REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MTI ADVANCED TEST DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9679

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 29 2021
2:48 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that the Court render judgment:

1) Declaring Petitioner entitled to claim for refund in the amount of Php3,344,544.96, covering the period of April 01, 2015 to June 30, 2015, and in the amount of Php2,647,138.78, covering the period of October 01, 2015 to December 31, 2015, representing value-added tax ("VAT") input taxes attributable to its zero-rated sales, for which no tax refund was granted or no tax credit certificate was issued; and

2) Ordering Respondent to refund or issue a tax credit certificate in favor of Petitioner in the amount of Php3,344,544.96 and Php2,647,138.78, or in the total amount of Php5,991,683.74, referred to above.

The Parties

Petitioner MTI Advanced Test Development Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and registered with the Securities and Exchange Commission (SEC), with principal office at 3/F BPI-Philam Life Alabang, Alabang-Zapote Road, cor. Acacia Ave., Madrigal Business Park, Alabang, Muntinlupa City.[1]

It is a VAT-registered person with the Bureau of Internal Revenue ("BIR") under Tax Identification Number (TIN) 006-674-191-00000.[2] It is also registered with the Board of Investments (BOI) as a new information technology (IT) export service firm in the field of software development (test programs for semiconductor industry).[3]

Respondent Commissioner of Internal Revenue is vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated revenue, and is holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila.[4]

The Facts

On April 27, 2017, Petitioner filed with the BIR Revenue District Office No. 53B, *Applications for Tax Credits/Refunds* in the amount of Php3,344,544.96, covering the period of April 01, 2015 to June 30, 2015,[5] and the amount of Php2,647,138.78, covering the period of October 01, 2015 to December 31, 2015,[6] or in the total amount of Php5,991,683.74, pursuant to Section 4.112-1 of Revenue Regulations ("RR") No. 16-2005. Said *Applications* were respectively accompanied by Petitioner's letters dated April 27, 2017, with the corresponding *Checklists of Mandatory Requirements for Claims for VAT Credit/Refund.*[7]

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1 Par. 1, Stipulation of Fact, Joint Stipulation of Facts and Simplification of Issue (JSFSI), Docket – Vol. 1, pp. 156 to 157.
2 Exhibit "P-8", Docket – Vol. 1, p. 374.
3 Exhibit "P-7", Docket – Vol. 1, p. 373.
4 Par. 2, Stipulation of Fact, JSFSI, Docket – Vol. 1, p. 157.
5 Exhibit "P-3", Docket – Vol. 1, p. 367.
6 Exhibit "P-4", Docket – Vol. 1, p. 368.
7 BIR Records (Exhibit "R-1", with Exhibit "P-18"), pp. 6 to 10; Exhibit "P-17", BIR Records (Exhibit "R-7"), pp. 5 to 7.

The BIR then issued the following:

1) *Letter of Authority* ("LOA") dated May 15, 2017 (SN: eLA201200035259),[8] authorizing certain revenue officers to examine Petitioner's books of accounts and other accounting records for VAT tax credit certificate/refund, for the period from April 01, 2015 to June 30, 2015, pursuant to Sections 6(A) and 10(C) of the National Internal Revenue Code ("NIRC") of 1997, as amended; and

2) LOA dated May 17, 2017 (SN: eLA201200035263),[9] authorizing certain revenue officers to examine Petitioner's books of accounts and other accounting records for VAT tax credit certificate/refund, for the period from October 01, 2015 to December 31, 2015, pursuant to Sections 6(A) and 10(C) of the NIRC of 1997, as amended.

Thereafter, in the letter dated August 01, 2017,[10] Revenue District Officer Mahinardo G. Mailig denied Petitioner's application for excess input taxes for the period April 01, 2015 to June 30, 2015, in the amount of Php3,344,544.96. The said letter was received by Petitioner on August 09, 2017. And in the letter dated August 09, 2017,[11] which was received by Petitioner on August 17, 2017, the same Revenue District Officer denied Petitioner's application for excess input taxes for the period October 01, 2015 to December 31, 2015, in the amount of Php2,647,138.78.

Petitioner filed the instant *Petition for Review* on September 05, 2017.[12]

Respondent filed his *Answer* on November 10, 2017,[13] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

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8 Exhibit "R-2", BIR Records (Exhibit "R-1"), p. 11.

9 Exhibit "R-8", BIR Records (Exhibit "R-7"), p. 10.

10 Exhibit "P-9", Docket – Vol. 1, p. 375; Exhibits "R-5", "R-5-A", and "R-5-B", BIR Records (Exhibit "R-1"), p. 16.

11 Exhibit "P-10", Docket – Vol. 1, p. 376; Exhibits "R-11", "R-11-a", and "R-11-b", BIR Records (Exhibit "R-7"), p. 14.

12 Docket – Vol. 1, pp. 12 to 23.

13 Docket – Vol. 1, pp. 66 to 68.

5. He reiterates and repleads the preceding paragraphs of this Answer as part of Respondent's Special and Affirmative Defenses;

6. Taxes paid and collected by the Respondent are presumed to have been made in accordance with law, hence, not refundable;

7. Petitioner's claim for refund or issuance of tax credit certificate in the amounts of **Php3,344,544.96 and Php2,647,138.78,** allegedly representing its unutilized input VAT attributable to its zero-rated export sales for the taxable periods covering **April 1, 2015 to June 30, 2015 and October 1, 2015 to December 31, 2015,** evidently failed to comply with the substantiation requirements prescribed under Revenue Regulations No. 7-95, as amended by Revenue Regulations No. 16-2005 in relation to Section 113 and 237 of the 1997 Tax Code, as well as, the conditions/requirements prescribed under Section 112(A)(D) of the 1997 Tax Code and Revenue Memorandum Circular No. 54-2014.

8. Petitioner has the burden of proof to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim. **It is axiomatic that the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor (J.R.A. Philippines, Inc.,** vs. **CIR , G.R. No. 171307, August 28, 2013)**

9. Petitioner failed to comply with the conditions/requirements prescribed under Sections 106 (A)(2)(a)(i)(ii)(iii) and 108 (B)(1) of the 1997 Tax Code.

10. The amount subject of the claim for refund/tax credit of Petitioner do not pertain in full to its input VAT attributable to its zero-rated export sales for the taxable period covering April 1, 2015 to June 30, 2015 and October 1, 2015 to December 31, 2015, pursuant to Sections 106 (A)(2)(a)(i)(ii)(iii) and 108 (B)(1) of the 1997 Tax Code;

11. Claims for refund are construed strictly against herein Petitioner for the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor

> (***Western Minolco Corp. vs. Commissioner of Internal Revenue , 124 SCRA 1211***). Following the latin principle, ***El incumbit probation qui dicit, no qui negat*** (He who asserts, not he who denies, must prove), Petitioner has the burden to prove with the required quantum of evidence of its entitlement to the claimed refund, and the court will render its decision on the basis of the facts proven and the evidence presented applying the law and jurisprudence applicable to the issue under consideration, even if no controverting evidence was ever presented by the Respondent."

On, February 01, 2018, Respondent transmitted the *BIR Records* pertaining to the refund claim amounting to Php3,344,544.96.[14] Subsequently, on June 13, 2019, Respondent transmitted the *BIR Records* for the refund claim amounting to Php2,647,138.78.[15]

The Pre-Trial Conference was set and held on April 10, 2018.[16] Prior thereto, *Respondent's Pre-Trial Brief* and the *Pre-Trial Brief (for the Petitioner)* were respectively filed on February 20, 2018[17] and April 03, 2018[18].

On April 23, 2018, the parties filed their *Joint Stipulation of Facts and Simplification of Issue.*[19] The Pre-Trial Order was issued on May 04, 2018,[20] thereby deeming the termination of the Pre-Trial Conference.

Trial ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Maria Eugene M. Ibañez,[21] Petitioner's Senior Accountant; (2) Ms. Beverly Viray,[22] Petitioner's Accounting Supervisor and Treasurer; and (3) Ms.

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14 Docket – Vol. 1, p. 90.
15 Docket – Vol. 2, p. 573.
16 Notice of Pre-Trial Conference dated November 27, 2017, Docket – Vol. 1, pp. 70 to 71; Minutes of the hearing held on, and Order dated, April 10, 2018, Docket – Vol. 1, pp. 152, and 154 to 155, respectively.
17 Docket – Vol. 1, pp. 100 to 101.
18 Docket – Vol. 1, pp. 112 to 117.
19 Docket – Vol. 1, pp. 156 to 158.
20 Docket – Vol. 1, pp. 160 to 165.
21 Exhibit "P-12", Docket – Vol.1, pp. 390 to 397; Minutes of the hearing held on, and Order dated, July 10, 2018, Docket – Vol. 1, p. 191 and 193, respectively.
22 Exhibit "P-13", Docket – Vol. 1, pp. 402 to 415; Minutes of the hearing held on and Order dated, August 20, 2018, Docket – Vol. 1, pp. 288 to 289.

Ofelia C. Flores,[23] the Court-commissioned Independent Certified Public Accountant ("ICPA").[24]

Ms. Flores submitted her ICPA *Report* on August 06, 2018.[25]

Petitioner filed its *Formal Offer of Evidence* on January 08, 2019.[26] Respondent posted his *Comment/ Opposition (Petitioner's Formal Offer of Evidence)* on January 16, 2019.[27] In the Resolution dated March 22, 2019,[28] the Court admitted Petitioner's exhibits, *except* for Exhibits "ICPA-P3-305" and "ICPA-P3-382", for not being found in the records of the case. In the same Resolution, the Court noted the following:

1) Page 2 of Exhibit "P-1" was not submitted; and
2) While Exhibit "ICPA-P8-28" to "ICPA-P8-29" is offered as "Independent Auditors' Report", the document pre-marked is actually pages 19 to 20 of the Notes to Financial Statements.

Petitioner then filed its *Motion for Partial Reconsideration (of the Resolution dated March 22, 2019)* on April 03, 2019,[29] praying that the Court: (1) consider page 2 of Exhibit "P-1" as admitted, including the purpose it was offered, and Exhibits "ICPA-P8-28" to "ICPA-P8-P29" be described and referred to as Notes to Financial Statements; and (2) give Ms. Flores a period of fifteen (15) days, within which to submit the soft copy of the complete ICPA *Report* and the corresponding annexes and/or schedules in Microsoft Word and/or Excel format. Respondent failed to file his comment on the said *Motion for Partial Reconsideration.*[30] In the Resolution dated June 17, 2019,[31] the Court granted Petitioner's *Motion for Partial Reconsideration.*

On April 08, 2019, the soft copy of the complete ICPA *Report* and the corresponding annexes and/or schedules in Microsoft Word and/or Excel format was submitted by Ms. Flores to the Court.[32]

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23 Exhibit "P-15", Docket – Vol 1, pp. 496 to 522; Minutes of the hearing held on and Order dated, December 11, 2018, Docket – Vol. 1, pp. 324 to 326.
24 Oath of Commission dated July 10, 2018, Docket – Vol 1, p.192; Minutes of the hearing held on and Order dated, December 11, 2018, Docket – Vol. 1, pp. 324 to 326.
25 Exhibit "P-14", Docket – Vol. 1, pp. 416 to 495.
26 Docket – Vol. 1, pp. 327 to 355.
27 Docket – Vol. 2, pp. 525 to 526.
28 Docket – Vol. 2, pp. 528 to 530.
29 Docket – Vol. 2, pp. 544 to 547.
30 Refer to the Minutes of the hearing held on April 03, 2019, Docket – Vol. 2, p. 549.
31 Docket – Vol. 2, pp. 575 to 577.
32 Transmittal letter dated April 04, 2019, Docket – Vol. 2, p. 552.

Petitioner filed its *Supplemental Formal Offer of Evidence* on July 17, 2019.[33] Respondent failed to file his comment thereon.[34]

Respondent likewise presented his documentary and testimonial evidence. He proffered the testimonies of Revenue Officers Aida F. Bacud,[35] and Eugene Valentine V. Berganio.[36]

Respondent posted his *Formal Offer of Evidence* on July 29, 2019.[37] Petitioner filed its *Comment (To Respondent's Formal Offer of Evidence dated July 26, 2019)* on August 06, 2019.[38] In the Resolution dated September 11, 2019,[39] the Court admitted Respondent's exhibits, *except* for Exhibit "R-3", for failure of the document identified to correspond with the duly marked document. As regards Petitioner's *Supplemental Formal Offer of Evidence*, the Court denied the admission of Exhibit "P-17", for failure to present the original for comparison; and Exhibit "P-18", for failure to identify and for failure to present the original for comparison.

Petitioner filed its *Motion for Partial Reconsideration and Motion to Defer Submission of Memorandum* on October 03, 2019.[40] Respondent failed to file his comment on the said Petitioner's *Motion for Partial Reconsideration.*[41] In the Resolution dated October 09, 2019,[42] Petitioner's *Motion to Defer Submission of Memorandum* was granted. Moreover, in the Resolution dated November 21, 2019,[43] the Court granted Petitioner's *Motion for Partial Reconsideration*, and accordingly admitted Exhibits "P-17" and "P-18".

Petitioner's Memorandum was filed on February 19, 2020.[44] Respondent failed to file his memorandum.[45]

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33 Docket – Vol. 2, pp. 583 to 585.

34 Records Verification Report issued by the Judicial Records Division dated August 01, 2019, Docket – Vol. 2, p. 590.

35 Exhibit "R-6", Docket – Vol. 2, pp. 533 to 537; Minutes of the hearing held on, and Order dated, April 03, 2019, Docket – Vol. 2, pp. 549 to 551.

36 Exhibit "R-12", BIR Records (Exhibit "R-7"), pp. 25 to 31; Docket – Vol. 2, pp. 556 to 562; Minutes of the hearing held on, and Order dated, July 04, 2019, Docket - Vol. 2, pp. 580 to 582.

37 Docket – Vol. 2, pp. 596 to 602.

38 Docket – Vol.2, pp. 591 to 593.

39 Docket – Vol. 2, pp. 607 to 609.

40 Docket – Vol. 2, pp. 612 to 617.

41 Records Verification Report dated November 05, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 623.

42 Docket – Vol. 2, p. 622.

43 Docket – Vol. 2, pp. 625 to 626.

44 Docket – Vol. 2, pp. 627 to 642.

45 Records Verification Report dated September 17, 2020 and October 15, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. 2, pp. 644 to 645.

On October 28, 2020, this case was deemed submitted for decision.[46]

The Issue

The following issue was stipulated by the parties for the Court's resolution, to wit:

> "1. Whether or not Petitioner is entitled for unutilized input VAT refund in the amount of Three Million Three Hundred Forty Four Thousand Five Hundred Forty Four & 96/100 **(Php3,344,544.96)** covering the period of April 01, 2015 to June 30, 2015 and the amount of Two Million Six Hundred Forty Seven Thousand One Hundred Thirty Eight & 78/100 **(Php2,647,138.78)** covering the period of October 1, 2015 to December 31, 2015, or in all, the total amount of **Php5,991,683.74.**"[47]

Petitioner's arguments:

Petitioner asserts that its claim for refund was timely filed; that its sales of service were zero-rated or effectively zero-rated; that it incurred input VAT attributable to its sales of services and the excess were unutilized; and that documentary and testimonial evidence show and support that Petitioner is entitled as a matter of right for tax credit/refund, covering the period from April 01, 2015 to June 30, 2015, and October 01, 2015 to December 31, 2015.

Respondent's counter-arguments:

In his *Answer*, Respondent contends that taxes paid and collected by him are presumed to have been made in accordance with law, hence, not refundable; that Petitioner's claim for refund or issuance of tax credit certificate in the amounts of Php3,344,544.96 and Php2,647,138.78, allegedly representing its unutilized input VAT attributable to its zero-rated export sales for the taxable periods covering April 01, 2015 to June 30, 2015, and October 01, 2015 to December 31, 2015, evidently failed to comply with the substantiation requirements prescribed under RR No. 7-95, as amended by RR No. 16-2005, in relation to Section 113 and 237 of the NIRC of 1997, as amended, as well as, the conditions/requirements prescribed under Section 112(A)(D) of the NIRC of 1997, as amended,, and Revenue Memorandum Circular ("RMC") No. 54-2014; that Petitioner has the burden of proof to establish its right to the claimed refund

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46 Resolution dated October 28, 2020, Docket – Vol. 2, p. 647.
47 Issue, JSFSI, Docket – Vol. 1, p. 157

and failure to adduce sufficient proof is fatal to its claim; that it failed to comply with the conditions/requirements prescribed under Sections 106 (A)(2)(a)(i)(ii)(iii) and 108 (B)(1) of the NIRC of 1997, as amended; and that claims for refund are construed strictly against herein Petitioner for the same partakes the nature of exemption from taxation.

Discussion/Ruling

The instant *Petition for Review* lacks merit.

Requisites for the grant of the refund or issuance of a tax credit certificate under the law.

Section 112 of the NIRC of 1997, as amended by Republic Act ("RA") No. 9337,[48] reads:

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

[48] 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.

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 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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. Said requisites are 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 (2) years after the close of the taxable quarter when the sales were made;[49]
2. in case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[50]

<u>With reference to the taxpayer's registration with the BIR</u>:

49 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

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

3. the taxpayer is a VAT-registered person;[51]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[52]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[53]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[54]
7. the input taxes are due or paid;[55]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[56] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

Relative to the foregoing, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[58] Thus, it behooves Petitioner to show compliance with each of the foregoing requisites. *N*

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51 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; and San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

57 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

58 Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq., G.R. Nos. 201665 and 201668, August 30, 2017; Commissioner of Internal Revenue v. Philippine National Bank, G.R. No. 180290, September 29, 2014; Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014; Dizon vs. Court of Tax Appeals, et al., G.R. No. 140944, April 30, 2008; Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007; and Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.

Petitioner's administrative and judicial claims were timely filed.

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

The instant claim covers the 1st quarter (April 01, 2015 to June 30, 2015) and 3rd quarter (October 01, 2015 to December 31, 2015) of Petitioner's fiscal year ("FY") ending March 31, 2016. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said quarters, to wit:

FY ending March 31, 2016	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st Quarter	June 30, 2015	**June 30, 2017**
3rd Quarter	December 31, 2015	**December 31, 2017**

Considering that Petitioner's *Applications for Tax Credits/Refunds* (BIR Forms No. 1914), covering the subject quarters, were filed with the BIR on **April 27, 2017**,[59] the same were timely made within the 2-year prescriptive period.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

Thus, from the filing of Petitioner's administrative claims on April 27, 2017, Respondent had one hundred twenty (120) days or until August 25, 2017 to act on the said claims.

On **August 07, 2017** and **August 17, 2017**, Petitioner received letters dated August 01, 2017 and August 09, 2017 from the BIR, stating the denial of Petitioner's claims covering the subject periods, respectively.[60] Thus, the judicial appeal *via* the instant *Petition for Review* filed on **September 05, 2017**[61] is well within the 30-day period from Petitioner's receipt of the said denial letters.

59 Exhibits "P-3" and "P-4", Docket – Vol. 1, pp. 367 to 368; BIR Records (Exhibit "R-1", with Exhibit "P-18"), pp. 6 to 10; Exhibit "P-17", BIR Records (Exhibit "R-7"), pp. 5 to 7.

60 Exhibit "P-9", Docket – Vol. 1, p. 375; Exhibits "R-5", "R-5-A", and "R-5-B", BIR Records (Exhibit "R-1"), p. 16; Exhibit "P-10", Docket – Vol. 1, p. 376; Exhibits "R-11", "R-11-a", and "R-11-b", BIR Records (Exhibit "R-7"), p. 14.

61 Docket – Vol. 1, pp. 12 to 23.

Such being the case, Petitioner clearly complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

As for its compliance with the *third requisite,* Petitioner has fulfilled the same by presenting its Certificate of Registration with OCN No. 9RC0000580595 dated July 5, 2016, with TIN 006-674-191-00000, showing that it is a VAT-registered person.[62]

Petitioner had zero-rated sales/receipts during the 1st and 3rd quarters of FY 2016.

The *fourth* and *fifth* requisites respectively require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds thereof must have been duly accounted for in accordance with BSP rules and regulations.

In its Quarterly VAT Returns for the 1st and 3rd quarters of FY ending March 31, 2016, Petitioner reported total sales/receipts of Php149,321,887.22, consisting of VATable sales/receipts of Php9,269.07, and zero-rated sales/receipts of Php149,312,618.15, as shown below:

Exhibit No.	FY ending March 31, 2016	VATable Sales/Receipts	Zero-Rated Sales/Receipts	Total Sales/Receipts
"P-1"[63]	1st Quarter (April 1 to June 30, 2015	Php 9,269.07	Php 70,904,890.32	Php 70,914,159.39
"P-2"[64]	3rd Quarter (October 1 to December 31, 2015)	-	78,407,727.83	78,407,727.83
Total		**Php9,269.07**	**Php149,312,618.15**	**Php149,321,887.22**

[62] Exhibit "P-8", Docket – Vol. 1, pp. 374.
[63] Docket – Vol. 1, p. 356.
[64] Docket – Vol. 1, p. 361.

Petitioner submits that its sales of services to its non-resident foreign affiliates, the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states that:

> "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)**;"[65]

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

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

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65 *Emphasis supplied.*

66 Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

67 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007.

2) The recipient of the services is a foreign corporation, and the aforesaid corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[68]

3) The services must be performed in the Philippines[69] by a VAT-registered person; and

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[70]

Petitioner satisfactorily met the *first* essential element.[71] Pursuant to the service agreements entered into between Petitioner and its client-affiliates,[72] namely, Microchip Technology Incorporated ("MTI") and Microchip Technology Ireland Limited ("M-Ireland"), the services provided by Petitioner for the subject period of claim pertain to sales and technical support services, accounting and consulting services, master research and development services and sales representative services. These services clearly fall within the scope of "*services other than processing, manufacturing or repacking of goods*".

As for the *second* essential element, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[73] held that:

"For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC[74] status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient

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68 Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, February 08, 2017; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2002.

69 Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

70 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007; and Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609, June 29, 2005.

71 Exhibit "ICPA-P9-1-4".

72 Exhibits "ICPA-P-10-1" to "ICPA-P-10-13", "ICPA-P10-16" to "ICPA-P10-51".

73 G.R. No. 234445, July 15, 2020.

74 That is, non-resident foreign corporation.

proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.

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To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.

<u>The Court upholds these findings</u>.

The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. <u>To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations</u>. On the other hand, <u>the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines</u>.

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* [75] and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*.[76] In these cases, the claimants similarly presented SEC Certifications and client service agreements. **However, the Court**

[75] 690 Phil. 679 (2012).
[76] 805 Phil. 464 (2017).

consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales."[77]

Thus, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** *Certificate of Nonregistration of Corporation/Partnership* issued by the Philippine SEC **and** proof of incorporation/association/business registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as a non-resident foreign corporation.

In the instant case, Petitioner proved that its client-affiliates, MTI and M-Ireland, are non-resident foreign corporations doing business outside the Philippines, as evidenced by the following documents, to wit:

Registered Name	**SEC Certification of Non-Registration of Company**	**Certificate of Incorporation/Memorandum of Association/Articles of Association**
Microchip Technology Incorporated	"ICPA-P11-1"	"ICPA-P11-2" to "ICPA-P11-11"
Microchip Technology Ireland Limited	"ICPA-P11-12"	"ICPA-P11-13" to "ICPA-P11-29"

With regard to the *third* essential element, only the sales representative services to M-Ireland were ascertained to have been performed by Petitioner in the Philippines as can be gleaned from the provisions stated in the service agreement.[78] As to the master research and development services to M-Ireland as well as the sales and technical support and accounting and consultancy services to MTI, the related service agreements[79] do not bear any indication that the said services were to be rendered by Petitioner in the Philippines.

Anent the *fourth* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, Petitioner presented the related Bank

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77 *Emphasis and underscoring supplied.*
78 Exhibits "ICPA-P10-27" (Recitals, par. C) and "ICPA-P10-46".
79 Exhibits "ICPA-P10-6" to "ICPA-P10-13", "ICPA-P10-16" to "ICPA-P25" and "ICPA-P10-49" to "ICPA-10-51".

Credit Memos[80], Settlement Advices[81] and Certificates of Inward Remittances[82] issued by the Bank of the Philippine Islands purportedly showing the remittances of its foreign clients/affiliates. It is noteworthy that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*.[83]

In any event, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP, but must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

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

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80 Exhibits "ICPA-P1-3", "ICPA-P1-8", "ICPA-P1-13", "ICPA-P1-18", "ICPA-P1-27", "ICPA-P1-31", "ICPA-P1-36", "ICPA-P1-40", "ICPA-P1-44" and "ICPA-P1-49".

81 Exhibits "ICPA-P1-4", "ICPA-P1-9", "ICPA-P1-14", "ICPA-P1-19", "ICPA-P1-23", "ICPA-P1-32", "ICPA-P1-45", and "ICPA-P1-53".

82 Exhibits "ICPA-P1-5", "ICPA-P1-10", "ICPA-P1-15", "ICPA-P1-20", "ICPA-P1-24", "ICPA-P1-28", "ICPA-P1-33", "ICPA-P1-37", "ICPA-P1-41", "ICPA-P1-46", "ICPA-P1-50", and "ICPA-P1-54".

83 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007.

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended, to wit:

"SEC. 4.113-1. *Invoicing Requirements*. --

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

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

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

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 invoices/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:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

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

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (Php1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices ("SIs") and official receipts ("ORs") must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx."[84]

"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."[85]

Since Petitioner's zero-rated sales are in the nature of sales of services under Section 108(B)(2) of the NIRC of 1997, as amended, Petitioner is required to issue BIR-registered VAT ORs for the foreign currency proceeds of each sales

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84 *Emphasis supplied.*
85 *Emphasis supplied.*

transaction, the information contained therein must be in compliance with the applicable provisions previously cited, such as the word "zero-rated" and the taxpayer's TIN-VAT number.

In the present claim, aside from the said Bank Credit Memos, Settlement Advices and Certificates of Inward Remittances, Petitioner also presented its Schedule of Zero-Rated Sales[86] and the related billing invoices[87], sales credit memo,[88] and ORs[89] supporting the amount of Php149,312,618.15 zero-rated sales/receipts declared in its Quarterly VAT Returns for the 1st and 3rd quarters of FY 2016.

Upon verification, however, the Court finds that only the sales/receipts in the amounts of Php5,098,220.85 and Php5,224,516.08 for the 1st and 3rd quarters, respectively, totaling Php10,322,736.93, were derived from sales representative services, which, as determined earlier, were performed in the Philippines by Petitioner to M-Ireland, a non-resident foreign corporation doing business outside the Philippines, and that such sales/receipts are properly supported by ORs compliant with above-stated invoicing requirements under the law and regulations. Below is the breakdown of the amount of Php10,322,736.93:

Exhibit No.			Amount of Sales		Exhibit No.
Billing Invoice	OR	Date of OR[90]	In US Dollars	In Philippine Peso[91]	Bank Credit Memo, Settlement Advice, Certificate of Inward Remittance
"ICPA-P1-1"	"ICPA-P1-2"	06/04/2015	37,990.89	1,679,155.32	"ICPA-P1-3" to "ICPA-P1-5"
"ICPA-P1-11"	"ICPA-P1-12"	05/05/2015	37,304.37	1,668,800.64	"ICPA-P1-13" to "ICPA-P1-15"
"ICPA-P1-21"	"ICPA-P1-22"	21/05/2015	39,576.99	1,750,264.89	"ICPA-P1-23" to "ICPA-P1-24"
		Subtotal – 1st Qtr FY 2016	**114,872.25**	**5,098,220.85**	
"ICPA-P1-34"	"ICPA-P1-35"	04/11/2015	33,996.80	1,593,774.51	"ICPA-P1-36" to "ICPA-P1-37"
"ICPA-P1-42"	"ICPA-P1-43"	16/11/2015	35,406.27	1,644,432.42	"ICPA-P1-44" to "ICPA-P1-46"
"ICPA-P1-51"	"ICPA-P1-52"	08/12/2015	42,064.07	1,986,309.15	"ICPA-P1-53" to "ICPA-P1-54"
		Subtotal – 3rd Qtr FY 2016	**111,467.14**	**5,224,516.08**	

86 Exhibit "P-14", Annex E, Docket - Vol. 1, p. 489.

87 Exhibits "ICPA-P1-1", "ICPA-P1-6", "ICPA-P1-11", "ICPA-P1-16", "ICPA-P1-21", "ICPA-P1-25", "ICPA-P1-29", "ICPA-P1-34", "ICPA-P1-38", "ICPA-P1-42", "ICPA-P1-47", and "ICPA-P1-51".

88 Exhibits "ICPA-P1-8" and "ICPA-P1-31.

89 Exhibits "ICPA-P1-2", "ICPA-P1-7", "ICPA-P1-12", "ICPA-P1-17", "ICPA-P1-22", "ICPA-P1-26", "ICPA-P1-30", "ICPA-P1-35", "ICPA-P1-39", "ICPA-P1-43", "ICPA-P1-48", and "ICPA-P1-52".

90 Date format: month/day/year.

91 Annex E, Exhibit "P-14".

Total	**226,339.39**	**10,322,736.93**	

Thus, for purposes of *fourth* and *fifth* requisites which must be complied with to successfully obtain a credit or refund of input VAT, Petitioner had valid zero-rated sales/receipts for the subject periods, but only in the total amount of Php10,322,736.93.

The Court shall now determine whether Petitioner complied with the following remaining requisites relating to the input VAT being claimed for refund or issuance of a tax credit certificate, to wit:

a) *sixth* requisite: the input taxes are not transitional input taxes;
b) *seventh* requisite: the input taxes are due or paid;
c) *eighth* requisite: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
d) *ninth* requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters.

The input VAT being claimed are not transitional input taxes.

Petitioner's input VAT claims are not transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[92]

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

The input taxes being claimed were due or paid.

Anent this *seventh* requisite in claiming VAT refund, it is of fatal importance for Petitioner to provide supporting documents to prove that the input taxes claimed for the 1st and 3rd quarters of FY 2016 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or

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92 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 158885 and 170680, April 2, 2008.

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (Php1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-05, as amended, which provides as follows:

"SECTION 4.110-1. *Credits For Input Tax*. — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

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

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

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

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (Php1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One Million pesos (Php1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided*, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than Php1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed Php1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Moreover, Section 4.110-8 of RR No. 16-05 provides for the substantiation requirements of input tax credits, to wit:

"SECTION 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.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."

It is categorically stated in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices or ORs issued in accordance with the aforequoted Section 113 of the NIRC of 1997, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, Petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-05, but more importantly, these documents must likewise comply with the invoicing requirements under above-quoted Section 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended.

For the 1st and 3rd quarters of FY ending March 31, 2016, Petitioner reported excess input taxes in the amounts of Php3,344,544.96 and Php2,647,138.78 respectively, or in the aggregate amount of Php5,991,683.74, which is the subject of the present claim, broken down as follows:

	FY ending March 31, 2016	
	1st Quarter[93]	**3rd Quarter**[94]
Input tax on purchases of capital goods exceeding Php1M		
Input tax deferred on capital goods exceeding Php1M from previous quarter	Php 6,046,573.51	Php 7,900,871.90
Input tax on purchases of capital goods exceeding Php1M this quarter	470,443.68	386,377.00
Total	Php 6,517,017.19	Php 8,287,248.90
Less: Input tax deferred on capital goods exceeding Php1M deferred for the succeeding period	6,062,234.66	7,725,922.42
Amortization of input tax on purchases of capital goods exceeding Php1M	**Php 454,782.53**	**Php 561,326.48**
Input tax on purchases of capital goods not exceeding Php1M	**53,652.00**	**115,289.89**
Input Tax on domestic purchases of goods and services other than capital goods		
Input tax on domestic purchases of goods other than capital goods	Php 136,203.18	Php 101,283.14
omestic purchases of services	2,024,282.54	1,089,599.28
Subtotal	**Php2,160 ,485.72**	**Php1,190,882.42**
Importation of Goods Other Than Capital Goods	**676,737.00**	**779,640.00**
Total Available Input Tax	Php 3,345,657.25	Php 2,647,138.79
Less: Output Tax	1,112.29	-
Penalty		.01
Excess Input Tax	**Php 3,344,544.96**	**Php2,647,138.78**

To substantiate the foregoing, Petitioner submitted in evidence various official receipts and invoices issued by its local suppliers,[95] importation and declaration documents and other relevant documents,[96] which were duly examined by the Court-commissioned ICPA, Ms. Ofelia C. Flores. In her

93 Exhibit "P-1", Docket – Vol. 1, p. 356 and Docket – Vol. 2, p. 548.
94 Exhibit "P-2", Docket – Vol. 2, p. 361.
95 Exhibits "ICPA-P2-1" to "ICPA-P2-254"and "ICPA-P4-1".
96 Exhibits "ICPA-P3-1" to ICPA-P3-427" and "ICPA-P5-1" to "ICPA-P5-4".

Report,[97] the ICPA recommended the disallowance of Petitioner's claimed input VAT amounting to Php400,985.01, for the following reasons:[98]

ICPA Report Reference	Particulars	FY ending March 31, 2016		Total
		1st Quarter	3rd Quarter	
Annex A.1	Purchase of Local Goods not within the 1st and 3rd Quarters of FY ended March 31, 2016	Php 8,462.57	Php 15,501.64	Php 23,964.21
Annex A.2	Purchase of Local Goods not Supported by Suppliers' Sales Invoice	-	107.14	107.14
Annex A.3	Purchase of Services not within the 1st and 3rd Quarters of FY ended March 31,2016	16,939.26	15,276.57	32,215.83
Annex A.4	Input VAT of Purchased Services not tally with the schedule	6,021.88	-	6,021.88
Annex A.5	Input VAT Incorrectly Classified as Deferred Input VAT from CIP-Capital Goods Instead of Purchase of Services	13,604.55	24,291.89	37,896.44
Annex A.6	Purchase of Imported Goods not within the 1st Quarter of FY Ended March 31, 2016	3,611.00	-	3,611.00
Annex A.7	Purchase of Imported Goods without Airwaybill	26,091.00	-	26,091.00
Annex A.8	Purchase of Imported Goods not supported by OR/Statement of Settlement of Duties and Taxes from Bureau of Customs	-	13,383.00	13,383.00
Annex A.9	Disallowed Deferred Input VAT from CIP – Services Treated as Capital Goods from Previous Year	86,111.95	86,111.95	172,223.90
Annex A.10	Disallowed Input VAT Incorrectly Classified as Deferred Input VAT from Aggregate Capital Goods Below P1,000,000 from previous years	13,175.01	13,175.01	26,350.02
Annex A.11	Disallowed Deferred Input VAT Due to Lack of Invoice from previous years	29,560.30	29,560.30	59,120.59
Total		**Php203,577.52**	**Php197,407.49**	**Php400,985.01**

The Court agrees with the disallowance of the input taxes classified under Annexes A.2, A.8 and A.11 in the respective amounts of Php107.14, Php13,383.00 and Php59,120.59, totalling Php72,610.73, for being unsupported by SIs or ORs, as prescribed under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as implemented by Sections 4.110-1 to 4.110-3, 4.110-8, and 4.113-1(A) and (B) of RR No. 16-05, as amended.

With regard to the amount of Php328,374.28 representing the sum of the input taxes classified under Annexes A.1, A.3 to A.7, A.9 and A.10, the Court cannot determine the propriety of the ICPA findings thereon as Petitioner did not present the supporting documents. Thus, Petitioner's input VAT claim of Php328,374.28 shall be denied on the same ground that it is unsubstantiated by the pertinent SIs or ORs.

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97 Exhibit "P14", Docket – Vol. 1, pp. 416 to 494.
98 Exhibit "P-14", Docket – Vol. 1, p. 424.

In addition, the Court disallows the following input taxes amounting to Php8,303.71 relative to Petitioner's domestic purchases of goods and services which are supported by invoices/official receipts but Petitioner's TIN was not indicated therein which is in violation of Section 113(B)(4) of the NIRC of 1997, as amended and Section 4.113.1(B)(3) of RR No. 16-2005, as amended:

Registered Name	Type of Purchase	Exhibit No.	Invoice/OR No.	Date of Invoice/OR	Invoice/OR Amount	Purchase Amount	Input VAT
3rd Qtr - FY 2016							
SI Teletrade Incorporated	Services	"ICPA-P2-194"	000053	December 16, 2015	Php 11,200.00	Php 10,000.00	Php 1,200.00
Meat Advantage Exchange Inc.	Goods	"ICPA-P2-205"	41593	December 15, 2015	66,301.29	59,197.58	7,103.71
Total					**Php77,501.29**	**Php69,197.58**	**Php8,303.71**

Moreover, the Court disallows the amount of Php717,212.22,[99] representing amortization of input VAT on Petitioner's purchases of capital goods exceeding Php1Million, for Petitioner's failure to present the supporting documents required under the aforementioned VAT law and regulations, to wit:

Registered Name	Particulars	Deferred Input VAT	Amount of Purchase	Monthly Amortization	Applied Input VAT (Quarterly)
1st Qtr-FY 2016					
	Semiconductor system	Php 630,699.71	Php 5,255,830.91	Php 10,511.65	Php 31,534.95
	Thermojet	178,174.32	1,484,786.00	2,969.57	8,908.71
	IQxel Test system and Rack Mount Kit	168,410.24	1,403,418.69	2,806.84	8,420.52
	Thermojet ES-Precision	196,673.96	1,638,949.67	3,277.90	9,833.70
	Diamond 10 System	643,055.55	5,358,796.25	10,717.59	32,152.77
	PABX Network system	170,591.32	1,421,594.34	4,738.65	14,215.95
	Diamond Test System	1,625,890.00	13,549,083.33	27,098.17	81,294.51
	Tera 1 Upgrade kit	198,238.00	1,651,983.33	3,303.97	9,911.91
	Polycom Real presence Group	81,428.57	678,571.43	2,261.90	6,785.70
	J750-512 PINS Test System Base System and 128-CH Digitial Instrument board	1,771,755.00	14,764,625.00	29,529.25	88,587.75
	Lenovo Thinkpad W540	15,160.71	126,339.29	421.13	1,263.39
	Checkpoint Network Firewall	193,380.00	1,611,500.00	5,371.67	16,115.01
Subtotal		**Php5,873,457.38**	**Php48,945,478.24**	**Php103,008.29**	**Php309,024.87**
3rd Qtr – FY 2016					
	Thermojet	Php 178,174.32	Php 1,484,786.00	Php 2,969.57	Php 8,908.71
	IQxel Test system and Rack Mount Kit	168,410.24	1,403,418.69	2,806.84	8,420.52
	Thermojet ES-Precision	196,673.96	1,638,949.67	3,277.90	9,833.70
	Diamond 10 System	643,055.55	5,358,796.25	10,717.59	32,152.77
	PABX Network system	170,591.32	1,421,594.34	4,738.65	14,215.95
	Diamond Test System	1,625,890.00	13,549,083.33	27,098.17	81,294.51
	Tera 1 Upgrade kit	198,238.00	1,651,983.33	3,303.97	9,911.91
	Polycom Real presence Group	81,428.57	678,571.43	2,261.90	6,785.70
	J750-512 PINS Test System Base System and 128 CH Digitial Instrument board	1,771,755.00	14,764,625.00	29,529.25	88,587.75

[99] Based on Annex D.4 of Exhibit "P-14".

	Lenovo Thinkpad W540	15,160.71	126,339.29	421.13	1,263.39
	Checkpoint Network Firewall	193,380.00	1,611,500.00	5,371.67	16,115.01
	Tera 1 upgrade kit	198,353.00	1,652,941.67	3,305.88	9,917.64
Trends & Technologies, Inc.	Power supply CAR HK1601	15,517.96	129,316.37	258.63	775.90
Microchip Technology (Thailand) Co., Ltd.	SPEA tester CAR B1545	1,916,297.00	15,969,141.67	31,938.28	95,814.85
Nippon Express Philippines Corp.	SPEA Tester Machine	13,260.96	110,507.97	221.02	663.05
SP Industries Inc. (Miraq PTE Ltd)	Thermojet-ES Precision Temp Cycling	212,935.00	1,774,458.33	3,548.92	10,646.75
	Agilent ESG Victor Signal Generator and Spectrum Analyzer	28,972.00	241,433.33	482.87	965.74
	Base channel board configuration	357,405.00	2,978,375.00	5,956.75	11,913.50
Subtotal		**Php7,985,498.59**	**Php66,545,821.67**	**Php138,208.99**	**Php408,187.35**
Total					**Php717,212.22**

Thus, in compliance with the *seventh* requisite, only the amounts of Php2,833,054.86 and Php2,033,240.23, represent Petitioner's valid input VAT for the 1st and 3rd quarters of FY 2016, respectively, totaling Php4,866,295.09, computed as follows:

	FY ending March 31, 2016		**Total**
	1st Quarter	**3rd Quarter**	
Input VAT Available Per Return	Php 3,345,657.25	Php 2,647,138.78	Php 5,992,796.03
Less: Disallowances			
Per ICPA Findings	Php 203,577.52	Php 197,407.49	Php 400,985.01
Per this Court's Further Verification			
Input VAT on domestic purchases of goods and services supported by invoice/official receipt but Petitioner's TIN is not indicated		8,303.71	8,303.71
Amortization of input VAT on purchases of capital goods exceeding Php1Million without supporting invoices/official receipts	309,024.87	408,187.35	717,212.22
Total Disallowances	Php 512,602.39	Php 613,898.55	Php 1,126,500.94
Valid Input VAT	**Php2,833,054.86**	**Php2,033,240.23**	**Php4,866,295.09**

Since there are both zero-rated sales and taxable sales subject to twelve percent (12%) VAT, the said amount of Php4,866,295.09 shall be

proportionately allocated on the basis of sales volume.

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

In this case, Petitioner reported only zero-rated sales/receipts for the 3rd quarter of FY 2016 in the amount of Php78,407,727.83. Thus, considering that Petitioner had no other type of sales, the entire validly substantiated input VAT for the said quarter in the amount of Php2,033,240.23 is deemed attributable thereto.

However, with regard to the 1st quarter of FY 2016, aside from zero-rated sales/receipts Php70,904,890.32, Petitioner also declared VATable sales/receipts in the amount of Php9,269.07. Since Petitioner's valid input VAT for the same quarter in the amount of Php2,833,054.86 cannot be directly identified with specific sales, this Court shall proportionately allocate the valid input VAT of Php2,833,054.86 on the basis of the volume of Petitioner's sales/receipts, as shown below:

	FY ending March 31, 2016		Total
	1st Quarter	3rd Quarter	
Sales per VAT Return			
VATable Sales/Receipts	Php 9,269.07	Php -	Php 9,269.07
Zero-Rated Sales/Receipts	70,904,890.32	78,407,727.83	Php149,312,618.15
Total Sales/Receipts	Php 70,914,159.39	Php 78,407,727.83	Php149,321,887.22
Allocation Factor (Percentage of each type of sales/receipts to total sales/receipts			
VATable Sales/Receipts	0.0130708%	-	
Zero-Rated Sales/Receipts	99.9869292%	100.00%	
	100.0000000%	100.00%	
Valid Input VAT	Php 2,833,054.86	Php 2,033,240.23	Php 4,866,295.09
Input VAT Allocation per each type of sales/receipts (Allocation factor multiplied by valid input VAT):			
VATable Sales/Receipts	**Php 370.30**	**Php -**	**Php 370.30**
Zero-Rated Sales/Receipts	**2,832,684.56**	**2,033,240.23**	**4,865,924.79**
	Php 2,833,054.86	Php 2,033,240.23	Php 4,866,295.09

Since the input VAT allocated to VATable sales/receipts is not enough to cover Petitioner's output tax due for the 1st quarter, the input VAT allocated to zero-rated sales/receipts shall be utilized to pay for the remaining output tax, as shown below:

	1st Quarter	3rd Quarter	Total
Output VAT Due	Php 1,112.29	Php -	Php 1,112.29
Less: Input VAT Allocated to VATable Sales/Receipts	370.30		370.30
Balance of Output VAT Due	Php 741.99	Php -	Php 741.99
Less: Input VAT Allocated to Zero-Rated Sales/Receipts	Php 2,832,684.56	Php 2,033,240.23	Php 4,865,924.79
Excess Input VAT Allocated to Zero-Rated Sales/Receipts	**Php2,831,942.57**	**Php2,033,240.23**	**Php4,865,182.80**

Thus, Petitioner had excess input VAT for the 1st quarter in the amount of Php2,831,942.57, and 3rd quarter in the amount of Php2,033,240.23, which can be attributed to its entire declared zero-rated sales/receipts in the amounts of Php70,904,890.32 and Php78,407,727.83, respectively.

However, as stated earlier, Petitioner was able to properly substantiate only the amounts of Php5,098,220.85 and Php5,224,516.08, out of its total declared zero-rated sales/receipts of Php70,904,890.32 and Php78,407,727.83, for the 1st and 3rd quarters, respectively. Thus, the excess input VAT attributable to Petitioner's valid zero-rated sales/receipts amounted only to Php203,623.03 and Php135,480.22, or in the sum of Php339,103.25, as computed below:

	1st Qtr-FY 2016	**3rd Qtr-FY 2016**	**Total**
Valid Zero-Rated Sales/Receipts	Php 5,098,220.85	Php 5,224,516.08	
Divide by: Zero-Rated Sales/Receipts per Quarterly VAT Returns	÷ 70,904,890.32	÷ 78,407,727.83	
Multiply by: Valid Excess Input VAT Allocated to Zero-Rated Sales/Receipts Per Returns	× 2,831,942.57	× 2,033,240.23	
Excess Input VAT Allocated to Valid Zero-Rated Sales/Receipts	**Php 203,623.03**	**Php 135,480.22**	**Php339,103.25**

Thus, for purposes of, and with regard to Petitioner's compliance with, the *eighth* requisite, only the amount of **Php339,103.25** represents Petitioner's valid excess input VAT attributable to its zero-rated sales/receipts for the 1st and 3rd quarters of FY 2016.

However, Petitioner failed to establish that the subject claim was not carried-over, nor applied against

any output tax, in the succeeding quarters.

With regard to the *ninth* requisite, Petitioner submitted in evidence its Monthly VAT Declarations for April[100], May[101], October[102] and November[103] of 2015 and Quarterly VAT Returns for the 1st (April 01 to June 30, 2015)[104] and 3rd (October 01 to December 31, 2015)[105] quarters of FY 2016 as well as for the 1st (April 01 to June 30, 2016)[106] and 3rd quarters (October 01 to December 31, 2016) of FY 2017[107]. However, the Court finds the preceding documents insufficient.

While Petitioner's Quarterly VAT Returns for the 1st and 3rd quarters of FY 2016 show that the claimed input taxes are already net of Petitioner's output tax due for the same quarters, Petitioner failed to prove that the claimed input taxes were not applied against any output tax in the succeeding quarters.

It must be emphasized that although under Section 110(B) of the NIRC of 1997, as amended, Petitioner is allowed to carry-over the excess input VAT of a given quarter to the succeeding quarter(s), Petitioner is required to deduct the claimed input taxes from its accumulated input VAT as of the quarter when it opted to file a claim therefor as provided under Section 110(C) of the NIRC of 1997, as amended, to wit:

> "SEC. 110. *Tax Credits.*
>
> xxx xxx xxx
>
> (C) *Determination of Creditable Input Tax.* — The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be reduced by the amount of claim for refund or tax credit for value-added tax** and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

100 Exhibit "P-1-a", Docket – Vol. 1, pp. 357 to 358 or Exhibits "ICPA –P7-1" to "ICPA –P7-3".
101 Exhibit "P-1-b", Docket – Vol. 1, pp. 359 to 360 or Exhibit "ICPA-P-7-4" to "ICPA –P7-6".
102 Exhibit "P-2-a", Docket – Vol. 1, pp. 363 to 364 or Exhibit "ICPA-P7-10" to "ICPA-P7-12".
103 Exhibit "P-2-b", Docket – Vol. 1, pp. 365 to 366 or Exhibit "ICPA-P7-13" to "ICPA-P7-15".
104 Exhibit "P-1", Docket – Vol. 1, p. 356 and Docket – Vol. 2, p. 548 or Exhibit "ICPA-P7-7" to "ICPA-P7-9".
105 Exhibit "P-2", Docket – Vol. 1, pp. 361 to 362 or Exhibit "ICPA-P7-16" to "ICPA-P7-18".
106 Exhibit "P-5", Docket – Vol. 1, pp. 369 to 370.
107 Exhibit "P-6", Docket – Vol. 1, pp. 371 to 372.

xxx xxx xxx."[108]

The reason for the deduction is to assure that the claimed input VAT shall not be carried-over nor applied against any output tax in the succeeding quarter(s).

In this case, Petitioner alleged that for each of the subject quarters, it indicated in the succeeding VAT return specifically in box 23D across the line, *"Less: Deduction from Input Tax – Any VAT Refund/Tax Credit Certificate Claimed"*, to avoid any double tax refund or benefit.[109]

However, Petitioner failed to present its Quarterly VAT Returns for the 2nd quarter of FY 2016 (July 01 to September 30, 2015) and 4th quarter of FY 2016 (January 01 to March 31, 2016) showing actual deduction of the claimed input taxes of Php3,344,544.96, covering the 1st quarter (April 01, 2015 to June 30, 2015), and Php2,647,138.78, covering the 3rd quarter (October 01 to December 31, 2015) of FY 2016. Although Petitioner presented its Quarterly VAT Returns for the 1st and 3rd quarters of FY 2017, which reflected in box 23D across the line, *"Less: Deduction from Input Tax –VAT Refund/TCC Claimed"* the amounts of Php2,601,068.29[110] and Php2,217,370.72[111], respectively, these amounts do not reconcile or correspond to any of the claimed input VAT of Php3,344,544.96 and Php2,647,138.78.

In sum, notwithstanding that out of the total claim of Php5,991,683.74, Petitioner was able to prove that the amount of Php339,103.25 represents excess input VAT attributable to its zero-rated sales/receipts for the 1st and 3rd quarters of FY 2016, the latter amount cannot be granted since Petitioner failed to establish that it was *not* carried-over *nor* applied against any output tax in the succeeding quarters.

It bears to stress that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[112] Tax refunds in relation to the VAT are in the nature of tax exemptions.[113] Thus, the taxpayer claiming the tax credit or refund has the burden of proving that he/she is entitled to the refund or credit, in this case input VAT, by submitting

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108 *Emphasis supplied.*
109 Petitioner's Memorandum, Docket – Vol. 2, p. 638.
110 Exhibit "P-5", Docket – Vol. 1, p. 370.
111 Exhibit "P-6", Docket – Vol. 1, p. 372.
112 Commissioner of Internal Revenue v. Seagate Technology (Philippines.), G.R. No. 153866, February 11, 2005.
113 Panasonic Communication Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue, G.R. No. 178090, February 08, 2010.

evidence that he/she has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[114] However, in this case, Petitioner clearly failed to fully discharge the said burden.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

114 Microsoft Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011.

ERLINDA P. UY
Associate Justice
Chairperson

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 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