REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 8600**
- *versus* -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 14 2015 9:45 a.m.

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DECISION

BAUTISTA, J.:

The Petition for Review, filed pursuant to Section 7(a)(2) of Republic Act ("RA") No. 1125, as amended by RA No. 9282 and RA No. 9503, seeks for the refund of the amount of Php40,201,665.70, representing excess unutilized input taxes for the 4th Quarter of 2010.[1]

THE PARTIES[2]

Petitioner Philex Mining Corporation is a domestic corporation organized under Philippine laws with principal office at 27 Brixton St., Pasig City. It is engaged in the mining business, including the exploration and operation of mine properties and the commercial production and marketing of mine products. It is a Value Added Tax ("VAT")-registered with VAT Registration Certificate No. 35-6-000731

[1] *Records*, pp. 6-19, with Annexes.
[2] *Id.*, Summary of Facts Admitted, pp. 153-154.

effective October 29, 1997, and under Bureau of Internal Revenue ("BIR") Form No. 2303 as of January 31, 1997. It likewise had its Application for Zero-Rate approved effective April 12, 1998, pursuant to Sec.4.100-3 of Revenue Regulations No. 7-95.

Respondent Commissioner of Internal Revenue is the government official charged with the administration and enforcement of National Internal Revenue Laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable or creditable taxes under the Tax Code, with address at BIR National Office, Diliman, Quezon City.

FACTS OF THE CASE

On January 24, 2011,[3] petitioner filed with the Bureau of Internal Revenue ("BIR") its VAT Return for the 4th Quarter of 2010.

On November 7, 2012,[4] petitioner filed an Amended VAT Return which reflected the following a total zero-rated sales of Php5,191,480,758.61, importation of good of Php133,995,016.68 with input tax of Php16,079,402.00, and purchases of services of Php201,018,864.17 with input tax of Php24,122,263.70.

On August 28, 2012, petitioner, pursuant to Section 4.112-1 of Revenue Regulations No. 16-2005, filed its administrative claim for refund or tax credit in the total amount of Php40,201,665.70, representing unutilized excess input VAT for the said quarter of 2010, with the One Stop Shop ("OSS") Center of the Department of Finance.

Due to the inaction of the OSS, petitioner filed this instant Petition for Review on January 9, 2013.[5]

On March 7, 2013, respondent filed her Answer,[6] interposing the following Special and Affirmative Defenses:

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[3] *Id.*, paragraph 4, p. 154.
[4] *Id.*
[5] *Id.*, paragraph 5, p. 154.
[6] *Id.*, pp. 26-28.

"4. Petitioner's claim for tax refund is subject to administrative investigation and/or examination by the respondent;

5. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

6. Moreover, in order to validly claim for tax refund, it is imperative for petitioner to prove its compliance with the following, viz:

> A. The registration requirements of a Value-Added taxpayer under the pertinent provision of the National Internal Revenue Code (NIRC) of 1997, as amended and its implementing revenue regulations;
>
> B. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).
>
> C. The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax refund which is a condition sine qua non prior to the filing of such claim;
>
> D. That the input taxes of Php40,201,665.70 allegedly representing excess and unutilized input taxes for the 4th Quarter of 2010, were:
>
> 1. Paid by petitioner;
> 2. Attributable to its zero-rated or effectively zero-rated sales; and

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3. Such input taxes paid should not have been applied against any output tax.

E. The petitioner's claim for tax refund allegedly representing excess and unutilized input taxes for the 4th Quarter of 2010 in the amount of Php40,201,665.70 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended;

7. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims and of showing, by words too plain to be mistaken, that the legislature intended to exempt them;

8. And finally, basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same. Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. 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."

Pre-trial ensued. The parties filed their "Stipulation of Facts and Issues"on August 12, 2013.[7]

Petitioner presented Mrs. Eileeen C. Rodriguez and Mr. Albert G. Alba as witnesses, and documentary evidence marked as *Exhibits "A"* to *"P-1."*[8]

On the other hand, respondent presented as witness Ms. Cleofe T. Tasarra,[9] and documentary evidence marked as *Exhibits "R-1" and "R-1-a."*[10]

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[7] *Records*, pp. 153-158.
[8] *Id.*, pp. 154-157.
[9] *Id.*, p.158.
[10] *Id.*, p. 549.

On May 21, 2014,[11] the Court resolved to submit the case for decision, taking into consideration the memorandum of petitioner filed on May15, 2014 and respondent's memorandum filed on April 21, 2014.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the sole issue for the Court's consideration is:[12]

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR TAX CREDIT OF THE ALLEGED EXCESS AND UNUTILIZED INPUT TAXES IN THE TOTAL AMOUNT OF PHP40,201,665.70 FOR THE 4TH QUARTER OF 2010 DUE TO PETITIONER BEING AN EXPORTER OF MINERAL PRODUCTS.

RULING OF THE COURT

Section 112(A) of the National Internal Revenue Code of 1997, as amended ("NIRC") laid down the manner in which the refund or credit of input tax may be made, to wit:

> "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

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[11] *Records,* p. 568.
[12] *Id.,* at p. 154.

and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided*, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Based on the above-quoted provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of unutilized input VAT attributable to such zero-rated or effectively zero-rated sales upon compliance with the following requisites:

1.that there must be zero-rated or effectively zero-rated sales;

2.that input taxes were incurred or paid;

3.that such input taxes were attributable to zero-rated or effectively zero-rated sales;

4.that the input taxes were not applied against any output VAT liability; and

5.that the claim for refund was filed within the two-year prescriptive period.

The Court shall first resolve the fifth requisite as it pertains to the timeliness of the filing of the Petition for Review.

In resolving the fifth requisite, in addition to the requirement that the claim must be filed within two-years, petitioner must likewise comply with Section 112(C) of the NIRC which provides:

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

(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 (120) day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, Philex Mining Corporation vs. Commissioner of Internal Revenue,*[13] the Supreme Court has stressed that the 120+30 day period provided in the aforequoted Section 112 (C) of the NIRC is mandatory and jurisdictional but provided exceptions thereto, to quote:

"xxx The application of the 120+day periods was first raised in Aichi, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) states that 'the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents,' the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of

[13] G.R.Nos.187485, 196113, 197156, February 12, 2013, 690 SCRA 336.

administrative remedies. Such doctrine is basic and elementary.

When Section 112(C) states that 'the taxpayer affected may, within thirty (30) days from 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,' the law does not make the 120+30 day periods optional just because the law uses the word 'may.' The word 'may' simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

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To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

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There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." (Underscoring supplied).

Applying the foregoing in the present case, the pertinent periods are as follows:

Period	Filing date of administrative claim	Last day of the 120-day period under Section 112 (C) from date of filing of administrative claim in case of inaction	Last day of the 30-day period to judicially appeal said inaction before the Court of Tax Appeals	Filing date of Petition for Review
4th Quarter 2010	August 28, 2012	December 26, 2012	January 25, 2013	January 9, 2013

Evidently, petitioner timely filed its administrative and judicial claim.

Anent the first and second requisites, petitioner duly filed its amended fourth quarterly VAT Return[14] with the Bureau of Internal Revenue declaring, among others, the following:

	Sales/Purchases	**VAT**
Zero Rated Sales/Receipts	5,191,480,758.61	-
Less:		
Input Tax Carried Over from Previous Period		283,528,153.68
Domestic Purchase of Services	133,995,016.68	16,079,402.00
Services Rendered by Non-residents	201,018,864.17	24,122,263.70
Total Available Input Tax		323,729,819.38
Less: VAT Refund/TCC claimed		(43,268,934.50)
Total Available Input Tax		280,460,884.88
Net VAT Payable (Overpayment)		(280,460,884.88)

Petitioner also submitted a Certification[15] from the Board of Investments of the Philippines (BOI) which certified that Philex Mining

[14] *Records*, Exhibit "N-1," p. 493.

Corporation exported 100% of its total sales volume/value for the calendar year covering January 1, 2010 to December 31, 2010.

In the Report[16] of Mr. Albert G. Alba, the Commissioned Independent Certified Public Accountant ("ICPA"), he noted that petitioner's zero-rated sales for the fourth quarter of 2010 amounts to $119,497,766.00.

Provisional Invoice No.	**Exhibit**	**Final Invoice No.**	**Exhibit**	**Amount Recorded in the General Ledger (in US$)**
Current Quarter's Shipments				
2601	F-1-b	2608	F-1-c	29,310,188.00
2602	F-2-b	2609	F-2-c	28,078,975.00
2604	F-3-b	2610	F-3-c	29,156,922.00
2605	F-4-b	2612	F-4-c	28,616,176.00
			subtotal	**115,162,261.00**
Catch-up Adjustments to Prior Quarter's Shipments				
2589	F-5-b	2599	F-5-c	79,949.00
2591	F-6-b	2598	F-6-c	309,891.00
2594	F-7-b	2600	F-7-c	324,927.00
2596	F-8-b	2603	F-8-c	1,411,455.00
2597	F-9-b	2606	F-9-c	2,209,283.00
			subtotal	**4,335,505.00**
TOTAL				**119,497,766.00**

Since petitioner claims that all of its sales for the said quarter pertain to export sales, it is necessary that the following conditions[17]

[15] Exhibit "O."
[16] Exhibit "E."
[17] Philex Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8553, March 15, 2015.

shall be present in order that such alleged sales shall be considered as zero-rated sales pursuant to Section 106 (A)(2)(a)(1) of the NIRC, to wit:

1. there was sale and actual shipment of goods from the Philippines to a foreign country;

2. the sale was made by a VAT registered person;

3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4. the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

In addition to the abovementioned requirements, it is necessary that the respective VAT invoices and VAT official receipts comply with the invoicing requirements provided in Section 113 of the NIRC and such invoices and receipts must have been duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC.

Moreover, pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC and Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated on its direct export sales must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;

2. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and

3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Thus, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC.

After careful examination of the documents presented by the petitioner, the alleged zero rated sales with their respective supporting documents may be summarized in a table below:

Provisional Invoice No.	Date	Exhibit	Final Invoice No.	Date	Exhibit	Amount Recorded in the General Ledger (in US$)	Inward Remittance	Exhibit	Difference
Current Quarter's Shipments									
2601	04-Nov-10	F-1-b	2608	01-Feb-11	F-1-c	29,310,188.00	23,186,882.00	G-1	6,123,306.00
2602	22-Nov-10	F-2-b	2609	15-Feb-11	F-2-c	28,078,975.00	23,255,563.00	G-2	4,823,412.00
2604	06-Dec-10	F-3-b	2610	02-Mar-11	F-3-c	29,156,922.00	23,059,687.00	G-3	6,097,235.00
2605	31-Dec-10	F-4-b	2612	01-Apr-11	F-4-c	28,616,176.00	-		28,616,176.00
					subtotal	**115,162,261.00**	**69,502,132.00**		**45,660,129.00**
Catch-up Adjustments to Prior Quarter's Shipments									
2589	07-Jun-10	F-5-b	2599	06-Oct-10	F-5-c	79,949.00	2,100,564.00	G-5	-
2591	05-Jul-10	F-6-b	2598	04-Oct-10	F-6-c	309,891.00	3,396,528.00	G-8	-
2594	03-Aug-10	F-7-b	2600	04-Nov-10	F-7-c	324,927.00	4,584,631.00	G-4	-
2596	09-Sep-10	F-8-b	2603	01-Dec-10	F-8-c	1,411,455.00	5,494,114.00	G-6	-
2597	28-Sep-10	F-9-b	2606	04-Jan-11	F-9-c	2,209,283.00	21,833,242.00	G-7	-
					subtotal	**4,335,505.00**	**37,409,079.00**		-
					TOTAL	**119,497,766.00**	**106,911,211.00**		**45,660,129.00**

Out of the $119,497,766.00 declared zero-rated sales, $45,660,129.00, pertaining to current quarter's shipment should be disallowed. Final Invoice Nos. 2608, 2609, 2610, and 2612 should be disallowed because they were not dated within the period of the subject claim and no actual remittance from the buyer was yet made for Final Invoice No. 2610. Consequently, the allocation of the correct Zero-Rated Sales in Peso Value shall be computed as follows:

<u>Computation of Allocation of Zero-rated Sales in Peso</u>

Total Zero-Rated Sales in US$	119,497,766.00	100.00%

Less: Disallowed Zero-Rated Sales	45,660,129.00	38.21%
Valid Zero-rated Sales in US$	73,837,637.00	61.79%
Disallowed Zero-Rated Sales in Peso	1,983,666,214.64	38.21%
Valid Zero-Rated Sales in Peso	3,207,814,543.97	61.79%
Zero-Rated Sales per VAT Return	5,191,480,758.61	100.00%

Since only 61.79% out of the declared Zero-Rated Sales for the quarter was found to be valid, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate pursuant to Section 4.112-1 of RR 16-2005.

Anent the third requisite that the input taxes paid for the period can be attributable to the said zero-rated transactions, Section 4.110-8 of RR 16-2005 provides the required supporting documents that must be presented in order to substantiate the alleged input tax credits for the period of claim, to wit:

*"**SEC. 4.110-8. Substantiation of Input Tax Credits. –***

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

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

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

> (4) *For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code."*

After careful examination of all documents submitted before this Court, only the following items were able to comply with the invoicing requirements provided in Section 113 of the NIRC, to wit:

a) Importation of Goods

Bank or BOC Official Receipt			**IEIRD**			**Statement of Settlement of Duties and Taxes**			**Input VAT**
Date	No.	Exhibit	Date	No.	Exhibit	Date	Ref. No.	Exhibit	
20-Oct-10	305732	H-1	20-Oct-10	111707967	H-1-a				1,337,826.00
10-Dec-10	307893	H-2	09-Dec-10	112722653	H-2-a				2,561,417.00
24-Dec-10	181343501-1	I-1							7,073.00
						04-Nov-10	C 118	J-1	1,646,964.00
						09-Nov-10	C 2116	J-2	1,660,057.00
TOTAL INPUT VAT ON IMPORTATIONS									**Php 7,213,337.00**

b) Domestic Purchases of Services

OR Date	**OR No.**	**Supplier's Name**	**TIN**	**OR Amount**	**Input VAT**	**Exhibit No.**
1-Oct-10	1543	Bradley Drilling Inc.	246-474-387	20,856,921.58	2,502,830.59	L-1
6-Oct-10	41211	Orient Freight International	000-349-114	30,592.58	3,277.78	L-3
10-Oct-10	3105465	International Container Terminal Services, Inc.	000-323-228	27,015.42	2,894.52	L-8
16-Oct-10	TSN1048 537	TOYOTA North EDSA	000-300-956-001	6,262.50	670.97	L-9
19-Oct-10	113942	DHL		8,348.85	873.90	L-11
20-Oct-10	670950	People's Air Cargo and Warehousing Co., Inc.	000-305-554	1,157.54	123.00	L-12
20-Oct-10	3154339	International Container Terminal Services, Inc.	000-323-228	4,211.59	451.24	L-13
22-Oct-10	1545	Bradley Drilling Inc.	246-474-387	23,987,758.13	2,773,921.43	L-14
26-Oct-10	1546	Bradley Drilling Inc.	246-474-387	32,370,827.33	3,884,499.28	L-15
26-Oct-10	926571	Philippine Skylanders, Inc.	000-305-304	578.90	61.52	L-16
27-Oct-10	3166563	International Container Terminal Services, Inc.	000-323-288	21,057.95	2,256.20	L-18
27-Oct-10	3166562	International Container Terminal Services, Inc.	000-323-288	29,481.13	3,158.68	L-19
4-Nov-10	3177318	International Container Terminal Services, Inc.	000-323-288	18,691.90	2,002.70	L-21
8-Nov-10	3162142	International Container Terminal Services, Inc.	000-323-288	2,156.20	231.02	L-22
10-Nov-10	1547	Bradley Drilling Inc.	246-474-387	53,242,490.08	6,389,098.81	L-25
12-Nov-10	3196131	International Container Terminal Services, Inc.	000-323-228	32,445.36	3,476.26	L-27
12-Nov-10	3196132	International Container Terminal Services, Inc.	000-323-228	12,443.35	1,440.36	L-28

23-Nov-10	5059282	Sycip Salazar Hernandez & Gatmaitan	000-502-555	2,432,036.32	260,575.32	L-31
23-Nov-10	3198440	International Container Terminal Services, Inc.	000-323-228	21,057.95	2,256.20	L-34
23-Nov-10	3198439	International Container Terminal Services, Inc.	000-323-228	29,481.13	3,158.68	L-35
23-Nov-10	3198442	International Container Terminal Services, Inc.	000-323-228	1,617.18	173.28	L-36
24-Nov-10	20737089	HONDA Cars Makati Inc.	000-220-239	69,894.88	7,624.90	L-37
1-Dec-10	1550	Bradley Drilling Inc.	246-474-387	5,265,937.07	575,774.21	L-38
6-Dec-10	1548	Bradley Drilling Inc.	246-474-387	40,882,657.10	3,518,069.20	L-39
22-Dec-10	1549	Bradley Drilling Inc.	246-474-387	29,625,985.92	3,555,118.31	L-42
TOTAL DOMESTIC PURCHASES OF SERVICES					Php 23,494,018.35	

Thus, the total input tax credits for the quarter amount to Php30,707,355.35. However, this input tax cannot be claimed in full by the petitioner since only 61.79% out of the actual zero-rated sales declared per VAT return were found to be valid. Thus, such input tax credits shall be allocated accordingly:

Allocation of Input VAT

Total Substantiated Input VAT	Php30,707,355.35
Multiplied by: Percentage of Valid Zero-rated Sales	61.7900%
Substantiated Input VAT attributable to Valid Zero-Rated Sales	Php18,974,066.49

Anent the fourth requisite, as found on records,[18] the input taxes were not applied against any output VAT liability for the fourth quarter of 2010 and the alleged input tax credit of such quarter in the amount of Php40,201,665.70 was subsequently declared as an item under VAT Refund/TCC Claimed per BIR Form No. 2550-Q of the Second Quarter of 2012. Thus, petitioner complied with the fourth requisite.

Although petitioner has satisfactorily complied with the requirements set forth in the NIRC in its claim for refund of unutilized input VAT arising from Zero Rated Transactions for the 4th quarter of 2010, only the amount of Php18,974,066.49 was properly substantiated.

Therefore, petitioner is entitled only to the amount of Php18,974,066.49 as claim for refund arising from its unutilized input VAT from Zero Rated Transactions for the 4th quarter of 2010, as properly substantiated amount.

[18] *Records*, Exhibits "N-1" to "N-7,"pp.493-506.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of Php18,974,066.49 representing unutilized input VAT from zero-rated transactions for the 4th quarter of 2010.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation , I certify that the conclusions in the above Decision had been 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