.
[67] Exhibit "P-14", CTA Case No. 9775 Docket, Vol. I, p. 429; Exhibit "P-17", CTA Case No. 9775 Docket, Vol. I, p. 432.
[68] The ICPA noted that the vouched documents pertaining to VATable sales for the 4th quarter of TY 2015 is ₱11,589,080.00 compared to the amount of VATable sales of ₱9,385,219.50 as declared in the Amended Quarterly VAT Return (Exhibit "P-17", CTA Docket Vol. I, p. 432.) and the VATable sales of ₱9,606,619.50 as reflected in the SLS.
[69] Exhibit "P-9", CTA Case No. 9775 Docket, Vol. I, pp. 416-424.

Exhibit No.	Invoice No.	Invoice Date	Client	Amount
3rd Quarter				
P-3.7.1	SI 0349	07/06/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	₱ 711,613.01
P-3.7.2	SI 0350	07/13/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,157,709.08
P-3.7.3	SI 0401	07/20/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,085,862.19
P-3.7.4	SI 0405	07/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,253,010.77
P-3.7.5	SI 0406	07/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,077,527.47
P-3.7.6	SI 0407	08/12/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,578,565.60
P-3.7.7	SI 0408	08/19/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,586,465.42
P-3.7.8	SI 0415	08/24/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,351,934.68
P-3.7.9	SI 0413	08/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,385,321.60
P-3.7.10	SI 0414	08/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	200,277.03
P-3.7.11	SI 0416	09/07/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,270,468.75
P-3.7.12	SI 0417	09/15/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,438,866.95
P-3.7.13	SI 0418	09/21/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,567,014.97
P-3.7.14	SI 0419	09/29/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,330,428.82
P-3.7.15	SI 0420	09/30/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	731,118.76
Subtotal-3rd Quarter				₱ 17,726,185.10
4th Quarter				
P-3.8.1	SI 0421	10/12/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	608,562.10
P-3.8.2	SI 0422	10/12/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,422,457.90
P-3.8.3	SI 0423	10/21/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,433,522.98
P-3.8.4	SI 0424	10/26/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,453,911.03
P-3.8.5	SI 0425	10/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,407,034.95
P-3.8.6	SI 0426	11/09/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,401,502.41
P-3.8.7	SI 0428	11/16/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,356,537.98
P-3.8.8	SI 0430	11/23/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,177,740.75
P-3.8.9	SI 0431	11/30/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,744,511.24
P-3.8.10	SI 0432	12/09/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,338,713.79
P-3.8.11	SI 0433	12/14/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,331,887.67
P-3.8.12	SI 0434	12/21/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,395,976.79
P-3.8.13	SI 0435	12/31/2015	PEPSI-COLA PRODUCTS PHILIPPINES INC.	1,513,466.28
Subtotal-4th Quarter				₱ 17,585,825.87
Total Zero-rated Sales Declared Per VAT Returns				**₱35,312,010.97**

The Court shall examine whether the valid zero-rated sales of petitioner complied with the invoicing requirements under Sections 113(A)(1) and (2), (8)(1), (2)(c) and (3) of the NIRC of 1997, as amended, *viz*:

> "**SEC. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) Invoicing Requirements. -A VAT-registered person shall issue:

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

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

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

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

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

x x x x x x x x x

(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;

x x x x x x x x x

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

The same requirements are provided for under Sections 4.113-1(A)(1) and (2), (8)(1) and (2)(c) of R.R. No. 16-2005, as follows:

"SEC. 4.113-1. ***<u>Invoicing Requirements</u>***.-

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

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said

> documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> (B) Information contained in VAT invoice or VAT official receipt. - The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> **(a)** The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> x x x x x x x x x
>
> (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; x x x"

In his ICPA Report, Mr. Paguio noted that there exists a variance[70] amounting to ₱53,976.00, which is the difference between the total zero-rated sales reported in the Amended 3rd Quarterly VAT for TY 2015 (₱17,726,185.10) and the total zero-rated sales per vouched documents (₱17,780,161.10). This is traceable from Exhibit "P-3.7.7", pertaining Sales Invoice No. 0408 dated August 19, 2015. Although the amount in the vouched invoice is higher than what is reported in the Amended 3rd Quarterly VAT Return for TY 2015, the Court shall consider the amount as reported in the VAT Return since it is the basis of the present refund claim.

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[70] ICPA Report, Exhibit "P-42", CTA Case No. 9775 Docket Vol. II, p. 661.

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Thus, the Court finds that the petitioner incurred zero-rated sales of energy in the amount of ₱35,312,010.97 for the 3rd and 4th quarters of TY 2015, which is properly substantiated and compliant with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005.

Petitioner incurred or paid input taxes during the 3rd and 4th quarters of TY 2015

In its Amended Quarterly VAT Returns for the 3rd and 4th quarters of TY 2015, petitioner declared input VAT from its domestic purchases of goods and services in the total amount of ₱2,127,347.95, as shown below, out of which the total amount of ₱1,101,498.32 is the subject of petitioner's claim:

	3rd Quarter (Exh. "P-14")[71]	**4th Quarter (Exh. "P-17")[72]**	**Total**
Input Tax Deferred on Capital Goods Exceeding ₱1M from Previous Quarter *(Line 20B)*	₱ 649,819.28	₱ 569,921.54	₱ 1,219,740.82
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period *(Line 23A)*	569,921.54	508,237.96	1,078,159.50
Amortized Input Tax	**₱ 79,897.74**	**₱ 61,683.58**	**₱ 141,581.32**
Current Input Tax:			
On Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 170,126.75	₱ 197,789.31	₱ 367,916.06
On Domestic Purchase of Services *(Line 21J)*	542,974.25	1,074,876.32	1,617,850.57
Total Current Input Taxes	**₱713,101.00**	**₱1,272,665.63**	**₱1,985,766.63**
Total Input Taxes for the Period	**₱792,998.74**	**₱1,334,349.21**	**₱2,127,347.95**
Input VAT refund claim[73]	**₱509,842.01**	**₱ 591,646.31**	**₱1,101,488.32**

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[71] CTA Case No. 9775, Docket – Vol. 1, p. 429.
[72] *Ibid.*, p. 432.
[73] See Petitions for Review, CTA Case Nos. 9775 (Docket – Vol. 1) and 9827.

At this juncture, it is important for petitioner to provide supporting documents to prove that the input taxes claimed during the 3rd and 4th quarters of TY 2015 are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,*

That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-05, as amended by RR No. 04-2007, which provide as follows:

"SECTION 4.110-1. *Credits For Input Tax.* — xxx

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

(a) Purchase or importation of goods

(1) For sale; or

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

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

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code;

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

xxx xxx xxx

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

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

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

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

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

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00."

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

> "SECTION 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
>
> (3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code."

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

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

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

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

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

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

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

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

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

xxx xxx xxx

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

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

This is further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, *viz*:

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

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

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

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

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

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

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

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

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

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

xxx xxx xxx

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

In addition to the above requirements, the sales invoices and official receipts must be duly registered with the BIR pursuant to Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: x x x"

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> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

In support of its declared input VAT, petitioner submitted various invoices and official receipts,[74] which were examined by the ICPA Mr. Paguio.

Based on the ICPA Report,[75] for the 3rd and 4th quarters of TY 2015, only the input VAT of ₱343,768.83 with invoices/receipts were obtained and vouched from the original source documents, to wit:

	ICPA Report Exhibit No. (Summary Schedule)	**Input VAT Amount**
3rd Quarter	P-2.1	₱ 141,324.59
4th Quarter	P-2.2	202,444.24
Total		**₱343,768.83**

At the outset, the input VAT in the amount of ₱1,783,579.12, as computed below, shall be disallowed being unsupported:

	3rd Quarter	**4th Quarter**	**Total**
Input VAT per VAT Returns	₱792,998.74	₱1,334,349.21	₱2,127,347.95
Less: Substantiated Input VAT per ICPA findings	141,324.59	202,444.24	343,768.83
Unsupported Input VAT	**₱651,674.15**	**₱1,131,904.97**	**₱1,783,579.12**

[74] ICPA Report Exhibits "P-3.1.1" to "P-3.1.97" and "P-3.2.1" to "P-3.2.84" except for the exhibits denied admission by this Court.

[75] Exhibit "P-42", pp. 4 to 5 of ICPA Report, par. 3.a and b.

Moreover, a further verification of the ICPA's schedule of substantiated input VAT, together with the supporting documents, reveals that the following input VAT, in the total amount of ₱296,026.77, shall likewise be disallowed for failure to meet the invoicing and substantiation requirements under the previously mentioned law and regulations:

Exhibit No.	OR/Inv. No.	Supplier's Name	Input VAT
3rd Quarter of TY 2015			
Input VAT on purchase of goods supported by VAT invoice but the input VAT amount was not separately indicated			
P-3.1.11	055838	AUTOMI AUTO SUPPLY	₱ 150.00
Input VAT on purchase of goods supported by VAT invoice but without the notation "THIS SALES INVOICE SHALL BE VALID FOR FIVE (5) YEARS FROM DATE OF ATP"			
P-3.1.85	18522	STRONG TOWER CONSTRUCTION SUPPLY	35.36
Input VAT on purchase of goods supported by document other than VAT invoice			
P-3.1.17	8061	CONCEPT MOTORCYCLE PARTS AND ACCESSORIES	78.21
Input VAT on purchase of service supported by VAT OR but not issued in petitioner's name			
P-3.1.58	AMS0558644	LBC EXPRESS	206.25
Input VAT on purchase of service supported by document other than VAT OR			
P-3.1.95	10107	SWITCHTEK CONSTRUCTION CORPORATION	2,142.86
Input VAT on purchase of goods/service supported by document with notation "THIS DOCUMENT IS NOT VALID FOR CLAIMING INPUT TAX"			
P-3.1.79	0035353	RS COMPONENTS CORPORATION	2,315.70
Input VAT on purchases supported by VAT ORs but the nature of services was not indicated therein			
P-3.1.1	2638	ABC COMMODITIES CORPORATION	63,650.41
P-3.1.3	2527	ABC COMMODITIES CORPORATION	1,388.57
P-3.1.4	2521	ABC COMMODITIES CORPORATION	32,443.55
P-3.1.10	000011	A.T. MONTALBO CO.	1,000.13
P-3.1.63	A145786	LEGEND HOTELS INT'L CORP. - LEGEND VILLAS	71.40
subtotal			**₱103,482.44**
4th Quarter of TY 2015			
Input VAT on purchase of goods supported by VAT invoice but without the TIN of petitioner			
P-3.2.28	62153	FILOMENA'S GOLDEN PAINT CENTER	₱ 131.79
Input VAT on purchase of goods supported by VAT invoice but with alteration on date and the year indicated is not clearly pertaining to 2015			
P-3.2.27	17446	FILMON COMMERCIAL	49.29
Input VAT on purchases of goods supported by VAT invoices but the input VAT amounts indicated per invoices are lower than the input VAT claimed			

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P-3.2.74	14871	STRONG TOWER CONSTRUCTION SUPPLY (₱11.79 per claim less ₱10.00 per SI)	1.79
P-3.2.76	14929	STRONG TOWER CONSTRUCTION SUPPLY (₱129.64 per claim less ₱129.00 per SI)	0.64
P-3.2.80	14930	STRONG TOWER CONSTRUCTION SUPPLY (₱19.29 per claim less ₱19.00 per SI)	0.29
Input VAT on purchases of goods/services, the supporting documents of which were denied admission by this Court			
P-3.2.23	5441	ERA INTERGRATED CORPORATION	1,928.57
P-3.2.25	17417	FILMON COMMERCIAL	6.43
P-3.2.57	004794	NEW PARABUILT CONSTRUCTION AND SERVICES CORPORATION	13,730.36
P-3.2.58		OREN METAL ENGINEERING WORKS	8,571.43
P-3.2.59		RA MANG BINATOG COMPANY	10.71
P-3.2.60		SODEXO BENEFITS AND REWARDS SERVICES PHILIPPINES INC	2,628.00
P-3.2.61		SPGM, INC.	267.86
P-3.2.62		SPGM, INC	192.86
P-3.2.63		SPGM, INC	192.86
P-3.2.64		STRONG TOWER CONSTRUCTION SUPPLY	93.00
P-3.2.65		STRONG TOWER CONSTRUCTION SUPPLY	17.14
P-3.2.68		STRONG TOWER CONSTRUCTION SUPPLY	31.07
Input VAT on purchases of goods/services supported by VAT invoice/OR but without the notation "THIS SALES INVOICE/OFFICIAL RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM DATE OF ATP"			
P-3.2.73	15091	STRONG TOWER CONSTRUCTION SUPPLY	16.07
P-3.2.15	MKT2-0000204939	CHARTER PING AN INSURANCE CORPORATION	27,607.03
Input VAT on purchases supported by VAT ORs but the nature of services was not indicated therein			
P-3.2.1	2533	ABC COMMODITIES CORPORATION	53,571.43
P-3.2.2	2535	ABC COMMODITIES CORPORATION	82,939.00
P-3.2.29	44258	GOTESCO SERVICE CENTER INC	160.71
P-3.2.30	173728	INTERTEK TESTING SERVICES PHILIPPINES	396.00
subtotal			**₱192,544.33**
Total			**₱296,026.77**

Thus, in compliance with the fourth requisite, out of the declared input VAT of ₱2,127,347.95, only the amount of ₱47,742.06 represents petitioner's valid input VAT incurred or paid for the 3rd and 4th quarters of TY 2015, computed as follows:

	3rd Quarter	4th Quarter	Total
Total Declared Input VAT	₱ 792,998.74	₱1,334,349.21	₱2,127,347.95
Less: Disallowances			
Unsupported Input VAT	₱ 651,674.15	₱1,131,904.97	₱1,783,579.12
Per Court's further verification	103,482.44	192,544.33	296,026.77
Total Disallowances	₱ 755,156.59	₱1,324,449.30	₱2,079,605.89
Valid Input VAT	**₱37,842.15**	**₱ 9,899.91**	**₱ 47,742.06**

A portion of petitioner's valid input taxes incurred or paid are attributable to its zero-rated or effectively zero-rated sales

Considering that petitioner had zero-rated sales or effectively zero-rated sales and taxable sales subject to 12% VAT during the 3rd and 4th quarters of TY 2015, and its input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱37,842.15 and ₱9,899.91 for the respective periods shall be allocated proportionately on the basis of the volume of its sales for the same periods, thus:

	3rd Quarter (Exh. P-14)[76]	4th Quarter (Exh. P-17)[77]	Total
Vatable Sales - Private per VAT Returns *(Line 15A)*	₱ 9,759,538.75	₱ 9,385,219.50	₱ 19,144,758.25
Zero-Rated Sales per VAT Returns *(Line 17)*	17,726,185.10	17,585,825.87	35,312,010.97
Total Sales per VAT Returns	**₱27,485,723.85**	**₱26,971,045.37**	**₱54,456,769.22**

Input VAT Allocation to 12% Vatable Sales to Private Entities:

	3rd Quarter	4th Quarter	Total
Total Vatable Sales - Private	₱ 9,759,538.75	₱ 9,385,219.50	₱19,144,758.25
Divided by Total Sales	27,485,723.85	26,971,045.37	54,456,769.22
Multiplied by Total Valid Input VAT	37,842.15	9,899.91	47,742.06
Valid Input VAT allocated to 12% Vatable Sales to Private Entities	**₱ 13,436.86**	**₱ 3,444.91**	**₱ 16,881.77**

Input VAT Allocation to Zero-Rated Sales:

	3rd Quarter	4th Quarter	Total
Total Zero-Rated Sales	₱17,726,185.10	₱17,585,825.87	₱35,312,010.97
Divided by Total Sales	27,485,723.85	26,971,045.37	54,456,769.22

[76] CTA Case No. 9775, Docket – Vol. 1, p. 429.
[77] *Ibid.*, p. 432.

Multiplied by Total Valid Input VAT	37,842.15	9,899.91	47,742.06
Valid Input VAT allocated to Zero-Rated Sales	**₱ 24,405.29**	**₱ 6,455.00**	**₱ 30,860.29**

Verily, for purposes of, and with regard to petitioner's compliance with, the fifth requisite, only the amount of ₱30,860.29 represents the valid input VAT attributable to its valid zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of TY 2015.

Petitioner had no excess unutilized input taxes available for refund

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, we now determine whether the same was not applied against its output VAT liability.

After deducting the ₱16,881.77 Input VAT attributable to Vatable Sales to Private Entities from its output VAT liability on the said sales of ₱2,297,370.99, petitioner still has a net output VAT payable in the amount of ₱2,280,489.22, as computed below:

	3rd Quarter	**4th Quarter**	**Total**
Output Tax Due per VAT Return[78]	₱ 1,171,144.65	₱ 1,126,226.34	₱ 2,297,370.99
Less: Input VAT attributable to Vatable Sales to Private Entities	13,436.86	3,444.91	16,881.77
Net Output VAT Payable	**₱1,157,707.79**	**₱1,122,781.43**	**₱2,280,489.22**

Since the Input VAT attributable to VATable Sales to Private Entities is not enough to cover its output VAT liability, the Input VAT attributable to Zero-Rated Sales shall be utilized against the remaining output VAT liability. However, the Input VAT attributable to Zero-Rated Sales of ₱30,860.29 is way lower than the net output VAT payable of ₱2,280,489.22. Consequently, petitioner still has net output VAT still due of ₱2,249,628.93, computed as follows:

[78] Exhibits "P-14" and "P-17, Line 19B, CTA Case No. 9775, Docket – Vol. 1, pp. 429 and 432, respectively.

Net Output VAT Payable	₱ 1,157,707.79	₱ 1,122,781.43	₱ 2,280,489.22
Less: Input VAT attributable to Zero-Rated Sales	24,405.29	6,455.00	30,860.29
Net Output VAT Still Due	**₱1,133,302.50**	**₱1,116,326.43**	**₱2,249,628.93**

As gleaned from the foregoing, petitioner failed to fulfill the sixth requisite, that the input taxes attributable to zero-rated or effectively zero-rated sales for the 3rd and 4th quarters of TY 2015 have not been applied against the output taxes.

Although petitioner's Amended Quarterly VAT Returns for the 3rd and 4th quarters of TY 2015 reflected the amount of ₱2,113,617.15[79] as "Input Tax Carried Over from Previous Period", petitioner was not able to substantiate the same.

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[80]

Consequently, the input tax carry over of ₱2,113,617.15, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

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

[79] Exhibits "P-14" and "P-17", Line 20A, CTA Case No. 9775, Docket - Vol. 1, pp. 429 and 432, respectively.

[80] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

> "(B) *Excess Output or Input Tax.*— If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."[81]

In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

Accordingly, there being no excess unutilized input VAT which may be the subject of a claim for refund or tax credit certificate under Section 112(A) of the NIRC of 1997, as amended, the instant claims must, therefore, be denied.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[82] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[83]

WHEREFORE, premises considered, the present Petition for Review filed by Restored Energy Development Corporation in CTA Case No. 9854 is **DISMISSED** for lack of jurisdiction. Meanwhile, the Petitions for Review filed by Restored Energy Development Corporation in CTA Case Nos. 9775 and 9827 are **DENIED** for lack of merit.

SO ORDERED.

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[81] NIRC of 1997, as amended by R.A. 9361, November 21, 2006.

[82] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 27, 2005.

[83] *National Power Corporation vs Province of Isabela,* G.R. No. 165827, June 16, 2006 citing *Cyanamid Philippines, Inc. vs Court of Appeals*, 379 Phil. 689, 703 (2000).

CATHERINE T. MANAHAN
Associate Justice

We Concur:

(See Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

RESTORED ENERGY DEVELOPMENT CORPORATION, Petitioner,	**CTA CASE NOS. 9775, 9827, and 9854**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, *Chairperson*, **MANAHAN,** and **MODESTO-SAN PEDRO,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 16 2021 2:30 p.m.

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of CTA Case No. 9854 for lack of jurisdiction as the Petition for Review was filed out time; and in the denial of the Petitions for Review docketed as CTA Case Nos. 9775 and 9827.

The *ponencia* finds that, out of the declared input VAT of ₱2,127,347.95, petitioner has a valid input VAT attributable to valid zero-rated sales for the 3rd and 4th quarters of taxable year 2015 in the amount of ₱30,860.29. The *ponencia* eventually denied the claim as it finds that petitioner had no excess unutilized input VAT after considering the fact that the valid input VAT attributable to zero-rated sales is way lower than petitioner's net output VAT payable of ₱2,280,489.22.

It is my view, however, that petitioner's claims for refund under CTA Case Nos. 9775 and 9827 should be denied on the ground that petitioner is precluded from claiming a refund of input taxes passed on to it by its local suppliers.

Section 15(g) of Republic Act (RA) No. 9513 pertinently provides, as follows:

CHAPTER VII
GENERAL INCENTIVES

SEC. 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 needed for the development, construction and installation of its plant facilities.

The provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. (*Boldfacing supplied.*)

Relative thereto, the Department of Energy (DOE) issued the Rules and Regulations (IRR) implementing R.A. No. 9513 under Department Circular No. DC2009-05-0008 on May 25, 2009. Section 13, Part III, Rule 5 thereof reads:

"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
>
> **(a) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and**
>
> **(b) 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.**" (Boldfacing supplied)

From the foregoing, Renewable Energy (RE) Developers are entitled to zero-rated VAT on **local purchases of goods, properties and services needed for the development, construction and installation of plant facilities**. The VAT zero-rating applies to the whole process of exploration and development of renewable energy sources up to its conversion into power, including the services performed by contractors or subcontractors.

Meanwhile, a close scrutiny of Part III, Rule 5 of the IRR of RA 9513 shows the conditions for availing incentives and other privileges under the said law. Section 18 (A), (B) and (C) thereof reads:

> "**SEC. 18.** *Conditions for Availment of Incentives and Other Privileges. –*
>
> ***A. Registration/Accreditation with the DOE***
>
> For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:
>
> *(1) **DOE Certificate of Registration*** – **issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) ***DOE Certificate of Accreditation*** – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

xxx xxx xxx

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

xxx xxx xxx"

Accordingly, for the purpose of availing the zero percent (0%) VAT on RE developer's local purchases of goods, properties and services needed for the development, construction and installation of its plant facilities, the following documents must be secured:

1. Certificate of Registration issued by the DOE;

2. Registration with BOI; and

3. Certificate of Endorsement issued by the DOE.

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Perusal of the records shows that petitioner indeed complied with the above-mentioned requirements. Petitioner presented its:

1. Certificate of Registration No. RE-B2013-09-074a dated June 14, 2016 issued by the Department of Energy, and signed by DOE Secretary Zenaida Y. Monsada,[1] which indicates that petitioner's registration as an RE Developer took effect on October 31, 2013;

2. Certificate of Registration No. 2015-068 dated March 23, 2015 issued by the Board of Investments, and signed by Undersecretary and BOI Managing Head Adrian S. Cristobal Jr;[2] and,

3. Certificate of Endorsement to BOI dated April 11, 2016 issued by the DOE.[3] Petitioner also submitted the Certificate of Endorsement to BIR dated April 11, 2016 issued by the DOE[4] which states that "[a]s far as the performance of obligations under the registration is concerned, [petitioner] is a corporation of good standing and therefore qualified to avail of the **Zero Percent Value-Added Tax Rate** incentive as provided under the RE Law."

Considering that petitioner was able to comply with the aforesaid requirements, it qualifies for zero percent VAT on its local purchases of goods, properties and services needed for the development, construction and installation of its plant facilities.

Thus, it was erroneous for petitioner's suppliers to subject their sales to petitioner to 12% VAT. In the same vein, it is not correct for petitioner to recognize said passed-on VAT as input taxes.

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*,[5] the Supreme Court had the occasion to discuss that in case where no input VAT should be paid on purchases of goods and services within a special economic zone, the taxpayer is not entitled to claim a tax refund or credit, as the proper party to seek the same should be the suppliers, *viz.*:

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[1] Exhibit "P-7", CTA Case No. 9775 Docket, Vol. I, p. 410.
[2] Exhibit "P-4", CTA No. 9775 Docket, Vol. I, p. 403.
[3] Exhibit "P-10", CTA No. 9775 Docket, Vol. I, p. 425.
[4] Exhibit "P-11", CTA No. 9775 Docket, Vol. I, p. 426.
[5] G.R. No. 190506, June 13, 2016.

> "The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone - a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. **As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE <u>should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT</u>** following RMC No. 42-03, which provides:
>
>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>>
>> In the meantime, **the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.**
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, <u>the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.</u>**" (*Boldfacing and underscoring supplied.)*

By analogy, the above-mentioned jurisprudence is applicable to the present case. Petitioner's local purchases of goods, properties and services needed for the development, construction and installation of its plant facilities are also zero-rated pursuant to Section 15(g) of RA No. 9513, and thus, no input VAT should be paid on such purchases, rendering petitioner not entitled to claim a tax refund or credit.

Since petitioner's purchases are subject to zero-rated VAT, the 12% VAT passed-on by petitioner's local suppliers formed part of petitioner's purchase price. Petitioner is therefore precluded from claiming a refund of the input VAT passed on to it by its local suppliers.

To reiterate, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[6] Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the present claims must be denied.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[7] The burden in claiming tax refund rests upon the taxpayer which petitioner has failed to discharge. For failing to prove its entitlement to a tax refund, petitioner's claim must perforce be denied.

All told, I VOTE to: (i) DISMISS the Petition for Review docketed as CTA Case No. 9854 for lack of jurisdiction; and, (ii) DENY the Petitions for Review docketed as CTA Case Nos. 9775 and 9827 for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

[6] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 2, 2014.
[7] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.