REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MAXIMA MACHINERIES, INC. *Petitioner,*	**CTA CASE No. 9268** For: Refund
-versus-	Members: CASTAÑEDA, JR., Chairperson MINDARO-GRULLA, BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUN 0 1 2020 8:50 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on March 9, 2020 is a *Petition for Review* filed by the petitioner Maxima Machineries, Inc. against respondent Commissioner of Internal Revenue, on February 24, 2016, praying for the issuance of a tax credit certificate in the aggregate amount of ₱32,299,209.56, representing its alleged unutilized input value-added tax (VAT) allocable and directly attributable to its zero-rated sales for the period July 1, 2013 to September 30, 2013.[1]

Petitioner Maxima Machineries, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at 871 Quezon Avenue, Quezon City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 006-618-023-00000.[3]

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[1] Statement of the Case, Pre-Trial Order dated November 29, 2016, Docket – Vol. II, pp. 790 to 798.
[2] Exhibits "P-1" and "P-2", Docket – Vol. III, pp. 1001 to 1015.
[3] Exhibit "P-3", Docket – Vol. III, p. 1016.

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On the other hand, respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations. He can be served with notices at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[4]

On September 28, 2015, petitioner filed administrative claim for the issuance of tax credit certificates totalling ₱32,299,209.56, representing the excess input VAT, which are allocable and directly attributable to its VAT zero-rated sales for the 2nd quarter of FY 2014.[5]

The BIR issued the Letter of Authority No. eLA201200042211 (Letter of Authority No. AUDM 04/1005098/2015) dated November 10, 2015, authorizing Revenue Officers Ferly Ann Paez, Jennifer Almedilla and Group Supervisor Marivic Bautista to examine petitioner's books of accounts and other accounting records for VAT for the period from July 1, 2013 to September 30, 2013.[6]

Petitioner filed the instant *Petition for Review* with this Court on February 24, 2016.[7] The case was initially raffled to this Court's First Division.

On May 25, 2016, respondent filed his *Answer,*[8] interposing the following special and affirmative defenses, to wit:

> "4. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:
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> **Claims for refund are construed strictly against the taxpayer and in favor of the Government.**
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> 5. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the

[4] Par. A.1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 747.
[5] Par. B.2, JSFI, Docket – Vol. II, pp. 747 to 748.
[6] Par. B.3, JSFI, Docket – Vol. II, p. 748.
[7] Docket – Vol. I, pp. 10 to 48.
[8] Docket – Vol. I, pp. 308 to 315.

lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

6. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

7. Audit and verification of petitioner's claim, resulted to the denial of the claimed refund, to wit:

VERIFICATION AND EVALUATION OF REFUND/TCC CLAIM

<u>Verification of Submitted Documents</u>

Submitted documents were evaluated. Noted from the said evaluation are the following:

1. Zero-rated sales invoices were not submitted.
2. Some line items of the submitted zero-rated sales schedule have no invoice number indicated.

<u>Input Tax Verification</u>

- Verification of Input Tax on Importations

Schedule of Input Tax on Importation was scrutinized. Comparison as made against the generated BOC Importation Listing from AITEID and compared against the Importation Listing submitted. Out-of-period items and those items which were not in the BOC date were disallowed. Computation is as follows:

Total VAT on Importation per return		P81,271,468.41
Allowable Input Tax per investigation		
Total Input VAT on Importation per schedule	P264,866,546.97	
Less: Out of period importations	201,084,353.97	

Importation within the prescribed period	45,782,193.00	
Less: Importation data not BOC	8,751,775.00	37,030,418.00
Disallowed Input Tax on Importation		P44,241,050.41

- Verification of Input Tax on Local Purchases

Invoices/Official Receipts in support of the input claim were scrutinized. Disallowances were either due to out-of-period claims, non-compliance with invoicing requirements, unsupported claims and invalid supporting document. Listed below are the allowable input taxes for the period with valid supporting documents.

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Allowable Input Tax	66,232.41
Disallowed Input Tax	8,708,107.31

Evaluation was made on the submitted documents and noted are the following:

1. Zero-rated sales invoices were not submitted.
2. Some line items of the submitted zero-rated sales schedule have no invoice number indicated.

These items are crucial to the tax credit / refund claim since the unutilized input tax subjected to refund claim are related to zero-rated sales.

8. Thus, the application for Refund/Tax Credit Certificate (TCC) of unutilized input tax related to zero-rated sales for the period July 1, 2013 to September 30, 2013 of Maxima Machineries, Inc. was denied for failure to submit complete documents that will fully substantiate its claim.

9. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implication. The 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.

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10. To reiterate, 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. This is so because 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. 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."

The pre-trial conference case was initially scheduled on August 4, 2016.[9] However, upon the parties' separate *Motions to Reset*,[10] the said pre-trial conference was reset to, and held on, October 13, 2016.[11]

Respondent's Pre-Trial Brief was filed on October 6, 2016;[12] while the *Pre-Trial Brief for the Petitioner* was submitted on October 10, 2016.[13]

Respondent transmitted the *BIR Records* for the instant case on October 10, 2016.[14]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on October 21, 2016.[15] In the Resolution dated November 8, 2016, [16] the parties' JSFI was approved, and the Court terminated the Pre-Trial. Thereafter, the Pre-Trial Order dated November 29, 2016 was issued.[17]

The trial of the case then ensued.

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[9] Notice of Pre-Trial Conference dated May 30, 2016, Docket – Vol. I, pp. 317 to 318.
[10] Petitioner's *Motion to Reset the Pre-Trial Conference*, Docket – Vol. I, pp. 321 to 323; Respondent's *Motion to Reset Pre-Trial Conference Scheduled on August 4, 2016*, Docket – Vol. I, pp. 327 to 330.
[11] Order dated July 25, 2016, Docket – Vol. I, p. 325; Order dated August 1, 2016, Docket – Vol. I, p. 332; Minutes of the hearing held on, and Order dated, October 13, 2016, Docket – Vol. II, pp. 723 to 726.
[12] Docket – Vol. I, pp. 343 to 346.
[13] Docket – Vol. II, pp. 702 to 717.
[14] Respondent's *Compliance*, Docket – Vol. II, pp. 719 to 721.
[15] Docket – Vol. II, pp. 747 to 760.
[16] Docket – Vol. II, p. 781.
[17] Docket – Vol. II, pp. 790 to 798.

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During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Mr. Yusuke Yamada,[18] petitioner's Chief Financial Officer; (2) Mr. Neil U. Sison,[19] Court-commissioned Independent Certified Public Accountant (ICPA)[20]; and (3) Ms. Marlene G. Manuel,[21] petitioner's Chief for Government Compliance.

On August 7, 2017, petitioner filed its *Formal Offer of Evidence.*[22] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 17, 2017.[23] In the Resolution dated December 15, 2017,[24] the Court admitted petitioner's exhibits, except for the following:

1. Exhibits "P-43-M-1614" to "P-43-M-2410", "P-43-O-37" to "P-43-O-341", "P-43-AE-71" to "P-43-AE-72", and "P-43-BJ-639" to "P-43-BJ-2340", for not being found in the records of the case;
2. Exhibit "P-43-BE-1", for failure of the exhibit formally offered and identified to correspond with the document actually marked.

In view of the foregoing denied exhibits, petitioner filed a *Motion for Reconsideration to the Resolution dated December 15, 2017* on January 5, 2018.[25] Thus, in the Resolution dated April 16, 2018,[26] the Court resolved to admit the above-stated "P-43-M-1614" to "P-43-M-2410", "P-43-O-37" to "P-43-O-341", "P-43-AE-71" to "P-43-AE-72", "P-43-BJ-639" to "P-43-BJ-2340", and "P-43-BE-1".

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[18] Exhibit "P-37", Docket – Vol. II, pp. 351 to 367; Minutes of the hearing held on, and Order dated, January 26, 2017, Docket – Vol. II, pp. 808 to 813, and 815 to 816, respectively.
[19] Exhibit "P-43", Docket — Vol. II, pp. 874 to 901; Exhibit "P-44", Docket — Vol. II, pp. 913 to 927; Minutes of the hearing held on, and Order dated, July 18, 2017, Docket – Vol. II, pp. 956 to 960.
[20] *Oath of Commission* dated January 26, 2017, Docket – Vol. II, p.814; Minutes of the hearing held on, and Order dated, January 26, 2017, Docket – Vol. II, pp. 808 to 813, and 815 to 816, respectively.
[21] Exhibit "P-42", Docket – Vol. II, pp. 625 to 633; Minutes of the hearing held on, and Order dated, March 7, 2017, Docket – Vol. II, pp. 818 to 821.
[22] Docket – Vol. III, pp. 972 to 999.
[23] Docket – Vol. III, pp. 1393 to 1394.
[24] Docket – Vol. III, pp. 1402 to 1404.
[25] Docket – Vol. III, pp. 1406 to 1407.
[26] Docket – Vol. III, pp. 1418 to 1419.

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For his part, respondent likewise presented his documentary and testimonial evidence. He presented his lone witness, Ms. Ferly Ann Paez-Montalban, Revenue Officer III of the BIR.[27]

The *Respondent's Formal Offer of Evidence* was filed on July 2, 2018.[28] In the Resolution dated September 17, 2018,[29] the Court admitted respondent's exhibits, and gave the parties a period of thirty (30) days from receipt thereof to file their respective memorandum.

The instant case was transferred to this Court's Second Division by virtue of the Order dated September 27, 2018.[30]

On October 22, 2018, respondent filed a *Manifestation*,[31] manifesting that he is adopting the arguments he raised in his *Answer* dated May 25, 2016, as his *Memorandum*. On the other hand, the *Memorandum for the Petitioner* was filed on October 24, 2018.[32] Thus, in the Resolution dated November 6, 2018,[33] the Court considered this case submitted for decision.

However, on April 2, 2019, petitioner filed a *Motion for Suspension of the Rendition of Decision and To Allow the Continuance of the ICPA Audit and To Schedule the Presentation of the ICPA and Yusuke Yamada*.[34] Respondent filed his *Opposition* to the said Motion on May 31, 2019.[35] Nevertheless, in the Resolution dated July 15, 2018,[36] the Court granted petitioner's *Motion for Suspension*, thereby recalling the Court's Resolution dated November 6, 2018.

Petitioner's witnesses, namely, Mr. Yusuke Yamada,[37] and Mr. Neil U. Sison,[38] were recalled to testify anew for petitioner.[39]

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[27] Docket – Vol. I, pp. 338 to 342; Minutes of the hearing held on, and Order dated, June 21, 2018, Docket – Vol. II, pp. 1421 to 1424.
[28] Docket – Vol. III, pp. 1426 to 1428.
[29] Docket – Vol. III, pp. 1436 to 1437.
[30] Docket – Vol. III, p. 1438.
[31] Docket – Vol. III, pp. 1440 to 1441.
[32] Docket – Vol. III, pp. 1443 to 1494.
[33] Docket – Vol. III, p. 1497.
[34] Docket – Vol. IV, pp. 1498 to 1501.
[35] Docket – Vol. IV, pp. 1577 to 1581.
[36] Docket – Vol. IV, pp. 1584 to 1588.
[37] Exhibit "P-54", Docket – Vol. IV, pp. 1599 to 1607.
[38] Exhibit "P-56", Docket – Vol. IV, pp. 1681 to 1685.

On October 30, 2019, petitioner filed its *Supplemental Formal Offer of Evidence.*[40] In the Resolution dated December 27, 2019, the Court admitted petitioner's exhibits, except for Exhibits "P-43-CC", "P-43-CD-6", "P-43-CD-37", "P-43-CD-467", "P-43-CD-483", "P-43-CD-609", "P-43-CD-801", "P-43-CD-831", "P-43-CD-834", "P-43-CD-836", "P-43-CD-838", "P-43-CD-868", "P-43-CD-876" to "P-43-CD-886", "P-43-CD-888" to "P-43-CD-893", "P-43-CD-1017", "P-43-CD-1077" to "P-43-CD-1079", "P-43-CD-1169", "P-43-CD-1239", "P-43-CD-1461" to "P-43-CD-1475", "P-43-CD-1716" to "P-43-CD-1718", "P-43-CD-1726", "P-43-CD-1729", "P-43-CD-1732" to "P-43-CD-1733", "P-43-CD-1745", "P-43-CD-1749", "P-43-CD-1759", "P-43-CD-1768", "P-43-CD-1875", "P-43-CD-1966", "P-43-CD-2096", "P-43-CD-2279" to "P-43-CD-2287", "P-43-CD-2328" to "P-43-CD-2337, "P-43-CD-2341", "P-43-CD-2345", "P-43-CD-2354" to "P-43-CD-2358", "P-43-CD-2362" to "P-43-CD-2363", "P-43-CD-2381" to "P-43-CD-2382", "P-43-CD-2384" to "P-43-CD-2428", "P-43-CD-2667" to "P-43-CD-2672", "P-43-CD-2689", "P-43-CD-2697" to "P-43-CD-2698", "P-43-CD-2731", "P-43-CD-2733" to "P-43-CD-2734", "P-43-CD-3401" to "P-43-CD-4331", "P-43-CD-4510", "P-43-CD-4542", "P-43-CD-4564" to "P-43-CD-4566", "P-43-CD-4586" to "P-43-CD-4587", "P-43-CD-4861" to "P-43-CD-4863", "P-43-CD-4878", "P-43-CD-4921" to "P-43-CD-4922", "P-43-CD-4941" to "P-43-CD-4942", "P-43-CD-4944", "P-43-CD-4969", "P-43-CD-5002" to "P-43-CD-5005", "P-43-CD-5085", "P-43-CD-5106", "P-43-CD-5165" to "P-43-CD-5166", "P-43-CD-5203", "P-43-CD-5326" to "P-43-CD-5347", "P-43-CD-5376" to "P-43-CD-5380", "P-43-CD-5431", "P-43-CD-5487", "P-43-CD-5489" to "P-43-CD-5509", "P-43-CD-5681" to "P-43-CD-5682", "P-43-CD-5686", "P-43-CD-5739", "P-43-CD-5744", "P-43-CD-5760", "P-43-CD-5798", "P-43-CD-5814", "P-43-CD-5823", "P-43-CD-5859", "P-43-CD-5972" to "P-43-CD-5977", "P-43-CD-5993", "P-43-CD-6061", "P-43-CD-6076", "P-43-CD-6084" to "P-43-CD-6085", "P-43-CD-6120", "P-43-CD-6167", "P-43-CD-6396", "P-43-CD-6496", "P-43-CD-6507" to "P-43-CD-6508", "P-43-CD-6533", "P-43-CD-6679", "P-43-CD-6718" to "P-43-CD-6719", "P-43-CD-6723" to "P-43-CD-6729", "P-43-CD-6737", "P-43-CD-6761" to "P-43-CD-6763", "P-43-CD-6990", "P-43-CD-6999" to "P-43-CD-7004", "P-43-CD-7007" to "P-43-CD-7020", "P-43-CD-7109" to "P-43-CD-7112", "P-43-CD-7156" to "P-43-CD-7157", "P-43-CD-7163" to "P-43-CD-7168", "P-43-CD-7173" to "P-43-CD-7174", "P-43-CD-7183" to "P-43-CD-7187", "P-43-CD-7211", "P-43-CD-

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[39] Minutes of the hearing held on, and Order dated, September 2, 2019, Docket – Vol. IV, pp. 1656 to 1657; and Minutes of the hearing held on, and Order dated, October 28, 2019, Docket – Vol. IV, pp. 1701 to 1702.

[40] Docket – Vol. IV, pp. 1703 to 1708.

7602", "P-43-CD-7881", "P-43-CD-8288" to "P-43-CD-8297", "P-43-CD-8374" to "P-43-CD-8377", "P-43-CD-8380" to "P-43-CD-8381", "P-43-CD-8395" to "P-43-CD-8396", "P-43-CD-8433", "P-43-CD-8564", "P-43-CD-8698" to "P-43-CD-8702", "P-43-CD-8894", "P-43-CD-8896" to "P-43-CD-8898", "P-43-CD-9333", "P-43-CD-9625", "P-43-CD-9731", "P-43-CD-9737", "P-43-CD-9791", "P-43-CD-10531", "P-43-CD-10533" to "P-43-CD-10534", "P-43-CD-10636" to "P-43-CD-640", "P-43-CD-10758", "P-43-CD-10780" to "P-43-CD-10782", "P-43-CD-10790" to "P-43-CD-10794", "P-43-CD-10951" to "P-43-CD-10953", "P-43-CD-11105" to "P-43-CD-11110", "P-43-CD-11139" to "P-43-CD-11142", "P-43-CD-11355", "P-43-CD-11370" to "P-43-CD-11371", "P-43-CD-11388", "P-43-CD-11566", "P-43-CD-11670" to "P-43-CD-11672", "P-43-CD-11795", "P-43-CD-11891" to "P-43-CD-11892", "P-43-CD-11941" to "P-43-CD-11957", "P-43-CD-11971", "P-43-CD-11976" to "P-43-CD-11980", "P-43-CD-12002" to "P-43-CD-12008", "P-43-CD-12040", "P-43-CD-12082", "P-43-CD-12215" to "P-43-CD-12216", "P-43-CD-12271", "P-43-CD-12335" to "P-43-CD-12341", "P-43-CD-12681" to "P-43-CD-12688", "P-43-CD-12732" to "P-43-CD-12734", "P-43-CD-12738" to "P-43-CD-12739", "P-43-CD-12784" to "P-43-CD-12785", "P-43-CD-13544", "P-43-CE-1-170", "P-43-CE-1-187", "P-43-CE-1-200" to "P-43-CE-1-201", "P-43-CE-1-225" to "P-43-CE-1-226", "P-43-CE-2-445", "P-43-CE-2-511" to "P-43-CE-2-539", "P-43-CE-2-771" to "P-43-CE-2-774", "P-43-CE-2-776" to "P-43-CE-2-777", "P-43-CE-2-990" to "P-43-CE-2-991", "P-43-CE-2-1081" to "P-43-CE-2-1083", "P-43-CE-2-1172" to "P-43-CE-2-1173", "P-43-CE-2-1802" to "P-43-CE-2-1803", "P-43-CE-2-1805" to "P-43-CE-2-1806", "P-43-CE-2-1938", "P-43-CE-2-1943" to "P-43-CE-2-1944", "P-43-CE-2-2093", "P-43-CE-2-2129", "P-43-CE-2-2295" to "P-43-CE-2-2299", "P-43-CE-2-2307" to "P-43-CE-2-2309", "P-43-CE-2-2419", "P 43-CE-2-2765", "P-43-CE-2-3462" to "P-43-CE-2-3463", "P-43-CE-3-1" to "P-43-CE-3-15", "P-43-CE-3-76" to "P-43-CE-3-93", "P-43-CE-3-98" to "P-43-CE-3-116", "P-43-CE-3-119" to "P-43-CE-3-123", "P-43-CE-3-130" to "P-43-CE-3-132", "P-43-CE-3-143" to "P-43-CE-3-145", "P-43-CE-3-155" to "P-43-CE-3-158", "P-43-CE-3-160" to "P-43-CE-3-161", "P-43-CE-3-300", and "P-43-CE-3-333" to "P-43-CE-3-343", for not being found in the records of the case.

Subsequently, petitioner filed its *Motion for Reconsideration to the Resolution dated December 27, 2019* on January 21, 2020, allegedly resubmitting the scanned copies of the above-mentioned documentary exhibits which are saved in USB. In the Resolution dated January 24, 2020, the Court ordered respondent to comment on the said *Motion*. Respondent then filed, on February 10, 2020, a

Motion for Extension of Time To File Comment, which was denied by the Court in the Resolution dated February 13, 2020.

In the Resolution dated March 9, 2020, the Court denied with finality the said *Motion for Reconsideration*, thereby finding that the USB attached thereto was found defective, as it can neither be opened nor recognized by the computer. As a consequence, the instant case was submitted anew for decision.

THE ISSUE

The main issue raised by parties for this Court's resolution is as follows, to wit:

> "4.1 Whether Petitioner is entitled for the issuance of tax credit certificate for the excess unutilized input Value Added Tax (VAT) allocable and directly attributable to its VAT zero-rated sales for the period July 1, 2013 to September 30, 2013 amounting to P32,299,209.56".[41]

Petitioner's arguments:

Petitioner argues that it is a VAT-registered taxpayer whose sales are entitled to zero-rating; that the input taxes being claimed are due or paid; that petitioner had unutilized and unapplied input tax credits for the period July 1, 2013 to September 30, 2013, that is allocable and directly attributable to its VAT zero-rated sales amounting to ₱32,299,209.56; that petitioner timely filed its administrative claim for the issuance of tax credit within the two-year prescriptive period; and that petitioner seasonably filed the instant *Petition for Review* to this Court against the "deemed denial decision" due to the inaction of the respondent after the lapse of the mandatory 120-day period under Section 112(C) of the Tax Code.

Respondent's counter-arguments:

Respondent states that claims for refund are construed strictly against the taxpayer and in favor of the Government; that since tax refunds are regarded as tax exemptions, therefore, these are to be

[41] Par. C.4, JSFI, Docket – Vol. II, p. 748.

construed *strictissimi juris* against the person or entity claiming the exemption; that audit and verification of petitioner's claim, resulted to the denial of the claimed refund; that the application for Refund/Tax Credit Certificate (TCC) of unutilized input tax related to zero-rated sales for the period July 1, 2013 to September 30, 2013 of petitioner was denied for failure to submit complete documents that will fully substantiate its claim; and that the 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.

THE COURT'S RULING:

The Court finds no merit in the instant *Petition for Review.*

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[42] provides:

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

[42] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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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.

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(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one-hundred-twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

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

Timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[43]

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

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[44]

Taxpayer's registration with the BIR:

3. the taxpayer is a VAT registered;[45]

Taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[46]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted with BSP rules and regulations;[47]

Taxpayer's refund claim for input VAT:

6. the input taxes are not transitional input taxes;[48]

7. the input taxes are due or paid;[49]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volumes;[50] and

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

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

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

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

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9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[51]

Timeliness of the filing of petitioner's administrative and judicial claims.

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

The instant claim covers the period July 1, 2013 to September 30, 2013, or the 2nd quarter of petitioner's FY 2014. Counting two (2) years from the close of the said quarter, the following table indicates the pertinent last day for the filing of an administrative claim therefor, to wit:

Period (FY 2014)	Close of the Taxable Quarter	Last Day to File Administrative Claim
July 1 to September 30, 2013	September 30, 2013	September 30, 2015

Considering that petitioner's administrative claim and its *Application for Tax Credits/Refunds* (BIR Form No. 1914) covering the subject quarter, was filed with the BIR on September 28, 2015,[52] the same was timely made within the 2-year prescriptive period.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day period, as applied to this case, is shown as follows:

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

[52] Exhibits "P-20" and "P-21", Docket – Vol. III, pp. 1085 to 1209.

Period Covered	Date of Filing of Administrative Claim	End of 120 days for BIR Commissioner to decide the claim	End of 30 days from expiration of the 120 days	Date of Filing of Petition for Review
2nd quarter of FY 2014	September 28, 2015	January 26, 2016	February 25, 2016	February 24, 2016

Notably, the instant *Petition for Review* covering the was filed on February 24, 2016.[53] Thus, petitioner's judicial claim was likewise timely made.

Such being the case, petitioner fulfilled the above-stated *first* and *second* requisites.

Petitioner's Registration with the BIR.

As for its compliance with the *third requisite*, petitioner has fulfilled the same by presenting its Certificate of Registration with OCN8RC0000019980, issued by BIR with TIN 006-618-023-000, indicating that it is liable to VAT.[54]

Petitioner had zero-rated or effectively zero-rated sales during the 2nd quarter of FY 2014.

Petitioner claims that during the 2nd quarter of FY 2014, it had VAT zero-rated sales transactions to entities registered with the Philippine Economic Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Authority (CDA), Cagayan Economic Zone Authority (CEZA) and Board of Investments (BOI).

In its Quarterly VAT Return for the 2nd quarter of FY 2016[55], petitioner reported total sales in the amount of ₱1,216,043,325.65, which include zero-rated sales in the amount of ₱403,798,185.05, as shown below:

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[53] Docket – Vol. I, pp. 10 to 48.
[54] Exhibit "P-3", Docket – Vol. III, p. 1016.
[55] Exhibit "P-17", Docket-Vol. III, p. 1032.

Vatable Sales	₱ 739,941,096.77
Sale to Government	72,304,043.83
Zero-Rated Sales	403,798,185.05
Total Sales	**₱1,216,043,325.65**

In support of its zero-rated sales, petitioner presented its Schedule of Zero-Rated Sales[56] and various sales invoices, official receipts (ORs) and other related documents[57], which were examined by the Court-commissioned ICPA, Mr. Neil U. Sison of Sison Corillo Parone & Co.

According to the ICPA[58], petitioner's zero-rated sales were as follows: 1) sale of goods and services to export entities subject to zero percent (0%) VAT as evidenced by Certifications of VAT zero-rating from PEZA, SBMA, CDA, CEZA, Clark Development Corporation (CDC) and BOI; and 2) sale of goods to entities which are not among the registered corporations in the Philippines as evidenced by Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) and were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) as supported by invoices and inward remittances from banks.

1) *Sales to entities registered with PEZA, SBMA, CDA/CDC, CEZA and those registered with BOI whose products are 100% exported.*

Anent the VAT zero-rating of sales to entities registered with PEZA, SBMA, CDA/CDC, CEZA and those registered with BOI whose products are 100% exported, the pertinent provisions of Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, state:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x

[56] Exhibit "P-36", Docket-Vol. III, pp. 1268 to 1298.
[57] Exhibits "P-43-O-1" to "P-43-AC-6", "P-43-BV-1" to "P-43-BV-4", "P-43-BX" and "P-43-BY-1" to "P-43-CB-4".
[58] Exhibit "P-43", Docket-Vol. II, p. 882, par. 6.b.

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* –The term '**export sales'** means:

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the 'Omnibus Investment Code of 1987', and other special laws.

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.-*

(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 exception 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;"

Furthermore, Sections 4.106-5 and 4.108-5 of Revenue Regulations (RR) No. 16-2005, as amended, which implement the foregoing, also provide:

"SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – x x x

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

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(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales 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**.

xxx xxx xxx

(c) *"Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement"* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* **sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate**." *(Emphasis supplied)*

"SEC. 4.108-5. *Zero-Rated Sale of Services.* –

xxx xxx xxx

(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

(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)*

In connection therewith, the special laws specific to this case are **Republic Act (RA) No. 7227, as amended by RA No. 9400,** otherwise known as *"Bases Conversion and Development Act of 1992"*, **RA No. 7916**, as amended, otherwise known as *"The Special Economic Zone Act of 1995"* and **RA No. 7922**, otherwise known as *"Cagayan Special Economic Zone Act of 1995"*. The relevant portions of said laws are quoted hereunder for easy reference:

<u>RA No. 7227, as amended by RA NO. 9400</u>:

"SEC. 12. *Subic Special Economic Zone.* – xxx

(b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

(c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone.** Xxx." *(Emphasis ours)*

"SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* – Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.

The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into

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and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. Xxx.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. xxx.

xxx xxx xxx

Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones." *(Emphasis ours)*

Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748:

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

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

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

<u>Sections 3 and 4 of RA No. 7922</u>

"SEC. 3. *The Cagayan Special Economic Zone and Free Port.* – In accordance with the foregoing declared policy, **there is hereby established a special economic zone and free port, to be known as the Cagayan Special Economic zone**, hereinafter known as the Zone, which shall cover the entire area embraced by the Municipality of Santa Ana and the islands of Fuga, Barit, and Mabbag in the Municipality of Aparri, Province of Cagayan." *(Emphasis ours)*

"SEC. 4. *Governing Principles.* – Xxx:

(b) Business establishments operating within the Zone shall be entitled to the existing fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority (EPZA), or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987;

(c) Any provision of existing law, rules or regulations to the contrary notwithstanding, **no taxes, local and national, shall be imposed on business establishments operating within the Zone.** Xxx" *(Emphasis ours)*

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[59] to wit:

"This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered

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

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enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.

xxx An ECOZONE or a Special Economic Zone has been described as —

xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the

Philippines shall be imposed with ten percent (10%) VAT[60]. (*Emphasis supplied*)

Pursuant to the afore-quoted provisions of Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5 and 4.108.5 of RR No. 16-2005, as amended, it is evident that the sales of goods and services by a VAT-registered taxpayer, such as herein petitioner, to entities located within the ecozones, as well as, to BOI-registered entities whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate.

To prove that its clients are duly registered with the PEZA, SBMA, CDA/CDC and CEZA or are 100% BOI-registered exporters, petitioner submitted various Certifications issued by such agencies. Likewise, petitioner presented the letters of the PEZA Director General, BGen Charito B. Plaza, dated October 6, 2016[61] addressed to petitioner's Chief Financial Officer, Mr. Yusuke Yamada and Certification issued by the BOI Director, Incentive Service, Ms. Erlinda F. Arcellana, on June 7, 2016[62] confirming the issuance of VAT zero-rating certifications to certain clients of petitioner. Listed below are petitioner's clients for the subject period of claim with the corresponding proof of VAT zero-rating:

Name of Customer	Proof of VAT zero-rating	Exhibit No.	Validity Period
ADNAMA MINING RESOURCES INCORPORATED	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-098	"P-5"; "P-43-L-1"	May 20, to December 31, 2013;
ASIA INTERNATIONAL AUCTIONEERS, INC.	SBMA Certificate of Tax Exemption	"P-6"; "P-43-L-2"	May 24, 2013 to May 23, 2014
BERONG NICKEL CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-040	"P-5"; "P-43-L-3"	January 1 to December 31, 2013
BIGLIFT PROPERTIES & DEVELOPMENT CORPORATION	SBMA Certificates of Tax Exemption	"P-7"; "P-43-L-4"	Oct. 16, 2013 to Oct. 15, 2014; July 27, 2012 to July 26, 2013
RIO TUBA NICKEL MINING CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certification No. 2013-043	"P-5"; "P-43-L-5"	January 1 to December 31, 2013
CAGDIANAO MINING CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certification No. 2013-037	"P-5"; "P-43-L-6"	January 1 to December 31, 2013
CARMEN COPPER CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certification 2013-016	"P-5"; "P-43-L-7"	January 1 to December 31, 2013
CORAL BAY NICKEL CORPORATION	Confirmation Letter from	"P-4"; "P-43-L-8"	For the year 2013

[60] Now at 12% VAT rate.
[61] Exhibit "P-4", Docket-Vol. III, pp. 1017-1019.
[62] Exhibit "P-5", Docket-Vol. III, p. 1020.

	PEZA; PEZA Certification No. 2013-0301		
C.T.P. CONSTRUCTION AND MINING CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-086	"P-5"; "P-43-L-9"	March 5 to December 31, 2013
FCF MINERALS CORP.	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-027	"P-5"; "P-43-L-10"	January 1 to December 31, 2013
HHIC-PHIL. INC.	SBMA Certificate of Tax Exemption	"P-43-L-11"	March 5, 2013 to March 4, 2014
HINATUAN MINING CORPORATION	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-036	"P-5"; "P-43-L-12"	January 1 to December 31, 2013
HOUSE TECHNOLOGY INDUSTRIES PTE., LTD. (HTIPL)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0059	"P-4"; "P-43-L-13"	For the year 2013
HYS-YACHT PHILS LTD. CO. INC.	SBMA Certificate of Tax Exemption	"P-8"; "P-43-L-14"	July 15, 2013 to July 14, 2014
INTEVALUE SERVICES INC.	CEZA Certification	"P-12"; "P-43-L-15"	September 9, 2013 to August 15, 2014
JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC	SBMA Certificate of Tax Exemption	"P-43-L-16"	October 3, 2012 to October 2, 2013
MAJESTIC LANDSCAPE CORPORATION (MLC)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0047	"P-4"; "P-43-L-17"	For the year 2013
JAMLJLE PROPERTIES (SUBIC) AND DEVELOPMENT CORPORATION (formerly: JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC)	SBMA Certificate of Tax Exemption	"P-9"; "P-43-L-18"	November 27, 2013 to November 26, 2014
SCAD SERVICES (S) PTE., LTD. (PHIL. BRANCH) (SSPL)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0046	"P-4"; "P-43-L-19"	For the year 2013
ST. LUKE'S MEDICAL CENTER (GLOBAL CITY) INC. (SLMCGCI)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-1014	"P-4"; "P-43-L-20"	July 10 to December 31, 2013
NORTHEAST FREIGHT FORWARDERS, INC.	SBMA Certificate of Tax Exemption	"P-43-L-22"	March 4, 2013 to March 3, 2014
TAGANITO MINING CORPORATION	BOI Certificate No. 2013-011	"P-5"; "P-43-L-23"	January 1 to December 31, 2013
SUBIC CONSOLIDATED PROJECTS, INC.	SBMA Certificate of Tax Exemption	"P-10"; "P-43-L-21"	January 4, 2013 to January 3, 2014
PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR)	Confirmation Letter from PEZA; PEZA Certification No. 2013-0334	"P-4"; "P-43-L-24"	For the year 2013
PLATINUM GROUP METALS CORPORATION (PGMC)	BOI Certification issued Jun. 7, 2016; BOI Certificate No. 2013-057	"P-5"; "P-43-L-25"	January 17 to December 31, 2013
SUNWEST WATER AND ELECTRIC CO. (SUWECO) INC.	BOI Certificate of Reistration issued Nov. 24, 2010 (as RE Developer under RA 9513)	"P-43-L-26"	
TRANS ASIA CONSTRUCTION DEVELOPMENT CORP.	CDC Certificates of Registration and Tax Exemption	"P-11"; "P-43-L-27"	April 1, 2013 to March 31, 2016; April 1, 2013 to March 31, 2014
VISAYAS SLAKED LIME CORPORATION	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0908	"P-4"; "P-43-L-28"	For the year 2013
WU KONG SINGAPORE PTE. LTD. (PHIL. BRANCH)	Confirmation Letter from PEZA; PEZA Certificate No.	"P-4"; "P-43-L-29"	For the year 2013

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REDONDO QUARRY AND DEVELOPMENT CORPORATION	SBMA Certificate of Tax Exemption	"P-43-L-30"	August 24, 2012 to August 23, 2013
TAGANITO HPAL NICKEL CORPORATION	Confirmation Letter from PEZA; PEZA Certificate No. 2013-1288	"P-4"; "P-43-L-31"	For the year 2013
PHILIPPINE MAKOTO CORPORATION (PMC)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0073	"P-4"; "P-43-L-32"	For the year 2013
PHIL. BATTERIES INCORPORATED (PBI)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-1364	"P-4"; "P-43-L-33"	For the year 2013
PHILIPPINE SINTER CORPORATION (PSC)	Confirmation Letter from PEZA; PEZA Certificate No. 2013-0860	"P-4"; "P-43-L-34"	For the year 2013

Thus, petitioner's sales to the aforementioned entities for the 2nd quarter of FY 2014 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(5) and(c) and 108(B)(3)of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices [for sales of goods] and official receipts (ORs) [for sales of services] in accordance with Sections 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-2005 which are all quoted hereunder:

"Sec. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.-*

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

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

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

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

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

xxx xxx xxx

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

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

"Sec. 4.113-1. *Invoicing Requirements.* –

(A) A Vat-registered person shall issue: -xxx

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

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

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

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* – The following information shall be indicated in VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That: xxx

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

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

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

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

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

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2) Sale of goods to entities which are not among the registered corporations in the Philippines and were paid for in accordance with the rules and regulations of the BSP

With respect to the alleged sales to entities not registered in the Philippines, which were allegedly supported by Certifications of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) and were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) per the supporting invoices and inward remittances from banks, the related schedules[63] submitted by the ICPA show that the same are actually classified by the latter as sales of services (and not goods) to Hyundai Corporation, Bomag Fayat Group and Marubeni Corporation.

Pertinent to the VAT zero-rating of such sales to the said entities, Section 108(B)(2) of the NIRC of 1997, as amended, provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*-
>
> (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
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

[63] Exhibits "P-43-V" and "P-43-BV".

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Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1) The payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules;[64]

2) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services was performed;[65]

3) The services fall under any of the categories under Section 108(B)(2)[66], or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[67]

4) The services must be performed in the Philippines[68] by a VAT-registered person; and

Relative to the *first* essential element and in relation to the *fifth* requisite for the granting of input VAT refund, petitioner was able to present only the *Certifications of Inward Remittances*[69] issued by BDO Unibank, Inc. showing the remittances of Bomag Fayat Group and Marubeni Corporation to petitioner. Considering that the certifications attest to the fact of payment *"in acceptable foreign currency....and accounted for in accordance with the rules and regulations of the BSP"*,[70] petitioner is considered to have complied

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[64] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[65] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[66] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[67] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[68] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[69] Exhibits "P-43-BV-1" (page 2 of 2), "P-43-BV-2" (page 2 of 2), "P-43-BV-3" (page 2 of 2) and "P-43-BV-4" (page 2 of 2).

[70] Refer to *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

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with the above-stated *first* essential element but only insofar as Bomag Fayat Group and Marubeni Corporation is concerned.

As to the *second, third* and *fourth* essential elements, the same have not been established for Hyundai Corporation, Bomag Fayat Group and Marubeni Corporation as petitioner failed to adduce evidence to prove that it rendered services to non-resident foreign corporations not doing business in the Philippines; that the nature of such services was other than *processing, manufacturing or repacking of goods";* and that the same were performed in the Philippines.

Thus, the sales of services to Hyundai Corporation, Bomag Fayat Group and Marubeni Corporation failed to qualify as subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended.

Meanwhile, based on the Final Report of the ICPA[71], the zero-rated sales in the amount of ₱32,895,316.42, as detailed below, shall be denied VAT zero-rating on the basis of the following findings:

Exhibit Reference	Description	Amount
"P-43-T"	Zero-rated sales properly supported by charge sales invoice but occurring beyond the term of zero-rating certificates [sale of goods]	₱ 127,750.96
"P-43-U"	Zero-rated sales w/o certificates of zero-rating from Customers [sale of goods and services]	15,499,190.41
"P-43-W"	Zero-rated sales properly supported by official receipt, but not properly classified as zero-rated sales (w/o stamp "Zero-rated sales") [sale of services]	1,399,408.57
"P-43-X"	Zero-rated sales properly supported by charge sales invoice, dated outside the covered fiscal period. [sale of goods]	5,427,378.17
"P-43-Y"	Zero-rated sales not properly supported by charge sales invoice or OR (Bills and Debit/credit notes). [sale of goods and services]	6,988,088.16
"P-43-Z"	Zero-rated sales with stamped "Zero-rated" in the photocopy not verified with the original document [sale of goods and services]	634,370.92
"P-43-AA"	Zero-rated sales without stamped "Zero-rated" and not verified with the original document [sale of services]	942,691.43
"P-43-AB"	Zero-rated sales properly supported by charge sales invoice, dated outside the covered fiscal period, not verified with original document [sale of goods]	2,712.00
"P-43-AC"	Zero-rated sales supported by improper documents (Bills), not verified with original document [sale of services]	86,490.00

[71] Exhibit "P-43", Docket-Vol. II, pp. 883 to 884.

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"P-43-BX"	Zero-rated sales without supporting documents	1,787,235.80
Total		**P32,895,316.42**

In addition, petitioner's claimed zero-rated sales in the amount of ₱17,356,607.78 shall also be denied VAT zero-rating due to the following reasons:

Exhibit No.	Customer Name	Amount
1. Sales of goods supported by VAT zero-rated invoices but dated outside the validity period of the Certificate of VAT zero-rating		
"P-43-R-41"	INTEVALUE SERVICES INC.	₱ 8,760.00
"P-43-BZ-1"	BIGLIFT PROPERTIES AND DEV'T CORPORATION	393,520.00
"P-43-BZ-59"	INTEVALUE SERVICES INC.	1,980.00
"P-43-BZ-60"	INTEVALUE SERVICES INC.	13,320.00
2. Sales of services supported by documents other than VAT zero-rated ORs		
"P-43-BZ-10"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-11"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-12"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-13"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-14"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-15"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-16"	CTP CONSTRUCTION & MINING CORP.	50,500.00
"P-43-BZ-17"	CTP CONSTRUCTION & MINING CORP.	30,000.00
3. Sales of services, which as stated earlier, failed to qualify for VAT zero-rating under Section 108(B)(2) of NIRC of 1997, as amended		
"P-43-V-1"	HYUNDAI CORPORATION	346,350.14
"P-43-BV-1"	BOMAG FAYAT GROUP	369,869.12
"P-43-BV-2"	BOMAG FAYAT GROUP	703,442.82
"P-43-BV-3"	MARUBENI CORPORATION	2,014,687.68
"P-43-BV-4"	MARUBENI CORPORATION	13,121,178.02
Total		**P17,356,607.78**

In sum, out of the reported zero-rated sales of ₱403,798,185.05, only the amount of ₱353,546,260.85, as computed below, qualify for VAT zero-rating for the 2nd quarter of FY 2014:

Total Reported Zero-Rated Sales		₱ 403,798,185.05
Less: Sales denied of VAT zero-rating		
Per ICPA Report	₱ 32,895,316.42	
Per Court's further verification	17,356,607.78	50,251,924.20
Valid Zero-Rated Sales		**P 353,546,260.85**

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Thus, for purposes of the *fourth* requisite, the Court finds that petitioner had VAT zero-rated sales in the said amount of ₱353,546,260.85 for the 2nd quarter of FY 2014.

As for the *fifth* requisite, which is to the effect that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations under **Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2)**, all of the NIRC of 1997, as amended, since the legal basis for petitioner's zero-rated sales of ₱353,546,260.85 is **Section 106(A)(2)(a)(5) and (c)** of the NIRC of 1997, as amended, the instant case need not comply with the said *fifth* requisite. Parenthetically, in this connection, while petitioner alleges that it has sales of services to certain non-resident foreign corporations, We need **not** determine whether there was compliance with the same *fifth* requisite, since it was not duly proven, as above shown, that the said sales of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

The Court shall then proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate.

The input VAT being claimed do not appear to be transitional input taxes

The claimed input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

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

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such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[72]

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

Not all of the input VAT being claimed are due or paid

For the 2nd quarter of FY 2014, petitioner declared input taxes in the total amount of ₱90,241,023.59, out of which the amount of ₱32,299,209.56 is the subject of petitioner's claim, to wit:

Input taxes as declared per VAT returns:[73]

Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter *(Line 20B)*	₱ 3,122,141.02
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period *(Line 23A)*	2,926,925.56
Input tax Amortized for the period	**₱ 195,215.46**
Add: Current Input Taxes	
On Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	2,124,710.68
On Importation of Goods Other than Capital Goods *(Line 21H)*	81,271,468.41
On Domestic Purchase of Services *(Line 21J)*	6,649,629.04
Total Current Input Tax	**₱90,045,808.13**
Total Input Taxes for the period	**₱90,241,023.59**

Input taxes as per subject claim[74]*:*

Total Input Taxes for the period	₱ 90,241,023.59
Less: Input tax on machineries purchased during the quarter and sold to VATable entities in the same quarter	3,267,163.89
Input tax on machineries purchased during the quarter but	

[72] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.
[73] Exhibit "P-17", Docket -Vol. III, p.1032.
[74] Petition for Review, Docket -Vol. I, p. 37, 2nd to 3rd pars.

not sold within the same quarter	21,947,192.48
Net Input tax for allocation	₱ 65,026,667.22
Multiply by zero-rated sales	403,798,185.05
Divide by total sales	1,216,043,325.65
Input tax allocated to zero-rated sales	₱ 21,592,693.00
Add: Input tax directly attributable to VAT zero-rated sale of machineries imported in prior years but sold only during the quarter	10,706,516.56
Input VAT claim	**₱ 32,299,209.56**

In support of its input taxes due or paid, petitioner submitted various sales invoices, ORs, Import Entry and Internal Revenue Declarations (IEIRDs), Statements of Settlement of Duties and Taxes (SSDTs), Bureau of Customs (BOC) ORs and other related documents[75], which were examined by the ICPA.

Based on the ICPA's Final Report[76], the input VAT in the amount of ₱8,541,035.44 shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended:

	Exhibit Reference	Description	Amount
A. Input tax on domestic purchases of goods and services			
	"P-43-AH"	Domestic purchase of goods and services with no supporting documents	₱ 4,817,177.36
	"P-43-AI"	Domestic purchase goods supported by documents other than VAT invoices	520,970.49
	"P-43-AJ"	Domestic purchase of services supported by documents other than VAT ORs	465,273.72
	"P-43-AK"	Domestic purchase of goods and services supported by VAT invoices claimed outside the taxable period/year	811,911.25
	"P-43-AL"	Domestic purchase of goods and services supported by VAT invoice and ORs with missing/outdated ATP	452,560.20
	"P-43-AM"	Domestic purchase of goods supported by VAT invoices issued in the name of the Petitioner wherein VAT amount was not separately disclosed	53,266.21
	"P-43-AN"	Domestic purchase of services supported by VAT ORs issued in the name of the Petitioner wherein VAT amount was not separately	725,032.43

[75] Exhibits "P-43-AD-1" to "P-43-AD-17", "P-43-AE-1" to "P-43-AE-84", "P-43-AF-1" to "P-43-AF-26", "P-43-AG-1" to "P-43-AG-487", "P-43-AI-1" to "P-43-AI-111", "P-43-AJ-1" to "P-43-AJ-262", "P-43-AK-1" to "P-43-AK-321", "P-43-AL-1" to "P-43-AL-117", "P-43-AM-1" to "P-43-AM-48", "P-43-AN-1" to "P-43-AN-336", "P-43-AO-1" to "P-43-AO-309", "P-43-AP-1" to "P-43-AP-2", "P-43-AQ-1" to "P-43-AQ-89", "P-43-AR-1" to "P-43-AR-4", "P-43-AS-1" to "P-43-AS-95", "P-43-AT-1" to "P-43-AT-108", "P-43-AU-1" to "P-43-AU-18", "P-43-AV-1" to "P-43-AV-25", "P-43-AW-1", "P-43-AY-1" to "P-43-AY-32", "P-43-AZ-1" to "P-43-AZ-118", "P-43-BA-1" to "P-43-BA-4", "P-43-BB-1" to "P-43-BB-11", "P-43-BC-1" to "P-43-BC-6" and "P-43-BD-1" to "P-43-BD-25".

[76] Exhibit "P-43", Docket-Vol. II, pp. 888 to 891.

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		disclosed	
	"P-43-AO"	Domestic purchase of goods and services supported by VAT invoices/ VAT ORs issued in the name of the Petitioner but without or with incorrect name, TIN and/or address of the Petitioner	511,594.67
	"P-43-AP"	Domestic purchase of services supported by VAT official receipt with unreadable date or with no date indicated	219.64
	"P-43-AQ"	Domestic purchase of goods and services supported by VAT sales invoice and ORs with unreadable details	34,148.48
	"P-43-AR"	Domestic Purchases of goods and services supported by a Non-VAT sales invoice and OR	18,189.50
	Disallowed input tax		***P8,410,343.95***
B. Input tax on Importations of goods			
	"P-43-AW"	Importation of goods supported by Import Entry Declarations only	₱ 4,821.00
	"P-43-AX"	Importation of goods with no supporting document	842.00
	Disallowed input tax		***P 5,663.00***
C. Amortization of Deferred Input tax on capital goods exceeding 1 Million			
	"P-43-AZ"	Input tax deferred on purchase of capital goods exceeding 1M supported by sale invoices but did not comply with the invoicing requirements	₱ 77,355.62
	"P-43-BA"	Deferred input tax from purchase of capital goods exceeding 1 Million supported by unreadable tape receipt/invoice	110.73
	"P-43-BB"	Input tax on purchases of goods other than capital goods classified as Input tax on purchase of capital goods exceeding 1 Million	959.40
	"P-43-BC"	Input tax on purchases of service classified as input tax on Purchase of capital goods exceeding 1 Million	1,682.59
	"P-43-BD"	Deferred input tax from purchase of capital goods exceeding 1 Million supported by documents other than sales invoice	12,631.38
	"P-43-BW"	Deferred Input tax from Purchase of Capital Goods Exceeding 1 Million without Supporting Document	32,288.77
	Disallowed Input Tax		***P 125,028.49***
Total Disallowances per ICPA findings			**P8,541,035.44**

In addition to the above disallowances, the following claimed input VAT on importations, in the total amount of ₱10,498,007.00, shall likewise be disallowed for failure to prove the VAT payment thereof:

Exhibit No.	Supplier Name	Amount
Supported by IEIRDs (without machine validation), Assessment Notices or other documents proving that the VAT were actually paid.		
"P-43-AV-1"	Bomag GMBH	₱ 1,218,945.00
"P-43-AV-2"	Bomag (China) Construction Machinery Co. Ltd	1,225,554.00
"P-43-AV-3"	Bomag Fayat Group	590,774.00
"P-43-AV-4"	Komatsu Diesel Co Ltd	395,254.00
"P-43-AV-5"	Bangkok Komatsu Co Ltd	4,729.00
"P-43-AV-6"	Clark Airport Support Services Corp	10,606.00
"P-43-AV-7"	Clark Airport Support Services Corp	7,288.00
"P-43-AV-8"	Pt. Komatsu Reman Indonesia	114,591.00
"P-43-AV-9"	Hensley Industries Inc	90,649.00
"P-43-AV-10"	Bomag GMBH	89,807.00

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"P-43-AV-11"	Bomag GMBH	25,836.00
"P-43-AV-12"	Hensley Industries Inc	8,265.00
"P-43-AV-13"	Daewoo International Corporation	192,252.00
"P-43-AV-14"	Komatsu Diesel Co Ltd	667,324.00
"P-43-AV-15"	Clark Airport Support Services Corp	45,330.00
"P-43-AV-16"	Komatsu Ltd	6,714.00
"P-43-AV-17"	Komatsu Ltd	309,220.00
"P-43-AV-18"	Hyundai Corporation	2,439,884.00
"P-43-AV-19"	Hyundai Mobis	41,080.00
"P-43-AV-20"	Komatsu Ltd	34,279.00
"P-43-AV-21"	Hyundai Mobis	10,713.00
"P-43-AV-22"	Hyundai Mobis	7,150.00
"P-43-AV-23"	Hyundai Mobis	34,212.00
"P-43-AV-24"	Daewoo International Corporation	2,920,201.00
"P-43-AV-25"	Cargotec	7,350.00
	Total	**P10,498,007.00**

In sum, out of the reported input VAT of ₱90,241,023.59, petitioner was able to substantiate input VAT due or paid only in the amount of ₱71,201,981.15, computed as follows:

Input VAT per Return		₱ 90,241,023.59
Less: Disallowances		
Per ICPA findings	₱ 8,541,035.44	
Per Court's further verification	10,498,007.00	19,039,042.44
Substantiated Input VAT due or paid		**P71,201,981.15**

Furthermore, as can be gleaned from petitioner's computation of its refund claim, it excluded from the reported input VAT of ₱90,241,023.59 the *"Input tax on machineries purchased during the quarter and sold to VATable entities in the same quarter"* and *"Input tax on machineries purchased during the quarter but not sold within the same quarter"* in the respective amounts of ₱3,267,163.89 and ₱21,947,192.48. Since the said amounts of ₱3,267,163.89 and ₱21,947,192.48 do not form part of the input VAT being claimed for refund and were not specifically identified by petitioner to determine whether it is already included in the disallowances noted, the same shall be deducted from the substantiated input VAT due or paid of ₱71,201,981.15 for purposes of computing the proper amount that may be subject for refund.

Moreover, petitioner also included in its refund claim the amount of ₱10,706,516.56 pertaining to *"Input tax directly attributable to VAT zero-rated sale of machineries imported in prior years but sold only during the quarter"*. As aptly found by the ICPA, *"the input tax directly attributable to zero-rated sales were properly supported by invoices and/or import documents, summarized in **Exhibit P-43-K**, except for the purchases amounting to **₱74,143.09**".*[77] Hence, only the input VAT paid of ₱10,632,373.47 (₱10,706,516.56 less ₱74,143.09) shall be included in the amount that may be refunded.

Based on the foregoing, petitioner complied with the *seventh* requisite, *i.e.*, the input VAT was due or paid. However, out of the ₱71,201,981.15 substantiated input VAT due or paid, only the claimed amount of ₱56,619,998.25, as computed below, may be the proper subject for refund:

Substantiated Input VAT due or paid	₱ 71,201,981.15
Less: Input tax on machineries purchased during the quarter and sold to VATable entities in the same quarter	3,267,163.89
Input tax on machineries purchased during the quarter but not sold within the same quarter	21,947,192.48
Net Amount (common input tax for allocation)	45,987,624.78
Add: Input tax directly attributable to VAT zero-rated sale of machineries imported in prior years but sold only during the quarter	10,632,373.47
Valid input VAT claim	**₱56,619,998.25**

A portion of petitioner's valid input taxes due or paid are attributable to its zero-rated or effectively zero-rated sales

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

Based on the findings above, out of the ₱56,619,998.25 valid input VAT claim, the amount of ₱45,987,624.78 pertain to common input tax available for allocation. Considering that petitioner had other kinds of sales, *i.e.*, sales to private entities and sales to government and its valid common input taxes due or paid in the amount of ₱45,987,624.78 cannot be directly or entirely attributed to

[77] *Id.*, p. 880, (page 6 of ICPA final report, no 2. 4th paragraph)

any of the transactions, the same shall be allocated proportionately on the basis of the volume of its sales, thus:

Vatable Sales to Private entities (a)	Sales to Government (b)	Zero-Rated Sales (c)	Total Sales (d = a+b+c))
₱739,941,096.77	₱72,304,043.83	₱403,798,185.05	₱1,216,043,325.65
Valid input VAT due or paid attributable to:			
Vatable Sales to Private entities (a/d x ₱45,987,624.78)			₱ 27,982,665.42
Sales to Government (b/d x ₱45,987,624.78)			2,734,352.61
Zero-Rated Sales (c/d x ₱45,987,624.78)			15,270,606.75
Total			**P 45,987,624.78**

Thus, for purposes of the *eight* requisite, the input VAT attributable to petitioner's valid zero-rated or effectively zero-rated sales only amounted to ₱25,902,980.22, as computed below:

Common input VAT due or paid allocable to zero-rated sales	₱ 15,270,606.75
Input tax directly attributable to VAT zero-rated sale of machineries imported in prior years but sold only during the quarter	10,632,373.47
Total valid input VAT attributable to valid zero-rated sales	**P25,902,980.22**

Petitioner had no unutilized input taxes available for refund.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, We now determine whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales to private entities in the amount of ₱31,249,829.31 from its output VAT liability of ₱88,792,931.61 on the said sales, petitioner still has a net output VAT payable of ₱57,543,102.30, as computed below:

Output VAT per Return[78]		₱ 88,792,931.61
Less: Input VAT attributable to VATable sales to private entities		
Input tax on machineries purchased during the quarter and sold to VATable entities in the same quarter	₱ 3,267,163.89	
Common input VAT allocable to Vatable Sales to private entities	27,982,665.42	31,249,829.31

[78] Exhibit "P-17" (Line 15B), Docket-Vol. III, p. 1032.

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Net Output VAT Payable		**₱57,543,102.30**

Since the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales of ₱25,902,980.22 is lower than the net output VAT payable of ₱57,543,102.30. Consequently, petitioner still has net output VAT still due of ₱31,640,122.08 (₱57,543,102.30 less ₱25,902,980.22).

Although petitioner's Quarterly VAT Return for the 2nd quarter of FY 2014 reflected the amount of ₱327,769,120.22[79] as "Input Tax Carried Over from Previous Period", still, petitioner failed to fully substantiate the same.

As ascertained by the ICPA, out of the reported input VAT from the 1st quarter of calendar year (CY) 2010 up to the 4th quarter of FY 2013 in the aggregate amount of ₱1,860,368,815.38[80], only the input VAT on importations in the amount of ₱822,673,657.10[81] were verified. Even assuming that the amount of ₱822,673,657.10 were valid input VAT attributable to VATable sales to private entities and zero-rated sales, still, the same is not enough to cover its reported output VAT on VATable sales to private entities for the same period in the aggregate amount of ₱1,441,804,826.90[82], thereby resulting to net output VAT payable of ₱619,131,169.80 (₱1,441,804,826.90 less

[79] Exhibit "P-17" (Line 20A), Docket-Vol. III, p. 1032.
[80] Exhibit "P-55", Supplemental ICPA Report (page 4 of 8), Docket-Vol. IV, p. 1690.
[81] *Id.*, p. 1691. (page 5 of 8 of the Supplemental ICPA Report)
[82]

1st Qtr of CY 2010 (Exh. "P-43-CF")	P 52,640,777.43
2nd Qtr of CY 2010 (Exh. "P-43-CF")	71,522,135.13
3rd Qtr of CY 2010 (Exh. "P-43-CF")	78,336,870.69
4th Qtr of CY 2010 (Exh. "P-43-CF")	47,832,180.71
1st Qtr of CY 2011 (Exh. "P-43-CG")	69,676,945.07
2nd Qtr of CY 2011 (Exh. "P-43-CG")	120,097,334.92
3rd Qtr of CY 2011 (Exh. "P-43-CG")	160,439,307.09
4th Qtr of CY 2011 (Exh. "P-43-CG")	124,291,358.13
1st Qtr of CY 2012 (Exh. "P-43-CH")	164,412,835.64
2nd Qtr of CY 2012 (Exh. "P-43-CH")	86,132,883.79
2nd Qtr of FY 2013 (Exh. "P-43-CI")	84,819,335.25
3rd Qtr of FY 2013 (Exh. "P-43-CI")	125,260,567.74
4th Qtr of FY 2013 (Exh. "P-43-CI")	256,342,295.31
Total output tax on VAT sales to private entities	**P1,441,804,826.90**

₱822,673,657.10). Needless to say, petitioner failed to prove that it has excess input VAT carried over from previous period.

Accordingly, the input tax carry over of ₱327,769,120.22, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> "SEC. 110. *Tax Credits.—*
>
> (A) *Creditable Input Tax.—*
>
> (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: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."[83]

Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

Consequently, petitioner failed to fulfill the *ninth* requisite, *i.e.,* that the input taxes have not been applied against output taxes during and in the succeeding quarters. Accordingly, the instant claim for refund/issuance of TCC on petitioner's alleged unutilized input VAT must necessarily fail.

[83] NIRC of 1997, as amended by R.A. 9361, November 21, 2006.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[84] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[85] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[86] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[87]

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

[85] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

[86] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

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

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
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice