Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CBK POWER COMPANY LIMITED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8624

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
COTANGCO-MANALASTAS, J.J.

Promulgated:
SEP 14 2015
4:15 p.m.

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DECISION

CASANOVA, J.:

This resolves the Petition for Review,[1] filed by petitioner-CBK Power Company Limited, on April 1, 2013, praying that a judgment be rendered ordering respondent-Commissioner of Internal Revenue to grant or issue to petitioner a cash refund/tax refund in the amount Sixty Nine Million Five Hundred Twenty Five Thousand Six Hundred Twenty Four & 24/100 Pesos (₱69,525,624.24)[2], representing unutilized input taxes on its local purchases of goods other than capital goods, importation of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding ₱1 million, for the period January 1, 2011 to December 31, 2011, all attributable to zero-rated sales for the period January 1, 2011 to December 31, 2011, pursuant to Sections 108(B)(7) and 112(A) of the Tax Code of 1997, as amended.

The facts of the case, as culled from the records, are as follows:

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[1] Docket (Vol. I), pp. 6-22.
[2] Should be ₱69,525,654.27 as stated in the Issues to be Resolved, Par. 2, Joint Stipulation of Facts and Issues, Docket (Vol. II), p. 1031.

Petitioner is a partnership duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at the NPC Compound, Kalayaan, Laguna.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, including inter alia, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law, with office address at the BIR National Office Building, Diliman, Quezon City, where she may be served with summons and other court processes.[4]

On November 28, 2012, petitioner filed with the BIR Large Taxpayers Service, Revenue District Office No. 121, BIR National Office Building, its administrative claim for the issuance of a cash refund/tax refund in the amount of ₱69,525,624.24[5], representing unutilized input taxes on its local purchases of goods other than capital goods, importation of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding ₱1 million, for the period January 1, 2011 to December 31, 2011, all attributable to zero-rated sale for the period January 1, 2011 to December 31, 2011.[6]

Due to respondent's inaction, petitioner filed its Petition for Review with this Court on April 1, 2013.

On June 27, 2013, respondent filed her Answer, interposing the following Special and Affirmative Defenses:

> **"<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**
>
> 4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
>
> 5. To support its claim, it is imperative for petitioner to prove the following, *viz:*
>
> > *a. The registration requirements of a value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;*

[3] Par. 1, Petition for Review, Docket (Vol. I), p. 6.
[4] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. II), p. 1030.
[5] See footnote no. 2.
[6] Par. 16, Petition for Review, Docket (Vol. I), pp. 12-13.

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, ***otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim*** *in accordance with Section 112 of the Tax Code, as amended. This requires the* ***submission of complete documents in support of the application filed*** *with the Bureau of Internal Revenue before the 120-day audit period shall apply, and* ***before the taxpayer could avail of the judicial remedies as provided for in the law.*** *Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of petitioner's petition for review;*

d. That the input taxes of Php69,525,624.24 allegedly paid by petitioner its (sic) purchases of goods other than capital goods, importation of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding P1 million for 2011 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. ***That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) were filed within the periods provided in Sections 112 (A) and (D) of the Tax Code, as amended;***

f. That petitioner's purchases of goods other than capital goods, importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding P1 million were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of

Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits).

6. Petitioner must prove the that the aggregate amount of P69,525,624.24 allegedly representing unutilized input taxes for the period of January 1, 2011 to December 31, 2011, is properly documented.

7. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund are the unutilized input taxes on *its purchases of goods other than capital goods, importation of goods other than capital goods, local purchases of services, payments for service rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding P1 million* covering the period from January 1, 2011 to December 31, 2011.

8. It is noteworthy that the instant petition involves a claim for refund in the amount of Sixty Nine Million Five Hundred Twenty Five Thousand Six Hundred Twenty Four and 24/100 Pesos (69,525,624.24) allegedly paid and incurred for the period of January 1, 2011 to December 31, 2011 is not warranted for lack of jurisdiction since petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

9. Unmistakably, Section 1 (j) of Rule 16 of the 1999 Rules of Civil Procedure provides that:

'MOTION TO DISMISS'

Section 1. Grounds.— Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
xxx

(j) That a condition precedent for filing the claim has not been complied with.'

10. Corollary thereto, Section 112 (D) [now Section 112 (c) of the Tax Code of 1997] provides as follows, *to wit:*

'SEC. 112. Refunds or Tax Credits of Input Tax.-

X X X

> ***(D) 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 Subsections (A) and (B) 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)*

Pursuant to the aforequoted provision of law, the Commissioner of Internal Revenue ('CIR', *for brevity*) has 120 days from the **submission of the complete supporting documents** to decide the claim for refund. It logically follows that a taxpayer **must first submit the complete supporting documents before the 120-day period should commence.** The CIR cannot decide the claim for refund without the complete supporting documents.

14. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

> ***VALUE-ADDED TAX***
>
> *(For audit involving Claim for Refund/TCC)*
>
> *A.) Requirements from Taxpayer*
>
> *I. Requirements mention in Annex B*
>
> *II. Additional General Requirements*
>
> *1) 3 copies of 'Application for VAT Credit/Refund'*
>
> *2) Summary List of Local Purchases specifying the following:*

xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipt must be arranged according to the summary list)

4) Summary of importations made and during the period with the following details:

XXX XXX XXX

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarters showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and the date of transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation-for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has *been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.*

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect importer.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and the amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

> 2) *Proof of Tax Compliance Certificates applied*
>
> 3) *Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable*
>
> 4) *Proof of payment of deficiency tax, if any*
> a) *current year/period*
> b) *previous year/period*
>
> 5) *Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives. if applicable*
>
> 6) *Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable*
>
> 7) *Proof of exemption under special law, if applicable*
>
> 8) *Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable*
>
> 9) *Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable*
>
> 10) *Proof of 'Approval for Effective Zero-Rating of Sales', if applicable*
>
> 11) *Sample invoice/s for 'Export/Exempt Sales,' if applicable*
>
> 12) *Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.*

Indubitably, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

15. Upon examination of the BIR records shows that petitioner failed to prove that it has submitted the complete documents to substantiate its administrative claim for refund and to reckon the commencement of the 120-day period for the CIR. This is a requirement established by law and jurisprudence. Ergo, respondent humbly submits that failure on the part of petitioner to submit the required complete supporting documents would render the instant petition with this Honorable Court to have been prematurely filed.

16. This is not a claim for refund of erroneously or illegally collected taxes where petitioner may choose the evidence it wishes to submit to prove its case. This is merely a claim for excess input taxes where the prescribed documentation is needed by the BIR

17. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

18. Respondent respectfully avers that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under the **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> *'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court.* ***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 claims. In this case, it was necessary***

> ***<u>for petitioner to show the CTA not only that it was entitled under the 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.</u>*** *Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence in the CTA.* ***<u>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.'</u>*** *(Emphasis and underscoring supplied)*

19. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

20. Well-settled is the rule that exhaustion of available administrative remedies is a condition *sine qua non* before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

21. Moreso, the Honorable Supreme Court had the occasion to rule that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. Thus, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the

matter itself correctly and prevent unnecessary and premature resort to the court.

22. The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, court will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.

23. Respondent respectfully submits that the 120-day period provided for by law within which the CIR has to act on petitioner's claim for refund has not yet commenced considering petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit *(i.e submission of complete supporting documents).* While it is true that petitioner filed an administrative claim for refund, the same is considered merely *pro forma* as it failed to submit a complete documentary evidence to prove its entitlement thereto. Petitioner here failed to substantiate its administrative claim for refund.

24. Had petitioner submitted all relevant documents to substantiate its claim for refund or tax credit, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount. Such failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function. It must be remembered, that in the case of *Jariol vs. Commission on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

25. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. Another thing, the respect and consideration due to each branch of

the government demand that the judicial department abstain, whenever possible from interfering in the acts of other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them.

26. Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, held:

> *'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. 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. <u>Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim.</u>* ***<u>In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.</u>*** *xxx'*

Thus, as early stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

27. Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of formality but is jurisdictional in nature.

28. Precinding from and anent the foregoing considerations, petitioner's failure to exhaust all available administrative remedies which led to the premature filing of the instant petition divests the Honorable Court jurisdiction over the instant petition.

29. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.

30. 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. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

31. It can never be emphasized enough in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> *'Tax refunds are in the nature of tax exemptions, and are to be construed strictissimi juris against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.*

32. Taxes collected are presumed to be in accordance with laws and regulations.

33. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

34. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant Petition should be dismissed for lack of jurisdiction and/or for lack of merit."

On July 19, 2013, the Court issued a Notice of Pre-Trial Conference[7] setting the hearing for the same on September 12, 2013 at 1:30 p.m. and requiring the

[7] Docket (Vol. I), p. 289.

parties to file their respective pre-trial brief. In compliance therewith, petitioner filed its Pre-Trial Brief[8] on September 5, 2013, while the Pre-Trial Brief[9] for respondent was filed on September 9, 2013.

On October 1, 2013, the parties filed their Joint Stipulation of Facts and Issues[10], which resulted to the issuance of a Pre-Trial Order[11] dated October 11, 2013.

Thereafter, the trial of the case proceeded giving both parties the opportunity to present their documentary and testimonial evidence. Petitioner filed its Formal Offer of Evidence-First Part[12] on February 21, 2014 and its Formal Offer of Evidence-Second Part[13] on March 28, 2014, which were all admitted in a Resolution[14] promulgated on May 20, 2014. For her part, respondent manifested, in her Manifestation with Motion[15] dated July 2, 2014 that she will no longer present evidence.

On September 16, 2014, the case was submitted[16] for decision, taking into consideration the Memorandum for the Petitioner[17] and respondent's Memorandum[18] filed on July 15, 2014 and September 9, 2014, respectively.

Hence, this Decision.

The following are the parties' jointly stipulated issues[19] submitted for this Court's resolution:

1. Whether or not petitioner's sale of services to the National Power Corporation (NPC) for the period January 1, 2011 to December 31, 2011, qualify as zero-rated sales.

2. Whether or not petitioner has duly substantiated its claim for the issuance of a cash refund/tax refund in the amount of ₱69,525,654.27, allegedly representing unutilized input taxes on Petitioner's local purchases of goods other than capital goods, importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on

[8] Docket (Vol. II), 341-360.
[9] Docket (Vol. II), pp. 1039-1043.
[10] Docket (Vol. II), pp. 1030-1032.
[11] Docket (Vol. II), pp. 1034-1038
[12] Docket (Vol. III), pp. 1079-1091.
[13] Docket (Vol. III), pp. 1097-1142.
[14] Docket (Vol. III), pp. 1146-1147.
[15] Docket (Vol. III), pp. 1154-1157.
[16] Docket (Vol. III), p. 1205.
[17] Docket (Vol. III), pp. 1160-1182.
[18] Docket (Vol. III), pp. 1195-1204.
[19] Issues to be Resolved, Joint Stipulation of Facts and Issues, Docket (Vol. II), p. 1031

purchases of capital goods exceeding ₱1M, for the period January 1, 2011 to December 31, 2011, all attributable to zero-rated sales for the period January 1, 2011 to December 31, 2011, pursuant to Sections 108(B)(7) and 112(A) of the Tax Code of 1997, as amended.

3. Whether or not petitioner had timely and duly filed its administrative and judicial claims for the issuance of a cash refund/tax refund in the amount of ₱69,525,654.27, allegedly representing unutilized input taxes on petitioner's local purchases of goods other than capital goods, importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding ₱1M, for the period January 1, 2011 to December 31, 2011, all attributable to zero-rated sales for the period January 1, 2011 to December 31, 2011, pursuant to Sections 108(B)(7) and 112(A) of the Tax Code of 1997, as amended.

4. Whether or not petitioner is entitled to the issuance of a cash refund/tax refund in the amount of Sixty Nine Million Five Hundred Twenty Five Thousand Six Hundred Fifty Four & 27/100 Pesos (₱69,525,654.27), allegedly representing unutilized input taxes on petitioner's local purchases of goods other than capital goods, importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, and amortized input taxes on purchases of capital goods exceeding ₱1M, for the period January 1, 2011 to December 31, 2011, all attributable to zero-rated sales for the period January 1, 2011 to December 31, 2011, pursuant to Sections 108(B)(7) and 112(A) of the Tax Code of 1997, as amended.

In gist, the principal issue is whether or not petitioner is entitled to the issuance of tax refund in the amount of ₱69,525,654.27 for the periods covering January 1, 2011 to December 31, 2011.

The Court finds the Petition for Review partly meritorious.

Petitioner timely filed its original quarterly VAT returns for the taxable year 2011[20], which were all subsequently amended on November 22, 2012[21].

Based on these amended returns, petitioner filed an administrative claim[22] dated November 28, 2012 to the Bureau of Internal Revenue (BIR), Large Taxpayers Service, RDO No. 121, for the issuance of cash refund/tax refund of its unutilized

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[20] Exhibits "P-100-A-5", inclusive of sub-markings, to "P-100-A-8", inclusive of sub-markings.
[21] Exhibits "P-100-A-1", inclusive of sub-markings, to "P-100-A-4", inclusive of sub-markings.
[22] Exhibits "P-1" and "P-2".

input taxes in the amount of ₱69,525,654.27[23], which consisted of the following input taxes, to wit:

Input Taxes on Local/Domestic Purchases of Goods Other Than Capital Goods	₱ 15,059,145.56
Input Taxes on Importations of Goods Other Than Capital Goods	25,339,312.00
Input Taxes on Local/Domestic Purchases of Services	28,287,880.07
Input Taxes on Services Rendered by Non-residents	993,211.80
Amortized Input Taxes on Purchases of Capital Goods Exceeding P1 Million for 2011 and previous years	1,824,819.13
Total Input Taxes	**71,504,368.56**
Less: Output Taxes on Sale of Scrap and Disposal of Service Vehicle	1,978,714.29
Total Unutilized Input Taxes for Calendar Year 2011	**₱ 69,525,654.27**

Pertinent to a claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sale or effectively zero-rated sales is Section 112 (A) and (C) of the Tax Code of 1997, as amended, which provides:

"Section 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 of 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

[23] Exhibit "P-1", p. 9.

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.

xxx xxx xxx."

Enumerated hereunder are the requisites that must be complied with under the foregoing provision:

1) the claimant must be a value-added tax ("VAT")-registered person;

2) there must be zero-rated or effectively zero-rated sales;

3) input taxes were incurred or paid;

4) said input taxes are attributable to zero-rated or effectively zero-rated sales;

5) 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.

I. *6th Requisite:* Petitioner's administrative and judicial levels were seasonably filed.

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

Based on the afore-quoted provision of Section 112, the administrative claim for refund/issuance of tax credit certificate of unutilized excess input VAT attributable to zero-rated sales must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four (4) quarters of the taxable year 2011 or from January 1, 2011 to December 31, 2011. Counting two (2) years from the end of each quarter, petitioner had until March 31, 2013, June 30, 2013, September 30, 2013 and December 31, 2013, respectively, within which to file its administrative claim for tax credit certificate/refund. Evidently, the administrative claim for refund of unutilized excess input taxes, filed on November 28, 2012, is well within the two-year prescriptive period.

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

In this case, records reveal that petitioner timely filed its original quarterly VAT returns for the taxable year 2011[24], which were all subsequently amended on November 22, 2012[25]. Thereafter, on November 28, 2012, petitioner filed its administrative claim[26] for refund with the Bureau of Internal Revenue (BIR), together with its BIR Form No. 1914 (Application for Tax Credits/Refunds)[27] and supporting documents contained in three (3) folders and four (4) boxes[28]. And, since there was no written notice sent by the BIR informing petitioner that the documents it submitted were not complete or requiring petitioner to submit additional documents, the 120-day period started and continued to run from November 28, 2012, the date petitioner submitted its administrative claim for refund.

Hence, applying subsection (C) of Section 112, respondent has 120 days or until March 28, 2013 to act on the said application. After the lapse of the 120-day period, petitioner may appeal the unacted administrative claim within 30 days or until April 27, 2013. Consequently, there is no doubt that petitioner seasonably filed its judicial claim on April 1, 2013.

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[24] Exhibits "P-100-A-5", inclusive of sub-markings, to "P-100-A-8", inclusive of sub-markings.
[25] Exhibits "P-100-A-1", inclusive of sub-markings, to "P-100-A-4", inclusive of sub-markings.
[26] Exhibits "P-1" and "P-2".
[27] Exhibit "P-2".
[28] Exhibit "P-1", pp. 10 to 13.

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

We shall now ascertain compliance with the first requisite—that the claimant must be a VAT-registered person.

Perusal of the records reveals that petitioner is registered as a value-added tax (VAT) entity with TIN/VAT No. 205-760-474-000 as shown in its BIR Certificate of Registration OCN 8RC0000019901 dated April 10, 2000[29]. It was classified as a Large Taxpayer under the Large Taxpayers Service (LTS) pursuant to Revenue Regulations (RR) No. 17-2010 under the jurisdiction of Revenue District Office (RDO) No. 121 effective January 1, 2011, based on respondent's letter dated December 21, 2010, informing petitioner of its new taxpayer classification[30].

Thus, there is no doubt that petitioner complied with the first requisite.

III. *2nd Requisite:* Petitioner has zero-rated sales.

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

> "**SEC.108. Value-added Tax on Sale of Services and Use or Lease of Properties.—**
>
> (B) Transactions Subject to Zero Percent (0%) Rate. —
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

In relation thereto, Section 4.108-5 (b) (7) of Revenue Regulations No. 16-2005[31], implementing the afore-quoted provision, qualifies the applicability of such zero-rating as follows:

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[29] Exhibit "P-13".
[30] Exhibit "P-14".
[31] Zero-Rated Sale of Services.

"(b) ***Transactions Subject to Zero Percent (0%) VAT Rate.*** — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; Provided, however, That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

Corollary thereto, Section 4.108-3(f) of the same Revenue Regulations provides:

"SEC. 4.108-3. Definitions and Specific Rules on Selected Services. —

xxx xxx xxx

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; Provided, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.

'Generation companies' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Thus, to qualify for VAT zero-rating, petitioner must prove that it is engaged in the sale of power or fuel generated through renewable sources of energy.

Petitioner, as shown by its SEC Registration[32] and Amended Certificate of Partnership[33], is a special purpose entity, the sole purpose of which is to engage in all aspects of (a) the design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of Kalayaan II pumped-storage hydroelectric power plant, the New Caliraya Spillway, and other assets to be located in the Province of Laguna, and (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.

Petitioner entered into a Second Accession Undertaking[34] with the National Power Corporation (NPC), Industrias Metalurgicas Pescarmona, S.A. (IMPSA), and CBK Power Corporation on September 20, 2000, wherein petitioner became a party to the Build-Rehabilitate-Operate-Transfer (BROT) Agreement[35] dated November 6, 1998. Under the BROT Agreement and by virtue of the Second Accession Undertaking, petitioner shall cause and be responsible for the rehabilitation, construction, operation and maintenance of the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for the NPC[36]. In consideration thereof, NPC shall pay petitioner Capital Recovery Fees and Operation and Maintenance Fees and other fees in accordance with the BROT Agreement[37].

In performing its obligations under the BROT Agreement and the Accession Undertaking, petitioner entered into an Agreement with IMPSA Construction Corporation designated as Turnkey Contract[38] on August 18, 2000, by virtue of which IMPSA Construction Corporation, as Contractor, undertook the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of such power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement[39].

Petitioner generates electricity through its Caliraya, Botocan and Kalayaan I hydroelectric power plants, as well as from the Kalayaan II hydroelectric power plant. The plants generate electricity by drawing water from an upstream reservoir, passing the water through a penstock and in the process utilizing the force of gravity to rotate the turbines. The turbines in turn rotate the generators, thereby generating electricity.[40]

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[32] Exhibit "P-11".
[33] Exhibit "P-12".
[34] Exhibit "P-4".
[35] Exhibit "P-3".
[36] A5, pp. 2-3,Exhibit "P-16"
[37] Par. 2.1.5, Article 2, Exhibit "P-3".
[38] Exhibit "P-5".
[39] Exhibit "P-16".
[40] A5, p. 3, Exhibit "P-16".

Petitioner's Caliraya, Botocan, Kalayaan I and Kalayaan II power plants were found by the Energy Regulatory Commission (ERC) to be compliant with the pertinent rules and regulations as evidenced by the Certificates of Compliance (COCs)[41] issued by the ERC to petitioner.

A verification of various sales invoices[42] and official receipts[43] issued by petitioner to NPC showed that for the taxable year 2011, petitioner derived revenues from sales of electricity to NPC in the amount of ₱2,429,357,067.29 which was reflected in its Quarterly VAT Returns[44], as follows:

Exhibit	Taxable Quarter (Year 2011)	Zero-Rated Sales
P-100-A-1	1st Quarter	₱ 605,910,427.96
P-100-A-2	2nd Quarter	607,224,729.64
P-100-A-3	3rd Quarter	603,875,740.13
P-100-A-4	4th Quarter	612,346,169.56
	Total	**₱ 2,429,357,067.29**

With the foregoing sales of electricity generated through a renewable source of energy, particularly, hydropower, the Court finds that the same qualifies for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Having resolved that petitioner's sales of electricity to NPC for the taxable year 2011 in the amount of ₱2,429,357,067.29 qualifies for VAT zero-rating, the amount of input VAT attributable thereto will now be determined.

IV. *3rd Requisite:* Petitioner incurred or paid input taxes.

To prove that it incurred/paid the excess input VAT amounting to ₱69,525,654.27 for the taxable year 2011, petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), and BOC Statements of Settlement of Duties and Taxes[45] which were examined by the Court-commissioned Independent CPA (ICPA), Ms. Myra Celeste O. Dabalos.

Upon scrutiny of the ICPA's final report[46] and supplemental audit reports[47] and related supporting documents, the Court finds that the input taxes in the amount of ₱694,002.91 should be disallowed for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as

[41] A5, pp. 2-3, Exhibits "P-6" to P-9".
[42] Exhibits "P-100-H-001" to "P-100-H-263", inclusive of sub-markings.
[43] Exhibits "P-100-J-001" to "P-100-J-278", inclusive of sub-markings.
[44] Exhibits "P-100-A-1", inclusive of sub-markings, to "P-100-A-4", inclusive of sub-markings.
[45] Exhibits "P-100-C-010001" to "P-100-C-120678".
[46] Exhibit "P-100", pp. 16-18.
[47] Exhibit "P-100-R", pp. 5-8.

amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8 and 4.113-1 of RR No. 16-05, as amended. Below is the detailed breakdown of the disallowed input VAT of ₱694,002.91 :

Exhibit Reference	Description	Input VAT Claimed
P-100-D-9	Input tax for CY 2011 on domestic purchases of services supported with VAT OR but without OR date	₱325.18
P-100-D-10	Supplier's name in the supporting document is different from the supplier's name indicated in the summary list of purchase of services	1,434.40
P-100-D-12	Input tax for CY 2011 on domestic purchase of goods supported by a VAT INVOICE issued in the Petitioner's name but without the Petitioner's TIN and/or address; Supported by VAT OR with TIN and Address	11,955.50
P-100-D-13	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR issued in the Petitioner's name but without the Petitioner's TIN and/or Address but supported by VAT INVOICE with TIN and Address	16,657.27
P-100-D-14	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but with corrections in the name of the Petitioner without counter signature	17,826.38
P-100-D-15	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but with correction in the OR date without counter signature in the year of the invoice date	277.43
P-100-D-16	Input tax for CY 2011 on domestic purchase of services supported by VAT OR issued in the name of the Petitioner, but the TIN of the Petitioner indicated is incorrect	339.64
P-100-D-17	Input tax for CY 2011 on domestic purchase of goods supported by TIN Sales Invoice with TIN VAT OR	4,607.14
P-100-D-18	Input tax for CY 2011 on domestic purchase of goods supported by a valid VAT INVOICE with correction in the amount without counter signature	171.43
P-100-D-19	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but with corrections in the amount without counter signature	21,392.83
P-100-D-20	Input tax for CY 2011 on domestic purchases of services supported by Non VAT Reg TIN OR with stamped VAT registered	35,935.20
P-100-D-22	Input tax for CY 2011 on domestic purchase of goods supported by a VAT INVOICE issued in the Petitioner's name but without the Petitioner's TIN and/or address; Supported by VAT OR without TIN and/or Address	526.50
P-100-D-23	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR issued in the Petitioner's name but without the Petitioner's TIN and/or Address but supported by VAT INVOICE or any other document without TIN and/or Address	84,529.23

P-100-D-24	Input tax for CY 2011 on domestic purchase of goods supported by documents other than a VAT INVOICE (i.e., VAT OR etc.)	55,488.15
P-100-D-25	Input tax for CY 2011 on domestic purchase of services supported by documents other than a VAT Official Receipt (OR) but Supported by any other VAT document (i.e., VAT INVOICE etc.)	59,875.92
P-100-D-26	Input tax for CY 2011 on domestic purchases of goods supported by a VAT INVOICE but not an original copy	7,875.06
P-100-D-27	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but not an original copy	45,119.71
P-100-D-28	Input tax for CY 2011 on domestic purchase of services supported by VAT OR. However, the sentence "This is not a source of input tax.", "Not to be used as source of input tax" or "Not valid for input tax" is printed in the VAT OR.	56,573.01
P-100-D-29	Input tax for CY 2011 on domestic purchase of goods supported by a VAT INVOICE but is not BIR-Registered	326.98
P-100-D-30	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but is not BIR-Registered	135,610.21
P-100-D-31	Input tax for CY 2011 on domestic purchase of goods supported by a VAT INVOICE but not dated within the VAT taxable year	14,823.77
P-100-D-32	Input tax for CY 2011 on domestic purchase of services supported by documents other than a VAT Official Receipt (OR) but Supported by other Non-VAT document	24,688.58
P-100-D-33	Input tax for CY 2011 on domestic purchases of services supported by a tape receipt without Petitioner's name and/or TIN	128.57
P-100-D-34	Input tax for CY 2011 on domestic purchase of goods and services WITHOUT supporting VAT ORs and VAT invoices	4,278.21
P-100-D-35	Overclaimed Input tax for CY 2011 on domestic purchases of goods/services due to erroneous computation (i.e., arithmetical error)	4,023.04
P-100-D-37	Overclaimed portion of input tax for CY 2011 arising from forex rate used on foreign currency denominated purchases of goods and services	89,213.57
	Total	**₱ 694,002.91**

Also, the Court noted the following findings of the ICPA:

Item	**Exhibit Reference**	**Description**	**Input VAT Claimed**
1	P-100-D-1	Input tax for CY 2011 on purchase of goods, services and importations that are supported by VAT INVOICEs (for goods) or VAT ORs (for services), BIR Form 1600 filed with the BIR (for VAT withheld)Import entry and internal revenue	67,568,242.75

		declaration (IEIRD) and BOC ORs (for importations) that are issued in the name of the Petitioner in the quarter where the input taxes are claimed	
2	P-100-D-2	Input tax for CY 2011 on domestic purchase of goods supported by a valid VAT INVOICE with correction in the Invoice amount with counter signature	219,885.65
3	P-100-D-3	Input tax for CY 2011 on domestic purchase of goods supported by a valid VAT INVOICE with correction in the Invoice date with counter signature	45,408.91
4	P-100-D-4	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but with correction in the Petitioner's name with counter signature	201,035.14
5	P-100-D-5	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR with correction in the OR amount with counter signature	1,118,459.42
6	P-100-D-6	Input tax for CY 2011 on domestic purchases of services supported by a VAT OR with correction in the OR date with counter signature	334,740.80
7	P-100-D-21	Input tax for CY 2011 on domestic purchases of services supported by TIN OR only; stamped TIN VAT OR	198,817.12

However, upon further examination of the supporting documents submitted by petitioner, the Court finds that the following input taxes must be disallowed:

Item 1 – Said finding included input VAT in the amount of ₱544,037.00 related to petitioner's importations supported with Import Entry and Internal Revenue Declarations (IEIRDs) but without proof of payment of the corresponding taxes (including VAT) and other duties. Thus, pursuant to Section 4.110.8(a)(1) of RR No. 16-05[48], the input VAT of ₱544,037.00, detailed below, shall be disallowed from petitioner's claim:

[48] 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 and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods- import entry or other equivalent document showing actual payment of VAT on the imported goods.

Exhibit No.		Supplier	Amount of Input VAT Claimed
P-100-D-	070275-070276	ENERGY PREMIERE ASIA LIMITED	₱ 179,236.00
P-100-D-	100245	IMPSA	226,623.00
P-100-D-	110327-110328	VOITH FUJI HYDRO K.K.	138,178.00
		Total	**₱ 544,037.00**

Items 2 to 6 – Said findings included input VAT amounting to ₱450,687.71 wherein the countersignature on the corrections made in the supporting VAT invoice/OR is not similar to the signature of the authorized signatory in the VAT invoice/OR or it cannot be ascertained whether the person who countersigned the corrections is duly authorized by the petitioner's supplier. Hence, petitioner's claim shall be further reduced by ₱450,687.71, broken down as follows:

Exhibit No.			Supplier	Input VAT Claimed
P-100-D-2	**Input tax for CY 2011 on domestic purchase of goods supported by a valid VAT INVOICE with correction in the invoice amount with counter signature**			
	1st Quarter			
	P-100-D-	010216-010217	ARISTON COMMERCIAL, INC.	₱ 59,444.10
	P-100-D-	020357-020358	MOTORWORLD SALES CENTER	3,212.14
	P-100-D-	030437-030438	NORWOOD MACHINERY & PARTS SUPPLY	1,216.27
	P-100-D-	030451-030452	NATHTOWN TRADING	3,789.48
	P-100-D-	030470-030471	DAN DARYLL PHILS. INC.	889.29
	Subtotal			₱ 68,551.28
	2nd Quarter			
	P-100-D-	040151-040152	MULTIPLE J ENTERPRISES	₱ 774.78
	P-100-D-	060374-060375	MULTIPLE J ENTERPRISES	1,917.25
	P-100-D-	060374, 060376	MULTIPLE J ENTERPRISES	1,607.13
	P-100-D-	060374, 060377	MULTIPLE J ENTERPRISES	385.69
	P-100-D-	060379-060380	MULTIPLE J ENTERPRISES	712.50
	P-100-D-	060379, 060381	MULTIPLE J ENTERPRISES	850.49
	P-100-D-	060382-060383	MULTIPLE J ENTERPRISES	763.38
	P-100-D-	060382, 060384	MULTIPLE J ENTERPRISES	790.50
	P-100-D-	060474-060475	SOUTHERN CONTROLS IND.SUPPLY	15,028.80
	P-100-D-	060515-060516	NOVEE MERCHANDISING	600.00
	P-100-D-	060619	DAN DARYLL PHILS. INC.	109.29
	P-100-D-	040178-040179	SOUTHERN CONTROLS INDUSTRIAL SUPPLY	26,160.00
	Subtotal			₱ 49,699.81
	3rd Quarter			
	P-100-D-	080171-080172	ANAKI SYSTEMS SALES	₱ 2,628.00
	P-100-D-	080173-080174	ANAKI SYSTEMS SALES	18,428.57

	P-100-D-	080175-080176	BRAN PRES TRADING		710.14
	P-100-D-	080182-080183	CARBONMASTER INDUSTRIAL SALES INC.		9,000.00
	P-100-D-	080188-080189	FERVID INTERNATIONAL PRODUCTS INC.		1,068.00
	P-100-D-	080192-080193	ISOTRUST TRADING COMPANY		648.00
	P-100-D-	080204-080205	JJLL TRADING		2,390.95
	P-100-D-	080244-080245	MULTI SYSTEM INDUSTRIAL SALES		4,272.22
	P-100-D-	080246-080247	MULTIPLE J ENTERPRISES		178.03
	P-100-D-	090418-090419	EXALTA ENTERPRISE		345.54
	P-100-D-	090426-090427	INDEX INC.		1,132.79
	P-100-D-	090465-090466	TACTECHS INDUSTRIAL & ELECTRICAL		1,071.36
	P-100-D-	090493-090494	BARRIER SOFTWARE SERVICES		20,622.60
	P-100-D-	070249, 070252	MULTIPLE J ENTERPRISES		347.54
	P-100-D-	070259-070260	TOP RIGID INDUSTRIAL SAFETY SUPPY, INC.		981.21
	Subtotal			₱	63,824.95
	Total			₱	**182,076.04**
P-100-D-3	**Input tax for CY 2011 on domestic purchase of goods supported by a valid VAT INVOICE with correction in the invoice date with counter signature**				
	2nd Quarter				
	P-100-D-	050303-050304	CHAN TRADING	₱	9,618.42
	Subtotal			₱	9,618.42
	3rd Quarter				
	P-100-D-	070221-070222	ARVA ENTERPRISES	₱	26,571.43
	P-100-D-	080305-080306	GLUCS BUSINESS ENTERPRISES		1,282.08
	Subtotal			₱	27,853.51
	4th Quarter				
	P-100-D-	100188-100189	BRENDA ENTERPRISES & CONSTRUCTION SERVICES	₱	1,178.52
	P-100-D-	100217-100218	PHILIPPINE ENVIRONMENTAL		942.86
	P-100-D-	110202, 110204	HOLIDAY TRADING CORFPORATION		234.64
	P-100-D-	120532-120533	SWITCH INDUSTRIAL SALES		930.53
	P-100-D-	120417-120418	DELEX TRADING		4,650.43
	Subtotal			₱	7,936.98
	Total			₱	**45,408.91**
P-100-D-4	**Input tax for CY 2011 on domestic purchases of services supported by a VAT OR but with correction in the petitioner's name with counter signature**				
	1st Quarter				
	P-100-D-	020163-020164	HARTY INCORPORATED PHILS.	₱	151,285.71
	Subtotal			₱	151,285.71
	3rd Quarter				

	P-100-D-	080011-080012	FIRST LAGUNA ELECTRIC COOPERATIVE INC.	₱ 308.22
	Subtotal			₱ 308.22
	Total			₱ **151,593.93**
P-100-D-5	**Input tax for CY 2011 on domestic purchases of services supported by a VAT OR with correction in the OR amount with counter signature**			
	1st Quarter			
	P-100-D-	010178-010179	TOYOTA MAKATI, INC.	₱ 110.64
	Subtotal			₱ 110.64
	2nd Quarter			
	P-100-D-	050265-050266	TOYOTA BATANGAS CITY, INC.	₱ 863.28
	Subtotal			₱ 863.28
	3rd Quarter			
	P-100-D-	090254-090255	RGMD ENGINEERING WORKS AND GENERAL SERVICES	₱ 436.36
	Subtotal			₱ 436.36
	4th Quarter			
	P-100-D-	110095-110096	MICROBASE INCORPORATED	₱ 3,750.00
	P-100-D-	120182-120183	JOLLIBEE FOODS CORPORATION	1,490.89
	P-100-D-	120339-120340	HARTY INCORPORATED PHILS.	1,186.80
	Subtotal			₱ 6,427.69
	Total			₱ **7,837.97**
P-D100-6	**Input tax for CY 2011 on domestic purchases of services supported by a VAT OR with correction in the OR date with counter signature**			
	1st Quarter			
	P-100-D-	010145-010146	TAM-YAP CAGA & ASSOCIATES	₱ 16,466.87
	P-100-D-	010147-010148	TAM-YAP CAGA & ASSOCIATES	38,607.86
	P-100-D-	010163-010164	TCS MANPOWER SERVICES, INC.	1,516.29
	P-100-D-	020030-020031	COUNTERFLOW MOVERS INC.	4,497.84
	Subtotal			₱ 61,088.86
	2nd Quarter			
	P-100-D-	040035-040036	GLOBE TELECOM	₱ 97.56
	Subtotal			₱ 97.56
	4th Quarter			
	P-100-D-	120022-120023	COUNTERFLOW MOVERS INC.	₱ 2,584.44
	Subtotal			₱ 2,584.44
	Total			₱ **63,770.86**
	Grand Total			₱ **450,687.71**

Item 7 – Said finding included input VAT amounting to ₱66,654.00[49] which was actually supported by a valid VAT OR printed with "VAT Reg. TIN No." Therefore, the amount to be disallowed under such category should only be ₱132,163.12 (₱198,817.12 less ₱66,654.00).

Anent the amortized portion of deferred input tax arising from purchases of capital goods exceeding ₱1M amounting to ₱1,824,819.13, respondent avers that input taxes on capital goods incurred by petitioner shall be allowed only to the extent that such capital goods are used in VAT taxable business and that the latter failed to present documents to support the claim that capital goods are used only in VAT taxable business.[50]

Respondent anchors her averments on Section 4.106-1(B) of RR No. 7-95, to wit:

> "SECTION 4.106-1. *Refunds or Tax Credits of Input Tax.*
>
> xx xx xx
>
> (b) Capital Goods — Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> **Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.**
>
> "Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.
>
> xx xxx xxx" (Emphasis supplied)

Respondent cannot rely on the foregoing provision since the same is already superseded.

[49] Exhibit "P-100-D-100136".
[50] Respondent's Memorandum, Docket (Vol. III), pp. 1195 - 1203.

Said regulation was issued for the purpose of implementing the provisions of the NIRC, as amended by Republic Act (RA) No. 7716, where Section 106(b) thereof provides that "a VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made." The same provision was retained when the NIRC was later amended by RA No. 8424, assigning it anew as Section 112(B).

However, it must be noted that such provision was already deleted when the NIRC was later amended by RA No. 9337, which took effect on July 1, 2005, and implemented on November 1, 2005. Further, the aforementioned RR 7-95 was already superseded upon the issuance of RR No. 16-2005 on September 1, 2005.

Hence, the governing law and regulations applicable to the present case is Section 112(A) of the NIRC, as amended by RA No. 9337, as implemented by Section 4.112-1(a) of RR No. 16-2005, as amended.

In *Sitel Philippines Corporation (Formerly Clientlogic Philippines, Inc.) vs. Commissioner of Internal Revenue*[51], this Court interpreted the deletion of Section 112(B) of RA No. 8424 in its amending RA 9337 as creating a new rule that **input taxes on capital goods purchased may be claimed for refund or issuance of tax credit only if such input taxes are attributable to zero-rated sales**, based on the Senate Deliberations During the Second Reading of Senate Bill 1950, the precursor of RA 9337. The same was upheld in *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue*[52] with further clarification that input VAT incurred on capital goods can only be refunded if the same is attributable to zero-rated or effectively zero-rated sales, where the **refundable amount is either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month as provided under Section 110(A) of the NIRC of 1997, as amended.**

As such, petitioner is well-entitled to a refund of the amortized portion of the deferred input tax from purchases of capital goods.

Petitioner presented invoices, official receipts and other supporting documents[53], Property and Equipment account general ledgers[54], and Input Tax Receivable account general ledgers[55] to prove that it incurred input taxes from purchases of capital goods exceeding ₱1M and had correctly amortized such input

[51] CTA Case No. 7623, March 3, 2010.
[52] CTA Case No. 7695, March 7, 2011.
[53] Exhibits "P-100-F-1" to "P-100-F-127".
[54] Exhibits "P-100-T" to "P-100-Y".
[55] Exhibits "P-100-Z" to "P-100-EE".

taxes in accordance with Section 110(A)[56] and that such purchases were accordingly substantiated pursuant to Section 113(A) and (B) of the NIRC of 1997.

The following is a summary of the ICPA's findings on the verification of the submitted documents by petitioner:

Exhibit Reference	Description	Total input tax recorded	Total input tax amotized in 2011
P-100-S-1	Input tax on purchase of capital goods that are supported by VAT INVOICEs (for goods) or VAT ORs (for services) that are issued in the name of the Petitioner in the quarter where the input taxes are claimed	₱ 4,401,314.19	₱ 823,878.12
P-100-S-2	Input tax on domestic purchase of capital goods supported by an undated VAT INVOICE issued in the Petitioner's name but supported by VAT OR dated within the taxable quarter	226,071.43	45,214.13
P-100-S-3	Input tax on domestic purchase of capital goods supported by a VAT INVOICE issued in the Petitioner's name but without the Petitioner's TIN and/or address; Supported by VAT OR with TIN and Address	727,855.02	143,754.64
P-100-S-4	Input tax on domestic purchase of capital goods supported by a VAT INVOICE issued in the Petitioner's name but without the Petitioner's TIN and/or address; Supported by VAT OR without TIN and/or Address	1,168,822.67	122,639.68

[56] SEC. 110. *Tax Credits.* –
(A) *Creditable Input Tax.* -
xx xx xx
Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: Provided, finally, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
xx xx xx.

P-100-S-5	Input tax on domestic purchases of services pertaining to capital goods supported by a VAT OR issued in the Petitioner's name but without the Petitioner's TIN and/or Address but supported by VAT INVOICE with TIN and Address	1,555,368.01	271,338.80
P-100-S-6	Input tax on domestic purchases of services pertaining to capital goods supported by a VAT OR issued in the Petitioner's name but without the Petitioner's TIN and/or Address but supported by VAT INVOICE or any other document without TIN and/or Address	1,802,107.21	182,781.78
P-100-S-7	Input tax on domestic purchase of capital goods supported by documents other than a VAT INVOICE	26,672.74	741.15
P-100-S-8	Input tax on domestic purchase of services pertaining to capital goods supported by documents other than a VAT Official Receipt (OR)	1,227,507.09	116,745.39
P-100-S-9	Input tax on domestic purchases of capital goods supported by a VAT INVOICE but not an original copy	123,621.43	24,724.28
P-100-S-10	Input tax on domestic purchase of capital goods and services pertaining to capital goods WITHOUT supporting VAT ORs and VAT invoices	691,791.50	93,001.15
	Total Input VAT on Capital Goods	**₱ 11,951,131.29**	**₱ 1,824,819.12**

Among these findings, the Court finds that the amortized input VAT totalling ₱1,000,941.00 (₱1,824,819.12 less ₱823,878.12) related to purchases of capital goods exceeding ₱1Million as described in Exhibits "P-100-S-2" to "P-100-S-10" must be disallowed for failure of petitioner to comply with the VAT substantiation requirements.

As to the amortized input VAT in the amount of ₱823,878.12 classified by the ICPA under Exhibit P-100-S-1, *Our* further examination of the supporting documents show that the amount of ₱1,835.71, representing input VAT on petitioner's purchase of vehicle from Toyota Makati, Inc., does not have supporting VAT invoice, hence, must be disallowed:

Exhibit No.	Description	Amortized Input VAT
P-100-F-94, P-100-F-95	Vehicle – Toyota Makati Inc.	₱ 1,835.71

Proceeding therefrom, out of petitioner's input VAT claim of ₱69,525,624.24, only the amount of ₱66,701,986.82, as computed below, is duly substantiated:

Excess Input VAT Claim			₱ 69,525,654.27
Less: Disallowances			
	Exhibit Reference	Input VAT	
	P-100-D-9	₱ 325.18	
	P-100-D-10	1,434.40	
	P-100-D-12	11,955.50	
	P-100-D-13	16,657.27	
	P-100-D-14	17,826.38	
	P-100-D-15	277.43	
	P-100-D-16	339.64	
	P-100-D-17	4,607.14	
	P-100-D-18	171.43	
	P-100-D-19	21,392.83	
	P-100-D-20	35,935.20	
	P-100-D-22	526.50	
	P-100-D-23	84,529.23	
	P-100-D-24	55,488.15	
	P-100-D-25	59,875.92	
	P-100-D-26	7,875.06	
	P-100-D-27	45,119.71	
	P-100-D-28	56,573.01	
	P-100-D-29	326.98	
	P-100-D-30	135,610.21	
	P-100-D-31	14,823.77	
	P-100-D-32	24,688.58	
	P-100-D-33	128.57	
	P-100-D-34	4,278.21	
	P-100-D-35	4,023.04	
	P-100-D-37	89,213.57	₱ 694,002.91
	Included in Exh. P-100-D-1		544,037.00
	Included in Exhs. P-100-D-2 to P-100-D-6		450,687.71
	Included in Exh. P-100-D-21		132,163.12
	P-100-S-2	₱ 45,214.13	
	P-100-S-3	143,754.64	
	P-100-S-4	122,639.68	
	P-100-S-5	271,338.80	
	P-100-S-6	182,781.78	
	P-100-S-7	741.15	
	P-100-S-8	116,745.39	

	P-100-S-9	24,724.28	
	P-100-S-10	93,001.15	1,000,941.00
	Included in P-100-S-1		1,835.71
Total Disallowances			₱ 2,823,667.45
Refundable Excess Input VAT			**₱66,701,986.82**

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

Considering that the valid/substantiated excess input VAT of ₱66,701,986.82 is already net of petitioner's output tax liability for the taxable year 2011, the same is entirely attributable to petitioner's zero-rated sales for the same period.

Additionally, petitioner's reported unutilized excess input taxes for the taxable year 2011 amounting to ₱69,525,654.27[57] was deducted as "VAT Refund / TCC claimed" in the amended Quarterly VAT Return for the fourth quarter of taxable year 2011 preventing the carry-over or application of such input taxes in the next taxable quarter/s.

In sum, the Court finds that petitioner is entitled to the reduced amount of ₱66,701,986.82, representing unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the period January 1, 2011 to December 31, 2011.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX REFUND**, in favor of petitioner, in the reduced amount of ₱66,701,986.82, representing unutilized excess input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the period January 1, 2011 to December 31, 2011.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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[57] Exhibit "P-100-A-4a".

(On-Leave)
AMELIA C. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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