REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHILIPPINE VENDING CORPORATION, INC.
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9785

Members:

RINGPIS-LIBAN, *Chairperson*
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

JAN 18 2024
10:54 a.m.

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DECISION

FERRER-FLORES, J.:

Before this Court is a *Petition for Review* praying that judgment be rendered:

1. Declaring petitioner entitled to a refund in the amount of ₱31,777,961.58, representing unutilized input value-added tax (VAT) arising from petitioner's importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods attributable to zero-rated transactions for the 1st through the 4th quarters of taxable year 2016; and,

2. Ordering respondent to grant petitioner a refund in the said amount of ₱31,777,961.58.[1]

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[1] *Petition for Review*, Docket – Vol. 1, p. 34.

THE PARTIES

Petitioner Philippine Vending Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 200-247-161-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City, where he may be served with summons and other legal processes.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 20, 2017, petitioner filed with the BIR-Revenue District Office (RDO) No. 43A, an *Application for Tax Credits / Refund* (BIR Form No. 1914),[5] relative to its claim for refund or tax credits of input tax under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, for the period January 1, 2016 to December 31, 2016, in the amount of ₱94,685,387.66.

Subsequently, respondent, through his OIC-Deputy Commissioner of Internal Revenue, Mr. Arnel SD. Guballa, issued the assailed Decision dated January 29, 2018, which denied petitioner's claim for refund of unutilized excess input VAT.[6]

PROCEEDINGS BEFORE THIS COURT

The present *Petition of Review* was filed on March 19, 2018.[7]

Respondent's *Answer* was posted on August 13, 2018,[8] interposing the following defenses, to wit:

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[2] Exhibit "P-9", Docket – Vol. 12, pp. 4391 to 4398.
[3] Exhibit "P-10", Docket – Vol. 12, p. 4399.
[4] Par. 1.2, *Petition for Review*, Docket – Vol. 1, p. 10 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 11, p. 4276.
[5] Exhibit "P-11-b", Docket – Vol. 12, p. 4406.
[6] Par. 1.3, *Petition for Review*, Docket – Vol. 1, p. 11 *vis-à-vis* Par. 1, *Answer* (Docket – Vol. 11, p. 4276).
[7] Docket – Vol. 1, pp. 10 to 37.
[8] Docket – Vol. 11, pp. 4276 to 4281.

xxx xxx xxx

4. Petitioner's alleged claim for tax refund is subject to administrative investigation/examination by respondent's Bureau.

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

6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:

> a. The registration requirements of a value-added taxpayer under the pertinent provision of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing revenue regulations.
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the NIRC of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).
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> c. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the NIRC of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition *sine qua non* prior to the filing of such claim.
>
> d. That the input taxes of P31,777,961.58 allegedly representing unutilized input VAT from its importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods were:
>
> i. paid by petitioner;
>
> ii. attributable to its zero-rated or effectively zero-rated sales; and
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> iii. such input taxes paid should not have been applied against any output tax.
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> e. That petitioner's claim for tax refund allegedly representing unutilized input VAT in the amount of P31,777,961.58 was filed within two (2) years after the close of the taxable quarter when the

sales were made in accordance with Section 112 (A) of the NIRC of 1997, as amended.

7. Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "**SEC. 112. Refunds of Tax Credits of Input Tax.** –
>
> xxx xxx xxx
>
> **(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.** – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application** filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days** from the receipt of the decision denying the claim or **after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**" (Emphasis supplied)

The above-cited provision of law unequivocally provides that the respondent has one hundred twenty (120) days from the date of the submission of complete documents in support of the application for tax credit/refund within which to grant or deny the claim. In case of full or partial denial, the taxpayer's recourse is to file an appeal before this Honorable Court within thirty (30) days from receipt of the decision of the respondent. However, if after the expiration of the 120-day period, the respondent fails to act on the application for tax credit/refund, the remedy of the taxpayer is to appeal such inaction to this Court within thirty (30) days.

Relative to Section 112 (C) of the NIRC of 1997, as amended, Item II Paragraph 1 of Revenue Memorandum Circular (RMC) No. 54-2014 dated 17 June 2014 reads as follows:

> 'The application for VAT refund must be accompanied by complete supporting documents as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex 'B')...

> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based on the documents submitted by the taxpayer. The application for tax credit or refund shall be denied where the taxpayer/claimant failed to submit the complete supporting documents...'

8. Further, Item I Paragraph 2 of the said RMC Nos. 54-2014 states that:

> 'The Commissioner shall have one hundred twenty (120) days from the date of submission of complete documents to decide whether or not to grant the claim for refund or issuance of the Tax Credit Certificate (TCC) for creditable input taxes. If the claim for VAT refund or credit is not acted upon by the Commissioner within the 120-day period as required by law, such 'inaction shall be deemed a denial' of the application for tax refund or credit.'

Therefore, since petitioner failed to submit the complete supporting documents upon submission of the administrative claim for VAT refund, the application for tax credit or refund should necessarily fail.

9. It is worth emphasizing at this juncture that the burden of proving entitlement to a tax refund is on the taxpayer. It is logical to assume that in order to discharge this burden, the law intends the filing of an application for a refund to necessarily include the filing of complete supporting documents to prove entitlement for the refund. Otherwise, the mere filing of an application without any supporting document would be as good as filing a mere scrap of paper. Besides, the taxpayer was already given two (2) years to determine its refundable taxes and complete the documents necessary to prove its claim. The alleged completion of supporting documents after the filing of an application for an administrative claim – and worse, after the filing of a judicial claim – is tantamount to legal maneuvering, which this Court will not tolerate (*Hedcor, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015).

10. In an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax refund.

11. Finally, it is a well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim (*Eastern Telecommunications Philippines, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 168856, August 29, 2012).

The Pre-Trial Conference was initially set on November 6, 2018;[9] however, upon petitioner's *Motion to Commission an Independent Certified Public Accountant and to Defer Pre-Trial and Submission of Pre-Trial Briefs* filed on October 31, 2018,[10] the Pre-Trial Conference was reset to, and held on, January 29, 2019.[11] Prior thereto, respondent's *Pre-Trial Brief* was filed on October 31, 2018,[12] while the *Pre-Trial Brief for the Petitioner* was submitted on January 4, 2019.[13]

In the interim, on January 14, 2019, respondent transmitted the *BIR Records* for this case, consisting of four (4) folders and eight (8) boxes of supporting documents submitted by the taxpayer.[14]

During the Pre-Trial Conference on January 29, 2019, respondent's counsel failed to appear; hence, petitioner's counsel moved in open court to be allowed to present evidence *ex-parte* which was granted by the Court. However, on March 4, 2019, respondent filed its *Compliance* justifying his absence at the pre-trial conference.[15] Consequently, in the Resolution dated March 6, 2019,[16] the Order dated January 29, 2019 allowing petitioner to present evidence *ex-parte* was recalled.

Trial of the case then proceeded, with the parties presenting their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Honorata L. Paguio,[17] the Court-commissioned independent certified public accountant (ICPA);[18] and, (2) Mr. Gian Paulo R. Andrade,[19] petitioner's Accounting Head.

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[9] Notice of Pre-Trial Conference dated August 17, 2018, Docket – Vol. 11, pp. 4283 to 4284.
[10] Minutes of the hearing held on, and Order, dated November 6, 2018, Docket – Vol. 11, pp. 4337 and 4339 to 4340, respectively.
[11] Minutes of the hearing held on, and Order dated, January 29, 2019, Docket – Vol. 12, pp. 4501 to 4503.
[12] Docket – Vol. 11, pp. 4297 to 4301.
[13] Docket – Vol. 12, pp. 4353 to 4367.
[14] Docket – Vol. 12, p. 4481.
[15] Docket – Vol. 12, pp. 4520 to 4526.
[16] Docket – Vol. 12, pp. 4528 to 4529.
[17] Exhibits "P-8", "P-30" and "P-32", Docket – Vol. 12, pp. 4462 to 4471, 4490 to 4495, and 4510 to 4515, respectively; Minutes of the hearing held on, and Order, dated March 7, 2019, Docket – Vol. 12, pp. 4530 to 4532.
[18] *Oath of Commission* dated November 6, 2018, Docket – Vol. 11, p. 4338; Minutes of the hearing held on, and Order dated, November 6, 2018, Docket – Vol. 11, pp. 4337 and 4339 to 4340, respectively.

The ICPA *Report* was submitted on December 6, 2018.[20] Thereafter, the *Addendum to the ICPA Report*,[21] and *Second Addendum to the ICPA Report*, were filed on January 24, 2019[22] and on February 21, 2019[23], respectively.

The *Formal Offer of Evidence For The Petitioner* was filed on October 24, 2019.[24] Respondent then posted his *Comment [Re: Petitioner's Formal Offer of Evidence]* on November 8, 2019.[25] In the Resolution dated February 27, 2020,[26] the Court admitted petitioner's offered exhibits, *except* for the following:

1. Exhibits "P-2-cw" to "P-2-dp", "P-2-wz", "P-2-aez", "P-2-afy" to "P-2-afz", and "P-2-agy" to "P-2-agz", for not being found in the records of the case;

2. Exhibits "P-4-i" to "P-4-n", for failure to submit duly marked exhibits;

3. Exhibits "P-6-g" to "P-6-i" and "P-12", for not being found in the records of the case and for failure to identify; and,

4. Exhibits "Annex F-1", "Annex F-2", "Annex F-3" and "Annex G", for failure to present originals for comparison and for failure to identify.

On June 29, 2020, petitioner posted its *Motion for Reconsideration*, praying for the Court to admit all of its exhibits as stated in its Formal Offer of Evidence and attaching therein copies of Exhibits "P-2-cw", "P-2-dk", "P-2-dj", "P-2-di", "P-2-dh", "P-2-dn", "P-2-dm", "P-2-dl", "P-2-dp", "P-2-dg", "P-2-df", "P-2-cy", "P-2-cz", "P-2-da", "P-2-db", "P-2-dc", "P-2-dd", "P-2-de", "P-2-do", "P-2-wz", "P-4-i" to "P-4-n", "P-6-g" to "P-6-i", "P-

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[19] Exhibits "P-33" and "P-34", Docket – Vol. 12, pp. 4368 to 4388, and 4542 to 4546, respectively; Minutes of the hearing held on, and Order dated, September 24, 2019, Docket – Vol. 12, pp. 4563 to 4565.

[20] Exhibit "P-7", Docket – Vol. 11, pp. 4344 to 4351. Refer also to the *Compliance* dated December 6, 2018, Docket – Vol. 11, pp. 4341 to 4343.

[21] Exhibit "P-29", Docket – Vol. 12, pp. 4496 to 4498.

[22] *Motion for Leave and to Admit* dated January 24, 2019, Docket – Vol. 12, pp. 4484 to 4486; Minutes of the hearing held on, and Order, dated January 29, 2019, Docket – Vol. 12, pp. 4501 to 4503.

[23] *Motion for Leave and to Admit* dated February 21, 2109, Docket – Vol. 12, pp. 4504 to 4506; Resolution dated March 6, 2019, Docket – Vol. 12, pp. 4528 to 4529.

[24] Docket – Vol. 12, pp. 4569 to 4575.

[25] Docket – Vol. 12, p. 4587.

[26] Docket – Vol. 12, pp. 4611 to 4612.

12", "Annex F-1", "Annex F-2", "Annex F-3", and "Annex G". [27] Respondent failed to file his comment on the said *Motion*.[28]

In the Resolution dated October 11, 2021,[29] the Court partially granted petitioner's *Motion for Reconsideration*, and admitted Exhibits "P-2-cw", P-2-cy" to "P-2-dp", "P-2-wz", "P-6-g" to "P-6-i" and "P-12", but still denied Exhibits "P-2-cx", "P-2-aez", "P-2-afy" to "P-2-afz", "P-2-agy" to P-2-agz", "P-4-i" to "P-4-n", "Annex F-1", "Annex F-2", "Annex F-3", and "Annex G".

For his part, respondent offered the testimony of Revenue Officer Jerome C. Manuncia.[30]

Respondent's Formal Offer of Evidence was filed on May 19, 2022.[31] No comment was filed thereon by petitioner.[32] In the Resolution, dated October 5, 2022,[33] the Court admitted all of respondent's offered evidence.

Petitioner's *Memorandum* was filed on December 19, 2022. [34] Respondent, however, failed to file his memorandum.[35]

The present case was submitted for decision on January 18, 2023.[36]

THE ISSUE

The issue for this Court's resolution is:

> Whether or not petitioner is entitled to a refund of its unutilized Input VAT arising from importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods attributable to zero-rated sales for

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[27] Docket – Vol. 12, pp. 4617 to 4670.
[28] Records Verification Report dated June 23, 2021 issued by the Judicial Records Division of this Court, Docket – Vol. 12, p. 4695.
[29] Docket – Vol. 12, pp. 4699 to 4703.
[30] Exhibit "R-4", Docket – Vol. 12, pp. 4599 to 4604; Minutes of the hearing held on, and Order dated, April 28, 2022, Docket – Vol. 12, pp. 4707 to 4709.
[31] Docket – Vol. 12, pp. 4710 to 4712.
[32] Records Verification Report dated July 20, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 12, p. 4715.
[33] Docket – Vol. 12, pp. 4721 to 4722.
[34] Docket – Vol. 12, pp. 4730 to 4771.
[35] Records Verification Report dated January 10, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 12, p. 4774.
[36] Resolution dated January 18, 2023, Docket – Vol. 12, p. 4776.

> the first through fourth quarters of taxable year 2016 in the amount of Thirty-One Million Six Hundred Fifty Thousand Four Hundred Seventy-Six Pesos and Forty-Seven Centavos (P31,650,476.47).[37]

Petitioner's arguments:

Petitioner argues that it complied with all the requisites to be entitled to a refund of its unutilized input VAT; and, that the grounds for the denial of petitioner's refund are unavailing.

Respondent's counter-arguments:

Respondent contends that petitioner's alleged claim for tax refund is subject to administrative investigation/examination by the BIR; that taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable; that in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with certain requirements; that since petitioner failed to submit complete supporting documents upon submission of the administrative claim for VAT refund, the application for tax credit or refund should necessarily fail; that in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for tax refund; and, that it is a well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Matters to be proved by petitioner, since the present appeal involves an unsuccessful administrative claim.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[38] the Supreme Court ruled as follows:

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[37] Order dated January 29, 2019, Docket – Vol. 12, pp. 4502 to 4503. Refer also to par. 4.1, *Petition for Review*, Docket – Vol. 1, p. 17 *vis-à-vis* Par. 1, *Answer*, Docket – Vol. 11, p. 4276.

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

At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[39] it was ruled –

> x x x **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA. *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, when a judicial claim for refund or tax credit in this Court is an appeal of an unsuccessful administrative claim, the taxpayer has to convince that respondent had no reason to deny its claim. Thus, it becomes imperative for

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[39] G.R. No. 145526, March 16, 2007.

the taxpayer to show this Court that not only is it entitled under substantive law to its claim for refund or tax credit, but also that it satisfied all the documentary and evidentiary requirements for an administrative claim.[40]

In other words, there are two (2) matters which must be shown before this Court, upon appeal of an unsuccessful administrative claim, to wit: *first*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and *second*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. The *first* matter involves a review whether respondent has basis in fact and/or in law of his denial of the administrative claim, and this entails the exercise of the appellate jurisdiction of this Court; while the *second* matter to be proved entails a determination of petitioner's compliance with the requisites established by law.

More significantly, the *first* matter is concerned with the proper exercise of this Court's appellate jurisdiction as conferred by law. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank to re-examine the final order or judgment of a lower court which tried the case now elevated for judicial review.[41] The *second* matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo*.

Thus, the task of this Court is to determine, in the main, whether petitioner sufficiently shown these two (2) matters.

To be sure, consistent with the above-quoted pronouncement of the High Court in *Pilipinas Total Gas* case, it is necessary for petitioner to convince this Court that respondent had no reason to deny its refund claim.

Correspondingly, the *first matter* that petitioner needs to show the Court is that respondent has no basis in fact and/or in law to deny the amount of ₱94,685,387.66 and the *second matter* entails that petitioner must show that it complied with the requisites established by law for a successful claim of refund.

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[40] Refer to *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.

[41] *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

Not all the deductions made by the BIR from petitioner's claim were proper.

In the letter dated January 29, 2018 issued by the BIR,[42] the specific grounds leading to the denial of petitioner's administrative claim for refund in the amount of ₱94,685,387.66, are summarized, as follows:

Input Tax Being Claimed (BIR Form 1914)		**Php 94,685,387.66**
Deductions per District Audit and Regional Review		
Disallowed input tax due to violation of invoicing requirements (Annex A)	(6,025,990.79)	
Unsupported Ripened Portion of Prior Year's Input Tax	(1,568,292.63)	
Input tax allocable to VATable Sales	(55,119,522.73)	
Ouput tax on disallowed zero-rated sales (Annex B)	(1,473,250.02)	
Net Input Tax Recommended per District Audit and Regional Review		**Php 30,498,331.49**
Adjustments and Disallowances per Review of TARD		
Reconsideration of input tax disallowed per District Audit and Regional Review (not part of claim)	1,568,292.63	
Disallowed input tax due to violation of invoicing requirements (Annex C)	(69,204.98)	
Disallowed input taxes due to non-compliance with the requirements under RMO No. 16-2007 and RMC No. 29-2009 (purchases from big-ticket suppliers)	(20,064,684.19)	
Disallowed input taxes on imported capital goods and goods other than capital goods without SSDT or OR issued by BOC (Annex D)	(2,478,112.98)	
Output tax on disallowed zero-rated sales (Annex E)	(8,073,636.22)	
Net Output tax per VAT Returns	(6,432,755.14)	**(35,550,100.88)**
Excess Deduction Over Input Tax Being Claimed		**Php (5,051,769.39)**

In addition, respondent also noted the following findings in its letter, to wit:

a. While the reported zero-rated sales of goods were accordingly covered by zero-rated sales invoices (SIs), some of which were also supported with VAT Certifications issued by economic zone authorities having jurisdiction over its local customers, petitioner failed to secure approved Application for VAT Zero-Rating from the BIR for your aforesaid sales to ecozone registered customers, which is a requirement under Annex "A" of Revenue Memorandum Circular (RMC) No. 54-2014 (Checklist of Mandatory Requirements for Claims for VAT Credit/Refund);

b. No statement under oath attesting to the completeness of the submitted documents and that they are the only documents which the taxpayer will present to support the claim (Annex "B" of RMC No. 54-2014); and

c. Absence of "Gap Analysis" for the series of SIs used including cancelled and unused invoices. Moreover, no Post Reporting

[42] BIR Records (F4/F4), pp. 312 to 314.

> Requirement for Computerized Accounting System (CAS) /Affidavit submitted to RDO.

The Court shall now examine each item and shall rule thereon accordingly.

a. ₱6,025,990.79 input VAT disallowance due to violation of invoicing requirements and ₱69,204.98 input VAT disallowance due to improper invoicing requirements under Section 113 of the NIRC of 1997, as amended.

While petitioner concedes to respondent's disallowance of input VAT amounting to ₱69,204.98, it however refutes the input VAT disallowance of ₱6,025,990.79, stating that respondent's decision utterly neglected to state which particular invoicing requirement imposed by the BIR was violated. According to petitioner, all of its transactions with their suppliers are properly documented on its end for purposes of claiming input VAT.

However, upon examination of the documents and records furnished by petitioner, the Court-commissioned ICPA, Ms. Honorata L. Paguio, noted in her *Report* dated December 5, 2018: (1) that petitioner's purchases from various suppliers with input tax amounting to ₱6,025,990.79 were unsupported by invoices; and (2) that petitioner did not provide invoices or official receipts (ORs) related to the amount of ₱69,204.98 input tax.

Considering petitioner's failure to provide the invoices or ORs as noted by ICPA Paguio, there is no way for this Court to determine if the said documents submitted at the administrative level were in compliance with the laws and regulations on invoicing requirements. Consequently, it cannot be ascertained whether the BIR's disallowance relative to the amount of ₱6,025,990.79 is indeed erroneous.

On the other hand, the Court deems that the disallowance of petitioner's input VAT amounting to ₱69,204.98 is in order.

b. Disallowed input taxes amounting to ₱2,478,112.98 on imported capital goods and goods other than capital goods without Statement of Settlement of Duties and Taxes (SSDT) or ORs issued by Bureau of Customs (BOC).

In the BIR's denial letter, respondent noted that there were import transactions without SSDT or ORs issued by the BOC that would show payment of input taxes on such importations. Consequently, the corresponding input taxes were disallowed and deducted from the amount claimed as VAT refund.

Petitioner refutes respondent's finding and asserts that, out of the thirty-six (36) transactions listed by respondent as unsupported by SSDTs or ORs from the BOC, twenty-six (26) of the said transactions which amounts to a total of ₱18,025,258.25 are actually supported by the necessary SSDTs.

Relevant to claiming input tax credits arising from importation of goods, Section 110(A)(2)(b) of the NIRC of 1997, as amended, provides that the **input tax on importation of goods or properties** by a VAT-registered person shall be **creditable to the importer upon payment of the value-added tax** prior to the release of the goods from the custody of the BOC. On the other hand, Section 4.110-8(a)(1) of Revenue Regulations (RR) No. 16-2005 provides that input taxes for the importation of goods must be substantiated and supported by **import entry <u>or</u> <u>other equivalent document</u> showing actual payment of VAT** on the imported goods.

The said provisions do not lay down an all-inclusive list of requirements in substantiating input VAT in order to be creditable against output VAT. The use of the terms *"or"* and *"other equivalent document"* in the above provision connotes that documents may be presented in the alternative and does not require that all documents pertaining to the importation of goods and properties must be presented. Accordingly, what is essential is that the document presented shows the actual payment of VAT on imported goods.

At the time petitioner made importation of goods in 2016, the document issued by the BOC that proves successful and completed payment of import taxes and duties, including VAT, is the SSDT, pursuant to Customs Administrative Order (CAO) No. 10-2008 dated November 12, 2008.

CAO No. 10-2008 implements the Payment Application Secure System Version 5.0 (PASS5), which provides that the duties, taxes and fees payable, both advanced and final, will be transmitted to the Authorized Agent Bank (AAB) via a payment gateway through a secured communication channel and collected by debit from designated bank accounts following the procedures described in the Order.[43]

[43] Sections 3.1, CAO No. 10-2008.

As briefly summarized in Customs Memorandum Order (CMO) No. 6-2009 dated February 6, 2009, which implements CAO No. 10-2008, the e2m (electronic-to-mobile) Customs System shall compute the final tax payable due on the importation based on the particulars contained in the Single Administrative Document – Import Entry and Internal Revenue Declaration (SAD-IEIRD) and submitted to the Customs via an accredited VASP. The e2m Customs System shall generate a final payment instruction (FPI) and transmit the same to the AAB nominated in the SAD-IEIRD via the BOC Bankers Association of the Philippines (BAP)/Philippine Clearing House Corporation (PCHC) Payment Gateway. The respective AAB internal system shall cause the debit of the amount stated in the FPI from the nominated account, generate the Final Payment Confirmation (FPC) and electronically transmit this to the BOC thru the Payment Gateway.[44]

The AAB shall then credit the account of the BOC maintained with the collecting bank and remit to BSP for the account of BOC following the guidelines of the existing BAP-BOC MOA.[45] The BOC, on the other hand, shall issue SSDT for completely processed declaration of importers.[46]

The PASS5 payment system under CAO No. 10-2008 has been adopted in CMO No. 27-2009 dated July 24, 2009, which provides for the Procedures for the Implementation of e2m Customs System – Phase 3: Import Assessment System (IAS) in all Customs Ports Nationwide. According thereto, payment of duties, taxes and other charges must comply with CAO 10-2008 and CMO 6-2009.[47]

Considering the foregoing, the most crucial document that petitioner must present in order to be entitled to claim input tax credit from importation of goods is the SSDT as it is the document which serves as proof of actual payment of VAT. Provided that an SSDT is presented, all other importation documents, or any defect or infirmities thereto, are dispensable.

A perusal of the petitioner's letter dated October 5, 2015,[48] which enumerates the supporting documents it supposedly filed with the BIR along with its *Application for Tax Credit/Refund* (BIR Form 1914),[49] reveals that SSDTs are not among the documents listed therein. Indeed, respondent has

[44] Section 3.4, CMO No. 6-2009.
[45] Section 5.5.3, CAO No. 10-2008.
[46] Section 5.3.3, CAO No. 10-2008.
[47] Section 4.4.2, CMO No. 27-2009.
[48] Exhibit 'P-11-a", Docket – Vol. 12, pp. 4402 to 4405.
[49] Exhibit "P-11-b", Docket – Vol. 12, p. 4406.

legal basis to disallow the amount of ₱2,478,112.98 input VAT from importations for being unsupported by SSDTs.

c. *Unallowable input tax amounting to ₱20,064,684.19 on purchases from big-ticket supplier – Nestle Philippines, Inc. – for failure to comply with the documentary requirements prescribed per Revenue Memorandum Order (RMO) No. 16-2007 and RMC 29-2009.*

In respondent's denial letter,[50] the basis leading to the disallowance of the amount of ₱20,064,684.19 was presented as follows:[51]

Source Document	**Tax Base**	**Input Tax**
Schedule of Input Taxes	₱ 526,538,573.83	₱63,184,628.86
AITEID "RELIEF"	359,332,872.24	43,119,944.67
DISCREPANCY	**₱167,205,701.59**	**₱20,064,684.19**

Petitioner objects to the said disallowance on the ground that its purchases from Nestle Philippines, Inc. (Nestle) is substantiated by the following documents: (1) Certification dated March 6, 2018 from Nestle, stating that total sales to petitioner for the year 2016 amounted to ₱528,377,235.50;[52] (2) BPI Certification dated March 13, 2018, showing that said amount was transferred to Nestle in 2016 as payment of goods purchased by petitioner;[53] and, (3) Accounts payable vouchers, purchase orders, goods receipts from purchase order, and invoices issued by Nestle.

Upon scrutiny of the records, the Court observes that the figures extracted from respondent's own data base (BIR-AITEID data) were not verified by any pertinent externally sourced documents to check their veracity, and the same were not supported by any corroborating certifications or confirmations from related third-party sources to support their credibility and integrity.

Thus, for lack of substantiation of the alleged discrepancies, the Court finds the disallowance by respondent of the amount of ₱20,064,684.19 as invalid.

d. *Additional output VAT of ₱8,073,636.22 was assessed on petitioner's unsupported zero-rated transactions with local customers.*

[50] Letter dated January 29, 2018, BIR Records (F4/F4), pp. 312 to 314.
[51] Exhibit "R-3", BIR Records – Main Folder, pp. 508 to 513.
[52] Exhibit "P-13", Docket – Vol. 12, p. 4407.
[53] Exhibit "P-23", Docket – Vol. 12, pp. 4428 to 4433.

Respondent treated petitioner's sales of ₱67,280,301.81 as subject to VAT, hence, the assessment of additional output VAT amounting to ₱8,073,636.22.[54] It was indicated in the BIR letter dated January 29, 2018 that the assessment was due to petitioner's unsupported zero-rated transactions with local customers detailed in Annex "E" (Sales to local customers not included in the 2016 PEZA Master list).

However, petitioner contends that the PEZA List of Operating Registered Enterprises as of 31 May 2016, which is readily available online, shows that all of its local customers are PEZA-registered enterprises, and that the same have been issued their respective PEZA ERD Forms No. 97-01 that sufficiently prove the VAT zero-rated nature of its transactions with said local suppliers located within their respective economic zones.[55]

A plain reading of the said List of Operating Registered Enterprises marked as Exhibits "P-5-a" to "P-5-ka"[56] shows that the same is only for the period of May 31, 2016. Evidently, the PEZA registration status of those entities after May 31, 2016 is uncertain or unclear. It is well to note that petitioner's claim for VAT refund covers the period of January 1 to December 31 of calendar year 2016. Hence, without certification from PEZA, the sales made to those entities cannot be considered as zero-rated export sales.

Furthermore, the List of Operating Registered Enterprises submitted by petitioner cannot be given credence for being self-serving and without probative value, as will be discussed below. Noteworthy is that petitioner, instead of presenting copies of PEZA Certification from its clients, opted to submit an unauthenticated downloadable document in excel sheet format to prove PEZA registration of its customers. Moreover, petitioner did not even offer any explanation for its failure to secure a PEZA Certification from its clients.

It bears stressing that a PEZA certification serves as authority to accord zero-rating status to sales made by a VAT-registered taxpayer to PEZA-registered entities during the period of the certification.

With emphasis, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund. After all, tax refunds partake the nature of exemption from taxation, and, as such, must be looked upon with disfavor. It is regarded as in

[54] Annex C, BIR Records (F4/F4), p. 300.
[55] Pars. 5.35 and 5.36, *Petition for Review*, Docket – Vol. 1, p. 26.
[56] Refer to the USB.

derogation of the sovereign authority, and should be construed in *strictissimi juris* against the person or entity claiming the exemption.[57] Unfortunately, petitioner failed to discharge this burden.

As such, we find that respondent's disallowance of ₱8,058,122.36 is valid; while the disallowances below are improper considering that these entities have PEZA Certifications:

DOCOMO INTERTOUCH BUSINESS SOLUTIONS, INC.	₱3,809.95
JPMORGAN CHASE BANK N.A. – PHILIPPINE GLOBAL SERVICE CENTER (JPMORGAN)	8,347.25
TELETECH CUSTOMER CARE MANAGEMENT – PHILIPPINE BRANCH (TCCM-PB)	3,356.66
Total	**₱15,513.86**

e. Net output tax per VAT Returns amounting to ₱6,432,755.14.

It is especially noteworthy that petitioner did not assail in its *Petition for Review* or *Memorandum* this specific finding (*i.e.*, adjustment in petitioner's output VAT for taxable year 2016) of respondent. In other words, insofar as the said specific finding is concerned, petitioner did not dispute and refute that the same were never justified in law. Considering that petitioner never questioned the disallowance made by the BIR, the Court cannot readily determine whether petitioner's administrative claim should not have been denied on the basis of the said finding, and thus, must be sustained.

f. Effectively zero-rated sales to ecozone registered customers without the approved application for zero-rating from the BIR.

In the said BIR letter dated January 29, 2018, respondent admitted that petitioner's reported effectively zero-rated sales of goods are accordingly covered by zero-rated sales invoices and that some of its customers are also supported with VAT Certifications issued by their respective economic zone authorities. Respondent further stated, however, that petitioner failed to secure approved application for zero-rating from the BIR, hence, the aforesaid sales to ecozone registered entities were denied VAT zero-rating.

This finding of the BIR is not consistent with law.

[57] *Commissioner of Internal Revenue vs. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.

In *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)* (*Seagate* case),[58] the Supreme Court has settled that the scope of BIR regulations additionally requiring an approved prior application for effective zero rating are not within the statutory authority granted by the legislature, *viz.*:

> **The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions. The scope of such regulations is not 'within the statutory authority x x x granted by the legislature.**
>
> *First,* **a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.**
>
> **Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated. An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application.** Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.
>
> *Second, grantia argumenti* that such an application is required by law, there is still the presumption of regularity in the performance of official duty. **Respondent's registration carries with it the presumption that, in the absence of contradictory evidence, an application for effective zero rating was also filed and approval thereof given. Besides, it is also presumed that the law has been obeyed by both the administrative officials and the applicant.**
>
> *Third,* even though such an application was not made, all the special *laws* we have tackled exempt respondent not only from internal revenue laws but also from the *regulations* issued pursuant thereto. **Leniency in the implementation of the VAT in ecozones is an imperative, precisely to spur economic growth in the country and attain global competitiveness as envisioned in those laws.**
>
> **A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer.** The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. **Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero rating. Otherwise, their VAT exemption would be**

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[58] G.R. No. 153866, February 11, 2005.

> **determined, not by their nature, but by the taxpayer's negligence -- a result not at all contemplated. Administrative convenience cannot thwart legislative mandate.** *(Emphases added)*

Based on the foregoing jurisprudential pronouncements, it is clear that no prior approved application is required for a sale transaction to ecozone enterprise to be treated as subject to the 0% VAT rate. As an apparent reaction therefor by the Secretary of the Department of Finance, upon recommendation of the respondent, the aforequoted pertinent portions of RR No. 16-2005, requiring a prior approval for VAT zero-rating, was removed or deleted via the issuance of RR No. 4-2007.[59]

Notwithstanding the deletion or removal of the said provisions, however, respondent or the BIR still applied the same. Thus, it was erroneous for respondent to deny petitioner's sales of VAT zero-rating on the basis of lack of prior approved application for zero-rating from the BIR.

g. Lack of statement under oath attesting to the completeness of the submitted documents.

The Court agrees with petitioner's disquisition that respondent has no legal and factual bases to deny its administrative claim for the alleged failure to submit a statement under oath attesting to the completeness of its submitted documents.

Contrary to respondent's allegation, a perusal of the records shows that petitioner was able to provide such Sworn Statement dated October 4, 2017 with a stamp received by BIR RDO No. 43 Pasig – Revenue Region No. 7, on October 20, 2017.[60] Clearly, respondent's denial of the petitioner's administrative claim for refund on this ground is improper.

h. Absence of Gap Analysis and Post Reporting Requirement for CAS.

Similarly, respondent's denial of the administrative claim for refund of petitioner on the latter's supposed failure to provide a gap analysis and a post reporting requirement for CAS is not justifiable. It bears noting that there is nothing in the RMC No. 54-2014 that requires the submission of

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[59] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

[60] Exhibit "P-25", Docket – Vol. 12, p. 4461.

such documents for purposes of refund claims.[61] This administrative issuance only requires that the application for VAT refund/tax credit must be accompanied by complete supporting documents enumerated in Annex "A" thereof. Hence, petitioner cannot be expected to have presented the said documents. With that, the Court finds that petitioner's failure to submit gap analysis and post reporting requirement for CAS are not valid grounds for the denial of its claim.

Considering the foregoing, petitioner's claim for refund should have been partially granted, and respondent has no basis in fact and/or in law to deny the whole amount of refund.

Nevertheless, the foregoing conclusion is still subject to petitioner's satisfaction of and compliance with the *second matter*, as set forth below. In other words, notwithstanding this Court's finding that petitioner's administrative claim should have been partially granted, petitioner is still required to show compliance with the requisites under substantive law for the grant of its refund claim, pursuant to the *Pilipinas Total Gas* case.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 (A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[62] provides as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated

[61] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

[62] 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.

> 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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

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 are classified into certain categories, to wit:

> <u>Timeliness of the filing of the administrative and judicial claims:</u>
>
> 1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[63]
>
> 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;[64]

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[63] *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.

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

The taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[65]

The taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[66]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[67]

The taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[68]

7. the input taxes are due or paid;[69]

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;[70] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[71]

In addition, at this juncture, it must already be emphasized that in claims for VAT refund/credit, applicants must satisfy the substantiation and

Semiconductor Philippines vs. Commissioner of Internal Revenue, G.R. No. 168950, January 14, 2015.

[65] *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.

[66] *Ibid.*

[67] *Ibid.*

[68] *Ibid.*

[69] *Ibid.*

[70] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue,* supra.

[71] *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.

invoicing requirements under the NIRC and other implementing rules and regulations.[72] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[73] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[74] Moreover, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[75]

Moreover, it must further be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[76] Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers the 1st to 4th quarters (January 1 to December 31) of taxable year 2016. Counting two (2) years from the close of the said quarters, the respective last days for the filing of the administrative claim therefor, are shown below:

[72] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[73] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[74] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[75] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[76] *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 Revenu.e 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.

Taxable year 2016	Close of the 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 for refund covering the above stated quarters were filed on **October 20, 2017**,[77] the same was timely made within the two (2)-year prescriptive period.

The *second* requisite necessitates that the judicial claim must be filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[78] 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.**
>
> **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, <u>whichever is sooner</u>.**
>
> 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 pronouncement, the thirty (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 the present case, as already established, petitioner's administrative claim for the 1st to 4th quarters (January 1 to December 31) of taxable year

[77] Exhibit "P-11-b", Docket – Vol. 12, p. 4406.
[78] G.R. No. 182737, March 2, 2016.

2016 was filed on October 20, 2017. Respondent then had one hundred twenty (120) days from the said date within which to act on the said claim. Correspondingly, the 120 days ended on February 19, 2018.[79]

Thus, respondent is considered to have acted on petitioner's claim within the said 120-day period when OIC-Deputy Commissioner–Operations Group Arnel Guballa issued the letter dated January 29, 2018 (denying petitioner's application for VAT refund),[80] which was received by the latter on February 16, 2018.[81] Counting thirty (30) days from said date, petitioner had until March 19, 2018,[82] within which to file its judicial claim for refund.

Accordingly, the *Petition for Review* filed on **March 19, 2018,**[83] covering the claim for the four quarters of taxable year 2016 was seasonably filed. Perforce, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

Petitioner likewise complied with the *third* requisite, considering that it has shown that it is registered with the BIR as a VAT taxpayer, under TIN No. 200-247-161-000.[84]

Petitioner failed to establish that it had zero-rated sales during the four (4) quarters of taxable year 2016.

The *fourth* requisite requires that petitioner is engaged in zero-rated or effectively zero-rated sales under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

In pursuit thereof, petitioner claims that it had zero-rated sales or VAT-exempt sales of food and beverage items to customers located within customs territories, special economic zones, and those exempt and/or zero-rated by virtue of special laws in the first through fourth quarters of 2016.[85]

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[79] The next working day since the 120th day period fell on a Saturday, February 17, 2018.
[80] Exhibits "P-1-a" to "P-1-c", USB; Exhibit "R-3", BIR Records, Folder 4 of 4, pp. 312 to 314.
[81] Par. 2.7, *Petition for Review*, p. 12.
[82] The next working day since the 30th day period fell on a Sunday, March 18, 2018.
[83] Docket – Vol. 1, pp. 10 to 48.
[84] Exhibit "P-10", Docket – Vol. 12, p. 4399.
[85] Par. 3.4, *Petition for Review*, Docket – Vol. 1, pp. 13 to 14.

Under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, such transactions are "considered export sales" subject to zero-percent (0%) VAT, viz.:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> xxx xxx xxx
>
> (5) **Those considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and **other special laws**; *(Emphases added)*

Relative thereto, Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 4-2007[86], which implements the foregoing provision, provides:

> SEC. 4.106-5. <u>*Zero-Rated Sales of Goods or Properties*</u>. – xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> **(a) *Export sales.*** – '*Export Sales'* shall mean:
>
> xxx xxx xxx
>
> (5) **Transactions considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and **other special laws.**
>
> *"Considered export sales under Executive Order No. 226"* shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales

[86] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further*, **That pursuant to** EO 226 and **other special laws, even without actual exportation, the following shall be considered constructively exported:** (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) <u>sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended</u>, 7903, 7922 and other similar export processing zones;** (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

xxx xxx xxx. *(Emphasis and underscoring added)*

The special law applicable to this case is RA No. 7916,[87] otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof, as amended RA No. 8748,[88] read as follows:

SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance. *(Emphases added)*

xxx

SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx." *(Emphases added)*

Considering that the Ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the

[87] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.
[88] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

Philippine customs territory to an entity registered and operating within an Ecozone are considered exports to a foreign country subject to 0% VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[89] to wit:

> This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.[90] *(Emphases added)*

[89] G.R. No. 150154, August 9, 2005.
[90] Now at 12% VAT rate.

Based on the foregoing, sales of goods by a VAT-registered taxpayer, such as petitioner, to entities located in the ECOZONEs are considered "*export sales*" subject to VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and as implemented by 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 4-2007.

To prove that its clients are duly registered with the PEZA, petitioner submitted certifications issued by said agency. Thus, listed below are petitioner's clients with the corresponding proof of VAT zero-rating, *viz.*:

Name of customer	**Proof of VAT zero-rating**	**Exhibit No.**	**Validity Period**
DOCOMO INTERTOUCH BUSINESS SOLUTIONS, INC.	PEZA-ERD Form No. 97-01, Certificate No. 2016-1653	"P-4-a"[91]	Taxable year 2016
JPMORGAN CHASE BANK N.A. – PHILIPPINE GLOBAL SERVICE CENTER (JPMORGAN)	PEZA-ERD Form No. 97-01, Certificate No. 2016-0749	"P-4-b"[92]	Taxable year 2016
KGB PHILIPPINES, INC. (KGB) [Formerly KGB_PHILIPPINES, INC.]	PEZA-ERD Form No. 97-01, Certificate No. 2016-0953	"P-4-c"[93]	Taxable year 2016
TELETECH CUSTOMER CARE MANAGEMENT – PHILIPPINE BRANCH (TCCM-PB)	PEZA-ERD Form No. 97-01, Certificate No. 2016-1574	"P-4-h"[94]	Taxable year 2016

However, the following PEZA Certifications referred to in the ICPA *Report* dated December 5, 2018, as Exhibits "P-4-d" to "P-4-g", are excluded in the determination of this case as these do not form part of those evidence formally offered pursuant to Section 34, Rule 132 of the Rules of Court, as amended, *viz.*:

Name of customer	**Proof of VAT zero-rating**
HARTE-HANKS PHILIPPINES, INC. (HHPI)	PEZA-ERD Form No. 97-01, Certificate No. 2016-0626
MAXIM (I.P.) ENTERPRISE SOLUTIONS CORPORATION (MESC)	PEZA-ERD Form No. 97-01, Certificate No. 2016-1892
PROVIEW GLOBAL ADMINISTRATION INC. (PGAI)	PEZA-ERD Form No. 97-01, Certificate No. 2016-0945
INTELENET GLOBAL PHILIPPINES, INC. (IGPI)	PEZA-ERD Form No. 97-01, Certificate No. 2016-1877

[91] Refer to the USB.
[92] *Ibid.*
[93] *Ibid.*
[94] CD - Addendum to ICPA Report (Exhibit "P-29-b").

It bears stressing that evidence not formally offered during trial cannot be used for, or against a party litigant by the trial court in deciding the merits of the case.[95]

Likewise, PEZA Certifications which were marked and offered as Exhibits "P-4-i" to "P-4-n" cannot be considered as these were denied admission by the Court in the Resolution dated February 27, 2020,[96] for failure of petitioner to submit the duly marked exhibits thereof. Such denial was further affirmed in the Resolution dated October 11, 2021.[97] Noteworthy is that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments.[98]

With respect to other purportedly PEZA-registered clients of petitioner, in lieu of PEZA Certifications, petitioner downloaded and printed the PEZA List of Operating Registered Enterprises as of 31 May 2016, then presented them in Court. Petitioner's witness, Gian Paulo R. Andrade, testified, "A cursory comparison of the BIR's list of customers allegedly not included vis-à-vis the Philippine Economic Zone Authority's (PEZA) published and easily-accessible List of Operating Registered Enterprises as of 31 May 2016 located at www.peza.gov.ph/documents/firmsmay2016.xls (the 2016 PEZA List) shows that all of the customers that the BIR believes to be unregistered are in fact listed therein".[99]

To be sure and as already intimated, the aforesaid 2016 PEZA List has no probative value.

In *PNOC Shipping and Transport Corporation vs. Honorable Court of Appeals, et. al.*,[100] the Supreme Court distinguished the admissibility of evidence from its probative value.

> ...This is a distinction we wish to point out. Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to (sic) considered at all. On the other hand, the **probative value of evidence refers to the question of whether or not it proves an issue**. Thus, a letter may be offered in evidence and admitted as such but its evidentiary weight depends upon the observance of the rules on evidence. *(Emphasis added)*

[95] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.
[96] Docket – Vol. 12, pp. 4611 to 4612.
[97] Docket – Vol. 12, pp. 4699 to 4703.
[98] *Dra. Leila A. Dela Llano vs. Rebecca Biong, doing business under the name and style of Pongkay Trading*, G.R. No. 182356, December 4, 2013.
[99] Exhibit "P-33", Docket – Vol. 12, p. 4383.
[100] G.R. No. 107518, October 8, 1998.

Similarly, the 2016 PEZA List were offered in evidence and admitted as such but its evidentiary weight will depend upon the observance of the rules on evidence. Accordingly, the 2016 PEZA List, which was allegedly downloaded and printed from the PEZA website, are being presented as written official acts or records from the government, hence, these are considered public documents for which proper authentication must be established under Sections 24 and 25 of the Rules of Court, as amended, which read:

> Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, xxx.
>
> xxx xxx xxx.
>
> Section 25. *What attestation of copy must state.* – Whenever copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there by any, or if he or she be the clerk of a court having a seal, under the seal of such court.

In this case, petitioner did not present any official publication or attestation from any PEZA officer having legal custody over the said records who can certify that the said list is correct and accurate. Moreover, nowhere in the testimony of petitioner's witness, Accounting Head Gian Paulo R. Andrade, was it mentioned that he had personal knowledge on the authenticity and accuracy thereof.

Furthermore, as earlier noted, the subject PEZA List cannot be considered because the same is only for the period of May 31, 2016, and not for the entire calendar year 2016 – when petitioner supposedly made its sales. Hence, the materiality and relevancy of such evidence is likewise insufficient for purposes of proving entitlement to VAT zero-rating.

Clearly, the documentary evidence presented by petitioner to substantiate its allegedly zero-rated sale of goods to those entities not duly supported by PEZA Certifications cannot be accorded VAT-zero rating.

That being said, only the export sales made by petitioner to the entities that are duly supported by PEZA Certifications, namely: 1) Domoco Intertouch Business Solutions, Inc.; 2) JPMorgan Chase Bank N.A. – Philippine Global Service Center; 3) KGB Philippines, Inc.; and, 4) Teletech Customer Care Management – Philippine Branch, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended; provided, that the same are properly substantiated by VAT zero-rated sales invoices in accordance with Sections 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-2005 which are all quoted hereunder:

> 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
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service;" *(Emphasis added)*
>
> "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
>
> xxx xxx xxx
>
> 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:

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

Moreover, the SIs must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or 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 xxx

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

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other 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 SIs for the gross receipts derived from its sales of goods, containing the above-stated information.

In its amended Quarterly VAT Returns for taxable year 2016, petitioner reported total sales/receipts in the amount of ₱875,147,233.00, consisting of VATable sales/receipts of ₱512,935,648.93, and zero-rated sales/receipts of ₱362,211,584.07, as shown below:

Taxable Year 2016	VATable Sales	Zero-Rated Sales	TOTAL
1st quarter[101]	₱ 109,964,081.36	₱ 89,627,912.52	₱ 199,591,993.88
2nd quarter[102]	92,371,143.50	88,539,206.82	180,910,350.32
3rd quarter[103]	105,763,904.82	95,690,084.69	201,453,989.51
4th quarter[104]	204,836,519.25	88,354,380.04	293,190,899.29
TOTAL	**₱512,935,648.93**	**₱362,211,584.07**	**₱875,147,233.00**

Upon examination of the documents submitted by petitioner, it was discovered that petitioner had failed to formally offer and present the VAT zero-rated SIs as proof of its purported zero-rated sales to PEZA-registered entities. Nothing was mentioned in the *Petitioner's Formal Offer of Evidence*[105] as to the inclusion of the zero-rated sales invoices as evidentiary support relating to the alleged sales of goods to PEZA entities. Moreover, a reading of the ICPA findings revealed that the petitioner just stressed the existence of PEZA certifications[106] as proof of sales of goods to PEZA entities, without further producing the pertinent SIs as proof of such zero-rated sale.

It must be remembered that Section 34, Rule 132 of the Rules of Court, as amended, provides that courts shall not consider any evidence which was not formally offered.[107] Evidence not formally offered has no probative value and must be excluded by the court.[108]

The Court is not unmindful of the exception to the rule on formal offer under said Section 34. Specifically, evidence not formally offered may be considered by the Court provided the following requisites are present: (1) the evidence must have been duly identified by testimony duly recorded; and, (2) the same must have been incorporated in the records of the case.[109] However, petitioner failed to satisfy the first requisite. Such SIs were not

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[101] Exhibit "P-6-a" to "P-6-b".
[102] Exhibit "P-6-c" to "P-6-d".
[103] Exhibit "P-6-e".
[104] Exhibit "P-6-f".
[105] *Petitioner's Formal Offer of Evidence*, Docket – Vol. 12, pp. 4569 to 4575.
[106] Exhibit "P-7", ICPA Report, Par. 5, Findings on Verification Procedures.
[107] *Motelibano vs. Yap*, G.R. No. 197475, December 6, 2017.
[108] *Republic of the Philippines vs. Gimenez*, G.R. No. 174673, January 11, 2016.
[109] *Heirs of Mabborang vs. Mabborang*, G.R. No. 182805, April 22, 2015; *Sabay vs. People*, G.R. No. 192150, October 1, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Star Two (SPV-AMC), Inc. vs. Ko*, G.R. No. 185454, March 23, 2011; and *The Heirs of Romana Saves vs. The Heirs of Escolastico Saves*, G.R. No. 152866, October 6, 2010.

duly identified in any of the Judicial Affidavits executed by petitioner's witnesses; hence, the exception to the rule on formal offer may not be applied in this case.

Thus, since the claim for tax refund/credit is litigated anew before this Court, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to respondent. Accordingly, petitioner's sales of goods to the alleged PEZA-registered entities failed to qualify for VAT zero-rating under 106(A)(2)(a)(5) of the NIRC of 1997, as amended. As such, the *fourth* essential element was **not fulfilled**.

Verily, at this juncture, petitioner has already fallen short in establishing that its sales of goods qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, for the 1st to 4th quarters of taxable year 2016 in the amount of ₱362,211,584.07.

Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the 1st to 4th quarters of taxable year 2016, the present *Petition for Review* must necessarily fail. Corollary, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

In fine, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[110] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[111] An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[112] Strict adherence to the conditions prescribed by law is required of the taxpayer.[113]

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[110] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[111] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

[112] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, *citing J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.

[113] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice