Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KEP (PHILIPPINES) REALTY CORPORATION,
Respondent.

CTA EB NO. 1504
(CTA Case No. 8983)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
RINGPIS-LIBAN, and
MANAHAN,JJ.

Promulgated:
AUG 18 2017 3:53 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 33-58.

dated April 20, 2016, rendered by the Second Division of this Court in CTA Case No. 8983, and its Resolution[3] dated August 11, 2016. Petitioner insists that respondent is not entitled to the claim for refund.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated April 20, 2016:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P38,736,174.00**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2012.*

SO ORDERED."

Resolution dated August 11, 2016:

*"**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated 20 April, 2016)** is hereby **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court in Division in its Decision read as follows:

"Petitioner[4] KEP (Philippines) Realty Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Cebu Light Industrial Park, Lapu-Lapu City, 6015. The Company was incorporated on May 29, 2012. As stated in its Articles of Incorporation, its primary purpose is:

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[3] En banc Docket, pp. 59-63.
[4] KEP (Philippines) Realty Corporation was the petitioner before the Court in Division and thereafter the respondent before this Court en banc.

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> *"To acquire by purchase, lease, donation or otherwise, and to own, use, develop, subdivide, sell, mortgage, exchange, lease, develop, and hold for investment or otherwise, real estate of all kinds, including but not limited to land, buildings, factories, and other structures of whatever kind, together with their appurtenances."*

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 008-289-280-000.

On the other hand, respondent[5] is the duly appointed Commissioner of the BIR, vested by law with authority to decide, approve, and grant claims for refund or tax credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Quezon City.

On September 14, 2012, petitioner purchased from Cebu Light Industrial Park, Inc. five (5) parcels of land located in Lapu-Lapu City in the total amount of P206,250,130.00.

Thereafter, petitioner executed a Contract of Lease on January 7, 2013 with Knowles Electronics (Philippines) Corporation (KEPC) involving the 5 parcels of land located within the special economic zone known as Cebu Light Industrial Park. KEPC is an entity registered with the Philippine Economic Zone Authority (PEZA) and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services.

Petitioner filed its Quarterly VAT Return (BIR Form No. 2550Q) for the 3rd quarter of calendar year 2012 on December 26, 2012.

On September 18, 2014, petitioner filed an administrative claim for refund or issuance of a tax credit certificate before Revenue District Office (RDO) No. 80 of the BIR.

Petitioner filed the instant Petition for Review before this Court on February 6, 2015.

In response to the Petition for Review, respondent filed her Answer on March 5, 2015, containing the following arguments and Special and Affirmative Defenses:

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[5] Commissioner of Internal Revenue (CIR) was the respondent before the Court in Division and thereafter the petitioner before this Court en banc.

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> *"5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.*
>
> *6. The amount of P38,736,174.00 representing alleged excess and unutilized input VAT on purchases of goods attributable to zero-rated sales of services for the 3rd quarter of calendar year 2012 was not properly documented.*
>
> *7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.*
>
> *8. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.*
>
> *xxx xxx xxx."*

Thereafter trial ensued, the parties presented their respective witnesses and evidences. On February 2, 2016, the case was submitted for decision.

On April 20, 2016, this Court in Division rendered the subject Decision, granting respondent corporation's petition and ordering petitioner CIR to refund or to issue a tax credit certificate in the amount of P38,736,174.00, representing respondent corporation's unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2012.

CIR filed a Motion for Reconsideration. Said motion was denied for lack of merit. Hence, the present petition was filed.

Petitioner CIR raised the sole issue of:

I.

"WHETHER OR NOT THE SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND IN THE AMOUNT OF

P38,736,174.00 REPRESENTING UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE 3RD QUARTER OF CALENDAR YEAR 2012."[6]

Petitioner CIR argues that respondent failed to show that it is entitled to a claim for refund. Petitioner CIR avers that respondent purchased the 5 parcels of land on September 14, 2012 and the same were leased to a PEZA-registered corporation on January 7, 2013. No evidence was presented that respondent has zero rated transactions for calendar year 2012 from which input VAT may be attributed. Thus, petitioner CIR argues that respondent cannot claim refund of the unutilized input VAT for 2012 since there is no zero-rated transactions for 2012.

Petitioner CIR avers that assuming the claim for refund is possible, as the property is merely rented for 25 years, ownership remains with respondent and that the refund can only be made when the property is eventually sold. Petitioner CIR further claims that it is only the portion which is attributable to such zero-rated sale that can be refunded, which in respondent's case refer to the contract of lease which was for a period of 25 years.

In addition, petitioner CIR maintains that the Second Division of this Court erred in granting the claim for refund. Petitioner CIR argues that a taxpayer is given the option to carry over to the succeeding quarters any unutilized input tax or to file a claim for refund and availing of an option precludes choosing that of the other. Likewise, petitioner CIR maintains that respondent failed to prove that the input VAT being claimed remained unutilized for the taxable years 2012 to 2014.

In the Comment[7], respondent claims that the phrase "attributable to zero-rated sales" does not refer only to sales that had already occurred in the past but can be made to refer to sales yet to be made and that there is nothing in the Tax Code which requires a taxpayer to have zero-rated sales

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[6] En banc Docket, p.19.
[7] En banc Docket, pp.79-89.

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in prior period or within the period covered by the claim before filing a refund of its input taxes.

Respondent further claims that "attribution to zero-rated sales" rule applies when a taxpayer has both zero-rated sales and sales subject to 12% VAT or exempt sales from VAT during the same period. Thus, respondent concludes that if a taxpayer is engaging solely in transactions subject to zero (0%) percent VAT, then all of its input VAT will be attributable to its zero-rated sales and no apportionment is necessary.

We resolve.

The relevant provisions of law pertaining to the issues raised by petitioner are Section 110(B) and Section 112 (A) and (C) of the National Internal Revenue Code (NIRC) of 1997. They provide for the treatment of excess output tax or input tax and the requirements for the issuance of a tax credit certificate or refund of input tax due or paid attributable to the taxpayer's zero-rated sales or effectively zero-rated sales, to wit:

Section 110 (B) of the NIRC of 1997, as amended, provides:

> *"SEC. 110. Tax Credits.-*
> *(A) Creditable Input Tax.- xxx xxx xxx.*
>
> *(B) Excess Output or Input Tax. — if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.*

Section 112 (A) and (C) of the NIRC of 1997, as amended, provides:

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

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

It is clear from the foregoing provisions, that if output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. However, if the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters, provided that any input tax attributable to zero-rated sales may at his option be refunded or credited against other internal revenue taxes within two (2) years after the close of the taxable quarter when the sales were made to the extent that such input tax has not been applied against output tax.

Otherwise stated, under Section 110 (B) and Section 112 (A) and (C) of the NIRC, the remedies available to the taxpayer in case of unutilized input VAT credits are: 1) the carrying over of the excess input tax into the succeeding quarter or quarters; 2) the claim for refund or issuance of tax credit certificate within two (2) years after the close of the taxable quarter when the sales were made.

In relation thereto, Sections 18 and 19 of Revenue Regulations No. 4-2007: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, provide as follows:

> ***"Section 18. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits***. *- Sec. 4.110-6 of RR No. 16-2005 is hereby amended to read as follows:*
>
> > *'SEC. 4.110-6. Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits. Xxx xxx xxx.*
> >
> > *There shall be allowed as a deduction from the output tax the amount of input tax deductible as determined under Sec.4.110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly declaration and the quarterly VAT returns."*
>
> ***Section 19. VAT Payable (Excess Output) or Excess Input Tax.-*** *Sec. 4.110-7 of RR No. 16-2005, as last amended by RR No. 2-2007, is hereby further amended to read as follows:*
>
> > ***"SEC.4.110-7. VAT Payable (Excess Output) or Excess Input Tax .***
> >
> > ***xxx xxx xxx.***
> >
> > *(b.) If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, the excess input tax shall be carried over to the succeeding quarter or quarters; Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which*

may be used in the payment of internal revenue taxes, subject to the limitations as may be provided for by law, as well as, other implementing rules.

Illustration:

For a given taxable quarter, XYZ Corporation has output VAT of 100 and input VAT of 110. Since input tax exceeds the output tax for such taxable quarter, there is an excess input tax at the end of the quarter of 10 which may be carried over to the next quarter or quarters."

Likewise, in Section 4.110-8 and Section 4.112-1 of Revenue Regulations No. 16-2005, as amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, provides as follows:

***"SEC. 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. xxx.*

xxx xxx xxx.

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

SEC. 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 by the following documents, and must be reported in the information returns required to be submitted to the Bureau:"

xxx xxx xxx.

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.*

xxxx.

Sec. 4.112-1. <u>Claims for Refund/ Tax Credit of Input Tax.-</u>

(a) Zero-rated and Effectively Zero-rated Sales of Goods, Properties or Services.

A VAT-registered person whose sales of goods, properties, or services are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate/refund of input tax attributable to such sales. The input tax that may be subject of the claim shall exclude the portion of input tax that has been applied against the output tax. The application should be filed within two (2) years after the close of the taxable quarter when such sales were made.

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Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of tax credit certificate.

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An examination of the abovementioned provisions of the NIRC and the implementing rules and regulations on VAT or the Consolidated Value-Added Tax Regulations of 2005, as amended, will clearly show that petitioner's arguments have no legal basis.

Neither the law nor the implementing regulations provide that in a claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid. Neither does it provide that the input tax in the purchase of land be refunded only when it was sold or input tax thereon be apportioned to the period of lease. Neither does the law nor the implementing regulations provide that the option to carry over to the succeeding quarters any unutilized input tax or to file a claim for refund and availing of an option precludes choosing that of the other.

What the law and the implementing regulations provide is that a taxpayer who has zero-rated or effectively zero-rated transactions were allowed to apply for the issuance of a tax credit certificate or a tax refund for input taxes paid, in addition to the option to carry forward the input taxes against future output tax liabilities. To be entitled to the issuance of a tax credit certificate or tax refund, the input taxes should not have been applied against output taxes, the input tax is attributable to zero-rated or effectively zero-rated sales and the claim should be made within 2 years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the case at bar, the facts are undisputed. Respondent purchased from Cebu Light Industrial Park, Inc. five (5) parcels of land and respondent reported an input VAT in the amount of P38,736,174.00 in the Quarterly VAT Return for the 3rd quarter of 2012.[8] Whether there is no reported zero rated sale for taxable year 2012 is immaterial as long as the input taxes should not have been applied against output taxes.

Thereafter, respondent entered into a contract of lease[9] with Knowles Electronics (Philippines) Corporation (KEPC), an entity registered with the PEZA and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services.[10] The rental fees were declared by respondent in its 2013 VAT Returns. Respondent claims that the input tax in the purchase of the land is attributable to zero-rated or effectively zero-rated sales (the lease of the land to a PEZA-registered corporation) and that the claim was made within 2 years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

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[8] Exhibit "P-5", Division Docket, p. 200; Exhibit "P-3", Division Docket, pp. 162-198; and Exhibit "P-4", Division Docket, p. 199.

[9] The Contract of Lease with KEPC executed on January 7, 2013, involving the 5 parcels of land.

[10] Exhibit "P-12", Division Docket, pp. 752-764; Exhibit "P-8", Division Docket, p. 408; Exhibit "P-9", Davison Docket, p. 409.

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It is an established rule[11] that the following criteria in claiming refund or tax credit under Section 112(A) must be complied with:

(1) The taxpayer is VAT-registered;
(2) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) The input taxes are due or paid;
(4) The input taxes are not transitional input taxes;
(5) The input taxes have not been applied against output taxes during and in the succeeding quarters;
(6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
(8) 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; and
(9) The claim is filed within two (2) years after the close of the taxable quarter when such sales were made

A careful perusal of the records reveal that respondent complied with the above-mentioned criteria, except for numbers 7 and 8 as the instant case neither involve zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2) nor does it involve mixed transactions. We find that the Court's Division correctly ruled as follows:

> *"xxx, [A] taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:*
> *1. that the claimant must be a VAT-registered person;*

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[11] Southern Philippines Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 179632, October 19, 2011; San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

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

Regarding the first requisite, petitioner is registered with the BIR as a VAT taxpayer, with Taxpayer Identification No. 008-289- 280-000. Thus, petitioner has satisfied the first requisite.

As to the sixth requisite, Section 112(A) of the 1997 NIRC clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.

Petitioner's zero-rated sales were made, at the earliest, in the 1st quarter of 2013. Counting two years therefrom, petitioner had until March 31, 2015 within which to file its administrative claim with the BIR. The administrative claim for refund or issuance of a tax credit certificate was filed by petitioner with the BIR RDO No. 80 on September 18, 2014. Thus, the administrative claim was timely filed within the said two-year prescriptive period.

Corollary thereto, Section 112(C) of the 1997 NIRC provides a specific period for the BIR Commissioner to act on the refund claim, as well as the taxpayer's remedy in case of denial or inaction thereof, to wit:

xxx xxx xxx.

In Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, the Supreme Court discussed the prescribed procedure relative to Section 112(C) of the NIRC of 1997, as amended, thus:

"We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter

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when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods."

As shown above, from the date of submission of complete documents in support of an administrative claim for refund with the BIR, the Commissioner of Internal Revenue has a period of 120 days within which to act on a claim for refund or application for issuance of tax credit certificate. Upon denial thereof, or upon expiration of the 120-day period, the taxpayer has a 30-day period within which to appeal said adverse decision or unacted claim before this Court.

Petitioner was able to submit complete documents in support of its claim for refund, as evidenced by the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund signed by a BIR Revenue Officer on September 30, 2014.

Respondent counters that petitioner failed to comply with the checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98; hence, there was no sufficient compliance with the filing of administrative claim for refund, which is an indispensable requirement prior to the filing of a judicial claim pursuant to the NIRC of 1997, as amended.

The Court finds for petitioner.

As borne by the records, petitioner simultaneously submitted the supporting documents when it filed its

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administrative claim for refund or issuance of tax credit certificate on September 18, 2014, xxx:

xxx xxx xxx.

The Court will now proceed to determine petitioner's compliance with the remaining requisites.

As regards the second requisite, petitioner posits that it is engaged in zero-rated or effectively zero-rated transaction arising from the lease of its 5 parcels of land it purchased from Cebu Light Industrial Park to KEPC. It asserts that it is entitled to a refund or issuance of tax credit certificate for its unutilized input VAT incurred during the 3rd quarter of 2012, arising from the said purchase of land attributable to its zero-rated sales, in accordance with Section 108(8)(3) of the 1997 NIRC. Section 108(8)(3) is quoted hereunder for ready reference:

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Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.

In Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc., the Supreme Court explained that:

"Sales of goods, properties and services by a VAT registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (i.e., the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

To prove that its client is a PEZA-registered enterprise, petitioner submitted (1) KEPC's Certificate of Registration as an Ecozone Export Enterprise at the Cebu Light Industrial Park-Special Economic Zone; (2) PEZA

Certification attesting that KEPC is a qualified enterprise for the purpose of VAT zero-rating; (3) KEPC's Articles of Incorporation; and (4) Contract of Lease between petitioner and KEPC executed on January 7, 2013, involving the 5 parcels of land. In addition, petitioner furnished this Court the official receipts evidencing the rental income it received from KEPC, detailed as follows:

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A closer scrutiny of petitioner's original and/or amended Quarterly VAT Returns for taxable years 2013, 2014 and 2015 clearly shows that the above rental fees have been declared by petitioner. Therefore, petitioner's lease of land to KEPC qualifies for VAT zero-rating and the input VAT attributable thereto may be a proper subject of a claim for refund or issuance of a tax credit certificate.

The Court shall now ascertain whether petitioner had incurred input VAT in connection to its VAT zero-rated receipts. It is evident from the Quarterly VAT Return for the 3rd quarter of 2012 that petitioner reported an input VAT from domestic purchase of goods other than capital goods in the amount of P38,736,174.00. The said input VAT pertains to its purchase of 5 parcels of land from Cebu Light Industrial Park, which were subsequently leased to KEPC, as evidenced by the Deed of Absolute Sale entered into by petitioner with Cebu Light Industrial Park and the Sales Invoice No. 000241 dated September 14, 2012, duly issued by the latter to petitioner

As regards the fifth requisite, it must be remembered that when claiming tax refund/credit, the VAT-registered taxpayer must be able to establish that it does have a refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities - information which are supposed to be reflected in the taxpayer's VAT returns. Thus, an application for tax refund/credit must be accompanied by copies of the taxpayers VAT return/s for the taxable quarter concerned.

Applying the foregoing principle, the Quarterly VAT Returns for the succeeding taxable quarters of 2013, 2014 and 2015 reveal that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Even though the claimed input VAT of P38,736,174.00 was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its amended Quarterly VAT Return for the 3rd quarter of 2014."

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To reiterate, neither the law nor the implementing regulations provide that in claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid; that the input tax in the purchase of land be refunded only when it was sold or input tax thereon be apportioned to the period of lease. Neither does the law nor the implementing regulations provide that the option to carry over to the succeeding quarters any unutilized input tax precludes the option to file a claim for refund.

In sum, the arguments raised to support the petition were bereft of legal basis. Hence, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by the evidence on record and it is consistent with prevailing law and jurisprudence.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated April 20, 2016, rendered by the Second Division of this Court in CTA Case No. 8983, and its Resolution dated August 11, 2016 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice