REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AMERTRON INCORPORATED
Petitioner,

CTA CASE NO. 9893

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 2022
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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Amertron Incorporated (**petitioner/Amertron**). The petition seeks the refund of alleged unutilized input Value-Added Tax (**VAT**) for taxable year (**TY**) 2016 amounting to ₱18,557,498.15.

PARTIES OF THE CASE

Petitioner is a duly registered domestic corporation operating and existing by virtue of the laws of the Republic of the Philippines. It

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[1] Filed on 27 July 2018, Division Docket, pp. 10-20.

has its principal office at 2430 Maloma St., Clark Field, CSEZ, Angeles City, Pampanga. On the other hand, respondent Commissioner of Internal Revenue (**respondent/CIR**) of the Bureau of Internal Revenue (**BIR**) is clothed with the authority to administer tax laws including the grant of tax refunds.

FACTS OF THE CASE

Petitioner is a VAT-registered entity with Tax Identification Number (**TIN**) 000-418-589-000 as shown in its Certificate of Registration.[2] It alleges that it accumulated an aggregate input VAT amounting to ₱19,222,854.80 for TY 2016, ₱18,557,498.15 of which is fully substantiated by documents and remain unutilized.

On 28 March 2018, petitioner filed an administrative claim[3] for the refund of the foregoing amount with the BIR's VAT Credit Audit Division (**VCAD**). However, through a letter dated 20 June 2018[4] (which petitioner received on 29 June 2018), the said claim for refund was denied.

Hence, the present petition.

On 15 August 2018, this Court, through the Second Division, issued its Summons[5] to respondent who filed his Answer[6] to the petition on 25 September 2018. Thereafter, petitioner and respondent filed their Pre-Trial Briefs on 28 November 2018[7] and 04 December 2018[8], respectively.

In the Pre-Trial Conference that followed on 31 January 2019, the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**) within fifteen (15) days from such order.[9] On 14 February

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2 Exhibit "P-5", USB.
3 Exhibit "P-12", id.
4 Exhibit "P-13", id.
5 Division Docket, p. 62.
6 Id., pp. 70-74.
7 Id., pp. 88-93.
8 Id., pp. 94-97.
9 See Order dated 31 January 2019, id., p. 104.

2019, the parties filed their JSFI.[10] Accordingly, the Court issued a Pre-Trial Order on 06 March 2019.[11]

During the trial, petitioner presented the testimony of its sole witness, Ronerick C. Tugas (**Tugas**), the Court-appointed Independent Certified Public Accountant (**ICPA**), who testified through his judicial affidavit.[12]

On the witness stand, Tugas testified on his official findings as regards petitioner's claim. He also identified and authenticated the ICPA Report[13] and the documents contained in the Universal Serial Bus (**USB**) drive[14] submitted to this Court. These documents consisted mostly of sales invoices of allegedly zero-rated and VAT-exempt transactions covering TY 2016, as well as, various receipts for purchases of services and goods for TY 2016. Thereafter, Tugas declared that petitioner was only able to substantiate an unutilized input VAT in the amount of ₱1,655,245.55.

With no other witnesses to present, the Court, in an Order dated 16 September 2019[15], gave petitioner five (5) days within which to file its Formal Offer of Evidence (**FOE**). Likewise, respondent was given five (5) days from his receipt of petitioner's FOE to file his comment/opposition thereto. Given respondent's further manifestation that it had no evidence to offer, the Court gave the parties thirty (30) days to file their respective memoranda.

Later or on 23 September 2019, petitioner filed its FOE[16] while respondent filed his Comment[17] on 30 September 2019.

In a Resolution dated 04 December 2019[18], a bulk of petitioner's exhibits was denied admission due to corruption of its files in the USB drive that it submitted. On 02 January 2020, petitioner then filed for a

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10 Id., pp. 111-115.
11 Id., pp. 142-145.
12 Exhibit "P-3501", id., pp. 275-291.
13 Exhibit "P-2", id., pp. 169-274, with annexes.
14 Exhibit "P-2-B".
15 Division Docket, p. 404.
16 Id., pp. 408-419.
17 Id., pp. 420-435.
18 Id., pp. 438-440.

"Motion for Partial Reconsideration[19] (**MPR**) [of Resolution dated December 4, 2019] and Motion to Set a Commissioner's Hearing for Submission of a Replacement Universal Serial Bus (USB) Flash Drive".

On 22 June 2020[20], petitioner was allowed to submit a replacement for its USB drive and a commissioner's hearing was set for the comparison of its exhibits. In a Resolution dated 28 September 2020[21], the Court resolved to admit all of petitioner's exhibits except the following: (1) Exhibits "P-51", "P-63", "P-85", "P-107" to "P-109", "P-149", "P-151", "P-255"[22], "P-296", "P-317", "P-362", "P-364" to "P-365", "P-395", "P-405", "P-413", "P428", "P-463", "P-479", "P-489" to "P-490", "P-502" to "P-505", "P-522", "p-559", "p-575", "P-624", "P-634", "P-674" to "P-675", "P-701", "P-734", "P-743" to "P-745", "P-772", "P-810", "P-832", "P-847" to "P-848", "P-860", "P-941" to "P-942", "P-949", "P-953", "P-974", "P-990", "p-994", "p-1010", "P-1015", "P-1041", "P-1082", "P-1118", "P-1127", "P-1156", "P-1159" to "P-1160", "P-1179", "P-1231", "P-1233", "P-1248", "P-1293" to "P-1294", "P-1337", "P-1355", "P-1388", "P-1416", "P-1418", "P-1455", "P-1459" to "P-1460"[23], "P-2419", "P-2440", "P-2453", "P-2585" to "P-2586", "P-2593", "P-2617" to "P-2618", "P-2628", "P-2648", "P-2658", "P-2676", "P-2705", "P-2725", "P-2770" to "P-2779", "P-2793", "P-2824", "P-2848", "P-2858", "P-2877", "P-2884", "P-2925", "P-2938", "P-2964", "P-2978", "P-3000", "P-3023", "P-3043" to "P-3044", "P-3071", "P-3074", "P-

19 Id., pp. 441-445.

20 See Resolution dated 22 June 2020, id., pp. 472-473.

21 Id., pp. 483-487.

22

Exhibit	Description
"P-51", "P-63", P-85", "P-107" to "P-109", "P-149", "P-151" and "P-255"	Sales invoices supporting Petitioner's zero rated sales for the year 2016.

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Exhibit	Description
"P-296", "P-317", P-362", "P-364" to "P-365", "P-395", "P-405", "P-413", "P-428", "P-463", "P-479", "P-489" to "P-490", "P-502" to "P-505", "P-522", "P-559", "P-575", "P-624", "P-634", "P-674" to "P-675", "P-701", "P-734", "P-743" to "P-745", "P-772", "P-810", "P-832", "P-847" to "P-848", "P-860", "P-941" to "P-942", "P-949", "P-953", "P-974", "P-990", "P-994", "P-1010", "P-1015", P-1041", "P-1082", "P-1118", "P-1127", "P-1156", "P-1159" to "P-1160", "P-1179", "P-1231", "P-1233", "P-1248", "P-1293" to "P-1294", "P-1337", "P-1355", "P-1388", "P-1416", "P-1418", "P-1455" and "P-1459" to "P-1460"	Sales invoices supporting Petitioner's VAT exempt sales for the year 2016.

3110", "P-3133", "P-3151", "P-3216", "P-3222", "P-3234" to "P-3236", "P-3251", "P-3321", "P-3343", "P-3397", "P-3403" and "P-2547"[24] for not being found in the records nor among the scanned copies in the USB flash drive submitted; and, (2) Exhibits "P-937", "P-2573" to "P-2575", "P-2687" to "P-2688", "P-2930" to "P-2931", "P-3027", "P-3089" to "P-3091" and "P-3383"[25] for being unreadable or not properly scanned.

In the *interim*, *per* Records Verification[26] on 01 December 2020, petitioner failed to file its memorandum, while respondent filed his Memorandum[27] on 09 January 2020.

Following petitioner's failure to file its memorandum within the prescribed period, the Court submitted the present petition for decision through a Resolution dated 04 January 2021.[28]

ARGUMENTS

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue

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Exhibit	Description
"P-2419", "P-2440", "P-2453", "P-2585" to "P-2586", "P-2593", "P-2617" to "P-2618", "P-2628", "P-2648", "P-2658", "P-2676", "P-2705", "P-2725", "P-2770" to "P-2779", "P-2793", "P-2824", "P-2848", "P-2858", "P-2877", "P-2884", "P-2925", "P-2938", "P-2964", "P-2978", "P-3000", "P-3023", "P-3043" to "P-3044", "P-3071", "P-3074", "P-3110", "P-3133", "P-3151", "P-3216", "P-3222", "P-3234" to "P-3236", "P-3251", "P-3321", "P-3343", "P-3397", "P-3403" and "P-2547"	Various sales invoices, official receipts, delivery receipts, and collection receipts supporting Petitioner's local purchases of goods and services for 2016.

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Exhibit	Description
"P-937"	Sales invoice supporting Petitioner's VAT exempt sales for the year 2016.
"P-2573" to "P-2575", "P-2687" to "P-2688", "P-2930" to "P-2931", "P-3027", "P-3089" to "P-3091" and "P-3383"	Various sales invoices, official receipts, delivery receipts, and collection receipts supporting Petitioner's local purchases of goods and services for 2016.

26 Division Docket, p. 488.
27 Id., pp. 449-457.
28 Id., p. 490.

Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963[29], otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN**) Law. The pertinent provisions read as follows:

> ...
>
> **Sec. 110.** *Tax Credits.* —
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> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided,* That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT. *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,*

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[29] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> ...
>
> (C) Period within which Refund of Input Taxes shall be Made.— In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided,* however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.
>
> ...

Petitioner claims that it incurred unutilized input VAT from its purchases of goods and services from local suppliers as shown in its Quarterly VAT Returns for TY 2016. It further contends that it had zero-rated sales in TY 2016 pertaining to its sales of goods to customers abroad. Moreover, that the input VAT it incurred was not claimed against any output VAT during the same TY or succeeding quarters.

On the other hand, respondent argues that petitioner failed to prove that it had zero-rated sales. He pointed out that petitioner did not comply with the proper invoicing requirements when no corresponding zero-rated sale invoices were submitted to prove its export sales to Singapore. Likewise, it contends that petitioner's invoices were not covered by an Authority to Print (**ATP**) from the BIR.

Respondent also questioned the veracity of petitioner's documentary exhibits.

ISSUE

WHETHER PETITIONER AMERTRON INCORPORATED IS ENTITLED TO ITS CLAIM FOR INPUT VALUE-ADDED TAX (VAT) REFUND IN THE AMOUNT OF EIGHTEEN MILLION FIVE HUNDRED FIFTY-SEVEN THOUSAND FOUR HUNDRED NINETY-EIGHT AND FIFTEEN CENTAVOS (₱18,557,498.15) REPRESENTING UNUTILIZED/EXCESS INPUT VAT CREDITS FOR THE FOUR (4) QUARTERS OF THE TAXABLE CALENDAR YEAR (CY) 2016.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the petition, it is best to first tackle the timeliness of its filing or if this Court's jurisdiction has been timely invoked.

TIMELINESS OF THE PETITION

In accordance with the above-cited Section 112(A) and (C)[30] of the NIRC of 1997, as amended, the administrative claim for refund of excess input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Petitioner's instant administrative claim covers the four (4) quarters of TY 2016. Thus, petitioner's last day for the filing of its administrative claim and the actual filing of administrative claim for the said periods fell on the following dates:

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
January to March 2016 (1st Quarter)	31 March 2018	28 March 2018[31]
April to June 2016 (2nd Quarter)	30 June 2018	
July to September 2016 (3rd Quarter)	30 September 2018	
October to December 2016 (4th Quarter)	31 December 2018	

[30] Supra at pp. 6-7.
[31] Exhibit "P-12", supra at note 3.

From the foregoing, it is clear that petitioner's administrative claim for the four (4) quarters of TY 2016 was filed within the prescriptive period.

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days or until 26 June 2018, to decide on petitioner's administrative claim. Considering that respondent issued a letter dated 20 June 2018[32] denying the said administrative claim (which petitioner received on 29 June 2018), petitioner had 30 days therefrom or until 29 July 2018, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also timely filed on 27 July 2018.

This Court shall now proceed to resolve whether petitioner is entitled to the refund being claimed.

PETITIONER FAILED TO PROVE ITS ENTITLEMENT TO A TAX REFUND OR CREDIT OF THE CLAIMED AMOUNT.

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[33] (**Luzon**), the Supreme Court laid down the requisites that must concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit:

> ...
> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) 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

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32 Exhibit "P-13", supra at note 4.
33 G.R. No. 188260, 13 November 2013; Citation omitted.

these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.

...

Upon a careful review of the records and petitioner's voluminous documents, the Court finds that petitioner was unable to prove that it had engaged in zero-rated or effectively zero-rated sales for reasons set forth below.

At the onset, it is undisputed that petitioner is a VAT-registered entity and that its claim for refund was timely filed. With that said, the Court will focus on the existence of zero-rated sales that would have entitled petitioner to the refund or credit of its unutilized input VAT.

For a tax refund or credit of unutilized input VAT to be allowed, *Luzon* requires that the taxpayer has zero-rated or effectively zero-rated sales. In the case of export sales, Sections 106(A)(2)(a)(1), (2) and (b)[34], and 108(B)(1) and (2)[35] of the NIRC[36] of 1997, as amended, provide

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[34] **Sec. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

...

(b) *Foreign Currency Denominated Sale.* – The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

[35] **Sec. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

...

that they must be paid in acceptable foreign currency and such proceeds must be duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (**BSP**) rules and regulations.

As indicated in petitioner's final amended Quarterly VAT Returns for the CY 2016, it declared exempt and zero-rated sales in the amounts of ₱2,184,141,876.42 and ₱1,988,893,167.12, respectively, and detailed as follows:

Exhibit	**Period**	**Exempt Sales**	**Zero-Rated Sales**
"P-8"	January to March 2016 (1st Quarter)	₱-	₱1,014,465,087.02
"P-9"	April to June 2016 (2nd Quarter)	763,792,892.70	332,516,024.66
"P-10"	July to September 2016 (3rd Quarter)	699,335,385.65	321,633,096.44
"P-11"	October to December 2016 (4th Quarter)	721,013,598.07	320,278,959.00
	Total	**₱2,184,141,876.42**	**₱1,988,893,167.12**

However, as the ICPA noted[37], petitioner erroneously reported the ₱716,057,754.72 exempt sales as zero-rated sales for the 1st quarter of CY 2016. Accordingly, the revised breakdown of petitioner's sales for CY 2016 is as follows:

Period	**Exempt Sales**	**Zero-Rated Sales**
January to March 2016 (1st Quarter)	₱716,057,754.72	₱298,407,332.30
April to June 2016 (2nd Quarter)	763,792,892.70	332,516,024.66

(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 non-resident 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);

. . .

36 Prior to the changes brought about by TRAIN.

37 Exhibit "P-2", ICPA Report, Division Docket, p. 175.

July to September 2016 (3rd Quarter)	699,335,385.65	321,633,096.44
October to December 2016 (4th Quarter)	721,013,598.07	320,278,959.00
Total	**₱2,900,199,631.14**	**₱1,272,835,412.40**

Based on petitioner's Schedule of Zero-Rated Sales[38], its total zero-rated sales for CY 2016 can be attributed to the actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. The said section further states:

> ...
>
> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — ...
>
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]
>
> ...

Based on the foregoing, in order for an export sale of goods to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following requirements must be met:

1. The sale was made by a VAT-registered person;
2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and,
3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

[38] Exhibit "P-2", Annex 1, id., pp. 183-188.

As for the *first* requirement, it has already been settled that petitioner is a VAT-registered person.

As regards the *second* requirement, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[39], provide respectively:

> ...
> 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
>
> ...
>
> (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:
>
> ...
>
> (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;
>
> ...
>
> 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.

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[39] Consolidated Value-Added Tax Regulations of 2005.

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:

...

(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[.][40]

...

The foregoing provisions mandate that any VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present the following documents, to wit:

1. Sales invoice as proof of sale of goods; and,
2. Bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz:*

[40] 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...
>
> ...
>
> **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.
>
> ...

Thus, only export sales supported by the aforementioned documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

As *per* the ICPA's verification[41] of petitioner's Schedule of Zero-Rated Sales[42], CTBC Bank Daily Transaction Listing[43], BDO Export Advances[44], Airway Bill/Bill of Lading[45], and sales invoices[46], only ₱171,120,035.98 (out of ₱1,272,835,412.40) comprise the valid zero-rated sales and are properly supported with VAT zero-rated sales invoices, bills of lading or airway bills and export declarations, to wit:

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41 Exhibit "P-2", Table 11, ICPA Report, Division Docket, p. 176.
42 Exhibit "P-2", supra at note 38.
43 Exhibit "P-1537", USB.
44 Exhibits "P-1510" to "P-1536", id.
45 Exhibits "P-3422" to "P-3499", id.
46 Exhibits "P-14" to "P-265", id.

	Description	Exhibit	Amount
1.	Sales with discrepancy in remittance amount	"P-14" to "P-48"	₱738,233,291.22
2.	Sales without proof of inward remittance	"P-49" to "P-185"	261,710,496.50
3.	Zero-rated sales without airway bill/ bill of lading	"P-186" to "P-247"	201,178,943.59
4.	Zero-rated sales without original invoice	"P-248" to "P-249"	19,345,052.75
5.	Zero-rated sale with discrepancy remittance	"P-250"	1,800.59
6.	Valid zero-rated sales	"P-250" to "P-270"	171,120,035.98

Upon further scrutiny of the ICPA Report with other submitted documentary evidence, the Court finds that the details of the amount of ₱171,120,035.98 (that the ICPA identified in his report) do not match the details in the sales invoices marked and submitted by petitioner as evidence, to wit:

Per ICPA Report[47]				*Per petitioner's evidence*[48]			
Exhibit No.	**SI No.**	**Date**	**Amount in USD**	**Exhibit No.**	**SI No.**	**Date**	**Amount in USD**
P-250	61335	25-Jan-16	764,249.37	P-250	61639	12-Dec-16	513,400.68
P-251	61360	25-Jan-16	440,333.39	P-251	61641	19-Dec-16	190,232.20
P-252	61436	18-Apr-16	295,628.35	P-252	61645	15-Dec-16	2,424.59
P-253	61455	25-Apr-16	78,834.93	P-253	61647	15-Dec-16	84.10
P-254	61459	02-May-16	41,236.89	P-254	61623	10-Nov-16	54.62
P-255	61490	09-May-16	160,806.73	P-255[49]	-	-	-
P-256	61514	06-Jun-16	179,667.30	P-256	61616	14-Nov-16	9.56
P-257	61516	13-Jun-16	8,060.98	P-257	61632	07-Nov-16	90.89
P-258	61518	15-Jun-16	326,044.68	P-258	61633	21-Nov-16	339.05
P-259	61521	27-Jun-16	8,152.37	P-259	61617	14-Nov-16	26.31
P-260	61542	11-Jul-16	20,673.61	P-260	61619	07-Nov-16	68,056.32
P-261	61553	25-Jul-16	565,682.74	P-261	61637	28-Nov-16	231,123.47
P-262	61558	01-Aug-16	12,126.68	P-262	61618	14-Nov-16	309,857.88
P-263	61561	08-Aug-16	36,073.88	P-263	61630	28-Nov-16	65,782.30
P-264	61568	22-Aug-16	21,851.29	P-264	61620	21-Nov-16	321,256.43
P-265	61570	29-Aug-16	19,149.40	P-265	61490	09-May-16	160,806.73
P-266	61572	05-Sep-16	33,891.57	P-266	35955	16-Jun-16	22,830.13
P-267	61578	19-Sep-16	59,384.35	P-267	35911	31-May-16	203.80
P-268	61583	26-Sep-16	94,039.09	P-268	35745	26-May-16	2,237.38
P-269	61600	17-Oct-16	202,546.41	P-269	35740	24-May-16	11,187.35
P-270	61619	07-Nov-16	68,056.32	P-270	35706	30-Mar-16	432.17
Total			3,436,490.33				1,194,239.77

47 Exhibit "P-2", Annex 1-5, ICPA Report, Division Docket, p. 198.

48 USB marked on 27 July 2020.

49 *In the Resolution dated 28 September 2020, the Court denied the admission of P-255 for not being found in the records/no scanned copy found in the USB submitted.*

A thorough scrutiny of the pieces of evidence offered by petitioner also shows that the documents identified by the ICPA to support validly substantiated zero-rated sales are marked differently in the records, as follows:

Per ICPA Report[50]				*Per petitioner's evidence*[51]			
Exhibit No.	**SI No.**	**Date**	**Amount in USD**	**Exhibit No.**	**SI No.**	**Date**	**Amount in USD**
P-250	61335	25-Jan-16	764,249.37	P-161	61335	25-Jan-16	764,249.37
P-251	61360	25-Jan-16	440,333.39	P-160	61360	25-Jan-16	440,333.39
P-252	61436	18-Apr-16	295,628.35	P-179	61436	18-Apr-16	295,628.35
P-253	61455	25-Apr-16	78,834.93	P-181	61455	25-Apr-16	78,834.93
P-254	61459	02-May-16	41,236.89	P-172	61459	02-May-16	41,236.89
P-255	61490	09-May-16	160,806.73	P-265	61490	09-May-16	160,806.73
P-256	61514	06-Jun-16	179,667.30	P-189	61514	06-Jun-16	179,667.30
P-257	61516	13-Jun-16	8,060.98	P-187	61516	13-Jun-16	8,060.98
P-258	61518	15-Jun-16	326,044.68	P-186	61518	15-Jun-16	326,044.68
P-259	61521	27-Jun-16	8,152.37	P-188	61521	27-Jun-16	8,152.37
P-260	61542	11-Jul-16	20,673.61	P-193	61542	11-Jul-16	20,673.61
P-261	61553	25-Jul-16	565,682.74	P-203	61553	25-Jul-16	565,682.74
P-262	61558	01-Aug-16	12,126.68	P-214	61558	01-Aug-16	12,126.68
P-263	61561	08-Aug-16	36,073.88	P-210	61561	08-Aug-16	36,073.88
P-264	61568	22-Aug-16	21,851.29	P-211	61568	22-Aug-16	21,851.29
P-265	61570	29-Aug-16	19,149.40	P-208	61570	29-Aug-16	19,149.40
P-266	61572	05-Sep-16	33,891.57	P-215	61572	05-Sep-16	33,891.57
P-267	61578	19-Sep-16	59,384.35	P-218	61578	19-Sep-16	59,384.35
P-268	61583	26-Sep-16	94,039.09	P-216	61583	26-Sep-16	94,039.09
P-269	61600	17-Oct-16	202,546.41	P-223	61600	17-Oct-16	202,546.41
P-270	61619	07-Nov-16	68,056.32	P-260	61619	07-Nov-16	68,056.32
Total			3,436,490.33				3,436,490.33

The Court further observed significant differences in the names and addresses of petitioner's customers appearing in its zero-rated sales invoices *vis-à-vis* the air waybill documents based on petitioner's Schedule of Zero-Rated Sales[52], to wit:

Per **Sales Invoice**				*Per* **Air Waybill**			
Exhibit No.	**SI No.**	**Name**	**Address**	**Exhibit No.**	**Air Waybill No.**	**Name**	**Address**
P-161	61335	Avago Technologies International Sales Pte, Ltd.	Locked Bag #211, Pejabat Serahan Bayan Lepas 11900 Bayan Lepas, Penang	P-3428	6UB2017	Avago Technologies Trading Ltd.	63 Alexandra Terrace No. 03-07 Harbour Link Warehouse
P-160	61360			P-3424	6UB2005		
P-179	61436			P-3456	6UB7372		
P-181	61455			P-3457	6UB8215		

50 Exhibit "P-2", supra at note 47.
51 Supra at note 49.
52 Exhibit "P-2", supra at note 43.

			Malaysia				Singapore
P-172	61459			P-3459	6UB8292	Avago Technologies Mfg. Pte Ltd.	1150 Depot Road Harbourlink Warehouse Singapore
P-265	61490			P-3474	6XJ0062	Avago Technologies Trading Ltd.	63 Alexandra Terrace No. 03-07 Harbour Link Warehouse Singapore
P-189	61514			P-3451	6XJ1512		
P-187	61516			P-3464	6XJ1876		
P-186	61518			P-3452	6XJ1513		
P-188	61521			P-3461	6XJ2910		
P-193	61542			P-3466	6XJ4872		
P-203	61553			P-3465	6XJ2928		
P-214	61558			P-3467	6XJ5228		
P-210	61561			P-3478	6XJ6269	Avago Technologies	1150 Depot Road Singapore
P-211	61568			P-3488	6XJ5280	Avago Technologies Trading Ltd.	63 Alexandra Terrace No. 03-07 Harbour Link Warehouse Singapore
P-208	61570			P-3485	6XJ6737		
P-215	61572			P-3472	6XJ2977		
P-218	61578			P-3494	6XJ8825		
P-216	61583			P-3486	6XJ6789		
P-223	61600			P-3495	6XJ8806		
P-260	61619			P-3497	7CE2003		

The sales invoices issued by petitioner do not also indicate the related air waybill or the details of the items exported.

Indubitably, petitioner failed to establish the linkage between the air waybill documents and its zero-rated sales invoices. In other words, the Court cannot ascertain whether petitioner's sales (as evidenced by zero-rated sales invoices) were actually shipped to the intended foreign customers. As a result, petitioner failed to prove compliance with *second* invoicing requirement.

With the foregoing and following petitioner's failure to properly support his claim with the necessary pieces of evidence, the Court is constrained to deny its claim for tax refund.

The oft-repeated rule is that actions for tax refund or credit are construed strictly against the taxpayer. In *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[53], the Supreme Court held:

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[53] G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, 569 Phil. 483 (2008); *Commissioner of*

> ...
>
> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed...
>
> ...

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Amertron Incorporated on 27 July 2018 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

Internal Revenue v. San Roque Power Corporation; 703 Phil. 300 (2013), and *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 746 Phil. 139 (2014).

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice