REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PAG-ASA STEEL WORKS, INC.,
Petitioner,

-versus-

BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE, ASSISTANT COMMISSIONER TERESITA M. ANGELES,
Respondents.

CTA Case No. 9506

Members:

DEL ROSARIO, *P.J., Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:

SEP 02 2020 3:15 pm

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D E C I S I O N

MANAHAN, *J.*:

This involves a Petition for Review[1] praying that the assessment against petitioner Pag-Asa Steel Works, Inc. for deficiency Value-Added Tax (VAT) in the amount of Php 23,913,427.87 for the period January 1 to June 30, 2014 be declared null and void.

FACTS

Petitioner Pag-Asa Steel Works, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 408 Amang Rodriguez Ave., Bo. Manggahan, Pasig City, Metro Manila.[2]

Respondent, Bureau of Internal Revenue (BIR) is the government agency in charge of the assessment and collection of all national and internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith. The Commissioner of Internal Revenue (CIR) is the head of the BIR. Respondent Assistant Commissioner Teresita M. Angeles (ACIR Angeles) is the Officer-in-Charge of Large Taxpayers Service who acted as the authorized representative

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[1] Docket, CTA Case No. 9506, Vol. 1, pp. 10-34.
[2] Docket, Vol. 1, Petition for Review (PFR), p. 13.

of the CIR.[3] Respondents CIR and ACIR Angeles are impleaded in their official capacities as officers of the BIR.[4]

Petitioner has been producing the finest quality steel bars since 1964. The company is one of the leading producers of concrete-reinforcement steel bars today and ranks among of the top 200 corporations in the country.[5]

Petitioner filed its VAT Declaration for January 2014, for February 2014, Quarterly VAT Return for the First Quarter 2014 or as of March 31, 2014, for April 2014, for May 2014, and Quarterly VAT Return for the Second Quarter or as of June 30, 2014. The filing of the VAT declarations and returns were made within the prescribed periods under the law.[6]

Petitioner filed its VAT returns for the period January 1, 2014 to June 30, 2014, as summarized below:

Tax Period	Date Filed	Computation of Tax		
		Output Tax	Input Tax	Payment/(Excess Input Tax)
Jan. 2014	Feb. 22, 2014[7]	P 75,320,403.95	P314,622,464.50	(P239,302,060.55)
Feb. 2014	Mar. 22, 2014[8]	P 88,608,202.67	P318,710,963.41	(P230,102,760.74)
1st Qtr. 2014	Apr. 24, 2014[9]	P260,638,473.74	P459,391,472.29	(P198,752,998.55)
Apr. 2014	May 21, 2014[10]	P 69,908,317.45	P266,006,798.53	(P196,098,481.08)
May 2014	June 24, 2014[11]	P 91,665,291.20	P365,722,364.27	(P274,057,073.07)
2nd Qtr. 2014	July 21, 2014[12]	P232,073,517.31	P465,566,743.54	(P233,493,226.23)

On August 14, 2014, petitioner received the Letter of Authority (LOA) No. LOA-LV1-2014-00000039[13] dated August 12, 2014 signed by Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service authorizing Revenue Officers Linda Macaspac, Kristine Rose Estolas, and Group Supervisor Marisol Girang of the Large Taxpayers Service to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2014 to June 30, 2014 pursuant to RMO 19-2012, VAT Audit Program.[14]

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[3] Docket, Vol. 1, Pre-Trial Order (PTO), p. 252.
[4] *Id.*
[5] Docket, Vol. 1, PFR, p. 15.
[6] Docket, Vol. 1, PTO, p. 251.
[7] Docket, Vol. 1, Exhibits "P-1" to "P-4", pp. 373-376.
[8] Docket, Vol. 1, Exhibits "P-10" to "P-19", pp. 382-391.
[9] Docket, Vol. 1, Exhibits "P-20" to "P-29", pp. 392-401.
[10] Docket, Vol. 1, Exhibits "P-30" to "P-38", pp. 402-410.
[11] Docket, Vol. 1, Exhibits "P-39" to "P-48", pp. 411-420.
[12] Docket, Vol. 1, Exhibits "P-49" to "P-58", pp. 421-430.
[13] Docket, Vol. 2, Exhibit "P-321", p. 695.
[14] Docket, Vol. 1, PTO, p. 251.

On April 25, 2016, petitioner received the Preliminary Assessment Notice[15] (PAN) with Details of Discrepancies[16] signed by Assistant Commissioner Nestor S. Valeroso.

Petitioner protested[17] the PAN on May 12, 2016.

On June 20, 2016, petitioner received the FLD/FAN[18] informing petitioner of its deficiency VAT for the period January 1, 2014 to June 30, 2014 and requesting petitioner to pay the deficiency.[19] The assessment was computed as follows:

Assessment No. VAT-LVI-2014-00000039-06-16-10-A

I. Deficiency VAT		
Taxable Sales per VAT Return		P 4,105,933,270.10
Add: Adjustments		
Sales discount not indicated in sales invoice		323,376.84
Zero-rated sales considered taxable		28,710,395.03
Hauling charged to customers, not taken up in sales		11,961,076.59
Offsetting of accounts receivable with account payable		316,543.03
Adjusted sales subject to VAT		P 4,147,244,661.59
Multiply by VAT rate		12%
Output Tax Due Thereon		P 497,669,359.39
Less: Allowable Input Tax Per Return	P 492,711,991.05	
Less: Disallowed input tax		
Non-compliance with invoicing reqts.	(11,573,755.17)	481,138,235.88
Net VAT Payable		P 16,531,123.51
Less: Tax payments		-
Net VAT Still Due		P 16,531,123.51
Add: Interest 7/25/14 to 6/30/16	36.68%	6,394,238.57
TOTAL AMOUNT DUE		**P 22,925,362.08**

Assessment No. VAT-LVI-2014-00000039-06-16-10-B

II. Administrative Penalty	
Compromise Penalty – Failure to file and/or pay an Internal Revenue Tax at the time or times required by law	50,000.00
TOTAL ADMINISTRATIVE PENALTY	P 50,000.00

On July 20, 2016, petitioner filed its Protest[20] to the FLD/FAN, requesting for reconsideration and/or reinvestigation. On September 15, 2016, petitioner filed its submission of supporting documents.[21]

On November 21, 2016, petitioner received the Final Decision on Disputed Assessment (FDDA),[22] which found petitioner still liable for basic deficiency VAT of

[15] Docket, Vol. 2, Exhibits "P-325" to "P-326", pp. 699-700.
[16] Docket, Vol. 2, Exhibits "P-327" to "P-342", pp. 701-716.
[17] Docket, Vol. 2, Exhibits "P-343" to "P-344", pp. 717-718.
[18] Docket, Vol. 2, Exhibits "P-345" to "P-364", pp. 719-738.
[19] Docket, Vol. 1, PTO, pp. 251-252.
[20] Docket, Vol. 2, Exhibits "P-365" to "P-378", pp. 739-752.
[21] Docket, Vol. 2, Exhibits "P-379" to "P-560", pp. 753-907.
[22] Docket, Vol. 2, Exhibits "P-561" to "P-572", pp. 908-919.

Php16,164,274.58 or a total of Php23,913,427.82 including surcharge and interest.

The instant Petition for Review was filed on December 16, 2016. After summons[23] and extensions,[24] respondents Answer[25] was admitted on May 24, 2017.[26]

The parties filed their respective pre-trial briefs[27] and their Joint Stipulation of Facts and Issues (JSFI).[28] The Pre-Trial Order (PTO)[29] was issued on October 4, 2017 to govern the proceedings.

Trial proceeded with petitioner presenting the following witnesses: (1) Ms. Lydia T. Lim,[30] (2) Ms. Marita M. Mena,[31] and (3) Court-commissioned Independent Certified Public Accountant (ICPA) Jose Isagani M. Lacson.[32]

Petitioner's Formal Offer of Evidence[33] was filed on April 20, 2018, which was resolved by the Court on November 14, 2018.[34]

Subsequently, respondent presented his sole witness, Revenue Officer Mariesol Girang.[35] On April 12, 2019, respondent filed his Formal Offer of Evidence[36] which was resolved on July 10, 2019.[37]

With the filing of respondent's Memorandum[38] on August 16, 2019, and the Memorandum for the Petitioner[39] on August

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[23] Docket, Vol. 1, p. 137.
[24] Docket, Vol. 1, Resolutions dated January 26, 2017 and February 28, 2017, pp. 143 and 151.
[25] Docket, Vol. 1, pp. 158-162.
[26] Docket, Vol. 1, Resolution dated May 24, 2017, p. 170.
[27] Docket, Vol. 1, Pre-Trial Brief (For the Petitioner), pp. 180-189; Respondent's Pre-Trial Brief, pp. 231-235.
[28] Docket, Vol. 1, pp. 240-246.
[29] Docket, Vol. 1, pp. 250-257.
[30] Docket, Vol. 1, pp. 192-218.
[31] Docket, Vol. 1, pp. 219-230.
[32] Docket, Vol. 1, pp. 309-314.
[33] Docket, Vol. 1, pp. 360-372.
[34] Docket, Vol. 2, pp. 973-978.
[35] Docket, Vol. 2, Judicial Affidavit of Revenue Officer IV Mariesol Girang, pp. 993-1000.
[36] Docket, Vol. 2, pp. 1007-1013.
[37] Docket, Vol. 2, pp. 1028-1029.
[38] Docket, Vol. 2, pp. 1030-1044.
[39] Docket, Vol. 2, pp. 1045-1096.

20, 2019, the case was submitted for decision on September 3, 2019.[40]

ISSUES

Whether or not petitioner is liable to pay the aggregate amount of Php23,913,427.82 as deficiency VAT for the taxable period January 1 to June 30, 2014; and

Assuming that petitioner is liable to pay deficiency VAT amounting to Php23,913,427.82, did the BIR violate Section 110 of the National Internal Revenue Code of 1997, as amended (NIRC), when it refused to credit against this deficiency tax the excess input VAT paid by the petitioner in the sum of Php233,493,226.23?

Petitioner's arguments

Petitioner argues that even assuming *arguendo* that the disallowances made by respondent BIR (which gave rise to additional VAT output) are valid, it has no VAT liability as of June 30, 2014; that as of June 30, 2014, petitioner has an excess VAT input of Php233,493,226.23, from where the additional VAT output determined by the BIR audit in the amount of Php16,164,274.58 can be deducted and which is more than enough to offset the assessment; and, that it is not liable to pay Php16,164,274.58 as additional VAT for the taxable period January 1 to June 30, 2014, per the FDDA.

Furthermore, petitioner avers that the sales discount of Php323,376.84 is not subject to VAT; that the zero-rated sales of Php28,710,395.03 to Subic Bay Freeport Zone – Registered Enterprises should not be subjected to VAT, regardless of whether it is "pick-up sales" or "delivered sales" and irrespective of place of delivery of goods; that delivery expenses or hauling charges should not be subjected to VAT; that the offsetting of accounts with Jelaina's Trading and Construction (Jelaina) in the sum of Php316,543.03 should not be subjected to VAT; and, that input tax in the sum of Php11,573,755.17 from domestic purchases for the supplier Jelaina's alleged non-compliance with invoicing requirements and because of Jelaina's failure to

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[40] Docket, Vol. 2, p. 1098.

report its income to respondent BIR should not be disallowed; and, that respondents failed to consider beginning and ending balances of VAT input/output and purchase of capital assets, other transactions that give rise to VAT inputs.

Respondents' arguments

Respondents contend that respondent CIR properly disallowed the sales discounts as an exclusion from petitioner's sales; that they correctly subjected to VAT petitioner's sales to MSK Group Work, Inc. and Water Treatment Corporation; that the hauling charges are revenue earned by petitioner, hence, subject to VAT; that petitioner's receipt of payment from Jelaina's Trading Corporation is subject to VAT; that respondents properly disallowed petitioner's input tax for failure to comply with the invoicing requirements under the National Internal Revenue Code (NIRC) of 1997; that petitioner failed to overcome the presumption of correctness of respondent's assessment; and, that after consideration of the disallowances due to petitioner's failure to comply with relevant laws, petitioner is clearly liable for deficiency VAT.

RULING OF THE COURT

The petition has merit.

The Petition for Review was timely filed.

In the instant case, petitioner received the FDDA on November 21, 2016.

Rule 8, Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Rule 8 Civil Procedure in Civil Cases
>
> xxx xxx xxx
>
> Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the

Commissioner of Internal Revenue to act on the disputed assessments. xxx (*Underscoring supplied*)

Counting thirty (30) days from November 21, 2016, petitioner had until December 21, 2016 within which to file its appeal. Thus, the instant Petition for Review was timely filed on December 16, 2016.

The deficiency VAT assessment is cancelled, considering that there is sufficient input VAT for the 1st and 2nd quarters of 2014 to cover the VAT due for the same periods.

In the subject FDDA signed by respondent OIC-ACIR Angeles, petitioner was informed that there is still a deficiency VAT due in the total amount of Php23,913,427.82, computed below:

Taxable sales per Returns			₱4,105,933,270.10
Add: Income not subjected to VAT A. Sales discount not indicated in sales invoice			
Discrepancy bet SI and check payments	₱ 1,077.95		
Pricing error/adj after invoicing/ delivery	322,298.89	₱ 323,376.84	
B. Zero-rated sales considered taxable			
MSK Groupwork, Inc.	18,521,760.85		
SB Construction and Water Treatment	10,188,634.18	28,710,395.03	
C. Hauling charged to customers, not taken up in sales	12,728,143.01		
Less: Zero-rated hauling	(3,824,140.78)	8,904,002.23	
D. 1) Offsetting of receivable accounts with payable account			
Water/electricity (no SI/OR)	17,250.00		
Labor & equipment rental in loading garbage to hauling trucks (with SI/no OR)	26,250.00		
Labor & equipment for levelling and spreading of backfill materials (with SI/no OR)	128,006.56		
Sub-total	171,506.56		
2) Offsetting - debit memos Various debit memos deducted from total billing	114,224.29		
Debit memos deducted from billing	30,812.18		
Sub-total	145,036.47	316,543.03	38,254,317.13
Total taxable sales/receipts per audit			₱4,144,187,587.23
Output tax due (before disallowed zero-rated sales)			₱ 497,302,510.46
Less: Allowable input tax per return		₱492,711,991.05	
Less: Disallowed input tax for non-compliance w/ invoicing reqts			
Jelaina's Trading & Construction	₱11,553,439.79.		

M-Lav Ind'l Gas, Inc.	19,237.52		
Brownstone Asia Tech, Inc.	642.86		
St. Ignatius de Loyola Health Care Services	227.14		
Botica de la Naval	207.86	11,573,755.17	481,138,235.88
DEFICIENCY VAT			**₱ 16,164,274.58**
Add: Interest 7/25/14 to 6/30/16			
7/25/15 to 12/16/16		47.94%	7,749,153.24
Compromise			-
TOTAL DEFICIENCY VAT			**₱ 23,913,427.82**

Based on the above computation, it appears that the assessment is comprised of six (6) items, identified as follows:

A. Sales discount not indicated in sales invoice	₱ 323,376.84
B. Zero-rated sales considered taxable	28,710,395.03
C. Hauling charged to customers, not taken up in sales	8,904,002.23
D. Offsetting of:	
1) receivable accounts with payable account	171,506.56
2) debit memos	145,036.47
E. Disallowed input tax for non-compliance with invoicing requirements	11,573,755.17
F. Disallowed excess input tax carried over to subsequent periods	233,493,226.23

A. Petitioner is liable for output VAT on sales discount not indicated in sales invoice amounting to ₱323,376.84

In the Formal Letter of Demand ("FLD"), respondent found that per reconciliation of sales per Trial Balance and VAT Returns, sales discounts amounting to ₱323,376.84 were not subjected to VAT.[41]

In its protest to the FLD, petitioner accounted for the assessed sales discount as lifted from its unadjusted trial balance, where the final balance as of June 30, 2014 amounting to ₱323,376.84 is composed of the following:[42]

[41] Exhibit "P-347", FLD, Docket – Vol. 2, p. 721.
[42] Exhibit "P-366", Protest to FLD, Docket – Vol. 2, p. 740. *am*

Uncollected difference	₱ 1,077.95
Adjustments due to pricing error	322,298.89
	₱323,376.84

Respondents nevertheless reiterated the assessment in the FDDA and assert that sales discounts are allowed as deduction from the taxable base for VAT if they are granted at the time of sale, the grant of which does not depend upon the happening of a future event. These maybe excluded from gross sales within the same month or quarter they were given. However, since petitioner admits that the uncollected difference and sales adjustments were granted subsequent to a sale, these are not the allowable sales deduction provided for under Section 4.106-9(a) of RR No. 16-2005, as amended. Respondents further state that it is true that they were never collected but the sales discounts were not granted at the time of sale. Respondents maintain that for income tax purposes, discounts granted subsequent to a sale are allowed as deduction from sales but not for VAT purposes.

Further, respondents argue that sales adjustments made by petitioner are not sales returns and allowances so they would not fall under Section 4.106-9(b) of RR No. 16-05, as amended. The trial balance has a separate account for sales returns and allowances under account #601 while sales discount fall under account #602.[43]

However, petitioner insists that the amount of ₱1,077.95 is an actual minimal peso and/or centavo discrepancy between sales invoice and check payments which is considered immaterial to claim from petitioner's customers. It was thus adjusted and closed to sales discount. Amounts of adjustment range from ₱0.01 to ₱185.63, representing 207 entries in the Journal Voucher.

On the other hand, the balance of ₱322,298.89 allegedly pertains to adjustments for pricing errors or adjustments to reflect the real agreement between petitioner and its customers.

Petitioner explains that price adjustments due to pricing error amount to ₱323,376.84 out of the total sales of ₱4,105,933,270.10, or roughly 0.0079% of the total sales for the

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[43] Exhibit "P-562", FDDA, Docket – Vol. 2, p. 909.

period January 1 to June 30, 2014. These pricing errors allegedly occurred in nineteen (19) out of thousands of sales transactions recorded during the period. These errors are, by no means, a reasonable average and there is no intent to cheat the government of lawful taxes.

Petitioner points out that the more important thing is not the use of the account title "Sales Discount", but the real or true transaction that gave rise to the use of the account title.[44] This is allegedly corroborated by the following findings of the Court-commissioned Independent Certified Public Accountant (ICPA), to wit:

> "Upon validation, proper adjustments were made as it [is] treated as an error in pricing, subsequently adjusted but the petitioner erred in the use of appropriate accounting title. Instead of a reduction in Sales, Sales Discount title was used.
>
> It is a standard accounting practice, that after conduct of audit, reclassification is allowed as an adjustment, so that proper tax accountability be computed and assessed.
>
> The amount of P323,376.84 should not be considered as part of the sales, thus not subjected to VAT."[45]

Petitioner further asserts that respondent must not rely solely on the provision under Section 106(D) of the 1997 NIRC which provides that sales discount must be indicated in the invoice at the time of sale, but must consider the law itself in its entirety.

Reading beyond Section 106(D) of the 1997 NIRC, petitioner posits that what should be considered as most important is the definition of "gross selling price" that is subject to VAT.

Petitioner avers that under Section 106 of the 1997 NIRC, VAT is assessed against "gross selling price" which means "the total amount of money or its equivalent which the purchaser

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[44] Petitioner's Memorandum (Pars. 62 to 63 and 64 to 65), Docket – Vol. 2, pp. 1066 to 1067.

[45] Exhibit "P-585", ICPA Report, Docket, Vol. 1, p. 338.

pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax." Selling price is the amount of consideration in a contract of sale between the buyer and the seller or the total price of the sale which may include cash or property and evidence of indebtedness issued by the buyer, excluding the VAT [as amended by BIR Revenue Regulations ("RR") No. 4-2007].

Petitioner states that it was able to establish that the total amount of ₱323,376.84 was never collected from its customers and should not be considered as sales subject to VAT. No cash or consideration was received by petitioner when it made adjustment entries on pricing errors.[46]

We rule to uphold the assessment.

With respect to the unaccounted difference amounting to ₱1,077.95, petitioner did not present any evidence to prove its allegations, other than a mere schedule[47] of its breakdown which is self-serving hence, deserves scant consideration.

Regarding the adjustments due to pricing errors amounting to ₱322,298.89, petitioner posits that the same were erroneously entered as sales discounts instead of being directly deducted from the sales account in order to reflect the real selling price agreed by the parties. And as verified by the Court-commissioned ICPA, Dr. Jose Isagani M. Lacson, this error was accordingly corrected and was reclassified to the proper account after the conduct of audit.

However, petitioner did not present any evidence to prove such reclassification in order to correct the erroneous classification to sales discount, other than a mere schedule[48] of the breakdown of the price adjustments which is self-serving, hence, deserves scant consideration.

While petitioner was correct in asserting that respondent should have considered the real nature of the transaction

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46 Petitioner's Memorandum (Pars. 72 to 74), Docket – Vol. 2, pp. 1069 to 1070.
47 Exhibit "P-409", Docket – Vol. 2, p. 783.
48 Exhibits "P-409" to "P-410", Docket – Vol. 2, pp. 783 to 784. aw

instead of the mere account title, petitioner was nevertheless remiss in proving the real nature of the transaction.

Without clear and convincing evidence which explains the real nature of the price adjustment under dispute herein, We are constrained to rely on what is indicated on its face – as sales discount – and apply the law and regulations as it is. Thus, it is no longer necessary to delve on petitioner's arguments on the definition of gross selling price and how it must be applied herein.

Section 106(D) of the 1997 NIRC provides that the value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.

Meanwhile, Section 4.106-9 of RR No. 16-05 provides that:

> "SECTION 4.106-9. *Allowable Deductions from Gross Selling Price.* — In computing the taxable base during the month or quarter, the following shall be allowed as deductions from gross selling price:
>
> (a) Discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts.
>
> Sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given. xxx"

The above provisions are clear. For sales discount to be allowable as deduction from gross selling price, it must be indicated in the sales invoice at the time of sale.

Since the price adjustments amounting to ₱322,298.89 were not indicated as sales discounts at the time of sale, we are constrained to disallow the same and subject it to output VAT, as found by respondents.

B. Zero-rated sales amounting to ₱27,947,555.03 are considered taxable

Respondents' verification of petitioner's zero-rated sales and the related certificates of exemption indicated that deliveries to MSK Group, Inc., a Subic Bay Freeport Zone, were made at its Formosa Project in L1 B1 Lot 4 Daichi Industrial Park, Maguyam Rd., Brgy. Maguyam, Silang, Cavite. Per certificate of exemption, MSK Group, Inc. shall engage in construction business at 9B Lots 22 and 38, Efficiency Street; No. 28-30, Lot 49-51, Unit H, Faith Street corner Innovative Street and Hill 1 Subic Bay Gateway Park, Phase 1, Subic Bay Freeport Zone. As found by respondents, total deliveries per petitioner's Summary List of Sales (SLS) amounted to ₱18,521,760.85.[49]

According to respondent, the same holds true for SB Construction and Water Treatment. Delivery was made at its Petron Project at Sitio Maluwang Barangay Cupang, Balanga, Bataan instead of the Hanjin Shipyard project at Redondo Peninsula at Unit 228 Alpga Bldg., SIH Complex, Subic Freeport Zone. Aside from this, SB Construction and Water Treatment claimed input tax of ₱1,222,636.10 per Third Party Information of its purchases from Pag-asa Steel Works, Inc. (total VATable purchase of ₱10,188,634.18 assessed per audit) while zero-rated sales declared by petitioner amounted to ₱11,099,285.27.[50]

Petitioner vehemently disagrees with respondent and argues that Section 106(A)(2)(c) of the 1997 NIRC states that 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. While Sec. 4.106-5(c) of BIR RR No. 16-2005 provides that 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)

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[49] Respondents' Memorandum, Docket – Vol. 2, p. 1034.

[50] Exhibit "P-562", FDDA, Docket – Vol. 2, p. 909.

pursuant to R.A. No. 7227, shall be effectively subject to VAT at zero-rate.

MSK Group Work, Inc. ("MSK") and SB Construction and Water Treatment Corporation ("SB") are Subic Bay Freeport Zone ("SBFZ") registered enterprises that presented their valid Certificates of Exemption[51] when they purchased reinforcing bars from petitioner.

Petitioner explains that reinforcing bars (or rebars) are bounded by stirrups, welded and processed before they are used in actual construction sites. This process of rebar preparation is normally undertaken offsite the construction area, owing to the lack of space in a construction site.

Petitioner avers that whether these rebars sold to MSK and SB were picked up or delivered to the site or within the SBFZ is immaterial and that it can claim the sales as zero-rated. Petitioner argues that there is no requirement in the law or the regulations that imposed a duty on petitioner to see to it that these rebars are eventually delivered or used within the SBFZ. Besides, it is impossible for petitioner to monitor the activities of all its customers under zero-rated sales to ascertain whether the rebars were used in accordance with the tax exemption or privilege that they enjoy.

Further, with regard to sales made to SB amounting to ₱10,188,634.18, a second issue raised by respondents is that while petitioner clearly indicated in the sales invoice issued to SB that said transaction is zero-rated, third party information provided disclosed that SB, in fact, claimed input tax on said transaction in the amount of ₱1,222,636.10. Petitioner alleges that the BIR never presented documentary proof of said "third party information" or any evidence that SB claimed an input tax of ₱1,222,636.10.

With regard to this second issue, petitioner contends that it complied with the invoicing requirements as found in Section 113, in relation to Section 237 of the 1997 NIRC, as amended by RA No. 9337.

[51] Exhibits "P-415" and "P-443-1", Docket – Vol. 2, pp. 790 and 819, respectively. *cm*

Petitioner alleges that in compliance with the legal requirements for invoicing, it clearly and conspicuously indicated in the invoices issued to SB the words "ZERO RATED SALE," "0.00," "ZERO RATED SUBIC BAY FREEPORT ENTERPRISE CERT. 2006-0082." If third party information (assuming them to be true) shows that SB claimed for a VAT input, the respondents should disallow SB's claim for VAT input and not penalize or assess petitioner for correctly invoicing the transaction.[52]

The assessment must be partially upheld.

In the case of *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*,[53] the Supreme Court enunciated that:

> "x x x the ecozone within which it is registered is managed and operated by the PEZA as a *separate customs territory*. This means that in such zone is created the legal fiction of foreign territory. Under the *cross-border principle* of the VAT system being enforced by the Bureau of Internal Revenue (BIR), 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. If exports of goods and services from the Philippines to a foreign country are free of the VAT, then the same rule holds for such exports from the national territory -- except specifically declared areas -- to an ecozone.
>
> Sales made by a VAT-registered person in the customs territory to a PEZA-registered entity are considered exports to a foreign country; conversely, sales by a PEZA-registered entity to a VAT-registered person in the customs territory are deemed imports from a foreign country. An ecozone -- indubitably a geographical territory of the Philippines -- is, however, regarded in law as foreign soil. This legal fiction is necessary to give meaningful effect to the policies of the special law creating the zone. If respondent is located in an export processing zone within that ecozone, sales to the export processing zone, even without being actually exported, shall in fact be viewed as *constructively exported* under EO 226. Considered as export sales, such purchase

[52] Petitioner's Memorandum (Pars. 81 to 83 and 98 to 100), Docket – Vol. 2, pp. 1072 and 1075 to 1077, respectively.
[53] G.R. No. 153866, February 11, 2005.

transactions by respondent would indeed be subject to a zero rate."

Proceeding from the above ruling, it is imperative that the goods or services sold by VAT-registered persons in the customs territory **enters** an ecozone, which is considered a separate customs territory, in order to give effect to the concept of *constructive export* which is granted effective zero-rating under the VAT laws and regulations, and not just rely on the mere fact of registration of a buyer within the ecozone. Thus, the place of delivery of the goods in this case is material, contrary to petitioner's argument that it is not.

Indeed, petitioner has satisfactorily proven that MSK and SB are SBFZ-registered entities for the taxable year 2014. However, the question to be resolved is whether the sales made by petitioner to MSK and SB from January to June 2014 actually entered the SBFZ in order to qualify for effective zero-rating.

Petitioner submitted the VAT sales invoices[54] it issued to MSK and SB for the period January to June 2014, which aggregated ₱18,521,760.85 and ₱11,099,285.27,[55] respectively, and are found to be compliant with the invoicing requirements for zero-rated sales under Section 113(B) and 237 of the Tax Code, as implemented by Section 4.113-1(B) of RR No. 16-05.

A perusal of the sales invoices issued to MSK and SB shows that the sold rebars in the following aggregate amounts were delivered to the following locations:

Customer	Delivery Location	Sales Amount
MSK Group Work, Inc.	Hermosa Ecozone Industrial Park, Palihan, Hermosa, Bataan	₱ 12,679,107.85
	Clarkfield, Pampanga	2,809,893.00
	Daichi Industrial Park, Maguyam, Silang, Cavite	934,380.00
	Hamlin Industrial Golden Mile Business Park, Carmona, Cavite	980,100.00
	Subic Bay Gateway Park, SBFZ, Olongapo City, Zambales	762,840.00
	Lima Technology Center, Lipa City, Batangas	355,440.00

[54] Exhibits "P-419" to "P-441" and "P-446" to "P-456", Docket - Vol. 2, pp. 794 to 816 and 823 to 833, respectively.
[55] Exhibits "P-417" to "P-418" and "P-444" to "P-445", Docket – Vol. 2, pp. 792 to 793 and 821 to 822, respectively.

Subtotal		***₱18,521,760.85***
SB Construction & Water Treatment	For pick-up	₱ 1,031,420.25
	Petron Corporation, Maluwang, Balanga, Bataan	10,067,865.02
Subtotal		***₱11,099,285.27***
TOTAL		**₱ 29,621,046.12**

Out of the above sales, only the amount of ₱762,840.00 has been delivered to SBFZ.

However, as to the remaining sales, petitioner did not present any proof that the corresponding delivery locations are declared ecozones pursuant to a special law. And even assuming that these other delivery locations are declared as ecozones, petitioner nevertheless failed to present any proof that MSK and SB are registered within said territories in order to be entitled to the tax incentives pursuant to the special law which declared it to be so.

It must be noted that each ecozone is managed by different regulatory bodies and has separate and independent registration procedures pursuant to the special law which created it. As such, it cannot be presumed that the registration in one ecozone may be construed as registration with other ecozone. Thus, the SBFZ registration of MSK and SB entitling it to VAT incentives within SBFZ cannot be presumed to extend to other alleged ecozones, which have separate rules for entitlement to VAT incentives.

Meanwhile, the sales to SB, indicated as "for pick-up", renders the same even doubtful as to where the goods were actually brought after they were picked up by SB.

Anent respondent's allegation that SB claimed input tax on its purchases from petitioner as per third-party information, i.e., from SB's Summary List of Purchases notwithstanding that zero-rated sales invoices were issued by petitioner to SB, we agree with petitioner that this must be resolved by respondent with SB and not with petitioner.

In summary, out of the total sales to MSK amounting to ₱18,521,760.85, only the amount of ₱762,840.00 was proven to be a zero-rated sale. Thus, the amount of ₱17,758,920.85 was correctly assessed by respondent with output VAT.

On the other hand, the total sales to SB amounting ₱11,099,285.27 must be subjected to output VAT for petitioner's failure to prove that the sales were made to an ecozone wherein SB is registered.

However, the amount assessed by respondent with respect to sales to SB is only ₱10,188,634.18. Accordingly, the amount to be [assessed] from [petitioner] should not go beyond what is stated in the assessment. In excess of such stated therein, [petitioner] was not informed in writing of the facts and law on which the amount is made, thus, the taxpayer has no opportunity to dispute the said amount, in violation of due process.[56]

Furthermore, as the said excess amount was not indicated in the [FLD], it should be considered as not assessed by [respondent], hence, already beyond the prescriptive period for it to be included only at this time of judicial trial.[57]

Verily, out of the assessed amount of ₱28,710,395.03, only ₱27,947,555.03[58] must be upheld.

C. Hauling charged to customers amounting to ₱8,904,002.03 is subject to output VAT

The total hauling charges (₱12,728,143.01) charged to customers was taken by respondents from various DMs per JV Register. This account does not appear in the Chart of Accounts/Trial Balance nor included in petitioner's Sales Invoices. Respondents computed the hauling charges subject to VAT as follows:

Hauling charges per JV Register		12,728,143.01
Less: Hauling and shipping charges for zero-rated sales per TP protest	₱4,630,500.55	
Less: Disallowed hauling (fr vatable sales)		
MSK Group Work, Inc.	499,000.00	
SB Constr & Water Treatment Corp	307,357.77	

[56] *Commissioner of Internal Revenue vs. Transnational Plans, Inc.*, CTA E.B. No 1337 and 1339 (CTA Case No. 8291), March 27, 2017.
[57] *Id.*
[58] ₱17,758,920.85 + ₱10,188,634.18.

sub-total	806,357.77	3,824,142.78
Hauling charges subject to output tax		**8,904,000.23**[59]

Under Section 4.108-4 of RR No. 4-2007, gross selling price (tax base subject to VAT) refers to the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding VAT.

Petitioner claims that hauling charges were not considered sales as the same were reversed back to "Admin expense" and that all hauling charges are for the account of the buyer, petitioner makes advances to common carriers and later seek reimbursement from the customers with no-mark up, hence, these are not part of sales.

However, respondents argue that a credit entry to Administrative expense signifies that it was previously taken up as a debit to operating expense. Hence, input taxes were claimed when the expense was taken up while the corresponding output tax on charges made to customers for reimbursements were not considered. Thus, respondents maintain that pursuant to RMC No. 65-2012, payments received for services rendered on a reimbursement-on-cost basis, even without realizing profit is subject to VAT.[60]

Petitioner, on the other hand, maintains that reimbursement of hauling charges from customers (whether ordinary sales or zero-rated sales), who earlier agreed that hauling charges shall be for their account, cannot be subject to output VAT.

Petitioner explains that it sells its products on varying terms. *First*, selling price indicated in the invoice may include hauling or delivery charges to the buyer's place of business. In this particular instance, the hauling fees incorporated in the selling price are subject to output VAT. *Second*, selling price, as indicated in the invoice, refers only to ex-works. In cases of ex-works sales, it is the customers' responsibility to designate the haulers and common carriers that will cause delivery to the products' final destination. The sale of goods is complete once

[59] Minimal difference of ₱2.00 as compared with the amount in Computation of Deficiency VAT per FDDA amounting to ₱8,904,002.23.
[60] Exhibit "P-564", FDDA (as summarized), Docket – Vol. 2, pp. 910 to 911.

the items leave petitioner's factory premises. All hauling charges are for the account of the buyer.

Petitioner alleges that in far-flung destinations and the terms of sale are ex-works, petitioner is often requested by its customers to advance payment to the common carriers. Petitioner later seeks reimbursement from customers. No mark-up is added to the hauling charges which are being advanced by petitioner. Petitioner does not earn money in reimbursing hauling charges from customers and are not recorded nor considered as income of petitioner.

Allegedly, when petitioner advances the hauling charges for its customers, it initially records the payment to "Administrative and Selling Expense". Subsequently, reimbursable hauling charges are reversed to debit "Accounts Receivable" and credit to "Administrative and Selling Expense." No income or sales account is recorded as petitioner is merely collecting from its customers the payment of the latter's liability.[61]

The hauling charges are treated separately from the sales and [petitioner] does not treat hauling charges as part of the sale because these are reimbursable expenses. [Petitioner] issues separate invoices for the sale of the goods. However, [it] does not issue official receipts for the hauling charges but only acknowledgment receipts because these are not part of sales. The customers just make reimbursement to [petitioner].[62]

The assessment must be upheld.

Based solely on the schedule of hauling charges[63] submitted by petitioner, We cannot ascertain whether the amounts indicated therein are mere reimbursements of cost and that no amount of profit was added or charged by petitioner. Likewise, it cannot be determined with certainty whether or not petitioner claimed the entire input tax related to the hauling charges. Such fact is relevant herein, considering that if petitioner claimed the entire input tax on the hauling

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[61] Petitioner's Memorandum (Pars. 111 to 115), Docket – Vol. 2, p. 1080.

[62] Exhibit "P-582", Judicial Affidavit of Ms. Lydia T. Lim (Q&A Nos. 89 to 91), Docket – Vol. 1, p. 211.

[63] Exhibit "P-457" to "P-458", Docket – Vol. 2, pp. 834 to 835.

charges, then the amounts billed by petitioner for reimbursements must be subject to output tax.

It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[64] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[65]

For failure to satisfactorily refute respondent's assessment, the same must not be disturbed.

D. 1) Offsetting of receivable accounts with payable account and 2) Offsetting – debit memos totaling ₱316,543.03 is subject to output VAT

Respondent found that offsetting of receivable from Jelaina's Trading & Construction and payable to said supplier was made amounting to ₱316,543.03 hence, subjected to VAT, since this was excluded from its sales/gross receipts as provided for under Section 106 of the Tax Code, as amended, computed as follows:[66]

Offsetting against water and electricity bill (no SI/OR)	₱ 17,250.00
Labor & equipment rental in loading garbage to hauling trucks (with SI/no OR)	26,250.00
Labor & equipment for levelling and spreading of backfill materials (with SI/no OR)	128,006.56
Various debit memos deducted from total billing	114,224.29
Debit memos deducted from billing	30,812.18
TOTAL	**₱316,543.03**

Respondent posits that when petitioner sells a product, it will charge a fee which will be sufficient to cover its material costs, labor costs, overhead costs and a sufficient mark up. The fees are thereafter subjected to VAT as a whole.

[64] *Real v. Belo*, G.R. No. 146224, January 26, 2007.
[65] *LNS International Manpower Services v. Padua, Jr.*, G.R. No. 179792, March 5, 2010.
[66] Exhibit "P-348", FLD (Details of Discrepancy); Exhibit "P-565", FDDA, Docket – Vol. 2, p. 722 and Vol. 2, p. 912, respectively; ～

In the case at hand, petitioner only subjected to VAT the fees it charged to Jelaina's Trading Corporation excluding the utilities expenses it incurred in connection with its sales – thereby reducing the VAT due on the transaction.

Respondents argue that petitioner's action is erroneous and merely a way to circumvent the provisions on VAT. Respondents emphasize that for VAT, the total amount received by a taxpayer shall be the basis for the computation of the VAT due.

Respondents further argue that petitioner has undoubtedly received the payment for utilities expenses as part of its sales to Jelaina's Trading Corporation. Hence, the same should be subjected to VAT.

Moreover, respondents' investigation allegedly revealed that petitioner has claimed input taxes for utilities expenses it incurred in relation to its transaction to Jelaina's Trading Corporation.

Thus, respondents posit that if Jelaina's Trading Corporation was the ultimate payor of said utilities, the input taxes should have been claimed by it and not petitioner.[67]

On the other hand, petitioner asserts that the offsetting of accounts are adjustments in contract prices borne by contract changes that reflect the agreement between petitioner and Jelaina's.

Petitioner contends that reimbursable advances, such as electricity and utilities which under the contract are chargeable to Jelaina's, are allowable adjustments. It cannot be said that petitioner earned sales or revenues from the reimbursement of electricity and water consumption, which under the contract should be borne by Jelaina's. It cannot also be said that petitioner is selling electricity or utilities to Jelaina's in the "ordinary course of business".

Petitioner states that these contract adjustments include rebars purchased by Jelaina's from the petitioner which were

[67] Respondents' Memorandum, Docket – Vol. 2, pp. 1037 to 1038.

used in the construction of petitioner's plant. Petitioner allegedly issued sales invoices for these rebars where the correct input VAT was reported and that notwithstanding this offsetting made, the proper VAT output for this transaction was correctly reported by petitioner.[68]

The assessment must be upheld.

Petitioner did not present any evidence to prove its allegations. Without any other corroborating evidence, We cannot verify the real nature of the offsetting transactions and determine its VAT implication on petitioner.

It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[69] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[70]

For failure to satisfactorily refute respondent's assessment, the same must not be disturbed.

E. Petitioner is not allowed to claim input tax amounting to ₱11,573,755.17 for non-compliance with the invoicing requirements

Respondent disallowed input tax from domestic purchases for non-compliance with invoicing requirements amounting to ₱11,573,755.17, broken down as follows:[71]

SUPPLIER	REASON FOR DISALLOWANCE	DISALLOWED INPUT
Jelaina's Trading & Construction	Constr svc - no ORs, basis of input are Sales Invoices	₱ 11,553,439.79
M-Lav Industrial Gas, Inc.	Goods, Charge Inv issued not valid source of input tax	19,237.52

[68] Petitioner's Memorandum (Pars. 124 to 126), Docket – Vol. 2, p. 1084.
[69] *Real v. Belo*, G.R. No. 146224, January 26, 2007.
[70] *LNS International Manpower Services v. Padua, Jr.*, G.R. No. 179792, March 5, 2010.
[71] Exhibits "P-565" to "P-566", FDDA, Docket – Vol. 2, pp. 912 to 913.

Brown Asia Tech, Inc.	Svc, no OR issued, with valid SI; Collection Receipt not valid for input tax	642.86
St. Ignatius de Loyola Health Care Service	Not VAT Registered	227.14
Botica dela Naval	Not VAT Registered	207.86
TOTAL DISALLOWANCE		**₱11,573,755.17**

a. Jelaina's Trading & Construction - ₱11,553,439.79

Respondent contends that these purchases of services are the contract jobs for the construction and erection of Rolling Mill Bldg., laying of sub-bedding escumbro, furnace and chimney foundation and construction of perimeter fence. Pursuant to Section 113 of the 1997 NIRC, a VAT official receipt should be issued for every sale of service. However, in the case at hand, the basis of the claim for input tax is a sales invoice which is a violation of Section 113. Accordingly, respondents argue that no input tax may be claimed from the said transaction and that the disallowance of the amount of ₱11,553,439.79 is proper.[72]

In addition, respondent served an access letter to [RDO] No. 9, San Pablo City requesting for certified copies of VAT Returns and Summary List of Sales of Jelaina's Trading & Construction for the period Jan. 1, 2014 to June 30, 2014, along with its Authority to Print invoices and receipts where it was found that petitioner's claimed amount of purchases is higher than the sales amount declared by [Jelaina's] and it could not be proven from the access records that proper output tax was declared by [Jelaina's].[73]

On the other hand, petitioner argues that all transactions with Jelaina's Trading and Construction where petitioner claim VAT input are supported by VAT-registered Sales Invoices issued by Jelaina's.

Petitioner explains that Jelaina's made an error in the printing of it Official Receipts, which stated 'not valid for Input VAT.' However, the Sales Invoice did not indicate that they are not valid for claim for input VAT.[74]

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[72] Respondents' Memorandum, Docket – Vol. 2, p. 1038.
[73] Exhibits "P-566" to "P-567", FDDA (as summarized), Docket – Vol. 2, pp. 913 to 914.
[74] Exhibit "P-582", Judicial Affidavit of Ms. Lydia T. Lim (Q&A No. 102), Docket – Vol. 1, p. 213.

Petitioner insists that it uses sales invoices because these are the bases in the processing of payments to Jelaina's where VAT is indicated in the invoices as clearly provided in RR No. 18-2012 dated October 22, 2012 that the basis in the computation of input VAT is the sales invoice.[75]

Further, petitioner asserts that the reported purchases were all supported by the Sales Invoice issued by Jelaina's and were used as the basis for payment made by the company. The BIR was given copies of all these sales invoices including the official receipts. If Jelaina's reported lower sales, [petitioner] should not be faulted or penalized for it.[76]

Section 113(A) of the 1997 NIRC provides that 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. These provisions are further implemented under Section 4.113-1(A) of RR No. 16-05.

On the other hand, Section 110(1)(b) and (2)(a) of the 1997 NIRC provides that:

> "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:
>
> xx xx xx
>
> (b) **Purchase of services** on which a **value-added tax has been actually paid.**
>
> (2) The **input tax on domestic purchase** or importation **of goods** or properties by a VAT-registered person shall be creditable:

[75] *Id.* (Q&A Nos. 104 to 105) at p. 213.
[76] *Id.* (Q&A No. 110) at p. 214.

(a) To the purchaser **upon consummation of sale** and on importation of goods or properties; and x x x." (*Emphasis supplied*)

These provisions are implemented by Sec. 4.110-2 of RR No. 16-05, which provides that:

"SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) **To the purchaser of the domestic goods or properties upon consummation of the sale**; or

(c) **To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee**." (*Emphasis supplied*)

The 1997 NIRC and its implementing rules and regulations are clear that input VAT arising from purchase of goods are creditable upon consummation of the sale, while purchase of services are only creditable upon its payment. This difference makes it material as to which type of document must be presented in order to be credited with input VAT thus, a VAT sales invoice to prove consummation of sale of goods and a VAT official receipt ("OR") to prove payment of services.

It is thus a non-negotiable requirement that in order for petitioner to be credited with the input VAT from its purchase of services, it must present the OR issued by its supplier and such OR must contain all the information required under Section 113(B) of the 1997 NIRC and Section 4.113-1(B) of RR No. 16-05.

Even RR No. 18-2012, as invoked by petitioner, is clear that the basis of the input tax claim of the buyer shall be the written admission or acknowledgment of the fact that money has been paid and received for the payment or settlement between persons rendering services and its customers.[77]

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[77] SECTION 2. *Definition of Terms.* — x x x

2. *Principal Receipts/Invoices* — x x x

Petitioner submitted the sales invoices and ORs[78] supporting its purchases from Jelaina's Trading & Construction for the period January to June 2014. A perusal of these documents shows that all the transactions described therein are in the nature of services hence, any input VAT claimed therefrom must be evidenced by a VAT OR. And out of the total input VAT claim from Jelaina's amounting to ₱11,553,439.79, only the amount of ₱11,532,859.00 has been substantiated with VAT ORs.

However, we concur with respondent's findings that these ORs bear the following notation: "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAXES."

This notation is fatal to petitioner's input VAT claim and we cannot subscribe to petitioner's mere allegation that Jelaina's committed a mistake in printing said notation in the OR without presenting evidence on the matter. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[79] Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[80]

Verily, petitioner is not entitled to claim input VAT credits from its purchases from Jelaina's amounting to ₱11,553,439.79.

However, without affecting our ruling on the matter, it is emphasized that it is erroneous for respondent to disallow the input VAT claim of petitioner on the mere basis that the latter's purchases did not match the sales declared by Jelaina's.

2.2 *VAT Official Receipt* — for purposes of Value Added Tax (VAT) pursuant to Section 108 of the NIRC, as amended, it is a proof of sale of service and/or leasing of properties which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer. It is a written admission or acknowledgment of the fact that money has been paid and received for the payment or settlement between persons rendering services and its customers.

[78] Exhibits "P-464" to "P-486-1", Docket – Vol. 2, pp. 841 to 863.

[79] *Real v. Belo*, G.R. No. 146224, January 26, 2007.

[80] *LNS International Manpower Services v. Padua, Jr.*, G.R. No. 179792, March 5, 2010.

It must be recalled that the main legal basis for disallowing the input VAT claim arising from purchases from Jelaina's is that it did not comply with the invoicing requirements under the NIRC. However, a reading of the invoicing requirements under Section 113 of the Tax Code and its implementing rules and regulations shows that there is no requirement to prove that the corresponding output tax has been declared and paid by the supplier. Neither is it a requirement in order to be credited with input tax under Section 110 of the Tax Code and its implementing rules and regulations.

Nevertheless, we reiterate that petitioner is still not entitled to claim input VAT amounting to ₱11,553,439.79 for clear failure to comply with the invoicing requirements.

b. M-Lav Industrial Gas, Inc. - ₱19,237.52

Input tax from another supplier, M-Lav Industrial Gas, Inc. (total input tax of ₱19,237.52) was disallowed since supporting documents were only charge sales invoices which expressly state that said documents are not valid for claim of input tax. Moreover, the other set of vatable Charge Sales Invoices bearing the same invoice number, ATP and printer accreditation submitted by petitioner should not be given any probative value because the same were received by petitioner only on Feb. 18, 2016. The act of maintaining two sets of charge sales invoice - one not valid for claim of input tax and another one which can be a source of input tax should not be countenanced.[81]

Further, an access letter to RDO No. 40 – Cubao, Q.C. served by respondent on Aug. 5, 2016 disclosed that M-Lav Ind'l Gas, Inc. did not submit Summary List of Sales; VAT Return accessed was only for the 4th Q of 2014. ATP issued are for Vatable cash sales invoice/charge sales invoice/collection receipt. There is no ATP for the use of charge invoice not valid for input tax and there is no proof that the 2014 sales were declared since reprinted VATable charge invoice was only received in 2016.[82]

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[81] Respondents' Memorandum, Docket – Vol. 2, pp. 1038 to 1039.
[82] Exhibit "P-567", FDDA, Docket – Vol. 2, p. 914. *am*

In response thereto, petitioner explained that M-Lav Industrial Gas Inc. issued a certification[83] that its accredited printer made an error in printing the invoice and rectified the same by issuing replacement charge sales invoice.

Respondents, however, claimed that there is no proof that the 2014 sales of the supplier were declared inasmuch as the reprinted VATable charge sales invoice was only received in 2016.

Again, this error and/or violation should be the concern of the supplier and not that of the petitioner.[84]

As in the case of Jelaina's, we partially agree with petitioner's arguments but nevertheless rule to uphold the assessment.

Respondent's main legal basis in disallowing the input VAT credit arising from purchase of goods from M-Lav amounting to ₱19,237.52 is due to its failure to comply with the invoicing requirements, particularly that the charge sales invoice submitted during respondent's audit states "THIS DOCUMENT IS NOT VALID SOURCE FOR CLAIM OF INPUT TAXES."[85]

M-Lav has been issued an Authority to Print ("ATP")[86] which includes the printing of VAT charge sales invoice. However, the accredited printer of M-Lav erroneously printed the charge sales invoice with the statement "THIS DOCUMENT IS NOT VALID SOURCE FOR CLAIM OF INPUT TAXES." as certified by M-Lav's accounting officer and general manager.[87] Accordingly, M-Lav has reprinted and replaced the erroneous charge sales invoices with the correct ones where the erroneous statement has been deleted.

These corrected charge sales invoices[88] were presented by petitioner before the Court.

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[83] Exhibit "P-487", Docket – Vol. 2, p. 864.
[84] Petitioner's Memorandum (Pars. 142 to 144), Docket – Vol. 2, p. 1092.
[85] Exhibit "R-12-a", BIR Records, pp. 114 to 192.
[86] Exhibit "P-488", Docket – Vol. 2, p. 865.
[87] Exhibit "P-487", Docket – Vol. 2, p. 864.
[88] Exhibits "P-490" to "P-548", Docket, Vol. 2, pp. 867 to 897.

However, despite having submitted the proper document to support the input VAT claimed from purchases from M-Lav, the same still did not comply with the invoicing requirements prescribed under Sec. 113(B) of the 1997 NIRC, which provides that:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xx xx xx
>
> (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); and
>
> (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:
>
>> (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
>>
>> (b) If the sale is exempt from value-added tax, the term VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;
>>
>> (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.
>>
>> (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
>
> (4) **In the case of sales in the amount of One thousand pesos (₱1,000) or more** where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address **and Taxpayer Identification Number (TIN) of the purchaser, customer or client.**" (*Emphasis supplied*)

According to Section 110(A)(1) of the 1997 NIRC, any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the transactions enumerated therein shall be creditable against the output tax.

Thus, before petitioner can be allowed to claim credit from input VAT arising from its purchases from M-Lav, it must comply with the provisions of Section 113 of the 1997 NIRC.

However, the VAT charge sales invoices presented by petitioner do not indicate its TIN therein despite each sales transaction exceeded the amount of ₱1,000.00.

Verily, petitioner is not entitled to claim input VAT arising from its purchases from M-Lav amounting to ₱19,237.52.

However, without affecting our ruling on the matter, it is emphasized that it is erroneous for respondent to disallow the input VAT claim of petitioner on the mere basis that the latter's purchases did not match the sales declared by M-Lav.

As explained earlier, it must be recalled that the main legal basis for disallowing the input VAT claim arising from purchases from M-Lav is that it did not comply with the invoicing requirements under the NIRC. However, a reading of the invoicing requirements under Section 113 of the 1997 NIRC and its implementing rules and regulations shows that there is no requirement to prove that the corresponding output tax has been declared and paid by the supplier. Neither is it a requirement in order to be credited with input tax under Section 110 of the 1997 NIRC and its implementing rules and regulations. *an*

Nevertheless, we reiterate that petitioner is still not entitled to claim input VAT amounting to ₱19,237.52 for clear failure to comply with the invoicing requirements.

c. Brownstone Asia Tech, Inc. - ₱642.86
d. St. Ignatius de Loyola Health Care Service - ₱227.14
e. Botica de la Naval - ₱207.86

Respondent posits that the service rendered by Brownstone Asia Tech, Inc. ("Brownstone") must be evidenced by an Official Receipt, not just a Collection Receipt, for the input VAT to be valid.

Meanwhile, the purchases from St. Ignatius de Loyola Health Care Services ("St. Ignatius") and Botica de la Naval ("Botica") were accordingly supported with VAT OR and cash invoices, respectively. However, respondent disallowed the same as these purchases were not issued in the name of petitioner.[89]

On the other hand, petitioner asserts that with regard to its purchase from Brownstone, it should not be faulted for the error of the supplier in issuing a sales invoice instead of an official receipt. While the purchases from St. Ignatius and Botica were issued to various employees, which were reimbursements made by petitioner to said employees.

The disallowances must be upheld.

As for the input VAT from purchase of services from Brownstone, we cannot simply subscribe to petitioner's arguments that it should not be faulted for Brownstone's errors in issuing the wrong document. Compliance with the VAT laws and its rules and regulations is not a one-way endeavor. Both parties in a sales transaction must be diligent enough to ensure that the document issued evidencing the sale is compliant with the applicable laws and regulations, especially that non-compliance by one would also have an adverse effect on the other.

Further, petitioner was indeed able to present a VAT Collection Receipt[90] to support its input VAT from its purchase

[89] Exhibit "P-567" to "P-568", FDDA (as summarized), Docket – Vol. 2, pp. 567 to 568.
[90] Exhibit "P-551", Docket – Vol. 2, p. 900.

from Brownstone. However, this receipt is still found to be not compliant with the invoicing requirements under Section 113(B) of 1997 NIRC, as cited earlier, particularly on the requirement that the amount of VAT must be indicated in the OR. Further, the receipt contains the statement "THIS DOCUMENT IS NOT VALID FOR CLAIMING INPUT TAXES."

Undoubtedly, petitioner is not entitled to claim input VAT amounting to ₱642.86 arising from its purchase of services from Brownstone.

As for the input VAT from purchases from St. Ignatius and Botica, we decline to accede to petitioner's arguments that these claims were mere reimbursement to its employees, which explains why the VAT OR and cash invoices[91] are not issued in the name of petitioner. Based on Section 110 and 113 of the 1997 NIRC, the said VAT OR and cash invoices must be under the name of petitioner, being the claimant of the corresponding input VAT.

Thus, we uphold the disallowance of input VAT amounting to ₱227.14 and ₱207.86 arising from purchases from St. Ignatius and Botica, respectively, for failure of petitioner to prove by clear and convincing evidence that it is entitled to be credited with input VAT in accordance with the invoicing requirements under the Tax Code.

In view of the foregoing, petitioner is liable for output VAT for the following assessment items and must not be credited with the disallowed input VAT as found by respondent, but nevertheless has no deficiency VAT liability and even incurred VAT overpayment amounting to ₱217,420,492.45, as computed below:

Taxable sales per Returns			₱4,105,933,270.10
Add: Income not subjected to VAT			
A. Sales discount not indicated in sales invoice			
Discrepancy bet SI and check payments	₱ 1,077.95		
Pricing error/adj after invoicing/delivery	322,298.89	₱ 323,376.84	
B. Zero-rated sales considered taxable			
MSK Groupwork, Inc.	17,758,920.85		
SB Construction and Water Treatment	10,188,634.18	27,947,555.03	
C. Hauling charged to customers, not taken up in sales	12,728,143.01		
Less: Zero-rated hauling	(3,824,140.78)	8,904,002.23	

[91] Exhibits "P-554" to "P-560", Docket – Vol. 2, pp. 903 to 907.

D. 1) Offsetting of receivable accounts with payable account			
Water/electricity (no SI/OR)	17,250.00		
Labor & equipment rental in loading garbage to hauling trucks (with SI/no OR)	26,250.00		
Labor & equipment for levelling and spreading of backfill materials (with SI/no OR)	128,006.56		
Sub-total	171,506.56		
2) Offsetting - debit memos			
Various debit memos deducted from total billing	114,224.29		
Debit memos deducted from billing	30,812.18		
Sub-total	145,036.47	316,543.03	37,491,477.13
Total taxable sales/receipts per audit			₱4,143,424,747.23
Output tax due (before disallowed zero-rated sales)			₱ 497,210,969.66
Less: Allowable input tax per return		₱726,205,217.28	
Less: Disallowed input tax for non-compliance w/ invoicing reqts			
Jelaina's Trading & Construction	₱11,553,439.79		
M-Lav Ind'l Gas, Inc.	19,237.52		
Brownstone Asia Tech, Inc.	642.86		
St. Ignatius de Loyola Health Care Services	227.14		
Botica de la Naval	207.86	11,573,755.17	714,631,462.11
DEFICIENCY VAT			**₱(217,420,492.45)**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency VAT are **UPHELD WITH MODIFICATION**. Nevertheless, petitioner has no deficiency VAT liability and even incurred VAT overpayment amounting to ₱217,420,492.45, as computed above.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice