REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

CBK POWER COMPANY LIMITED, *Petitioner,*	**CTA Case No. 9793**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 21 2021 11:36 am

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DECISION

MANAHAN, *J.:*

This is a *Petition for Review* filed by petitioner, CBK Power Company Limited, on March 28, 2018, against respondent Commissioner of Internal Revenue, praying that a tax credit certificate (TCC) be issued for its unutilized or excess creditable input taxes on its domestic purchases of goods other than capital goods, domestic purchases of services, payments of services rendered by non-residents, purchases of capital goods not exceeding ₱1 million, and purchases of capital goods exceeding ₱1 million, attributable to zero-rated sales of electricity to the National Power Corporation (NPC) for the period January 1, 2016 to December 31, 2016, in the amount of ₱44,252,585.31, pursuant to Sections 108(B)(7), 112(A) and 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended.[1]

THE PARTIES

Petitioner CBK Power Company Limited is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the NPC-CBK

[1] Docket, CTA Case No. 9793, Vol. III, Summary of the Case, Pre-Trial Order dated January 15, 2019, p. 1102.

Compound, Purok 6, National Highway, Barangay San Juan, Kalayaan 4015, Laguna.[2] It is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway and other assets located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Tax Identification Number (TIN) No. 205-760-474-00000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including *inter alia*, the power to decide, approve and grant tax refund/credit, with office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[5]

THE FACTS

Pursuant to its primary business purpose, petitioner entered into an Accession Undertaking on September 20, 2000 with NPC, Industrias Metalurgicas Pescarmona, S.A. (IMPSA), a non-resident foreign corporation based in Argentina, and the CBK Power Corporation, wherein petitioner acceded to a Build-Rehabilitate-Operate-and-Transfer (BROT) Agreement and agreed to rehabilitate, construct and operate on a build-operate-and-transfer basis the four (4) hydroelectric power plants known as the Caliraya, Botocan, Kalayaan I and II in the Province of Laguna.[6]

On November 20, 2017, petitioner filed through its Chief Financial Officer, Mr. Fernando J. Dela Paz, an administrative

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[2] Docket, Vol. III, Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), p. 1032.
[3] *Id.*, Vol. III, Par. 3, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibits "P-13" and "P-14", pp. 1806 to 1815.
[4] *Id.*, Vol. III, Par. 4, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibit "P-15", pp. 1816 to 1817.
[5] *Id.*, Vol. III, Par. 2, Facts Admitted, JSFI, pp. 1032 to 1033.
[6] *Id.*, Vol. III, Par. 5, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibits "P-8", "P-8-a", "P-8-b", "P-8-c" and "P-8-d", pp. 1668 to 1673.

claim for refund together with its *Application for Tax Credits/Refunds* (BIR Form No. 1914) with the BIR Large Taxpayers Service, Revenue District Office No. 121, for the issuance of TCC for unutilized or excess creditable input taxes in the amount of ₱45,548,607.31, on its domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchases of services, payments of services rendered by non-residents, purchases of capital goods not exceeding ₱1 million, and purchases of capital goods exceeding ₱1 million, attributable to zero-rated sales of electricity to NPC, for the calendar year 2016, pursuant to Sections 108(B)(7), 112(A) and 112(C) of the 1997 NIRC, as amended by Republic Act (RA) No. 9337.[7] On the same date, petitioner submitted a *Sworn Certification* executed by Mr. Dela Paz, attesting to the completeness of the supporting documents in compliance with Revenue Memorandum Circular (RMC) No. 54-2014.[8]

On March 21, 2018, petitioner received the letter dated March 12, 2018 from respondent, signed by Ms. Teresita M. Dizon, OIC – Assistant Commissioner (ACIR), Large Taxpayers Service, wherein, out of the total input VAT refund claim for the issuance of a TCC, amounting to ₱45,548,607.31, she recommended the issuance of a TCC in the amount of ₱1,296,022.00, representing input taxes on petitioner's importations of goods other than capital goods only, and denied the amount of ₱44,252,585.31, representing unutilized input taxes on domestic purchases of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, purchases of capital goods not exceeding ₱1 million, and purchases of capital goods exceeding ₱1 million.[9]

Petitioner filed the instant *Petition for Review* on March 28, 2018.[10] The petition was initially raffled to this Court's Second Division.

Respondent filed his *Answer* on July 3, 2018,[11] interposing a main defense that petitioner is not entitled to a refund or issuance of a TCC in the aggregate amount of

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[7] Docket, Vol. IV, Exhibits "P-1", and "P-6", pp. 1557 to 1579 and 1584.
[8] *Id.*, Vol. IV, Exhibits "P-2", "P-2-a" and "P-3", pp. 1580 to 1581.
[9] *Id.*, Vol. III, Par. 7, Facts Admitted, JSFI, pp. 1033 to 1034; Docket, Vol. IV, Exhibit "P-17", p. 1819.
[10] *Id.*, Vol. I, pp. 14 to 39.
[11] *Id.*, Vol. I, pp. 288 to 297.

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₱44,252,585.31 allegedly representing unutilized input VAT for the period January 1, 2016 to December 31, 2016.

The pre-trial conference was initially set on August 2, 2018.[12] However, upon petitioner's *Motion for Postponement of Pre-Trial Conference* filed on July 19, 2018,[13] the pre-trial conference was reset to, and held on, August 30, 2018.[14] Petitioner's *Pre-Trial Brief* was filed on August 17, 2018,[15] while *Respondent's Pre-Trial Brief* was submitted on August 24, 2018.[16]

On September 13, 2018, the parties filed their *Joint Stipulation of Facts and Issues*,[17] which was noted by the Court in the Resolution dated October 29, 2018,[18] deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order was issued on January 15, 2019.[19]

In the Order dated September 24, 2018,[20] the instant case was transferred to this Court's First Division.

Respondent transmitted the *BIR Records* on October 4, 2018.[21]

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Fernando J. Dela Paz, petitioner's Chief Financial Officer;[22] and (2) Ms. Myra Celeste

[12] Docket, Vol. I, *Notice of Pre-Trial Conference* dated July 5, 2018, pp. 299 to 300.
[13] *Id.*, Vol. I, pp. 301 to 304.
[14] *Id.*, Vol. I, Order dated July 24, 2018, p. 307; Docket, Vol. III, Minutes of the hearing held on, and Order dated, August 30, 2018, pp. 1030 to 1031.
[15] *Id.*, Vol. I, pp. 308 to 329.
[16] *Id.*, Vol. III, pp. 1024 to 1027.
[17] *Id.*, Vol. III, pp. 1032 to 1036.
[18] *Id.*, Vol. III, pp. 1072 to 1073.
[19] *Id.*, Vol. III, pp. 1102 to 1117.
[20] *Id.*, Vol. III, pp. 1063 to 1064.
[21] *Id.*, Vol. III, *Compliance* dated October 1, 2018, pp. 1066 to 1069.
[22] *Id.*, Vol. III, Exhibit "P-38", pp. 689 to 721; Docket, Vol. III, Order dated January 15, 2019, pp. 1119 to 1121.

O. Dabalos,[23] the duly commissioned Independent Certified Public Accountant (ICPA).[24]

Ms. Dabalos submitted her Final ICPA Report dated February 14, 2019 on March 1, 2019,[25] and Amended Final ICPA Report dated June 4, 2019 on June 6, 2019.[26]

Petitioner filed its *Formal Offer of Evidence* on July 11, 2019.[27] Respondent posted his *Comment Re: Petitioner's Formal Offer of Evidence* on July 22, 2019.[28] In the Resolution dated October 28, 2019,[29] the Court admitted petitioner's exhibits, *except* for the following: *(1)* Exhibits "P-122-A-1-80", "P-122-A-1-81", "P-122-A-1-336", "P-122-A-1-337", "P-122-A-1-338", "P-122-A-5-406", "P-122-A-11-359", and "P-122-A-11-360", for failure to present the originals for comparison; *(2)* Exhibits "P-122-A-3-112", "P-122-A-6-163", "P-122-A-6-220", "P-122-A-6-291", "P-122-A-6-299", "P-122-A-6-570", and "P-128-43", for not being found in the records; and *(3)* Exhibits "P-122-A-9-49", "P-122-A-12-47", and "P-122-A-12-49", for being blurred/unreadable/not properly scanned.

Petitioner filed its *Motion for Partial Reconsideration* on November 20, 2019.[30] Respondent failed to file his comment thereon.[31] In the Resolution dated June 23, 2020,[32] the Court partially granted the said *Motion*, and admitted Exhibits "P-122-A-3-112", "P-122-A-6-163", "P-122-A-6-220", "P-122-A-6-291", "P-122-A-6-570", "P-122-A-9-49", "P-122-A-12-47", and "P-122-A-12-49"; but still denied Exhibits "P-122-A-1-80", "P-122-A-1-81", "P-122-A-1-336", "P-122-A-1-337", "P-122-A-1-338", "P-122-A-5-406", "P-122-A-11-359", and "P-122-A-11-360", for failure to present the originals for comparison.

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[23] Docket, Vol. IV, Exhibit "P-204", pp. 1214 to 1254; Docket, Vol. IV, Minutes of the hearing held on, and Order dated, June 13, 2019, pp. 1430 to 1436.
[24] *Id.*, Vol. III, Exhibit "P-40", pp. 1088 to 1094; Docket, Vol. III, Order dated January 15, 2019, pp. 1119 to 1121.
[25] *Id.*, Vol. III, Exhibit "P-100", pp. 1156 to 1195.
[26] *Id.*, Vol. IV, Exhibit "P-200", pp. 1255 to 1311.
[27] *Id.*, Vol. IV, pp. 1449 to 1555.
[28] *Id.*, Vol. V, pp. 1864 to 1866.
[29] *Id.*, Vol. V, pp. 1880 to 1884.
[30] *Id.*, Vol. V, pp. 1899 to 1905.
[31] *Id.*, Vol. V, Records Verification dated January 22, 2020 issued by the Judicial Records Division of this Court, p. 1929.
[32] *Id.*, Vol. V, pp. 1957 to 1963.

Respondent manifested that he will no longer present his witnesses.[33]

Respondent's *Memorandum* was filed on December 13, 2019;[34] while *Memorandum for the Petitioner* was submitted on July 28, 2020.[35]

On September 16, 2020, the instant case was submitted for decision.[36]

THE ISSUES

The parties submitted the following issues for the Court's resolution, to wit:

> "Whether or not Petitioner is entitled to the issuance of a Tax Credit Certificate (TCC) for its alleged unutilized or excess creditable input taxes in the amount of Forty Four Million Two Hundred Fifty Two Thousand Five Hundred Eighty Five & 31/100 Pesos (P44,252,585.31) on Petitioner's domestic purchases of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, purchases of capital goods not exceeding P1 million, and purchases of capital goods exceeding P1 million, for the period January 1, 2016 to December 31, 2016, attributable to its zero-rated sales of electricity to the National Power Corporation (NPC) for the same period January 1, 2016 to December 31, 2016, pursuant to Sections 108(B)(7), 112(A) and 112(C) of the 1997 NIRC, as amended by RA No. 9337, and BIR Ruling No. DA-146-2006 dated March 17, 2006, as proposed by the Petitioner; and
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> Whether respondent correctly denied the claim for refund based on the documents submitted in the administrative claim for refund, as proposed by the Respondent." [37]

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[33] Docket, Vol. V, Order dated November 5, 2019, pp. 1893 to 1894.
[34] *Id.*, Vol. V, pp. 1922 to 1927.
[35] *Id.*, Vol. V, pp. 1964 to 2001.
[36] *Id.*, Vol. V, Resolution dated September 16 2020, pp. 2014 to 2015.
[37] *Id.*, Vol. III, Issued to be Tried or Resolved, JSFI, p. 1034.

Petitioner's Arguments[38]

Petitioner argues that it has complied with all the basic requirements in order to be entitled to the issuance of a TCC of unutilized or excess creditable input taxes for calendar year 2016, pursuant to Sections 108(B)(7), 112(A) and (C) of the 1997 NIRC, as amended; that sales to petitioner by its local suppliers of goods and services, and payments of services rendered by non-residents are subject to 12% VAT under Sections 105, 106, 107 and 108 of the 1997 NIRC, as amended, and are valid sources of input taxes, pursuant to Section 110 of the same Code; that respondent erred when he partially denied the VAT refund claim of petitioner in the letter dated March 12, 2018; that petitioner has fully substantiated its claim for refund or issuance of a TCC in the total amount of ₱44,252,585.31, representing valid unutilized or excess creditable input taxes paid or incurred on its purchases of goods and services for calendar year 2016; and that petitioner is not only entitled to a refund or issuance of a TCC amounting to ₱1,296,022.00, representing unutilized input taxes on its importation of goods other than capital goods, but also to the said remaining balance of ₱44,252,585.31.

Respondent's Arguments[39]

Respondent argues that pursuant to Section 15(g) of RA No. 9513, petitioner, being a Renewable Energy (RE) Developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power; that no input VAT shall be paid by RE Developers on these transactions; that there being no input VAT to be paid by RE Developers, it necessarily follows that they are not entitled to refund or issuance of TCC from said purchases; and that partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

RULING OF THE COURT

The instant *Petition for Review* has partial merit.

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[38] *Supra.*, Note 35.
[39] *Supra.*, Note 34.

Requisites for the grant of the refund or issuance of a TCC under the law.

Section 112(A) and (C) of the 1997 NIRC, as amended by RA No. 9337,[40] provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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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 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."

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[40] 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.

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Pursuant to the foregoing provisions, jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories, to wit:

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[41]

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[42]

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[43]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[44]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable

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

[42] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; and *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

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

[44] *Id.*

foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[45]

<u>*Taxpayer's input VAT being refunded:*</u>

6. the input taxes are not transitional input taxes;[46]

7. the input taxes are due or paid;[47]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[48]

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

Relative thereto, 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.[50] Thus, it behooves petitioner to show compliance with each of the foregoing requisites, where applicable.

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

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Petitioner timely filed its administrative and judicial claims.

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

The instant claim covers the four (4) quarters of calendar year 2016. Counting two (2) years from the close of the said quarters, respectively, the following table indicates the pertinent last days for the filing of an administrative claim for the said quarters, to wit:

2016	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
1st Quarter	March 31, 2016	March 31, 2018
2nd Quarter	June 30, 2016	June 30, 2018
3rd Quarter	September 30, 2016	September 30, 2018
4th Quarter	December 31, 2016	December 31, 2018

Considering that petitioner's administrative claim covering the subject quarters, was filed with the BIR on November 20, 2017,[51] the same was timely made within the 2-year prescriptive period.

The *second* requisite is the filing of the judicial claim within thirty (30) days from receipt of respondent's decision or after the expiration of the one hundred twenty (120)-day period under Section 112(C) of the 1997 NIRC, as amended.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue,*[52] the Supreme Court held:

> **"Whether respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim- within the period of 120 days from, the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
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> xxx xxx xxx

[51] Exhibits Nos. "P-1" to "P-3", and "P-6", Docket - Vol. IV, pp. 1557 to 1581, and 1584, respectively.
[52] G.R. No. 182737, March 2, 2016.

> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner.**
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> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner.** In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of this Court.

In this case, as already stated, petitioner's administrative claim was filed on November 20, 2017. Thus, respondent had 120 days therefrom, or until March 20, 2018 to act on the said claim.

However, it was only on March 21, 2018, when petitioner received the letter dated March 12, 2018 from respondent, signed by OIC-Assistant Commissioner, Large Taxpayer's Service, Teresita M. Dizon, denying, in part, petitioner's refund claim.[53] Such being the case, since the said date of receipt was already outside the 120-day period, the 30-day period within which petitioner may file its judicial claim for refund before this Court should be reckoned from March 20, 2018. Thus, petitioner had until April 19, 2018 to file its appeal before this Court.

The instant *Petition for Review*, having been filed before this Court on March 28, 2018,[54] is thus well within the period prescribed by law. Such being the case, petitioner fulfilled both the above-stated *first* and *second* requisites.

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[53] Docket, Vol. IV, Exhibit No. "P-17", pp. 1819.
[54] *Id.*, Vol. I, p. 14.

Petitioner is a VAT-registered taxpayer.

It is undisputed that petitioner is registered with the BIR as a VAT taxpayer, with TIN No. 205-760-474-00000.[55] Thus, the *third* requisite is likewise complied with.

Petitioner had zero-rated sales for the subject period of claim, but only in the amount of ₱2,333,185,424.48.

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

Section 108(B)(7) of the 1997 NIRC, as amended, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT, to wit:

> "(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**:
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> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.**" (*Emphasis supplied*)

Through BIR Ruling No. DA-146-2006 dated March 17, 2006,[56] the BIR has confirmed that the sale of petitioner to NPC of electricity generated through hydropower is subject to zero percent (0%) VAT under Section 108 (B)(7) of the 1997 NIRC, as amended by RA No. 9337, to wit:

> "In reply thereto, please be informed that Section 108 of the Tax Code of 1997, as amended by R.A. No. [9337], as

[55] Docket, Vol. III, Par. 4, Facts Admitted, JSFI, p. 1033; Docket, Vol. IV, Exhibit "P-15", pp. 1816 to 1817.
[56] *Id.*, Vol. IV, Exhibit "P-18", pp. 1820 to 1825.

implemented by Section 4.108-5(b) of Revenue Regulations No. 16-2005 provides that –

'(a) xxx xxx xxx

'(b) Transaction Subject to Zero Percent (0%) VAT Rate. – The following services performed in the Philippines by a VAT-registered person 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 or operation of plants generating said power.'

From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, *i.e.*, generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the Certificate of Compliance issued by the Energy Regulatory Commission (ERC) that CBK is indeed a hydropower generation company. **Thus, the billings of CBK for its sale of electricitv to NPC, designated under the BROT Agreement as Capital Recovery Fees and O&M Fees, are subject to zero percent (0%) VAT.**

Comparatively, in *BIR VAT Ruling No. 052-99 dated May 19, 1999,* this Office ruled that-

'Accordingly, please be informed that, based on the said ruling, the supply of electricity by HOPEWELL PHILS., to the NPC, shall be subject to the zero percent (0%) VAT, pursuant to Section I 08(8)(3) of the National Internal Revenue Code of 1997.

It shall be understood, however, that your client, HOPEWELL PHILS., shall apply with the Revenue District Office giving jurisdiction over its principal place of business for the effective VAT zero rating of its sale of electricity to the NPC, pursuant to the provisions of Revenue Regulations No. 7-95. Without an approved application for zero rating, the transaction

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otherwise entitled to zero percent (0%) VAT shall only be considered exempt from the VAT.'

It is noteworthy that while the aforesaid ruling is anchored on Section 108(B)(3) of the Tax Code of 1997 which is premised on NPC's exemption from direct and indirect taxes, this Office takes cognizant of the rule that the said exemption had already been expressly repealed, notably under Section 24(A) of R.A. No. 9337 insofar as VAT is concerned. However, this Office cannot close its eyes that the sale/supply of electricity by CBK to NPC continues to be zero-rated under Section 108(B)(7) of R.A. No. 9337. **Accordingly, payments received by CBK for the sale or supply of electricity to NPC shall be subject to 0% VAT.**

Moreover, Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005 provides that the sale of power or fuel generation 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, shall be subject to zero percent 0% VAT rate.

From the above-cited regulations, it is immediately clear that the requirement for prior approval or confirmation for effective zero-rating therefore applies only to those services specifically identified as "effectively zero-rated" under subparagraph (b) nos. (3), (4) and (5) of Section 4.108-5. Conversely, subparagraphs (1), (2), (6) and (7) of Section 4.108-5 are therefore considered zero-rated which do not require prior approval or confirmation with the BIR.

WHEREFORE, ***in view of the foregoing*, this Office holds that <u>the billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. No. 9337</u>. Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005."** *(Emphases and underscoring added)*

Thus, by virtue of the foregoing ruling by the BIR, the sale by petitioner of electricity generated through hydropower to NPC should be treated as subject to the 0% percent VAT rate under Section 108(B)(7) of the 1997 NIRC, as amended. The above-quoted BIR Ruling is binding on respondent until validly modified or reversed by the latter. However, any modification or reversal by respondent of the same BIR Ruling shall not be given retroactive application, if it will be prejudicial to petitioner, pursuant to Section 246 of the 1997 NIRC, as amended, to wit:

> "SEC. 246. *Non-Retroactivity of Rulings.* – **Any revocation, modification or reversal of** any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings** or circulars **promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith." *(Emphasis added)*

The abovementioned provision expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.[57]

For sure, the modification or reversal of BIR Ruling No. DA-146-2006 dated March 17, 2006 is prejudicial to petitioner. This is so because, in such situation, the sale of petitioner to NPC will then be subject to the 12% VAT rate, and petitioner will not be able to claim for a refund of its input VAT.

Moreover, the facts of the case do not show that petitioner deliberately committed mistakes or omitted material facts when it obtained the said ruling from the BIR. Neither is there an indication that the facts subsequently gathered by the BIR are materially different from the facts on which the same ruling is based; nor is it shown that petitioner acted in bad faith. Thus, in the absence of such proof, this Court upholds the application of Section 246 of the 1997 NIRC, as amended. Consequently, the pronouncement made by the BIR in BIR Ruling No. DA-146-2006 dated March 17, 2006 as to petitioner's VAT zero-rating on its sale of electricity generated through hydropower to NPC should be upheld.

To be clear, however, the reversal or revocation of BIR Ruling No. DA-146-2006 happened only upon the filing of

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[57] *Team Energy Corporation (Formerly Mirant Pagbilao Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 197760, January 13, 2014.

respondent's *Answer* on July 3, 2018,[58] wherein respondent contested petitioner's refund claim.[59] It could not have been legally made in the letter dated March 12, 2018 signed by OIC-ACIR Teresita M. Dizon,[60] partially denying petitioner's administrative claim, because the power to reverse, revoke or modify any existing ruling of the BIR can only be exercised by the respondent himself. Such power may not be validly delegated by respondent to any other officer in the BIR, pursuant to Section 7 of the 1997 NIRC, as amended, to wit:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* – **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code** to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* **That the following powers of the Commissioner shall <u>not be delegated</u>**:
>
> xxx xxx xxx
>
> (b) **<u>The power</u>** to issue rulings of first impression or **<u>to reverse, revoke or modify any existing ruling of the Bureau</u>**;" *(Emphases and underscoring added)*

In any event, while petitioner's sales qualify for VAT zero-rating by virtue of BIR Ruling No. DA-146-2006, for the subject period, petitioner must still show compliance with the pertinent invoicing requirements under Section 113(A) and (B) of the 1997 NIRC, as amended, to wit:

> "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:

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[58] Docket, Vol. I, pp. 288 to 297.
[59] Refer to *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[60] Docket, Vol. III, Par. 7, Facts Admitted, JSFI, pp. 1033 to 1034; Docket, Vol. IV, Exhibit "P-17", p. 1819.

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

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

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

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

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

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

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

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

The foregoing provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended, to wit:

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

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

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

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

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

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> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> (B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That:
>
> (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
>
> (3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

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

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

> "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."

Simply put, petitioner is required to issue BIR-registered VAT ORs for the gross receipts derived from its sale of services, containing the above-stated information.

In its Amended Quarterly VAT Returns for the four (4) quarters of 2016, petitioner's declared zero-rated sales/receipts amounted to ₱2,605,962,736.75, broken down as follows:

Exhibit No.	2016	Zero-Rated Sales/Receipts
"P-104"	1st Quarter	₱ 651,502,643.45
"P-107"	2nd Quarter	647,175,150.46
"P-109"	3rd Quarter	652,091,193.28
"P-111"	4th Quarter	655,193,749.56
	Total	**₱2,605,962,736.75**

In support of the above zero-rated sales/receipts, petitioner submitted its *Schedule of Sales*,[61] *General Ledgers for Capital Recovery Fee Accounts*,[62] and *Fixed O&M Fees*,[63], *Summary of Petitioner's ORs*,[64] as well as the related SIs[65] and ORs[66].

A scrutiny of the supporting ORs shows that the same are compliant with the invoicing requirements under the law and regulations. However, the Court finds that petitioner failed to provide the ORs corresponding to the following sales

[61] Exhibit "P-123", inclusive of sub-markings.
[62] Exhibits "P-126-1" to "P-126-9".
[63] Exhibits "P-126-10" to "P-126-19".
[64] Exhibit "P-125", inclusive of sub-markings.
[65] Exhibits "P-123-1" to "P-123-246".
[66] Exhibits "P-125-1" to "P-125-232".

in the amounts of ₱204,021,841.08, representing *Capital Recovery Fees*, and ₱68,755,471.19 representing *Operation and Maintenance Fees* totaling ₱272,777,312.27, detailed as follows:

Exhibit No.	Invoice Date[67]	Invoice No.	Capital Recovery Fees		Operation & Maintenance Fees
			Exhibit "P-123"		
			USD	Php	Php
"P-123-199"	12/27/2016	1000002258	$792,390.00	₱39,437,250.30	
"P-123-200"	12/27/2016	1000002259			₱13,297,284.80
"P-123-201"	12/27/2016	1000002260	792,390.00	39,437,250.30	
"P-123-202"	12/27/2016	1000002261			13,297,284.80
"P-123-203"	12/27/2016	1000002262	762,813.78	37,965,241.83	
"P-123-204"	12/27/2016	1000002263			12,800,959.18
"P-123-205"	12/27/2016	1000002264	801,050.00	39,868,258.50	
"P-123-206"	12/27/2016	1000002265			13,442,610.32
"P-123-207"	12/27/2016	1000002266	84,993.19	4,230,111.07	
"P-123-208"	12/27/2016	1000002267			1,426,290.96
"P-123-209"	12/27/2016	1000002268	84,455.52	4,203,351.23	
"P-123-210"	12/27/2016	1000002269			1,417,268.21
"P-123-211"	12/27/2016	1000002270	47,208.02	2,349,543.16	
"P-123-212"	12/27/2016	1000002271			792,208.99
"P-123-213"	12/27/2016	1000002272	47,841.90	2,381,091.36	
"P-123-214"	12/27/2016	1000002273			802,846.31
"P-123-215"	12/27/2016	1000002274	3,507.63	174,574.75	
"P-123-216"	12/27/2016	1000002275			58,862.36
"P-123-217"	1/26/2017	1000002276	158,478.00	7,879,526.16	
"P-123-219"	1/26/2017	1000002278	158,478.00	7,879,526.16	
"P-123-221"	1/26/2017	1000002280	152,562.77	7,585,420.92	
"P-123-223"	1/26/2017	1000002282	160,210.00	7,965,641.20	
"P-123-225"	1/26/2017	1000002284	16,998.64	845,172.38	
"P-123-227"	1/26/2017	1000002286	16,891.10	839,825.49	
"P-123-229"	1/26/2017	1000002288	9,441.60	469,436.35	
"P-123-231"	1/26/2017	1000002290	9,568.38	475,739.85	
"P-123-233"	1/26/2017	1000002292	702.53	34,880.07	
"P-123-235"	1/26/2017	1000002294			2,648,494.52
"P-123-236"	1/26/2017	1000002295			2,648,494.52
"P-123-237"	1/26/2017	1000002296			2,549,638.82
"P-123-238"	1/26/2017	1000002297			2,677,439.81
"P-123-239"	1/26/2017	1000002298			284,082.34
"P-123-240"	1/26/2017	1000002299			282,285.23
"P-123-241"	1/26/2017	1000002300			157,788.69
"P-123-242"	1/26/2017	1000002301			159,907.39
"P-123-243"	1/26/2017	1000002302			11,723.94
Total				**₱204,021,841.08**	**₱68,755,471.19**

Thus, for purposes of the *fourth* requisite, petitioner's valid zero-rated sales/receipts for the four (4) quarters of 2016 amounted only to ₱2,333,185,424.48, computed as follows:

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[67] Date format: month/day/year.

cm

Zero-Rated Sales/Receipts per VAT returns	₱ 2,605,962,736.75
Less: Sales/Receipts without supporting ORs	272,777,312.27
Valid Zero-Rated Sales/Receipts	**₱2,333,185,424.48**

Parenthetically, petitioner need not comply with the *fifth* requisite, since its VAT zero-rating was made pursuant to Section 108(B)(7) of the 1997 NIRC, as amended, and *not* under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), of the same Code.

Petitioner's input VAT incurred for its domestic purchases of goods and services may be the subject of a refund claim, since petitioner is <u>not entitled</u> to the VAT zero-rating incentive on such purchases under Section 15(g) of RA No. 9513.

Having found that petitioner had valid zero-rated sales only in the total amount of ₱2,333,185,424.48 for the subject period of the claim, the Court may now determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of a TCC.

However, before doing so, it is apt to address the second issue raised by the parties, *i.e.*, "(*w*)hether respondent correctly denied the claim for refund based on the documents submitted in the administrative claim for refund, as proposed by the Respondent."

In the letter dated March 12, 2018,[68] the BIR denied the amount of ₱44,252,585.31 for refund or issuance of a TCC, as follows:

> "CBK POWER COMPANY LIMITED
> NPC Compound, San Juan, Kalayaan, Laguna
> TIN: 205-760-474-000
>
> Gentlemen:
>
> This has reference to your claim for Value-added Tax credit/refund of pesos: **FORTY FIVE MILLION FIVE HUNDRED FORTY EIGHT THOUSAND SIX HUNDRED SEVEN PESOS & 31/100 ONLY (Php 45,548,607.31)**, representing unutilized input VAT for the period from January 01, 2016 to December 31, 2016, pursuant to Section 108(B)(7) and 112(A) of the 1997 National Internal Revenue Code, as amended.

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[68] Docket, Vol. III, Par. 7, Facts Admitted, JSFI, pp. 1033 to 1034; Docket, Vol. IV, Exhibit "P-17", p. 1819.

Relative thereto, please be informed that the amount of **ONE MILLION TWO HUNDRED NINETY SIX THOUSAND TWENTY TWO PESOS & 00/100 ONLY (Php 1,296,022.00)** representing input tax on importation was recommended for issuance of Tax Credit Certificate (TCC).

However, the entire amount of P44,252,585.31 representing unutilized input taxes on domestic purchases of goods and services were denied pursuant to CTA Case No. 8748 ***(CBK Power Company Ltd vs. Commissioner of Internal Revenue)*** promulgated on February 23, 2017, in the decision that CBK being a RE Developer is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power. Accordingly, no input VAT shall be paid by RE Developers on these transactions. There being no input VAT to be paid by RE Developers, it necessarily follows that they are not entitled to refund, or issuance of TCC from the said purchases. The summary computed as follows:

		LOCAL		IMPORTATION		TOTAL
Unutilized Input Tax per BIR 1924	**P**	**44,252,585.31**	**P**	**1,296,022.00**	**P**	**45,548,607.31**
Less: Disallowance		**44,252,585.31**		-		**44,252,585.31**
Allowable Claim for TCC	**P**	-	**P**	**1,296,022.00**	**P**	**1,296,022.00**

Please be guided accordingly.

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

By:

TERESITA M. DIZON
OIC – Assistant Commissioner
Large Taxpayers Service"

As can be deduced from the foregoing letter, the denial was not based on any document submitted by petitioner. It was based instead on a previous ruling rendered by this Court on an earlier case, albeit involving the same parties herein. Thus, there can be no question as to the sufficiency of the documents presented by petitioner at the administrative level, insofar as respondent is concerned.

As borne out by the evidence presented in this case and the points herein raised by petitioner, however, We rule in favor of the latter.

Sections 15(g), 25, and 26 of RA No. 9513 (Renewable Energy Act of 2008) read as follows:

"CHAPTER VII
GENERAL INCENTIVES

SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – **RE Developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE**, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) Zero Percent Value Added-Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This 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." *(Emphasis added)*

"SECTION 25. *Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.* – **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer** and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment **to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.**" *(Emphases added)*

"SECTION 26. *Certification from the Department of Energy.* – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau**.

xxx xxx xxx." *(Emphases added)*

Based on the foregoing provisions, RE Developers are entitled to VAT zero-rating on its purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities. However, to be entitled to such tax treatment or incentive, the concerned RE Developer must register with the Department of Energy (DOE), through the Renewable Energy Management Bureau; and upon registration, shall be issued a certification by the said government office, which certification would qualify the said RE Developer to said tax treatment or incentive.

In this case, it is clear that petitioner is not registered with the DOE,[69] and thus, no certificate from the said government agency was issued in favor of petitioner. Correspondingly, petitioner could not have been entitled to a VAT zero-rating on any its purchases of local supply of goods, properties and services. Such being the case, it was an error on the part of respondent to have outrightly denied the amount of ₱44,252,585.31.

In any event, we shall proceed to determine whether petitioner is indeed entitled to the full amount of ₱44,252,585.31.

To recall, the remaining requisites which must be complied with by petitioner are the following, to wit:

a) *sixth requisite:* the input taxes are not transitional input taxes;

b) *seventh requisite:* the input taxes are due or paid;

c) *eighth requisite:* the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

d) *ninth requisite:* the input taxes have not been applied against output taxes during and in the succeeding quarters.

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[69] Docket, Vol. IV, Exhibits "P-4" and "P-5", pp. 1582 to 1583.

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The input VAT being claimed are not transitional input taxes.

Petitioner's input VAT claims are not transitional input taxes, as provided for under Section 111(A) of the 1997 NIRC, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.–*
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[70]

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

The input taxes being claimed were due or paid.

Anent this *seventh requisite* in claiming VAT refund, it is of vital importance for petitioner to provide supporting documents to prove that the input taxes claimed for the 1st and 3rd quarters of 2016 were actually due or paid, in accordance with Section 110(A) of the 1997 NIRC, as amended, which provides that:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —

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

(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. 16-2005, as amended, which provide, as follows:

"SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered 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;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111(a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111(b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset

> acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.
>
> xxx xxx xxx
>
> If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Relative thereto, Section 4.110-8 of RR No. 16-2005 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.

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(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods or properties) or ORs (for domestic purchases of services) issued in accordance with the above-quoted Section 113 of the 1997 NIRC, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under the earlier quoted Sections 113(A) and (B), 237 and 238 of the 1997 NIRC, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended.

In its latest Amended Quarterly VAT Returns for 2016,[71] petitioner reported excess input taxes in the aggregate amount of ₱45,548,607.31, which is the subject of petitioner's administrative claim filed on November 20, 2017, to wit:[72]

Input Taxes on Goods Other Than Capital Goods	
Input Taxes on Domestic Purchases of Goods Other Than Capital Goods	₱ 15,694,477.41
Input Taxes on Importation of Goods Other Than Capital Goods	1,296,022.00
Input Taxes on Services	
Input Taxes on Domestic Purchases of Services	26,897,115.96
Input Taxes on Services rendered by Non-residents	812,824.04
Input Taxes on Capital Goods	

[71] Exhibits "P-104", "P-107", "P-109" and "P-111",
[72] Docket, Vol. IV, Exhibits Nos. "P-1" to "P-3", and "P-6", pp. 1557 to 1581 and 1584, respectively.

Input Taxes on Purchase (Domestic and Importation) of Capital Goods not exceeding P1Million	158,329.49
Amortization of Input Tax on Capital Goods exceeding P1Million	816,714.91
Total Creditable Input Tax	₱ 45,675,483.81
Less: Output Tax	126,876.50
Excess Input Tax	**₱45,548,607.31**

The amount of ₱1,296,022.00 representing input tax on importation of goods other than capital goods had already been effectively granted by respondent, hence, only the remaining amount of ₱44,252,585.31 (₱45,548,607.31 less ₱1,296,022.00) is the subject of the present appeal.

However, in determining petitioner's entitlement to the instant claim, the Court shall have, as reference point, the amount of ₱44,379,461.81, which represents the net creditable tax after deducting the amount of ₱1,296,022.00 input tax already granted by the BIR from the total creditable input tax of ₱45,675,483.81.

To prove that it incurred/paid the input VAT amounting to ₱44,379,461.81 for 2016, petitioner submitted its *Schedule of Input Tax* [73] and the related suppliers' invoices, ORs, BIR Forms 1600 and other documents[74] which were examined by the Court-commissioned ICPA, Ms. Myra Celeste O. Dabalos.

A scrutiny of the ICPA's *Amended Report* [75] and related supporting documents shows that input taxes in the amount of ₱531,947.94 should be disallowed for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the 1997 NIRC, as amended, in relation to Sections 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, which were all quoted earlier. Below is the detailed breakdown of the disallowed input VAT amounting to ₱531,947.94:

Exhibit No	Particulars	Amount
"P-134-8"	Input tax on purchase of capital goods which should be deferred to succeeding years	₱319,832.75

[73] Exhibit "P-122-A".
[74] Exhibits "P-122-A-1-1" to "P-122-A-1-485", "P-122-A-2-1" to "P-122-A-2-419", "P-122-A-3-1" to "P-122-A-3-412"; "P-122-A-4-1" to "P-122-A-4-390", "P-122-A-5-1" to "P-122-A-5-433", "P-122-A-6-1" to "P-122-A-6-571"; "P-122-A-7-1" to "P-122-A-7-366", "P-122-A-8-1" to "P-122-A-8-424", "P-122-A-9-1" to "P-122-A-9-694"; "P-122-A-10-1" to "P-122-A-10-347", "P-122-A-11-1" to "P-122-A-11-389", "P-122-A-12-1" to "P-122-A-12-487", " P-130-1" to "P-130-163".
[75] Exhibit "P-200", pp. 21 to 22.

"P-134-3"	Overclaimed input tax due to erroneous computation	1,288.02
"P-134-4"	Overclaimed input tax due to foreign exchange rate used	42,903.66
"P-134-9"	Input tax on purchase of goods supported by a VAT invoice not dated within the VAT taxable year	77,678.57
"P-134-10"	Input tax on purchase of goods and services supported by a VAT invoice (for goods) or a VAT OR (for services) not issued in the name of the petitioner	3,658.48
"P-134-11"	Input tax on purchase of goods and services supported by a VAT invoice (for goods) or a VAT OR (for services) but the VAT was not separately indicated	2,875.96
"P-134-12"	Input tax on purchase of goods and services supported by a VAT invoice (for goods) or a VAT OR (for services) issued in the petitioner's name but without the petitioner's TIN and/or address	44,083.37
"P-134-13"	Input tax on purchase of services supported by documents other than a VAT OR	4,264.70
"P-134-14"	Input tax on purchase of goods supported by a VAT invoice. However, the sentence "This document is not valid for claiming input tax" is printed in the VAT invoice	990.00
"P-134-15"	Input tax on purchase of goods supported by documents other than a VAT invoice	7,434.70
"P-134-16"	Input tax on purchase of service supported by a VAT OR and purchase of goods supported by a VAT invoice but not an original copy	7,435.55
"P-134-17"	Input tax on purchase of goods and services without supporting documents	19,502.18
	Total	**₱531,947.94**

In addition, the following input taxes amounting to ₱1,388,269.12 shall likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations, *viz*:

Exhibit No	Vendor Name	Tax Base	VAT Amount
Official Receipt is not under the name, TIN and registered address of the petitioner			
"P-122-A-1-365" to "P-122-A-1-366"	Pacific Plaza Condominium Corp.	₱68,132.81	₱8,175.94
Official Receipt does not bear the TIN of the petitioner			
"P-122-A-1-380" to "P-122-A-1-381"	Philippine Long Distance Company	7,000.00	840.00
Official Receipt does not bear the correct TIN of the petitioner			
"P-122-A-6-19"	BV and EA Marketing	2,828.14	339.38
Details of the official receipts/sales invoices are unreadable			
"P-122-A-12-46" to "P-122-A-12-47"	Golden 1 Shell Gasoline Corp	50,142.72	6,017.13
"P-122-A-12-48" to "P-122-A-12-49"	Golden 1 Shell Gasoline Corp	1,275.02	153.00
Official Receipts/Sales Invoices do not bear the registered address of the petitioner			

"P-122-A-5-98" to "P-122-A-5-100"	Pilipinas Shell Petroleum Corp.	98,258.07	11,790.97
"P-122-A-5-142" to "P-122-A-5-143"	Centerlane Car Rental Services	7,200.00	916.71
"P-122-A-6-161" to "P-122-A-6-163"	Pilipinas Shell Petroleum Corp.	82,233.92	9,868.07
"P-122-A-6-201" to "P-122-A-6-202"	The Landmark Corp.	4,494.20	539.30
"P-122-A-6-211"	The Landmark Corp.	4,841.92	581.03
"P-122-A-6-216" to "P-122-A-6-217"	Asalus Corporation	4,692,617.80	640,849.20
"P-122-A-6-233"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-6-234"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-6-335" to "P-122-A-6-336"	Globe Telecom, Inc.	2,144.65	257.36
"P-122-A-6-417" to "P-122-A-6-418"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-6-419" to "P-122-A-6-420"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-6-421" to "P-122-A-6-422"	Philippine Long Distance Company	11,984.27	1,438.11
"P-122-A-6-423" to "P-122-A-6-424"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-6-425" to "P-122-A-6-426"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-6-433" to "P-122-A-6-434"	SGV & Co.	825,000.00	99,000.00
"P-122-A-6-457" to "P-122-A-6-458"	Sycip Salazar Hernandez & Gatmaitan	368,469.00	44,216.28
"P-122-A-6-493" to "P-122-A-6-494"	Pioneer Insurance and Surety Corp	3855.42	462.65
"P-122-A-6-504" to "P-122-A-6-505"	Philam Properties Corporation	9,664.00	1,039.68
"P-122-A-6-506" to "P-122-A-6-507"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-6-508" to "P-122-A-6-509"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-6-512"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-6-520" to "P-122-A-6-521"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-6-534" to "P-122-A-6-536"	Philippine Long Distance Company	13,941.90	1,673.07
"P-122-A-6-543" to "P-122-A-6-546"	Pioneer Insurance and Surety Corp	447.01	53.64
"P-122-A-6-543" to "P-122-A-6-546"	Pioneer Insurance and Surety Corp	447.01	53.64
"P-122-A-6-543" to "P-122-A-6-546"	Pioneer Insurance and Surety Corp	1,341.03	160.92
"P-122-A-6-562" to "P-122-A-6-563"	Federal Express Pacific LLC	3,217.50	386.10
"P-122-A-7-168" to "P-122-A-7-170"	Pilipinas Shell Petroleum Corp.	82,205.59	9,864.67
"P-122-A-7-198"	The Landmark Corp.	4,903.84	588.46
"P-122-A-7-263" to "P-122-A-7-264"	Fuji Xerox Phils Inc	1,334.27	160.11
"P-122-A-7-294" to "P-122-A-7-295	Philam Properties Corporation	8,664.00	1,039.68
"P-122-A-7-296" to "P-122-A-7-297"	Philamlife Tower Condominium Corporation	172,050.00	20,646.00
"P-122-A-7-298" to "P-122-A-7-299"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-7-304" to "P-122-A-7-305"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-7-306" to "P-122-A-7-307"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-7-310" to "P-122-A-7-311"	SGV & Co.	29,464.32	3,535.72
"P-122-A-7-312" to "P-122-A-7-313"	SGV & Co.	29,464.32	3,535.72
"P-122-A-7-314" to "P-122-A-7-315"	SGV & Co.	220,000.00	26,400.00
"P-122-A-8-47" to "P-122-A-8-48"	Citimotors Inc	3,513.60	421.63
"P-122-A-8-166" to "P-122-A-8-168"	Pilipinas Shell Petroleum Corp.	79,655.18	9,558.62
"P-122-A-8-220"	The Landmark Corp.	4,280.31	513.64

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"P-122-A-8-232" to "P-122-A-8-233"	Citimotors Inc	2,883.48	346.02
"P-122-A-8-234"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-8-328" to "P-122-A-8-330"	Philamlife Tower Condominium Corporation	9,249.58	1,109.95
"P-122-A-8-328" to "P-122-A-8-330"	Philamlife Tower Condominium Corporation	240.11	28.81
"P-122-A-8-331" to "P-122-A-8-332"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-8-335" to "P-122-A-8-337"	Philippine Long Distance Company	3,500.00	420.00
"P-122-A-8-338" to "P-122-A-8-339"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-8-342" to "P-122-A-8-343"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-8-344" to "P-122-A-8-345"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-8-346" to "P-122-A-8-347"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-8-361" to "P-122-A-8-362"	SGV & Co.	110,000.00	13,200.00
"P-122-A-8-363" to "P-122-A-8-364"	SGV & Co.	550,000.00	66,000.00
"P-122-A-8-384" to "P-122-A-8-385"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-8-386" to "P-122-A-8-387"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-9-22" to "P-122-A-9-23"	Citimotors Inc	12,785.41	1,534.25
"P-122-A-9-94" to "P-122-A-9-95"	Pilipinas Shell Petroleum Corp.	74,537.92	8,944.55
"P-122-A-9-122"	Triumph JT Marketing Corporation	383.93	46.07
"P-122-A-9-140"	The Landmark Corp.	4,370.45	524.45
"P-122-A-9-154" to "P-122-A-9-155"	Citimotors Inc	7,142.86	857.14
"P-122-A-9-156"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-9-157"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-9-158"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-9-215" to "P-122-A-9-216"	Fuji Xerox Phils Inc	1,192.66	143.12
"P-122-A-9-217" to "P-122-A-9-218"	Fuji Xerox Phils Inc	3,108.07	372.97
"P-122-A-9-380" to "P-122-A-9-381"	Philam Properties Corporation	8,664.00	1,039.68
"P-122-A-9-382" to "P-122-A-9-384"	Philamlife Tower Condominium Corporation	247.07	29.65
"P-122-A-9-385"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-9-391" to "P-122-A-9-392"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-9-393" to "P-122-A-9-394"	Philippine Long Distance Company	1,268.16	152.18
"P-122-A-9-395" to "P-122-A-9-396"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-9-399" to "P-122-A-9-400"	Philippine Long Distance Company	11,963.15	1,431.94
"P-122-A-9-593" to "P-122-A-9-594"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-9-667" to "P-122-A-9-668"	Pioneer Insurance and Surety Corp	5,934.43	712.13
"P-122-A-10-27" to "P-122-A-10-28"	Holland Blooms Flower Shops Inc	2,991.07	358.93
"P-122-A-10-29"	Hurricane Motorcycle Center	133.93	16.07
"P-122-A-10-74" to "P-122-A-10-75"	Papermax Distributor Inc	13,169.64	1,580.36
"P-122-A-10-79" to "P-122-A-10-81"	Pilipinas Shell Petroleum Corp.	91,755.20	11,010.62
"P-122-A-10-93"	Racing Sun Motorcycle Parts Supply	535.71	64.29
"P-122-A-10-115"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-10-148" to "P-122-A-10-154"	FPG Insurance Co Inc	1,291.12	154.93
"P-122-A-10-157" to "P-122-A-10-158"	Fuji Xerox Phils Inc	10,738.84	1,288.66
"P-122-A-10-266" to "P-122-A-10-268"	Philamlife Tower Condominium Corporation	10,005.50	1,200.66
"P-122-A-10-266" to	Philamlife Tower Condominium Corporation	195.67	23.48

"P-122-A-10-268"			
"P-122-A-10-269" to "P-122-A-10-270"	Philamlife Tower Condominium Corporation	172,050.00	20,646.00
"P-122-A-10-271" to "P-122-A-10-273"	Philamlife Tower Condominium Corporation	9,632.17	1,155.86
"P-122-A-10-271" to "P-122-A-10-273"	Philamlife Tower Condominium Corporation	218.28	26.19
"P-122-A-10-279" to "P-122-A-10-280"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-10-281" to "P-122-A-10-282"	Philippine Long Distance Company	1,263.62	151.63
"P-122-A-10-283" to "P-122-A-10-284"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-10-285" to "P-122-A-10-286"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-10-299" to "P-122-A-10-300"	SGV & Co.	220,000.00	26,400.00
"P-122-A-10-301" to "P-122-A-10-302"	SGV & Co.	275,000.00	33,000.00
"P-122-A-11-25" to "P-122-A-11-26"	Citimotors Inc	4,429.80	531.58
"P-122-A-11-113" to "P-122-A-11-115"	Pilipinas Shell Petroleum Corp.	87,481.41	10,497.77
"P-122-A-11-122"	The Landmark Corp.	4,334.91	520.19
"P-122-A-11-133" to "P-122-A-11-134"	Bayan Telecommunications Inc	45,360.00	5,443.20
"P-122-A-11-135" to "P-122-A-11-136"	Citimotors Inc	6,651.41	798.17
"P-122-A-11-137"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-11-138"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-11-139"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-11-156" to "P-122-A-11-157"	Federal Express Pacific LLC	1,299.02	155.88
"P-122-A-11-162" to "P-122-A-11-164"	FPG Insurance Co Inc	200.48	24.06
"P-122-A-11-179" to "P-122-A-11-180"	Fuji Xerox Phils Inc	6,432.72	771.93
"P-122-A-11-260" to "P-122-A-11-261"	Philam Properties Corporation	8,664.00	1,039.68
"P-122-A-11-262" to "P-122-A-11-263"	Philam Properties Corporation	8,664.00	1,039.68
"P-122-A-11-270" to "P-122-A-11-271"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-11-274" to "P-122-A-11-275"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-11-276" to "P-122-A-11-277"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-11-290" to "P-122-A-11-294"	SGV & Co.	29,465.00	3,535.80
"P-122-A-11-290" to "P-122-A-11-294"	SGV & Co.	29,465.00	3,535.80
"P-122-A-11-290" to "P-122-A-11-294"	SGV & Co.	29,465.00	3,535.80
"P-122-A-11-290" to "P-122-A-11-294"	SGV & Co.	29,465.00	3,535.80
"P-122-A-11-295" to "P-122-A-11-296"	SGV & Co.	275,000.00	33,000.00
"P-122-A-11-388" to "P-122-A-11-389"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-12-7"	Battery World Inc	4,491.07	538.93
"P-122-A-12-127" to "P-122-A-12-129"	Pilipinas Shell Petroleum Corp.	73,968.99	8,876.28
"P-122-A-12-176"	The Landmark Corp.	4,362.16	523.46
"P-122-A-12-177"	The Landmark Corp.	357.14	42.68
"P-122-A-12-198"	Citra Metro Manila Tollways Corp	4,464.29	535.71
"P-122-A-12-218" to "P-122-A-12-221"	Federal Express Pacific LLC	486.75	58.40
"P-122-A-12-231" to "P-122-A-12-232"	FPG Insurance Co Inc	449.08	53.89
"P-122-A-12-234" to "P-122-A-12-236"	FPG Insurance Co Inc	962.31	115.48
"P-122-A-12-237" to "P-122-A-12-239"	FPG Insurance Co Inc	29,816.59	3,577.99
"P-122-A-12-244" to "P-122-A-12-245"	Fuji Xerox Phils Inc	1,461.67	175.40

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"P-122-A-12-333" to "P-122-A-12-334"	Philam Properties Corporation	8,664.00	1,039.68
"P-122-A-12-335" to "P-122-A-12-336"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-12-337" to "P-122-A-12-338"	Philamlife Tower Condominium Corporation	450.00	54.00
"P-122-A-12-339" to "P-122-A-12-340"	Philamlife Tower Condominium Corporation	218.60	26.23
"P-122-A-12-343" to "P-122-A-12-344"	Philamlife Tower Condominium Corporation	223.21	26.79
"P-122-A-12-355" to "P-122-A-12-356"	Philippine Long Distance Company	1,281.54	153.79
"P-122-A-12-357" to "P-122-A-12-358"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-12-359" to "P-122-A-12-360"	Philippine Long Distance Company	1,259.06	151.09
"P-122-A-12-374" to "P-122-A-12-375"	SGV & Co.	29,465.00	3,535.80
"P-122-A-12-388" to "P-122-A-12-389"	The Philippine American Life and General Insurance Company	266,985.00	32,038.20
"P-122-A-12-413" to "P-122-A-12-414"	Globe Telecom, Inc.	852.38	102.29
"P-122-A-12-415" to "P-122-A-12-417"	Globe Telecom, Inc.	1,411.27	169.35
"P-122-A-12-415" to "P-122-A-12-417"	Globe Telecom, Inc.	714.29	85.71
Total			**₱1,388,269.12**

Thus, in compliance with the *seventh* requisite, out of petitioner's claimed creditable input VAT of ₱44,379,461.81, only the amount of ₱42,459,244.75, as computed below, is duly substantiated and shall be considered valid input VAT, to wit:

Claimed Creditable Input VAT	₱ 44,379,461.81
Less: Disallowances	
Per ICPA Amended Report	₱ 531,947.94
Per this Court's further verification	1,388,269.12
Total Disallowances	₱ 1,920,217.06
Valid Creditable Input VAT	**₱ 42,459,244.75**

Since there are both zero-rated sales and taxable sales subject to 12% VAT, the said amount of ₱42,459,244.75 shall be proportionately allocated on the basis of petitioner's sales volume.

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

In this case, aside from zero-rated sales/receipts ₱2,605,962,736.75, petitioner also declared VATable sales/receipts in the amount of ₱1,057,304.12, reflecting total sales/receipts of ₱2,607,020,040.87 for 2016, as shown below:

Exhibit	CY 2016	VATable Sales/Receipts	Zero-Rated Sales/Receipts	Total Sales/Receipts
"P-104"	1st Quarter	₱ 42,732.65	₱ 651,502,643.45	₱ 651,545,376.10
"P-107"	2nd Quarter	-	647,175,150.46	647,175,150.46
"P-109"	3rd Quarter	460,201.51	652,091,193.28	652,551,394.79
"P-111"	4th Quarter	554,369.96	655,193,749.56	655,748,119.52
	Total	**₱1,057,304.12**	**₱2,605,962,736.75**	**₱2,607,020,040.87**

Since petitioner's valid input VAT in the amount of ₱42,459,244.75 cannot be directly identified with the zero-rated sales/receipts, the same shall be allocated proportionately on the basis of the volume of petitioner's sales/receipts, as shown below:

	Amount per VAT Returns		Allocation Factor (A ÷ B)	Valid Input VAT Allocation
VATable Sales/Receipts	₱ 1,057,304.12	[A]	0.04055604%	₱ 17,219.79
Zero-Rated Sales/Receipts	2,605,962,736.75	[A]	99.95944396%	42,442,024.96
Total	**₱2,607,020,040.87**	[B]	**100.0000000%**	**₱42,459,244.75**

Thus, for purposes of the *eight* requisite, the input VAT attributable to petitioner's declared zero-rated sales/receipts only amounted to ₱42,442,024.96, as computed above.

Input VAT attributable to valid zero-rated sales/ receipts which were not applied against output taxes during and in the succeeding quarters amounted only to ₱37,901,257.45.

Since petitioner's valid input VAT of ₱17,219.79 allocated to VATable sales/receipts is not enough to cover its output VAT liability for calendar year 2016 in the amount of ₱126,876.50, the valid input VAT of ₱42,442,024.96 allocated to the declared zero-rated sales/receipts shall be utilized to pay for the remaining output VAT of ₱109,656.71, as shown below:

Output VAT per VAT returns[76]	₱ 126,876.50
Less: Valid input VAT allocated to VATable sales/receipts	17,219.79
Output VAT still due	**₱ 109,656.71**

Substantiated input VAT allocated to declared zero-rated sales/receipts	₱ 42,442,024.96
Less: Output VAT still due	109,656.71
Excess input VAT attributable to declared zero-rated sales/receipts	**₱42,332,368.25**

Based on the foregoing table, petitioner had excess/unutilized input VAT for 2016 in the amount of ₱42,332,368.25, which can be attributed to its entire declared zero-rated sales/receipts in the amount of ₱2,605,962,736.75.

However, as stated earlier, petitioner was able to properly substantiate only the amount of ₱2,333,185,424.48 out of its total declared zero-rated sales/receipts of ₱2,605,962,736.75. Thus, the excess/unutilized input VAT attributable to the ₱2,333,185,424.48 valid zero-rated sales/receipts amounts only to ₱37,901,257.45, as computed below:

Excess input VAT attributable to declared zero-rated sales/receipts	₱ 42,332,368.25
Divided by declared zero-rated sales/receipts	2,605,962,736.75
Multiply by valid zero-rated sales/receipts	2,333,185,424.48
Excess Input VAT attributable to valid zero-rated sales/receipts	**₱ 37,901,257.45**

As correctly found by the ICPA, petitioner did not utilize in subsequent periods the amount of input tax being claimed for TCC amounting to ₱45,548,607.31. This amount was deducted from available input tax as shown in box 23D of the latest Amended Quarterly VAT Return for the 4th quarter of 2016.[77] The balance of the excess input tax as of the end of the 4th quarter of 2016 as shown in box 29 of the Return for the said period,[78] amounting to ₱3,139,580.80, is equal to the amount carried over to the VAT return for the 1st quarter of

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Exhibit	**CY 2016**	**Output VAT**
"P-104"	1st Quarter	₱ 5,127.92
"P-107"	2nd Quarter	
"P-109"	3rd Quarter	55,224.18
"P-111"	4th Quarter	66,524.40
	Total	**₱ 126,876.50**

77 Exhibit "P-111-2-b".
78 Exhibit "P-111-2-a".

2017 as shown on box 20A of the said return.[79] Hence, petitioner is, in effect, deemed to have fulfilled the *ninth* requisite for the refund/tax credit of input VAT under Section 112(A) of the 1997 NIRC, as amended.

In sum, petitioner has sufficiently proven its entitlement to the issuance of TCC in the amount of ₱37,901,257.45, representing excess and unutilized input VAT attributable to its zero-rated sales/receipts for calendar year 2016.

Tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[80] . This is why in every case for such claims, the Court has always ruled that the claimant should positively show compliance with the statutory requirements provided under the NIRC and the relevant BIR rules and regulations.[81]

It must be emphasized, however, that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the respondent. It is then the turn of the latter to disprove the claim by presenting contrary evidence.[82] Respondent, however, opted not to present any evidence to contest the instant claim.[83]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱37,901,257.45**, representing unutilized input VAT attributable to its zero-rated sales/receipts for calendar year 2016, in addition to the Tax Credit Certificate in the amount of ₱1,296,022.00 to be issued in favor of petitioner pursuant to

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[79] Exhibit "P-112-1-a".
[80] *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 184266, November 11, 2013.
[81] *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 212699, March 13, 2019.
[82] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.
[83] Docket, Vol. V, Refer to the Order dated November 5, 2019, pp. 1893 to 1894.

the Letter dated March 12, 2018, signed by Ms. Teresita M. Dizon, OIC-Assistant Commissioner, Large Taxpayers Service.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
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 case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice