REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

****

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 9119, 9201, 9254, and 9336

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

MAR 04 2019 10:42am

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DECISION

UY, J.:

This case is a consolidation of four (4) *Petitions for Review* respectively filed on August 18, 2015, November 16, 2015, February 5, 2016, and April 25, 2016, by Maibarara Geothermal, Inc., as petitioner, against the Commissioner of Internal Revenue, as respondent,[1] seeking the refund of the total amount of ₱81,572,707.81, allegedly representing its unutilized input value-added tax (VAT) for the four taxable quarters of calendar year 2013 attributable to zero-rated sales, detailed as follows:

CTA CASE No.	PERIOD COVERED	AMOUNT OF CLAIM
9119	1st Quarter (January to March 2013)	₱ 9,027,372.28
9201	2nd Quarter (April to June 2013)	69,816,295.84
9254	3rd Quarter (July to September 2013)	1,621,794.52
9336	4th Quarter (October to December 2013)	1,107,245.17
	TOTAL	**₱ 81,572,707.81**

[1] Docket (CTA Case No. 9119) – Vol. I, pp. 10 to 24; Docket (CTA Case No. 9201) – Vol. I, pp. 10 to 24; Docket (CTA Case No. 9254), pp. 10 to 25; and Docket (CTA Case No. 9336), pp. 12 to 27.

THE FACTS

Petitioner Maibarara Geothermal, Inc. is a corporation duly organized and existing under the laws of the Philippines.[2] It is registered with the Department of Energy (DOE) as an "RE Developer of Geothermal Energy Resources",[3] and with the Board of Investments (BOI) as a "New Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project".[4] Petitioner is a VAT-registered taxpayer with Taxpayer's Identification Number (TIN) 007-843-328-000; and its business address is at the 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City.[5]

Respondent is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law, with office address at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[6]

Petitioner filed its original and amended Quarterly VAT Returns for the four quarters of taxable year 2013 on the following dates:[7]

DATE FILED		QUARTER	TAXABLE YEAR
ORIGINAL	AMENDED		
April 25, 2013	August 22, 2013	1st	2013
July 25, 2013	January 23, 2014	2nd	2013
October 25, 2013	January 23, 2014	3rd	2013
January 24, 2014		4th	2013

Petitioner separately filed with the BIR Revenue District Office (RDO) No. 43A its administrative claims for refund of its alleged unutilized input VAT attributable to zero-rated sales for the 1st, 2nd, 3rd, and 4th quarters of 2013 on March 26, 2015,[8] on June 26, 2015,[9]

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[2] Exhibit "P-1", Docket (CTA Case No. 9119) – Vol. IV, p. 1840.
[3] Exhibit "P-3", Docket (CTA Case No. 9119) – Vol. IV, p. 1856.
[4] Exhibit "P-4", Docket (CTA Case No. 9119) – Vol. IV, p. 1857.
[5] Exhibit "P-2", Docket (CTA Case No. 9119) – Vol. IV, p. 1866.
[6] Par. 2, *Consolidated Joint Stipulation of Facts and Issues*, Docket (CTA Case No. 9119) – Vol. III, p. 1620.
[7] Exhibits "P-25" to "P-32", Docket (CTA Case No. 9119) – Vol. IV, pp. 1955, 1960, 1965, 1971, 1977, 1983, 1988, and 1997, respectively.
[8] Exhibits "P-9" and "P-10", Docket (CTA Case No. 9119) – Vol. IV, pp. 1887 to 1893.

on September 18, 2015,[10] and on December 10, 2015,[11] in the respective amounts of ₱9,027,372.28, ₱69,816,295.84, ₱1,621,794.52, and ₱1,107,245.17, or in the aggregate amount of ₱81,572,707.81.

Petitioner then filed with this Court four (4) separate *Petitions for Review* on August 18, 2015, on November 16, 2015, on February 5, 2016, and on April 25, 2016, respectively docketed as CTA Case Nos. 9119, 9201, 9254, and 9336.[12]

In the *Answers* filed by respondent, certain defenses were interposed therein, as follows:

CTA Case No. 9119 filed on October 26, 2015[13] : (1) in order to validly claim for refund, it is imperative for petitioner to prove its compliance with the requirements laid down by the NIRC of 1997, as amended, and its implementing rules and regulations; and (2) petitioner must prove that it filed its administrative claim for refund for the 1st quarter of taxable year 2013 within the two-year prescriptive period.

CTA Case Nos. 9201 filed on December 17, 2015[14] : (1) taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable; (2) petitioner must prove that its export sale qualify as VAT zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended; (3) petitioner must prove that it complied with the invoicing requirements provided in Section 113 of the NIRC of 1997, as amended; (4) petitioner must also prove that it complied with the provisions of Section 4.110-8 of Revenue Regulations No. 16-05, as amended, as to the substantiation of Input Tax Credits; and (5) Petitioner must comply with the requirements provided under Revenue Memorandum Order No. 53-98.

CTA Case Nos. 9254 and 9336 filed on March 16, 2016[15] and July 25, 2016[16] : (1) petitioner's alleged claim for refund is subject to

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[9] Exhibits "P-11" and "P-12", Docket (CTA Case No. 9119) – Vol. IV, pp. 1894 to 1900.
[10] Exhibits "P-13" and "P-14", Docket (CTA Case No. 9119) – Vol. IV, pp. 1901 to 1907.
[11] Exhibits "P-15" and "P-16", Docket (CTA Case No. 9119) – Vol. IV, pp. 1908 to 1916.
[12] Docket (CTA Case No. 9119) – Vol. I, p. 10; Docket (CTA Case No. 9201) – Vol. I, p. 10; Docket (CTA Case No. 9254), p. 10; and Docket (CTA Case No. 9336), p. 12.
[13] Docket (CTA Case No. 9119) – Vol. I, pp. 89 to 92.
[14] Docket (CTA Case No. 9201) – Vol. I, pp. 93 to 97..
[15] Docket (CTA Case No. 9254), pp. 108 to 111.
[16] Docket (CTA Case No. 9119) – Vol. II, pp. 795 to 804.

administrative routinary investigation/examination by the BIR; (2) taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable; and (3) in order to validly claim for refund, it is imperative for petitioner to prove its compliance with the requirements laid down by the NIRC of 1997, as amended, and its implementing rules and regulations.

On March 4, 2016, petitioner moved to consolidate CTA Case No. 9119,[17] with CTA Case Nos. 9201, and 9254, which were pending before the Second and Third Divisions of this Court, respectively. The *Motion to Consolidate* was granted on April 11, 2016[18] and on May 5, 2016[19].

Petitioner then filed on May 27, 2016 another *Motion to Consolidate* CTA Case No. 9336,[20] pending before the Third Division of this Court, with CTA Case Nos. 9119, 9201, and 9254. The said *Motion to Consolidate* was granted on June 14, 2016.[21]

After the parties submitted their *Consolidated Joint Stipulation of Facts and Issues* on October 7, 2016,[22] the Court issued the Pre-Trial Order on January 4, 2017.[23]

To prove its case, petitioner presented the following as witnesses: (1) Helenio B. Seraspi,[24] petitioner's Accounting Manager; (2) Atty. Clifford Chua,[25] the Court-commissioned Independent Certified Public Accountant; (3) Atty. Roberto K. Santos,[26] petitioner's Legal Officer; and (4) Maria Victoria M. Olivar,[27] petitioner's Geosciences Manager.

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[17] *Motion to Consolidate*, Docket (CTA Case No. 9119) – Vol. II, pp. 728 to 731.
[18] Resolution dated April 11, 2016 issued by the Third Division of this Court, Docket (CTA Case No. 9254), pp. 115 to 116.
[19] Resolution dated May 5, 2016, Docket (CTA Case No. 9119) – Vol. II, pp. 766 to 767.
[20] Docket (CTA Case No. 9119) – Vol. II, pp. 772 to 777.
[21] Resolution dated June 14, 2016 issued by the Third Division of this Court, Docket (CTA Case No. 9119), pp. 780-B to 780-D.
[22] Docket (CTA Case No. 9119) – Vol. III, pp. 1621 to 1629.
[23] Docket (CTA Case No. 9119) – Vol. III, pp. 1648 to 1663.
[24] Minutes of the hearing held on, and Order dated, March 21, 2017, Docket (CTA Case No. 9119) – Vol. III, pp. 1744 to 1751.
[25] Minutes of the hearing held on, and Order dated, January 26, 2017, Docket (CTA Case No. 9119) – Vol. III, pp. 1678 to 1683; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket (CTA Case No. 9119) – Vol. III, pp. 1784 to 1788.
[26] Minutes of the hearing held on, and Order dated, March 21, 2017, Docket (CTA Case No. 9119) – Vol. III, pp. 1744 to 1751.
[27] Minutes of the hearing held on, and Order dated, June 29, 2017, Docket (CTA Case No. 9119) – Vol. III, pp. 1800 to 1804.

During the hearing held on June 29, 2017, respondent's counsel manifested that she would not be presenting evidence in this case.[28]

On August 24, 2017, petitioner filed its *Formal Officer of Evidence*.[29] In the Resolution dated December 7, 2017,[30] this Court admitted Exhibits "P-1" to "P-45", "P-47" to "P-64", "P-67" to "P-352", "P-360" to "P-364", inclusive of sub-markings.

In the Resolution dated March 22, 2018,[31] the consolidated cases were considered submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues for this Court's disposition:

> "Whether petitioner is entitled to refund for the unutilized VAT input taxes in the total amount of **Eighty One Million Five Hundred Seventy Two Thousand Seven Hundred Seven and 81/100 (₱81,572,707.81)** for the taxable year 2013;
>
> 1. Whether the Petitioner is entitled to the refund of the unutilized input VAT it paid in the amount of Nine Million Twenty Seven Thousand Three Hundred Seventy Two and 28/100 Pesos (₱9,027,372.28) for the 1st Quarter of the taxable year 2013 (**CTA Case No. 9119**);
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> 2. Whether the Petitioner is entitled to the refund of the unutilized input VAT it paid in the amount of Sixty Nine Million Eight Hundred Sixteen Thousand Two Hundred Ninety Five and 84/100 Pesos (₱69,816,295.84) for the 2nd Quarter of the taxable year 2013 (**CTA Case No. 9201**);

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[28] Docket (CTA Case No. 9119) – Vol. V, pp. 2569 to 2570.
[29] Docket (CTA Case No. 9119) – Vol. IV, pp. 1821 to 1838.
[30] Docket (CTA Case No. 9119) – Vol. V, pp. 2581 to 2582.
[31] Docket (CTA Case No. 9119) – Vol. V, p. 2653.

3. Whether the Petitioner is entitled to the refund of the unutilized input VAT in the amount of One Million Six Hundred Twenty One Thousand Seven Hundred Ninety Four and 52/100 Pesos (₱1,621,794.52) for the 3rd Quarter of the taxable year 2013 (**CTA Case No. 9254**); and

4. Whether the Petitioner is entitled to the refund of the unutilized input VAT in the amount of One Million One Hundred Seven Thousand Two Hundred Forty Five and 17/100 Pesos (₱1,107,245.17) for the 4th Quarter of the taxable year 2013 (**CTA Case No. 9336**)."[32]

The above-enumerated issues may be summarized as follows:

Whether or not petitioner is entitled to the refund of the alleged unutilized input VAT for the four quarters of taxable year 2013 in the total amount of ₱81,572,707.81.

Petitioner's arguments:

Petitioner argues that it has complied with the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, as regards the prescriptive period for filing administrative and judicial claims of refund and/or issuance of tax credit.

Moreover, petitioner avers that it is a VAT-registered entity.

Allegedly, it is engaged in zero-rated or effectively zero-rated sales, pursuant to Section 108(B)(7) of the NIRC of 1997, as amended, and Republic Act (RA) 9513. Relative thereto, petitioner is authorized to operate as a generation company and that it is engaged in generation, collection and distribution of electricity. As such, it is allegedly duly registered with the DOE as a "RE Developer of Geothermal Energy Resources". It also registered with the BOI as a "New Renewable Energy Developer of a 20 MW Maibarara Geothermal Power Generation Project"; and that the BOI has issued to petitioner its Specific Terms and Conditions, pursuant to its registration or activity as a New Renewable Energy Developer.

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[32] Statement of the Issues, *Consolidated Joint Stipulation of Facts and Issues*, Docket (CTA Case No. 9119) – Vol. III, p. 1622.

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Furthermore, petitioner submits that the input taxes being claimed are due or paid; that the said input taxes have not been applied against output taxes during the quarter and in the succeeding quarters; and that the same input taxes being claimed are attributable to zero-rated sales.

Lastly, petitioner contends that it is entitled to a claim for refund or issuance of tax credit certificate of unutilized input taxes attributable to zero-rated sales/receipts for taxable year 2013 in the total amount of ₱79,125,707.16, based on the following reasons, to wit :

1) Only local purchases of goods, services and properties related to RE are expressly subject to zero percent VAT under the Renewable Energy Law;

2) Importations are subject to 12% VAT pursuant to the Destination Principle or Cross-Border Doctrine and subject to either 12% VAT or is exempt from VAT, but in both cases never zero-rated;

3) Petitioner's input VAT on purchases of local supply of goods, properties and services not related to the development, construction and installation of its plant facilities and not related to the whole process of exploration and development of RE sources up to its conversion into power are subject to 12% VAT; and

4) Although local purchases of goods, services and properties related to RE are subject to zero percent VAT under the Renewable Energy Law, petitioner is nonetheless entitled to claim a refund or to be credited with input VAT shifted to it by its suppliers

Respondent's counter-arguments:

Respondent counter-argues that petitioner's claim for refund of its alleged input taxes it paid for purchases of goods and services are not attributable to zero-rated or effectively zero-rated sales, considering that petitioner is not yet selling its geothermal energy power; and that contrary to Section 112(A) of the NIRC of 1997, as amended, petitioner even admitted in paragraph 20 of its *Petition for Review* that its claim for refund of input VAT it paid for purchases of goods and services was anchored on the development, construction and installation of its power facilities.

According to respondent, the ICPA Report failed to indicate the amount of input VAT it paid on certain purchases of goods and services as to whether the same are attributed to the sale of power or the development, construction and installation of its power facilities.

Additionally, the instant claim for refund must be denied because petitioner's input VAT which it paid for purchases of goods and services are not for the sale of power pursuant to Section 112(A) of the NIRC of 1997, as amended, but instead for the development, construction and installation of its power facilities.

Lastly, respondent points out that petitioner failed to comply with Sections 113(A) and 237 of the NIRC, as amended, providing for the invoicing requirements for VAT-registered persons. Allegedly, petitioner failed to show proof that its input taxes have not been applied against its output taxes during and in the succeeding quarters as required by Section 110(B) of the NIRC of 1997, as amended.

Well-established is the rule that tax refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions.

THE COURT'S RULING

The consolidated *Petitions for Review* must be denied.

Relevant to the resolution of the present case is Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 9337,[33] provides as follows:

> "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

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

> input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.
>
> xxx xxx xxx
>
> (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 a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provisions, certain requisites have been developed by jurisprudence which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the zero-rated or

effectively zero-rated sales were made;[34]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the submission of complete documents to support the claim, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[35]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is VAT registered;[36]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[37]
5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[38]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are due or paid;[39]
7. the input taxes are not transitional input taxes;[40]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;[41]
9. where there are both zero-rated or effectively zero-

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[34] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010; and *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013.

[35] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015; *Commissioner of Internal Revenue vs. Deutsche Knowledge Services, Pte. Ltd.*, G.R. No. 211072, November 7, 2016; and *Aichi Forging Company of Asia, Inc. vs. Court of Tax Appeals – En Banc, et al.*, G.R. No. 193625, August 30, 2017.

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

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

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rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[42] and

10. the input taxes have not been applied against output taxes during and in the succeeding quarters.[43]

As can be gleaned from the foregoing requisites, the presence of zero-rated or effectively zero-rated sales is very critical. This is so because the said *fourth*, *eighth*, and *ninth* requisites are entirely dependent on the said presence of such zero-rated or effectively zero-rated sales.

With regard to the ***fourth*** requisite, it is explicit that taxpayer must be engaged in zero-rated or effectively zero-rated sales.

In *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[44] the Supreme Court emphasized the necessity of establishing the presence of zero-rated sales on the part of the taxpayer-applicant to obtain a credit/refund of input VAT, to wit:

> "The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA *En Banc* that the petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA *En Banc* precisely found, **the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity. Had there been zero-rated sales, it would have reported them in the returns. Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim before the administrative official concerned, or in the *de novo* litigation before the CTA in Division.**

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[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[43] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.
[44] G.R. No. 188260, November 13, 2013.

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> Although the petitioner has correctly contended here that the sale of electricity by a power generation company like it should be subject to zero-rated VAT under Republic Act No. 9136, **its assertion that it need not prove its having actually made zero-rated sales of electricity by presenting the VAT official receipts and VAT returns cannot be upheld.** It ought to be reminded that it could not be permitted to substitute such vital and material documents with secondary evidence like financial statements." *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the taxpayer-applicant ought to prove that it had zero-rated sales.

As regards the ***eighth*** requisite, the presence of zero-rated or effectively sales is indispensable because the input VAT being refunded must be attributable thereto. In the same vein, the ***ninth*** requisite entails the existence of zero-rated or effectively zero-rated sales despite that there are also taxable or exempt sales, because the proportionate allocation on the basis of sales volume cannot be had in the absence the said zero-rated or effectively zero-rated sales.

In this case, an examination of petitioner's Quarterly VAT Returns[45] filed for taxable year 2013 reveals that petitioner had no sales declared during the said period. In fact, Helenio B. Seraspi, petitioner's Accounting Manager, confirmed that petitioner had no sales during taxable year 2013, in this wise:

> "25. Q: What proof, if any, can you show us that Petitioner was not able to utilize its input VAT for the taxable year 2013?
>
> A: The Petitioner's Quarterly VAT returns for the taxable year 2013 and the Quarterly VAT returns subsequent to said taxable year will prove that the input VAT being claimed for refund amounting to Eighty One Million Five Hundred Seventy Two Thousand Seven Hundred Seven and 81/100 Pesos (₱81,572,707.81) were not utilized nor applied against Petitioner's output VAT liabilities in the

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[45] Exhibits "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", and "P-32", Docket (CTA Case No. 9119) – Vol. IV, pp. 1955, 1960, 1965, 1971, 1977, 1983, 1988, and 1997, respectively.

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subsequent periods.

<u>As a matter of fact</u>, during the taxable years 2011 to 2013, Petitioner generated no sales yet as development, construction, and installation of its geothermal power plant, including its auxiliary facilities was still ongoing.

xxx xxx xxx

35. Q: You also mentioned earlier that for the taxable years 2011 to 2013, Petitioner generated no sales yet. Again, why is this so?

A: During this period, the Petitioner was still in the process of developing, constructing, and installing its geothermal power plant, including its auxiliary facilities. It usually takes some time in developing, constructing, and installing a geothermal power plant before it may be put into use to convert geothermal energy into electricity for sale. During this time, the Petitioner incurred and paid input VAT on its purchases of goods and services used in the development, construction and installation of the geothermal power plant in order to make it operational so as to generate power to be sold. **The Company started selling on the first quarter of 2014.**

36. Q: What is Petitioner's proof that the first commercial sale of the Petitioner was on the first quarter of 2014?

A: Petitioner entered into an Electricity Supply Agreement with Trans-Asia Oil and Energy Development Corporation last February 2011. Petitioner first supplied power to Trans-Asia on February 2014 as shown in the Official Receipt No. 501 dated March 25, 2014 of the Petitioner and Billing Statement 0001 dated March 10, 2014. This was the first commercial sale of the Petitioner.

> **Further, as can be seen in the Income Tax Returns, and Audited Financial Statements during the taxable years 2010 to 2013, <u>there was no sales made</u>.**
>
> Furthermore, **the Quarterly VAT returns of the Petitioner during the taxable years 2011 to 2013 that I have previously identified <u>do not reflect any sales transactions</u>.** However, in the 1st quarter of 2014, the sale pertaining to the transaction with Trans-Asia was reflected. This can likewise be seen in the Income Tax Return and Audited Financial Statement for the year 2014."[46] *(Emphases and underscoring supplied)*

Petitioner's Legal Officer, Atty. Roberto K. Santos, likewise confirmed that petitioner's sale of electricity to Trans-Asia Oil and Energy Development Corporation was only in February 2014, to wit.

> "ATTY. BURGOS:
> xxx
>
> Q. When was the sale of electricity to TransAsia, when was this?
>
> MR. SANTOS:
> A. February 2014, Ma'am."[47]

Clearly, there are no zero-rated sales yet unto which the subject input VAT can be attributed for the year 2013. Correspondingly, petitioner failed to comply with the ***eighth*** requisite in obtaining a credit/refund of input VAT, *i.e.*, that the latter is attributable to zero-rated or effectively zero-rated sales. In addition, the ***fourth*** requisite, *i.e.*, the taxpayer is engaged in zero-rated or effectively zero-rated sales, is likewise not complied with.

Considering that the said ***fourth*** and ***eighth*** requisites are not complied with in this case, We need not look into petitioner's compliance with the other remaining requisites in obtaining a credit/refund of input VAT.

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[46] Exhibit "P-363" (Judicial Affidavit of Helenio B. Seraspi), Docket (CTA Case No. 9119) – Vol. III, pp. 829 to 830, and 834 to 835.
[47] Transcript of Stenographic Notes at the hearing held on March 21, 2017, p. 18.

Consequently, the subject *Petitions for Review* cannot be given due course because there were no zero-rated or effectively zero-rated sales during the subject periods.

In other words, the aggregate amount of ₱81,572,707.81 being claimed by petitioner, supposedly representing its unutilized input VAT for 2013, may not be refunded.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate 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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special First Division