REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SMCC PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8356

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, ***JJ.***

Promulgated:

APR 1 2015
9:45 a.m.

x--x

DECISION

RINGPIS-LIBAN, J.

This is a Petition for Review[1] filed on October 19, 2011, to seek judicial relief from the Commissioner of Internal Revenue's (CIR) denial of petitioner SMCC Philippines, Inc.'s (SMCC) administrative claim for refund or application for the issuance of a tax credit certificate (TCC) which SMCC filed with the Bureau of Internal Revenue (BIR) on March 10, 2010.

STATEMENT OF THE CASE

Petitioner SMCC, is a corporation duly organized and existing under the laws of the Philippines, with principal office address at 2nd Floor Pioneer House, 108 Paseo de Roxas, Legaspi Village, Makati City, Philippines.

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[1] Docket (CTA Case No. 8356), pp. 6-31, with Annexes.

On the other hand, respondent is the duly appointed Commissioner of the Bureau Internal Revenue, who holds office at the Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City.

The facts as admitted by the parties in their Joint Stipulation of Facts[2] are as summarized as follows:

Petitioner is registered with the BIR and was issued TIN 004-813-382-000 and BIR Certificate of VAT Registration bearing RDO Control No. 9RC0000141056.

Petitioner is engaged in general construction business, manufacturing, acquiring, and furnishing all building and other tools and equipment connected therewith or required therefore, as well as manufacturing things incidental to or used in connection with any of such activities as shown in its Securities and Exchange Commission Certificate of Registration numbered AS 095-09484.

Petitioner filed with the BIR its monthly and quarterly VAT returns for the period covering January 2008 to December 2008.

MONTHLY RETURN FOR TAXABLE YEAR 2008	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
January 2008	February 26, 2008	March 25, 2008	October 14, 2010
February 2008	March 25, 2008	October 14, 2010	
April 2008	May 28, 2008	October 15, 2010	
May 2008	June 24, 2008	October 14, 2010	
July 2008	August 28, 2008	October 14, 2010	
August 2008	September 25, 2008	October 14, 2010	
October 2008	November 25, 2008	October 14, 2010	
November 2008	December 24, 2008	October 14, 2010	

MONTHLY RETURN FOR TAXABLE YEAR 2009	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
January 2009	February 23, 2009	October 14, 2010	
February 2009	March 23, 2009	October 14, 2010	October 22, 2010

QUARTERLY RETURN FOR 2008	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
1ST Quarterly Return (January to March 2008)	April 25, 2008	January 8, 2009	October 14, 2010
2nd Quarterly Return	July 25, 2008	January 8, 2009	October 14, 2010

[2] Docket, pp. 431-438.

(April to June 2008)			
3rd Quarterly Return (July to September 2008)	October 24, 2008	October 14, 2010	
4th Quarterly Return (October to December 2008)	January 26, 2009	October 14, 2010	

QUARTERLY RETURN FOR 2009	Date Filed ORIGINAL VAT RETURN	Date Filed AMENDED VAT RETURN	Date Filed SECOND AMENDED VAT RETURN
1ST Quarterly Return (January to March 2009)	April 24, 2009	October 18, 2010	October 22, 2010

Petitioner filed with the BIR-Revenue District Office ("RDO") No. 47 its Application for Refund/Tax Credit for excess input VAT for the four quarters of taxable year 2008 on 5 March 2010;

Petitioner received a letter from Respondent on 20 September 2011 denying the administrative claim for refund or issuance of TCC."

The Summons was issued on November 4, 2011.[3]

On November 23, 2011, the CIR filed a Motion for Extension of Time to File Answer, which motion was granted by the Court in an Order dated December 11, 2011.

Instead of filing an Answer, respondent filed on December 23, 2011, a Motion to Dismiss on the ground that the claim for refund or TCC was filed out of time. She prayed that the instant case be dismissed due to prescription or for lack of jurisdiction.

On January 3, 2012, the Court ordered petitioner to file its Comment or Opposition to the Motion to Dismiss.

On January 5, 2012, petitioner filed its Opposition and prayed that the Motion to Dismiss be denied because the petition was filed on time in accordance with the Tax Code, recent jurisprudence and other applicable laws.

On May 8, 2012, the Court issued a Resolution which denied the Motion to Dismiss for lack of merit. The Court ruled that petitioner timely filed its administrative claim for refund on March 5, 2012, since it was filed within two (2) years after the close of the taxable quarter when the sales were made. The Court also ruled that petitioner timely filed the instant petition because the

[3] Docket, p. 336.

same was filed within 30 days from receipt of the decision of respondent on September 20, 2011.

Respondent filed a Motion for Reconsideration (of the Resolution dated May 8, 2012).

On June 15, 2012, petitioner filed its Comment (to Respondent's Motion for Reconsideration).

On August 1, 2012, the Court denied the Motion for Reconsideration and ruled that petitioner timely filed both its administrative and judicial claims for refund.[4]

On August 23, 2012, the CIR filed her Answer,[5] interposing as its Special and Affirmative defenses that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected; and that petitioner's claim for refund or issuance of tax credit certificate in the amount of Php16,981,349.73 as alleged unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2008 was not fully substantiated by proper documents, such as sales invoices, official receipts and others.

On October 10, 2012, the parties filed their Joint Stipulation of Facts and Issues. On October 17, 2012, the Court issued the Pre-Trial Order.[6]

Trial thereafter ensued.

Petitioner presented Mr. Felix Anton Dishanta Dhalmedha Nissanka Arachchige Don and Ms. Myra Celeste O. Dabalos as its witnesses and the documentary evidence marked as Exhibits "A" to "SS-1" inclusive of sub-markings.

During the hearing on March 17, 2014[7], Atty. Catherine N. Herrera manifested that respondent will no longer present any evidence and is submitting the case for decision based on the pleadings and evidence presented by petitioner.

[4] Docket, p. 406.
[5] Ibid. at pp.409-411.

[6] Ibid. pp. 447 - 451.
[7] Docket, Minutes of the hearing, p. 1520.

In the Resolution[8] dated March 26, 2014, the parties were ordered to file their respective memoranda. On May 16, 2014, SMCC filed its Memorandum.[9] On May 15, 2014, respondent filed her Memorandum.[10]

This case was deemed submitted for decision in a Resolution[11] dated May 22, 2014.

ISSUES

As stipulated by the parties, the following are the issues[12] for this Court's consideration:

1. Whether Petitioner's sale of services to various PEZA-registered customers are subject to VAT at zero-percent;
2. Whether Petitioner has accumulated excess input VAT for the four quarters of taxable year 2008 amounting to P16,981,349.73;
3. Whether Petitioner's input VAT in the amount of P16,981,349.73 is directly attributable to its alleged zero-rated sales for the four quarters of taxable year 2008;
4. Whether Petitioner's input VAT in the amount of P16,981,349.73 remains unutilized;
5. Whether Petitioner's claim for refund or tax credit of alleged input VAT for the four quarters of taxable year 2008 is duly substantiated by documentary evidence;
6. Whether Petitioner has complied with the invoicing requirements pursuant to Revenue Regulations (RR) 16-2005;
7. Whether Petitioner is entitled to its claim for refund or issuance of TCC on its unutilized input tax attributable to zero-rated sales in the amount of Php16,981,349.73, incurred during the four quarters of taxable year 2008.

The issues raised boil down to the sole issue of whether or not petitioner is entitled to its claim for refund or issuance of TCC on its alleged unutilized input tax attributable to zero-rated sales in the amount of Php16,981,349.73, incurred during the four quarters of taxable year 2008.

PETITIONER'S ARGUMENTS

Petitioner claims that its sales to PEZA-registered entities are subject to VAT at zero percent (O%); that it has accumulated excess input VAT for the four quarters of taxable year 2008 amounting to P16,981,349.73; that the input

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[8] Ibid. p. 1522.
[9] Ibid. pp. 1533 – 1559.
[10] Ibid. pp-1560 -1568.
[11] Ibid. p. 1571.
[12] Ibid. pp. 437-438, Joint Stipulation of Facts and Issues.

VAT in the amount of P16,981,349.73 is directly attributable to its alleged zero-rated sales for the four quarters of taxable year 2008; that the input VAT was not utilized or carried forward to the succeeding taxable quarters; that it has complied with the invoicing requirements pursuant to RR No. 16-2005; that petitioner's claim is duly substantiated by documentary evidence and thus it is entitled to a claim for refund or issuance of a TCC.

RESPONDENT'S ARGUMENTS

Respondent argues that petitioner failed to substantiate its claim that its sale of services to various PEZA-registered customers are subject to VAT at zero percent; that the services rendered by petitioner to its foreign clients cannot qualify as zero-rated for failure to prove that the payment for its services is in acceptable foreign currency accounted for in accordance with the BSP rules and regulations and that its foreign clients are doing business outside the Philippines; and that the input VAT on domestic purchases of services and goods amounting to P4,179,641.99 should be disallowed.

RULING OF THE COURT

TIMELINESS OF THE PETITION

As provided in Section 112 (C), 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 sales."

The instant case involves a claim for refund for the period covering the four quarters of taxable year 2008. The close for the taxable quarter for the first quarter is March 31, 2008, for the second quarter is June 30, 2008, for the third quarter is September 30, 2008 and for the fourth quarter is December 31, 2008. Petitioner filed its administrative claim for refund on March 5, 2010[13]. Hence, applying the foregoing rule, the administrative case was filed within two years after the close of the taxable quarter.

In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue*[14], the Supreme Court clarified the rule with regard to the application of prescriptive periods under Section 112(A) and (C). Thus:

[13] Exhibit "S".

[14] G.R. No. 187485, February 12, 2013. Citation omitted.

> "This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period."

In this case, petitioner received on September 20, 2011 the letter from respondent denying the administrative claim for refund or issuance of a TCC.[15] Then on October 19, 2011, petitioner filed the instant petition.[16]

From the foregoing, this Court finds that the instant petition was filed within the prescriptive periods provided by law.

Whether the petitioner's sales are subject to VAT at zero percent (0%)

Is petitioner engaged in sales which are zero-rated?

As provided in Section 112 of the NIRC, petitioner must prove the following requirements in order to be entitled to a refund or issuance of a TCC of unutilized input taxes attributable to zero-rated or effectively zero-rated sales: (1) the taxpayer is engaged in sales which are zero-rated (*i.e.*, export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1) and (2), Section 106 (B) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[17]

Petitioner avers that its sales of service to various entities registered with the Philippine Economic Zone Authority (PEZA) are subject to VAT at 0% pursuant to 108(B)(3) of the NIRC of 1997, as amended, and Section 4.108-5 of Revenue Regulations (RR) No. 16-05, as amended by RR No. 04-07, viz:

[15] Exhibit "AA", Docket, p. 1162 . Letter signed by Gerry O. Dumayas, Revenue District Officer.
[16] Docket, p. 6.
[17] AT&T Communications Services Phils. Inc. vs. CIR, G.R. No. 182364, August 3, 2010, citing Intel Tech Phils., Inc. vs. CIR, G.R. No. 166731, April 27, 2007.

Section 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; (Emphasis supplied)

SECTION 4.108-5. ***Zero-Rated Sale of Services.*** —

(a) In general. — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the **input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations**.

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; (Emphasis supplied)

Section 24 of Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995", a special law which grants exemptions from national (including VAT) and local taxes to duly registered business establishments operating within the ecozone except payment of the preferential tax rate of 5% on gross income earned, provides:

Section 24. ***Exemption from National and Local Taxes.*** — Except for real property taxes on land owned by developers, **no taxes, local and national,** shall be imposed on business establishments operating within the ECOZONE. **In lieu thereof, five percent (5%) of the gross income earned** by all business enterprises within the ECOZONE **shall be paid** and remitted as follows:

"(a) Three percent (3%) to the National Government;
"(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the

> municipality or city where the enterprise is located." (*Emphasis supplied*)

The Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*,[18] the Supreme Court explained R.A. No. 7916 in this wise:

> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the **ECOZONE is a foreign territory**. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> The Philippine VAT system adheres to the **Cross Border Doctrine**, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, **actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT. (*Emphasis supplied*)

Hence, sales of services by VAT registered entities in the customs territory, like herein petitioner, to PEZA registered entities are effectively subject to 0% VAT under Section 108(B)(3) of the NIRC of 1997, as amended.

In its 2008 final amended Quarterly VAT Returns, petitioner's declared zero-rated receipts amounted to ₱272,529,293.22, broken down as follows:

Exhibit	Taxable Year 2008	Zero-Rated Sales/Receipts
"F-2"	First Quarter	₱ 39,998,958.54
"I-2"	Second Quarter	60,174,661.17
"L-1"	Third Quarter	57,680,382.64
"O-1"	Fourth Quarter	114,675,290.87
	Total	**₱ 272,529,293.22**

[18] G.R. No. 150154, August 9, 2005.

To substantiate its zero-rated sales/receipts, petitioner presented its Summary of Zero-Rated Sales for the months of January to December 2008[19], Certifications[20] from PEZA, Certification[21] from Board of Investments (BOI), VAT zero-rated official receipts[22]

As shown in the Summary of Zero-Rated Sales, petitioner rendered services to the following entities:

1. JGC Philippines, Inc.
2. NIDEC Precision Philippines Corportion (NPPC)
3. KOMYO Philippine Logistics Service Corporation (KOPLS)
4. Sakamoto Orient Chemicals Corporation (SOCC)
5. Coral Bay Nickel Corporation (CBNC)
6. Shi Manufacturing & Services (Philippines), Inc. (SHIMS)
7. Sunnelit Philippines Corporation (SPC)
8. Imasen Philippine Manufacturing Corporation (IPMC)
9. Andes Sumetronics, Inc. (ASI)
10. Hoya Glass Disk Philippines, Inc. (HGDPI)
11. Seminac Philippines, Inc. (SPI)
12. Taganito Mining Corporation
13. Obayashi Corporation
14. Rio Tuba Nickel Mining Corporation
15. SB Flex Philippines, Inc.
16. SMCC - Dubai
17. SMCC - Guam
18. SMCC - Hanoi
19. SMCC - Jakarta
20. SMCC - Singapore
21. SMCC - Vietnam
22. SMCC (Thailand) Co., Ltd.
23. SMCC Const. India Ltd.
24. SMCC Head Office
25. Sumitomo Chemical Engineering Co., Ltd.
26. Sumitomo Metal Mining Engineering Co.
27. Sumitomo Mitsui Const. Co., Ltd. (H.Q.)
28. Vestas Asia Pacific
29. Vinci – Sumitomo Mitsui Joint Venture

Through the various PEZA Certifications, petitioner was able to prove that its clients, namely, JGC Philippines, Inc.[23], NIDEC Precision Philippines Corportion (NPPC)[24], KOMYO Philippine Logistics Service Corporation (KOPLS)[25], Sakamoto Orient Chemicals Corporation (SOCC)[26], Coral Bay

[19] Exhibits "V-1" to "V-12".
[20] Exhibits "U-1" to "U-11".
[21] Exhibit "U-12".
[22] Exhibits "LL-1" to "LL-355".
[23] Exhibit "U-1".
[24] Exhibit "U-2".
[25] Exhibit "U-3".

Nickel Corporation (CBNC)[27], Shi Manufacturing & Services (Philippines), Inc. (SHIMS)[28], Sunnelit Philippines Corporation (SPC)[29], Imasen Philippine Manufacturing Corporation (IPMC)[30], Andes Sumetronics, Inc. (ASI)[31], Hoya Glass Disk Philippines, Inc. (HGDPI)[32] and Seminac Philippines, Inc. (SPI)[33] are PEZA-registered entities. Thus, petitioner's gross receipts from services rendered to the said entities which are duly covered by VAT zero-rated official receipts qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended.

As regards petitioner's client, Taganito Mining Corporation (TMC), petitioner presented the Certification[34] from the BOI attesting to the fact that TMC is a BOI-registered entity which exported 100% of its total sales volume/value for the calendar year covering January 1 to December 31, 2007. It was stated that the Certification was issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI registered Manufacturers-Exporters with 100% Export Sales" and that the Certification was valid from February 22 to December 31, 2008.

Section 4.106-5 of RR No. 16-05, as amended by RR No. 04-07, classify as "export sales" the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported subject to the presentation of a BOI certification stating that the company-buyer is a BOI-registered manufacturer/producer whose products are 100% exported, to wit:

> **SEC. 4.106-5.** ***Zero-Rated Sales of Goods or Properties.*** — xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) **Export Sales.** — "*Export Sales*" shall mean:
>
> **xxx xxx xxx**
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

[26] Exhibit "U-4".
[27] Exhibit "U-5".
[28] Exhibit "U-6".
[29] Exhibit "U-7".
[30] Exhibit "U-8".
[31] Exhibit "U-9".
[32] Exhibit "U-10".
[33] Exhibit "U-11".
[34] Exhibit "U-12".

> ***"Considered export sales under Executive Order No. 226"*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; Provided, further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and ***Provided, finally,*** **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**. *(Emphasis supplied)*

Thus, petitioner's gross receipts from services rendered to TMC which are duly supported by VAT zero-rated official receipts likewise qualify for VAT zero-rating.

With regard to petitioner's gross receipts from services rendered to the other entities, namely, Obayashi Corporation, Rio Tuba Nickel Mining Corporation, SB Flex Philippines, Inc., SMCC-Dubai, SMCC-Guam, SMCC-Hanoi, SMCC-Jakarta, SMCC-Singapore, SMCC-Vietnam, SMCC(Thailand)

Co., Ltd., SMCC Const. India Ltd., SMCC Head Office, Sumitomo Chemical Engineering Co., Ltd., Sumitomo Metal Mining Engineering Co., Sumitomo Mitsui Const., Co., Ltd. (H.Q.), Vestas Asia Pacific and Vinci-Sumitomo Mitsui Joint Venture, the same shall be denied VAT zero-rating because other than the official receipts, no PEZA/BOI certification or other evidence was adduced by petitioner to prove that the services rendered to these entities can be classified as zero-rated sales.

The following is the list of denied zero-rated receipts based on the Summary of Zero-rated Sales for the months of January to December 2008:

1. Declared zero-rated receipts from services rendered to entities without PEZA or BOI registration certificates

First Quarter of 2008 January (Exhibit "V-1") February (Exhibit "V-2") March (Exhibit "V-3")	**₱7,056,323.30**
Second Quarter of 2008 April (Exhibit "V-4") May (Exhibit "V-5") June (Exhibit ("V-6")	**₱9,528,404.19**
Third Quarter of 2008 July (Exhibit "V-7") August (Exhibit "V-8") September (Exhibit "V-9")	**₱21,875,934.45**
Fourth Quarter of 2008 October (Exhibit "V-10") November (Exhibit "V-11") December (Exhibit "V-12")	**₱90,888,004.58**

2. Declared zero-rated receipts to entities but supported by undated VAT zero-rated official receipts

Second Quarter of 2008 April (Exhibit "V-4") May (Exhibit "V-5")	**₱2,334,298.80**

From the reported zero-rated receipts of ₱272,529,293.22[35], only the amount of ₱140,846,327.90 which is properly supported by PEZA and BOI Certifications and VAT zero-rated official receipts, qualifies for VAT zero-rating pursuant Section 108(B)(3) of the NIRC of 1997, as amended and Section 4.106-5 of RR No. 16-05, as amended by RR No. 04-07. Below is the computation of the amount of ₱140,846,327.90:

[35] See table on p. 9.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Zero-Rated Receipts per VAT Returns	₱ 39,998,958.54	₱ 60,174,661.17	₱ 57,680,382.64	₱ 114,675,290.87	₱ 272,529,293.22
Less: Disallowances[36]					
Without PEZA or BOI Certifications	₱ 7,056,323.30	₱ 9,528,404.19	₱ 21,875,934.45	₱ 90,888,004.58	₱ 129,348,666.52
With PEZA Certifications but supported by undated ORs		₱ 2,334,298.80			₱ 2,334,298.80
Total	₱ 7,056,323.30	₱ 11,862,702.99	₱ 21,875,934.45	₱ 90,888,004.58	₱ 131,682,965.32
Valid Zero-Rated Receipts	**₱32,942,635.24**	**₱48,311,958.18**	**₱35,804,448.19**	**₱23,787,286.29**	**₱140,846,327.90**

Whether petitioner incurred input VAT during taxable year 2008

As reflected in its final amended Quarterly VAT Returns for the year 2008, petitioner incurred input VAT in the amount of ₱67,272,336.82[37] during the same period. However, the subject of the present claim for refund/TCC only amounts to ₱16,981,349.73, with breakdown as follows:

Taxable Year 2008	Input VAT Claim
1st Quarter	₱ 3,323,682.98
2nd Quarter	7,102,092.08
3rd Quarter	2,388,536.07
4th Quarter	4,167,038.60
Total	**₱ 16,981,349.73**

In support of its claim, petitioner submitted various suppliers' invoices, official receipts and other documents[38] which were all examined by the Court-commissioned Independent CPA (ICPA), Ms. Myra Celeste O. Dabalos. In her Final Amended Report[39], Ms. Dabalos noted the following findings as regards petitioner's input VAT claim of ₱16,981,349.73:

Findings	Exhibit	Input Tax
Input Tax claimed on purchase of services without VAT official receipts	"PP-1"	₱ 190,562.59
Input Tax claimed on purchase of goods that are not supported by VAT invoices.	"PP-2"	483,801.54
Input Tax claimed on purchase of services supported by acknowledgment receipt.	"PP-3"	10,671.56

[36] See table on pp. 13.
[37] Exhibit "Y".
[38] Exhibits "Z-1-1" to "Z-1-215", "Z-2-1" to "Z-2-473", "Z-3-1" to "Z-3-831", "Z-4-1" to "Z-4-501", "Z-5-1" to "Z-5-584", "Z-6-1" to "Z-6-1147", "Z-7-1" to "Z-7-529", "Z-8-1" to "Z-8-606", "Z-9-1" to "Z-9-625", "Z-10-1" to "Z-10-522", "Z-11-1" to "Z-11-499" and "Z-12-1" to "Z-12-457".
[39] Exhibit "OO", Docket, Vol. 3, pp. 1312-1313.

Input Tax claimed on purchases with missing supports.	"PP-4"	1,938,570.48
Input Tax claimed on purchase of services that are supported by Non-VAT or TIN official receipts.	"PP-5"	1,557.16
Input Tax claimed on purchases that are supported by invoice (for goods) /or (for services) dated not within the taxable year.	"PP-6"	565,902.87
Input Tax claimed on purchase of goods/services that are supported by VAT invoice/or without BIR accreditation or permit to print.	"PP-7"	251.68
Input Tax claimed on purchase of goods that are supported by VAT invoice or purchase of services that are supported by VAT official receipts but not issued in petitioner's name, or with incorrect TIN or address.	"PP-8"	256,433.51
Input Tax claimed on purchases of goods and service that are supported by photocopy of invoices/official receipts only.	"PP-9"	21,322.18
Input Tax claimed on purchase of services that are supported by provisional receipts only.	"PP-10"	68,474.40
Input Tax claimed on purchases with discrepancies between the invoice/or amount against the amount recorded by petitioner - overclaimed input tax.	"PP-12"	133,478.74
Input Tax supported by invoices/official receipts without petitioner's TIN and/or address in the primary document (i.e. Invoice for goods, Official Receipts for services) - P1,000 and above.	"PP-14"	508,615.28
Total Disallowable Input Tax		**₱ 4,179,641.99**
Input Tax claimed on purchase of goods that are supported by certified copy of invoice.	"PP-11"	1,206.43
Input Tax allowable on purchases with discrepancies between the invoice/or amount against the amount recorded by petitioner.	"PP-12"	661,330.27
Input Tax claimed on purchases that are supported by invoice/or dated not within the taxable quarter but within the taxable year.	"PP-13"	872,129.93
Input Tax claimed on purchases with proper supporting documents.	"PP-15"	11,267,041.11
Total Input Tax Reviewed		**₱ 16,981,349.73**
Total Input Tax Claimed		**₱ 16,981,349.73**
Difference		-

The Court agrees with the disallowance of the input taxes of ₱4,179,641.99 for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended Hence, out of the ₱16,981,349.73 input VAT claim, only the amount of ₱12,801,707.74 is properly substantiated, as computed below:

Input VAT Claim	₱ 16,981,349.73
Less: Disallowances	4,179,641.99
Valid Input VAT	**₱ 12,801,707.74**

Whether petitioner's substantiated input VAT claim was applied against any output VAT

Petitioner summarized its output and input VAT transactions for the year 2008 as follows[40]:

Excess Input VAT - 2007	₱ 56,110,469.42
Less: TCC Applied for 2007	28,963,994.33
Balance - Excess Input VAT 2007	₱ 27,146,475.09
Input VAT - 2008	
PEZA Transactions	₱ 16,981,349.73
Non-PEZA Transactions	50,290,987.09
Total Input VAT - 2008	₱ 67,272,336.82
Excess Input VAT 2007	₱ 27,146,475.09
2008 Input VAT from Non-PEZA Transactions	50,290,987.09
Total Available Tax Credits	₱ 77,437,462.18
Less: 2008 Output VAT	49,444,183.99
Excess 2008 Input VAT from Non-PEZA Transactions	**₱(27,993,278.19)**

The above summary indicates that the claimed amount of ₱16,981,349.73 remained unutilized because the ₱27,146,475.09 input VAT carry-over from 2007 and ₱50,290,987.09 input VAT from 2008 Non-PEZA transactions in the sum of ₱77,437,462.18 were more than sufficient to cover petitioner's 2008 output VAT liability in the amount of ₱49,444,183.99.[41] After offsetting the output VAT of ₱49,444,183.99 from the accumulated input VAT of ₱77,437,462.18, there still remains an amount of ₱27,993,278.19 input VAT credits that can be applied to the succeeding period.

However, this Court noted that petitioner was not able to substantiate the input VAT carry-over of ₱27,146,475.09 and input VAT from 2008 Non-PEZA transactions of ₱50,290,987.09. **Without the corresponding VAT invoices or official receipts, the said input taxes cannot be applied against petitioner's 2008 output VAT liability** of ₱49,444,183.99 pursuant to Section 110(A)(1) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> **"SEC. 110. *Tax Credits.* —**
>
> "A. *Creditable Input Tax.* —

[40] Exhibit "Y".

[41] Exhibits "F-2", "I-2", "L-1" and ""'O-1", line15B (the sum of ₱9,363,189.34, ₱10,017,428.51, ₱11,183,620.76 and ₱18,879,945.38).

> (1) Any **input tax evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be **creditable against the output tax**:
>
> xxx xxx xxx
>
> (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. xxx" (*Emphasis supplied*)

Considering that the substantiated input VAT claim of ₱12,801,707.74 is lower than the output VAT liability of ₱49,444,183.99 as shown below, **there is no unutilized excess input VAT which may be the proper subject of a claim for refund/tax credit certificate** under Section 112(A) of the NIRC of 1997, as amended:

Output Tax Due	₱ 49,444,183.99
Valid Input VAT	12,801,707.74
Output Tax Still Due	**₱ 36,642,476.25**

Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.[42] The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner failed to discharge the necessary burden of proof.

From the foregoing, the Court finds that it is no longer necessary to discuss the other issues raised in this Petition.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen s. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[42] Far East Bank and Trust Company as Trustee of Various Retirement Present: Funds, vs. Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No.138919, May 2, 2006, citing *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, 368 Phil. 388, 411 (1999).

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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