REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8888**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 3 1 2018 3:25 p.m.

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AMENDED DECISION

CASANOVA, *J.*:

Before this Court is petitioner's **Motion for Reconsideration (RE: Decision dated 26 May 2017)**, filed on June 13, 2017, with respondent's **Opposition/Comment (on the Motion for Reconsideration (RE: Decision dated 26 May 2017))**, filed through registered mail on June 16, 2017.

To recall, the instant Petition for Review involves petitioner's claim for refund or issuance of tax credit certificate (TCC) in the aggregate amount of ₱41,659,221.63, allegedly representing its excess and unutilized input value-added tax (VAT) credits for the 4th quarter of taxable year 2013. However, in the Decision dated May 26, 2017 (assailed Decision), this Court dismissed the instant petition for lack of jurisdiction. The Court held that petitioner's judicial claim for refund was belatedly filed considering that compliance with the 120+30 day period prescribed under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, is mandatory and jurisdictional.

On June 13, 2017, petitioner filed a Motion for Reconsideration with Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence (RE: Decision dated 26 May 2017).

In the said motion, petitioner alleges, among others, that its administrative claim for refund was filed on March 20, 2014. Further, it alleges that it submitted the complete documents to support the claim on April 11, 2014, and a copy of the transmittal letter was attached to the motion. Moreover, petitioner reiterated that it received respondent's letter denying the administrative claim on August 6, 2014, which is within the 120 days from the submission of complete documents. Therefore, based on this timeline, the judicial appeal filed on September 5, 2014 was well within the 30 days from receipt of the denial letter on August 6, 2014.

Respondent filed its comment thereto, and claims that the timeliness of petitioner's appeal had already been extensively discussed by the Court. Respondent claims that the letter dated August 4, 2014 cannot be considered as a decision of the respondent that can be elevated/appealed to this Court. According to respondent, it was misleading on the part of petitioner to state that the letter dated August 4, 2014 was the decision that can be appealed to this Court considering that petitioner emphasized in its motion that the reckoning of the 30-day period to appeal is on the date of its alleged submission of supporting documents on April 11, 2014, not on the date of receipt of the letter dated August 4, 2014.

In the Resolution dated September 28, 2017, the Court granted petitioner's Motion with Leave of Court to Reopen the Case for Presentation of Additional Evidence. Accordingly, the case was set for hearing for the presentation of the documents cited and attached to the instant motion for reconsideration. Meanwhile, the resolution of petitioner's Motion for Reconsideration (Re: Decision dated 26 May 2017) was held in abeyance.

During the hearing held on January 29, 2018, petitioner presented Ms. Mary Anne U. Murphy, who testified by way of Judicial Affidavit. Thereafter, on February 5, 2018, petitioner filed its Supplemental Formal Offer of Evidence.

In the Resolution dated April 4, 2018, the Court admitted Exhibits "P-81", "P-82", "P-83" and "P-83-1". Moreover, upon establishing the bases for the presentation of secondary evidence, the Court likewise admitted Exhibit "P-80".

In compliance with the order of the Court, petitioner filed through registered mail on May 11, 2018 its Supplemental Memorandum. On the other hand, respondent failed to file his memorandum as per Records Verification dated May 22, 2018. Accordingly, petitioner's motion for reconsideration was considered submitted for resolution on May 28, 2018.

In view of the admission of additional pieces of evidence offered and presented by petitioner, the Court shall determine anew if petitioner's judicial claim was timely filed.

In the case of ***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,***[1] the Supreme Court clarified the reckoning point of the 120+30 day period within which a claimant must file its judicial claim, hence:

> "*Ideally*, upon filing his administrative claim, a taxpayer should complete the necessary documents to support his claim for tax credit or refund or for excess [un]utilized VAT. After all, should the taxpayer decide to submit additional documents and effectively extend the 120-period, it grants the CIR more time to decide the claim. Moreover, it would be prejudicial to the interest of a taxpayer to prolong the period of processing of his application before he may reap the benefits of his claim. Therefore, *ideally*, the CIR has a period of 120 days from the date an administrative claim is filed within which to decide if a claim for tax credit or refund of excess unutilized VAT has merit.
>
> Thus, when the VAT was first introduced through Executive Order No. 273, the pertinent rule was that:
>
>> (e) Period within which refund of input taxes may be made by the Commissioner. The Commissioner shall refund input taxes within 60 days **from the date the application for refund was filed** with him or his duly

[1] G.R. No. 207112, December 8, 2015.

> authorized representative. No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be.
>
> [Emphasis Supplied]

Here, the CIR was not only given 60 days within which to decide an administrative claim for refund of input taxes, but the beginning of the period was reckoned 'from the date the application for refund was filed.'

When Republic Act (*R.A.*) No. 7716 was, however, enacted on May 5, 1994, the law was **amended** to read:

> (d) 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 for creditable input taxes within sixty (60) days **from the date of submission of complete documents in support of the application** filed in accordance with sub-paragraphs (a) and (b) 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 sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.
>
> [Emphasis Supplied]

Again, while the CIR was given only 60 days within which to act upon an administrative claim for refund or tax credit, the period came to be reckoned '**<u>from the date of submission of complete documents in support of the application.</u>**' With this amendment, the date when a taxpayer made its submission of complete documents became relevant. In order to ensure that such date was at least determinable, RMO No. 4-94 provides:

> REVENUE MEMORANDUM ORDER NO. 40-94
>
> SUBJECT: *Prescribing the Modified Procedures on the Processing of Claims for Value-Added Tax Credit/Refund*
>
> III. Procedures
> REGIONAL OFFICE
> A. Revenue District Office
> In General:
>
> 1. Ascertain the completeness of the supporting documents prior to the receipt of the application for VAT credit/refund from the taxpayer.
>
> 2. Receive application for VAT Credit/Refund (BIR Form No. 2552) in three (3) copies in the following manner:
>
>   a. stamp the word 'RECEIVED' on the appropriate space provided in all copies of application;
>
>   b. indicate the claim number;
>
>   c. **indicate the date of receipt**; and
>
>   d. initial by receiving officer.
>
> The application shall be received only if the required attachments prescribed in RAMO 1-91 have been fully complied with. x x x

Then, when the NIRC was enacted on January 1, 1998, the rule was once more amended to read:

> (D) *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 comp[l]ete documents** in support of the application filed in accordance with Subsections (A) and (B) 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.
>
> [Emphasis Supplied]

This time, the period granted to the CIR to act upon an administrative claim for refund was extended to 120 days. The reckoning point however, remained '**<u>from the date of submission of complete documents.</u>**'

Aware that not all taxpayers were able to file the complete documents to allow the CIR to properly evaluate an administrative claim for tax credit or refund of creditable input taxes, the CIR issued RMC No. 49-2003, which provided:

> Q-18: *For pending claims with incomplete documents, what is the period within which to submit the supporting documents required by the investigating/processing office? When should the investigating/processing office officially receive claims for tax credit/refund and what is the period required to process such claims?*
>
> A-18: **For pending claims** which have not been acted upon by the investigating/processing office due to incomplete documentation, **the taxpayer-claimants are given thirty (30) days**

> **within which to submit the documentary requirements unless given further extension by the head of the processing unit, but such extension should not exceed thirty (30) days.**
>
> For claims to be filed by claimants with the respective investigating/processing office of the administrative agency, the same shall be officially received only upon submission of complete documents.
>
> For current and future claims for tax credit/refund, the same shall be processed within one hundred twenty (120) days from receipt of the complete documents. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents **<u>within thirty (30) days from request</u> of the investigating/processing office, <u>which shall be construed as within the one hundred twenty (120)-day period.</u>**
>
> [Emphases Supplied]

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

Then, when R.A. No. 9337 was passed on July 1, 2005, the same provision under the NIRC was retained. With the amendment to Section 112, particularly the deletion of what was once Section 112(B) of the NIRC, Section 112 (D) was amended and renamed 112(C). Thus:

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days **from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

With the amendments only with respect to its place under Section 112, the Court finds that RMC No. 49-2003 should still be observed. Thus, taking the foregoing changes to the law altogether, it becomes apparent that, for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. The taxpayer may have also filed the complete documents on the 30th day from filing of his application, pursuant to RMC No. 49-2003. He may very well have filed his supporting documents on the first day he was notified by the BIR of the lack of the necessary documents. In such cases, the 120-day period is computed from the date the taxpayer is able to submit the complete documents in support of his application.

Then, except in those instances where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms [of] ***what*** additional document must be presented in support of a claim for tax credit or refund - it is the taxpayer who has that right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.

Thereafter, whether these documents are actually complete as required by law - is for the CIR and the courts to determine. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

Lest it be misunderstood, the benefit given to the taxpayer to determine when it should complete its submission of documents is not unbridled. Under RMC No. 49-2003, if in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimacy of the claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. **Again, notice, by way of a request from the tax collection authority to**

> **produce the complete documents in these cases, is essential.**
>
> Moreover, under Section 112(A) of the NIRC, as amended by RA 9337, a taxpayer has two (2) years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Thus, before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed. This is because, it is upon the complete submission of his documents in support of his application that it can be said that the application was, 'officially received' as provided under RMC No. 49-2003.
>
> To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition[al] documents to complete his administrative claim, the 120[-]day period allowed to the CIR begins to run from the date of filing.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected." *(Citations omitted)*

Based on the foregoing, the 120-day period given to respondent to decide on petitioner's claim for refund or issuance of TCC shall be reckoned from the day of the submission of additional documents, which must be within 30 days from the filing of the administrative claim for refund or, if additional documents are required for the proper determination of the legitimacy of the claim, within 30 days from the request of the investigating/processing office.

Undeniably, petitioner filed its administrative claim on March 20, 2014[2], hence, the subsequent submission of supporting documents on April 11, 2014[3] was well within the 30-day period allowed under RMC No. 49-2003 to submit additional supporting documents from the time the administrative claim was filed.

Presented below are the transmittal letters indicating the documents submitted by petitioner on April 11, 2014 and March 20, 2014:

April 11, 2014 Transmittal Letter[4]:

"March ____, 2014

From : Vestas Services Philippines, Inc.
31/F RCBC Plaza
Ayala Ave., Makati City

To : Bureau of Internal Revenue
Revenue District No. 50
South Makati

We are pleased to transmit the following documents in relation to your LOA Vat Credit Certificate for Q4 of 2013

1. Proof of zero rated sales
2. Xerox of official receipts for the zero rated sales claimed
3. Certification of the appropriate regulatory agency as to the exempt of zero rated sales of the taxpayer under its regulatory supervision, if applicable
   PEZA for ADP
   CEZA for Bayview
4. Photocopies of VAT purchase Invoices for purchase of goods and official receipts for purchase of services
5. Summary of importation made during the period
6. Photocopies of Invoices, import entry documents [,] official receipts or confirmation receipts evidencing payment of VAT
7. VAT Returns for the quarter as well as the VAT return for the succeeding quarter
8. Articles of Incorporation
9. Sales Contract/ Agreement

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2 Exhibit "P-5" and "P-5-1".
3 Exhibit "P-80".
4 *Ibid.*

10. BOI Certificate of Registration
11. BIR Cert of Registration
12. Certificate from DOF that subject taxpayer has not filed similar claim for refund covering the same period
13. Filed For 1914 – Application for Tax Credits / Refunds"

March 20, 2014 Transmittal Letter[5]:

"March 20, 2014

MS. MARIDUR V. ROSARIO
Revenue District Officer
BUREAU OF INTERNAL REVENUE
RDO NO. 50
Makati City

Dear Madam,

This has reference to our application for tax refund per BIR Form no 1914, with the following details:

Name of claimant/taxpayer	Vestas Services Philippines, Inc.
Letter claim date to BIR RDO 50	March 20, 2014
Tax type	VAT
Period Covered	October 01, 2013 to December 31, 2013
Mode of Claim	Tax refund
Reasons for Claim	Zero Rated Sales / Receipts
Attachments	BIR form 1914 BIR form 2550Q for 2013 Q4 Sales Transactions / Reconciliation of Listing and Reinforcement Purchase Transactions / Reconciliation of Listing and Reinforcement
Claim Amount	PHP 41,659,221.63
Claim Amount Cumulative	PHP 107,309,259.02

Previous Claims Filed

2013 Q2 – claim filed October 09, 2013	PHP 3,299,050.06
2013 Q3 – claim filed December 11, 2013	PHP 62,350,987.28

We look forward to your favourable action on the above claim.

Thank you very much.
Yours sincerely,

VESTAS SERVICES PHILIPPINES, INC."

[5] Exhibit "P-5".

Upon comparison of both letters, it can be gleaned that petitioner initially submitted on March 20, 2014 only BIR Form No. 1914 (Application for Tax Credits/Refunds), BIR Form No. 2550Q (Quarterly VAT Return) for the 4th quarter of 2013 and Reconciliations of Listing and Reinforcement for both sales and purchase transactions.

Thereafter, on April 11, 2014, petitioner submitted additional documents, as enumerated in the transmittal letter, in support of its application for refund/tax credits.

Since no evidence was presented that a written notice was sent by the BIR informing petitioner that the aforesaid documents are incomplete nor requiring petitioner to submit additional documents, the 120-day period started to run from April 11, 2014, the date when petitioner submitted its additional supporting documents.

Thus, applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

Date of Submission of Complete Documents	**End of the 120-day period for the BIR Commissioner to decide on the claim**	**End of the 30-day period from the expiration of the 120-day period**	**Date of Filing of the Judicial Claim**
April 11, 2014	August 9, 2014	September 8, 2014	September 5, 2014[6]

Evidently, petitioner's appeal by way of a Petition for Review, filed on September 5, 2014, is well within the period prescribed by law.

Finding that petitioner's administrative, as well as, judicial claims were timely filed, the Court will now determine petitioner's compliance with the following remaining requisites provided by Section 112(A) of the NIRC of 1997, as amended:

1. there must be zero-rated or effectively zero-rated sales;
2. the input taxes were incurred or paid;
3. such input taxes are attributable to zero-rated or effectively zero-rated sales; and

[6] Petition for Review, Docket, (Vol. I), pp. 14-22.

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

Petitioner's zero-rated or effectively zero-rated sales

Petitioner alleges that for the 4th quarter of CY 2013, it generated gross receipts from sale of services to (1) EDC Burgos Wind Power Corporation *(EDC Burgos)*, an export-oriented enterprise, duly registered with the Board of Investments (BOI) and engaged in the sale of power through renewable sources of energy; (2) Bayview Technologies, Inc., a Cagayan Special Economic Zone and Freeport Enterprise; and (3) Vestas Wind System A/S *(Vestas Wind)*, a non-resident foreign corporation not doing business in the Philippines, in the aggregate amount of ₱546,196,162.22, as declared in its Quarterly VAT Return[7] for the same period.

Petitioner's claim finds legal support in Chapter VII, Section 15(g) of Republic Act (RA) No. 9513, or the Renewable Energy Act of 2008, in relation to Section 108(B)(3) of the NIRC of 1997, as amended, as well as on Section 108(B)(2) of the NIRC of 1997, as amended, quoted below:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SEC. 15. *Incentives for Renewable Energy Projects and Activities.* - RE Developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. -The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind,

[7] Exhibit "P-4".

hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, **shall be subject to zero percent (0%) value-added tax (VAT)**, pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

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

xxx xxx xxx

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

xxx xxx xxx

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

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

xxx xxx xxx

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

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Part III, Rule 5, Section 13(G) of the Implementing Rules and Regulations of RA No. 9513 further clarifies the zero-rated nature of the transaction, *viz*:

"G. *Zero Percent Value-Added Tax Rate*

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;

(b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities** of RE Developers; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power,** including, but not limited to, the services performed by subcontractors and/or contractors." *(Emphasis supplied)*

(i) Sales to EDC

Petitioner claims that its sales of services to EDC Burgos are subject to zero percent (0%) VAT pursuant to Chapter VII, Section 15(g) of RA No. 9513, in correlation with Section 108(B)(3) of the NIRC of 1997, as amended.

We agree with petitioner.

Pursuant to the afore-cited law and rules, the whole process of exploration and development of renewable energy sources up to its conversion into power, including the services performed by contractors or subcontractors is a zero-rated transaction. Moreover, the provision is categorical in stating that RE Developers are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

In the case at bar, petitioner's rendition of services for the development, construction and installation of plant facilities and the whole process of exploration and development of Burgos Wind Farm Project[8] for EDC Burgos, a registered RE developer of wind resources as evidenced by its Certificate of Registration[9] issued by the BOI on June 29, 2011, may be treated as part of the whole process of exploration and development of renewable energy sources. As a local supplier of services needed for the development, construction

[8] Part II, No. 2(a), Findings and Observations, Exhibit "P-9-1" (Updated ICPA Report); Exhibits "P-12" and "P-13".
[9] Exhibit "P-3".

and installation of EDC Burgos' facilities, the services rendered by petitioner to EDC Burgos qualify as zero-rated under Chapter VII, Section 15(g) of RA No. 9513.

In line with this, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, in relation to Sections 237 and 238 of the same Code, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> "Sec. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter, or exchange of services**.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
>
> xxx xxx xxx

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

xxx xxx xxx

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

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

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

xxx xxx xxx

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

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

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

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

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

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

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

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

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

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

Based on the foregoing, only sales of services supported by duly registered official receipts imprinted with the word "zero-rated sale" and which contain all the required information under the law and regulations shall qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Chapter VII, Section 15(g) of RA No. 9513.

Based on the extracted schedule of zero-rated sales[10], petitioner's gross receipts from sale of services to EDC Burgos amounted to ₱202,117,195.23, detailed as follows:

Exhibit Reference	Name of Customer	Document Reference	Document Date	Amount	
				USD	Php
P-16	EDC Burgos Wind Power Corp.	OR No. 002		60,550.65	2,622,467.42
P-17	EDC Burgos Wind Power Corp.	OR No. 003	10/18/2013		10,502,025.92
P-18	EDC Burgos Wind Power Corp.	OR No. 005	11/8/2013	583,320.05	25,263,772.20
P-19	EDC Burgos Wind Power Corp.	OR No. 006	11/8/2013		105,020,259.19
P-20	EDC Burgos Wind Power Corp.	OR No. 007	11/26/2013	22,186.42	960,900.73
P-21	EDC Burgos Wind Power Corp.	OR No. 008	12/20/2013		2,802,574.33
P-22	EDC Burgos Wind Power Corp.	OR No. 009	12/20/2013	170,855.73	7,399,815.07
P-24	EDC Burgos Wind Power Corp.	CR No. 00014	12/20/2013		43,406,339.21
P-25	EDC Burgos Wind Power Corp.	CR No. 00015	12/20/2013	95,567.11	4,139,041.16
TOTAL					**202,117,195.23**

Upon verification of the submitted documents supporting its zero-rated gross receipts from sale of services to EDC Burgos, the Court finds that the date on Exhibit "P-16" is unreadable. For this reason, the Court cannot validate if it pertains to a sale made by petitioner to EDC Burgos during the 4th quarter of CY 2013.

Moreover, Exhibits "P-24" and "P-25" are supported by collection receipts instead of official receipts which are required under Section 113(A)(2) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A)(2).

Consequently, only the following zero-rated gross receipts from sale of services to EDC Burgos have been properly substantiated:

Exhibit Reference	Name of Customer	Document Reference	Document Date	Amount	
				USD	Php
P-17	EDC Burgos Wind Power Corp.	OR No. 003	10/18/2013		10,502,025.92
P-18	EDC Burgos Wind Power Corp.	OR No. 005	11/8/2013	583,320.05	25,263,772.20
P-19	EDC Burgos Wind Power Corp.	OR No. 006	11/8/2013		105,020,259.19
P-20	EDC Burgos Wind Power Corp.	OR No. 007	11/26/2013	22,186.42	960,900.73
P-21	EDC Burgos Wind Power Corp.	OR No. 008	12/20/2013		2,802,574.33
P-22	EDC Burgos Wind Power Corp.	OR No. 009	12/20/2013	170,855.73	7,399,815.07
	TOTAL				**151,949,347.44**

(ii) Sales to Bayview Technologies, Inc.

[10] Annex 1 of Exhibit "P-9-1" (Updated ICPA Report).

Petitioner posits that the rental income it received from Bayview Technologies was subjected to zero percent (0%) VAT since the entity is duly registered with the Cagayan Economic Zone Authority (CEZA).

To prove that Bayview Technologies, Inc. is a CEZA-registered Corporation, petitioner presented in evidence the Certificate of Registration[11] of Bayview Technologies, Inc. with CEZA and the Certification[12] issued by CEZA to Bayview Technologies, Inc. Likewise, petitioner offered the VAT zero-rated official receipt[13] it issued to Bayview Technologies, Inc. to prove that it generated zero-rated receipts therefrom.

Upon verification of the foregoing documents, the Court agrees with petitioner. Consequently, petitioner's gross receipts from the rental it earned from Bayview Technologies, Inc. in the amount of ₱4,198,845.53 duly supported by OR No. 000172 may be treated as subject to zero percent (0%) VAT.

(iii) Vestas Wind Systems A/S

Petitioner avers that its gross receipts from Vestas Wind, a non-resident foreign corporation established under the laws of Denmark, are subject to zero percent (0%) VAT, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended.

In the case of ***Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.***[14], the Supreme Court laid down the following requisites in order for the sale of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended:

1) the services must be other than processing, manufacturing or repacking of goods;
2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3) the recipient of such services is doing business outside the Philippines.

[11] Exhibit "P-70", attached as Annex "A" to petitioner's Formal Offer of Evidence.
[12] Exhibit "P-71", attached as Annex "B" to petitioner's Formal Offer of Evidence.
[13] Exhibit "P-15".
[14] G.R. No. 153205, January 22, 2007.

Petitioner complied with the first requisite. Based on the Service Agreement[15] between petitioner and Vestas Wind, petitioner provided operation of the overall IT system, including support and service, of the latter. Such services are other than processing, manufacturing or repacking of goods.

Petitioner likewise complied with the third requisite by presenting the following documents, proving that Vestas Wind Systems A/S is a non-resident foreign corporation doing business outside the Philippines:

Documents	Exhibit
Certificate of Non-Registration of Company issued by the Securities and Exchange Commission	P-79[16]
Articles of Association of Vestas Wind Systems A/S issued by the Danish Business Authority	P-74[17]
Certificate of Registration of Vestas Wind Systems A/S with the Danish Business Authority	P-75[18]
Certificate of Tax Residency of Vestas Wind Systems A/S issued by the Tax Authorities of Denmark	P-76[19]
Translation/Transcript of Registration of Vestas Winds Systems A/S from the Danish Business Authority	P-77[20]

Anent the second requisite, petitioner submitted in evidence its VAT zero-rated official receipt[21] issued to Vestas Wind. However, the Court finds the same insufficient as petitioner failed to provide, such as but not limited to, bank certification proving that the payments were inwardly remitted in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations, thus, shall be denied VAT zero-rating.

Note that there is a difference amounting to ₱259,536,042.84, between the zero rated-receipts reflected in petitioner's Quarterly VAT Return vis-à-vis as accounted above, as shown below:

Zero-Rated Receipts per VAT Return			₱ 546,196,162.22
Less: Zero-rated receipts from EDC Burgos			
Duly Substantiated	₱ 151,949,347.44		
Disallowed	50,167,847.79	₱ 202,117,195.23	

[15] Exhibit "P-72".
[16] Docket, (Vol. I), p. 314
[17] Docket, (Vol. I), pp. 315-323.
[18] Docket, (Vol. I), pp. 324-326.
[19] Docket, (Vol. I), pp. 327-329.
[20] Docket, (Vol. I), pp. 330-382.
[21] Exhibit "P-23".

Duly Substantiated zero-rated receipts from Bayview Technologies Inc.		4,198,845.53	
Disallowed zero-rated receipts from Vestas Wind System A/S		80,344,078.62	286,660,119.38
Unsupported zero-rated receipts			**₱ 259,536,042.84**

Such discrepancy not being supported by any documents shall be denied VAT zero-rating.

In view of the foregoing, out of the declared zero-rated sales of ₱546,196,162.22, only the amount of ₱156,148,192.97, as computed below, qualifies for VAT zero-rating:

EDC Burgos Wind Power Corp.	₱ 151,949,347.44
Bayview Technologies, Inc.	4,198,845.53
Total	**₱ 156,148,192.97**

Petitioner's input taxes paid or incurred which are attributable to zero-rated sales

In its amended Quarterly VAT Return for the 4th quarter of CY 2013[22], petitioner declared input VAT from importation of goods other than capital goods and domestic purchases of services in the aggregate amount of ₱41,659,221.63, as detailed below:

Importation of Goods other than Capital Goods	₱ 7,075,391.00
Domestic Purchases of Services	34,583,830.63
Total	**₱ 41,659,221.63**

Petitioner presented various official receipts to support its domestic purchase of services[23] and Import Entry and Internal Revenue Declarations (IEIRDs)[24] for their importations of goods other than capital goods, which were examined by the Court-Commissioned Independent CPA (ICPA), Atty. Jackielyn N. Arceño, CPA, of KB & Associates. The ICPA summarized her findings as follows:

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22 Exhibit "P-4".
23 Exhibits "P-28" to "P-51", Exhibit "P-9" (ICPA Report, March 11, 2015).
24 Exhibits "P-52" to "P-61", Exhibit "P-9" (ICPA Report, March 11, 2015).

	Findings	Reference (Exhibit P-9-1)	Input VAT Amount
1	Purchase of services properly supported by official receipts	Annex 4-a	₱ 15,287,680.94
2	Purchase of services supported by official receipts but with blank information on business style of buyer	Annex 4-b	68,946.00
3	Input taxes claimed on purchases of services dated outside the period of the claim	Annex 4-c	8,852,479.91
4	Input taxes claimed supported by VAT registered TIN OR/Sales Invoice but without/incomplete TIN of petitioner	Annex 4-d	213,062.92
5	Input taxes claimed supported by VAT registered TIN OR/Sales Invoice but without/incomplete address of petitioner	Annex 4-e	361,035.05
6	Input taxes claimed supported by VAT registered TIN OR but incomplete name of petitioner	Annex 4-f	223,078.68
7	Unaccounted input taxes	Annex 4-g	10,141,052.13
8	Importation of goods other than capital goods supported by original copy of IEIRD	Annex 5-a	6,230,447.00
9	Importation of goods other than capital goods supported by Certified True Copy of IEIRDs	Annex 5-b	281,439.00
	Total		**₱ 41,659,221.63**

Based on the foregoing, the input VAT of ₱10,141,052.13 *(item 7)* from purchases which remained unaccounted due to the absence of any supporting documents shall be disallowed.

In addition, the input VAT on domestic purchases of services in the aggregate amount of ₱9,649,656.56 *(items 3, 4, 5 and 6)* shall be disallowed since, aside from the reasons stated above, the purported official receipts were not formally offered before this Court. According to the Updated ICPA Report[25], the official receipts/sales invoices were not submitted as exhibits since only photocopies were provided by petitioner.

Likewise, the input VAT on importations of goods other than capital goods in the aggregate amount of ₱6,511,886.00 *(items 8 and 9)* supported by IEIRDs but without machine validation shall be disallowed since the Court cannot ascertain if the input VAT claimed were indeed paid by petitioner.

Therefore, out of petitioner's claimed input VAT of ₱41,659,221.63 for the 4th quarter of CY 2013, only the amount of ₱15,356,626.94 *(items 1 and 2)* represents petitioner's valid input VAT, which can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱546,196,162.22. Consequently, only the input VAT amount of ₱4,390,198.45 is attributable to the substantiated zero-rated sales of ₱156,148,192.97, as computed below:

[25] See footnote below Table 12, Exhibit "P-9-1" (Updated ICPA Report).

Valid input VAT	₱ 15,356,626.94
Divided by total declared zero-rated sales	546,196,162.22
Multiply by substantiated zero-rated sales	156,148,192.97
Valid Input VAT attributable to substantiated zero-rated sales	**₱ 4,390,198.45**

Petitioner's input taxes were not applied against any output VAT liability during the quarter and in the succeeding periods

Petitioner's input VAT claim of ₱41,659,221.63 remained unutilized since petitioner's reported sales for the 4th quarter of CY 2013 were all zero-rated and there is no output VAT to speak of from which the claimed input VAT may be applied. Moreover, the same was not reflected as carry over in petitioner's succeeding Quarterly VAT Returns for the 1st and 2nd quarters of CY 2014[26].

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (RE: Decision dated 26 May 2017)** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated May 26, 2017 is amended to read as follows:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **₱4,390,198.45** representing its unutilized input VAT for the 4th quarter of CY 2013, attributable to its zero-rated receipts for the same period.
>
> **SO ORDERED**."

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[26] Exhibits "P-68" and "P-69".

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice