REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MAXIMA MACHINERIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9499

Members:

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

Promulgated:
JAN 28 2020
4:20 p.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

This is a *Petition for Review* filed by Maxima Machineries, Inc. against the Commissioner of Internal Revenue, praying that this Court render judgment ordering the latter to issue the corresponding tax credit certificates, or to refund the former the aggregate amount of ₱38,732,565.26.[1]

THE PARTIES

Petitioner Maxima Machineries, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at No. 871 Quezon Avenue, Brgy. Sta. Cruz, Quezon City.[2] It is registered

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[1] Refer to the Pre-Trial Order dated June 27, 2017, Docket – Vol. 3, p. 1431.
[2] Exhibits "P-1" and "P-2", Docket – Vol. 5, pp. 2255 to 2269.

with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, with Taxpayer Identification Number (TIN) 006-618-023-00000.[3]

On the other hand, respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner filed its *Quarterly VAT Returns* (BIR Form No. 2550-Q) with the BIR on the following dates:

Period	Return	Date of filing
1st Quarter – Fiscal Year (FY) 2015 (April 1, 2014 to June 30, 2014)	Quarterly VAT Return (Original)[5]	July 23, 2014
	Quarterly VAT Return (Amended)[6]	July 30, 2014
2nd Quarter – FY 2015 (July 1, 2014 to September 30, 2014)	Quarterly VAT Return[7]	October 23, 2014

On June 29, 2016, petitioner filed with the BIR *Applications for Tax Credits/Refunds* (BIR Form No. 1914), covering the said quarters of FY 2015, amounting to ₱9,924,123.55 and ₱28,808,441.71, respectively.[8]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on November 25, 2016.[9]

Respondent filed his *Answer (to the Petition for Review dated 25 November 2016)* on February 17, 2017,[10] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

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[3] Exhibit "P-3", Docket – Vol. 5, p. 2270.
[4] Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 3, p. 1404.
[5] Exhibit "P-50", Docket – Vol. 5, pp. 2353 to 2354.
[6] Exhibit "P-51", Docket – Vol. 5, pp. 2355 to 2356.
[7] Exhibit "P-52", Docket – Vol. 5, pp. 2357 to 2358.
[8] Exhibit "P-66", BIR Records, pp. 577 to 583.
[9] Docket – Vol. 1, pp. 10 to 55.
[10] Docket – Vol. 2, pp. 669 to 679.

4. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.

5. The amount of P38,732,565.26 representing alleged unutilized or unapplied creditable input taxes allegedly allocable and directly attributable to its VAT zero-rated sales for the first and second quarters of FY 2015 (01 April 2014 to 30 June 2014 and 01 July 2014 to 30 September 2014), is subject to determination of sufficiency of proper documentation.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

8. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor ***(Western Mindanao Power Corporation vs. CIR, G.R. No. 181136, 13 June 2012, 672 SCRA 350, 362)***.

9. Respondent humbly manifests that petitioner must prove that it was able to substantiate its claim and that it is entitled to the refund being prayed for. Petitioner's failure to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005 would be fatal to its claim. In addition, petitioner must prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

10. Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

11. Likewise, for a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a)

zero-rated of effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period.

12. To support its claim, it is imperative for petitioner to prove and present the following:

> a. The registration requirements of a value-added taxpayer in compliance with section 6(a) and (b) of Revenue Regulations NO. 6-97 in relation to Section 4.107-1(a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
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> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;
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> c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;
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> d. That the input taxes of Php38,732,565.26 allegedly incurred by

petitioner was attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112(A) and (C) of the Tax Code, as amended;

f. <u>That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5(a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claim for Input Tax Credits);</u>

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits)

13. With all due respect, respondent humbly manifests that petitioner has the burden of proving that it was able to substantiate its claim to be entitled to the refund being prayed for. Compliance with the aforementioned provisions of the 1997 NIRC, as amended, as well as the existing rules and regulations are necessary to establish its claim, that indeed there is the presence of valid zero-rated sales which would warrant the grant of administrative application for refund of its unapplied and unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

14. Petitioner must prove that it has submitted complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of ***Atlas Consolidated***

***Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, 16 March 2007*:**

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **<u>Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u>** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **<u>Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.</u>** (emphasis and underscoring supplied)

15. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund / TCC)

A.) Requirements from Taxpayer
- I. Requirements mention in Annex B
- II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'
2) Summary List of Local Purchases specifying the following:

XXX XXX XXX

3) Photocopies of VAT purchases invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

XXX XXX XXX

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation - for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statement, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers
1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
   a) current year / period
   b) previous year / period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice / s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export/ sales foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

16. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690).*** Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time

frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

17. Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

18. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer ***(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).***

19. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language ***(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999).*** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).***

20. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

The Pre-Trial Conference was set and held on May 16, 2017.[11] The *Pre-Trial Brief for the Petitioner* was filed on May 11, 2017,[12] whereas *Respondent's Pre-Trial Brief* was submitted on May 12, 2017.[13]

The parties filed their *Joint Stipulation of Facts and Issues* on May 31, 2017.[14] The Court issued its Pre-Trial Order on June 27, 2017.[15]

The trial of the case then ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals: (1) Yusuke Yamada,[16] petitioner's Chief Financial Officer; (2) Jenelyn Palayon-Tagao,[17] Chief for Government Compliance of petitioner; and (3) Conrado M. Briones,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The ICPA Report and Amended ICPA Report were submitted to the Court on November 6, 2017,[20] and February 12, 2018.

On June 8, 2018, petitioner filed its *Formal Offer of Evidence.*[21] In the Resolution dated July 16, 2018,[22] the Court admitted petitioner's evidence, *except* the following:

1. Exhibits "P-17", "P-18", "P-21", "P-22", "P-23", "P-24", "P-26", and "P-41", for failure to present the originals for comparison; and

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[11] Notice of Pre-Trial Conference dated February 22, 2017, Docket – Vol. 2, pp. 681 to 682; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket – Vol. 3, pp. 1394 and 1396, respectively.
[12] Docket – Vol. 2, pp. 691 to 709.
[13] Docket – Vol. 3, pp. 1388 to 1391.
[14] Docket – Vol. 3, pp. 1404 to 1414.
[15] Docket – Vol. 3, pp. 1431 to 1439.
[16] Exhibit "P-74", Docket – Vols. 2 to 3, pp. 994 to 1018; Minutes of the hearing held on, and Order dated, August 8, 2017, Docket – Vol. 3, pp. 1466, and 1468 to 1469.
[17] Exhibit "P-77", Docket – Vol. 2, pp. 717 to 726; Minutes of the hearing held on, and Order dated, February 20, 2018, Docket – Vol. 5, pp. 2213 to 2214; Minutes of the hearing held on, and Order dated, May 15, 2018, Docket – Vol. 5, pp. 2229 to 2231.
[18] Exhibit "P-147", Docket – Vol. 5, pp. 2221 to 2227; Exhibit "P-78"; Minutes of the hearing held on, and Order dated, May 15, 2018, Docket – Vol. 5, pp. 2229 to 2230.
[19] *Oath of Commission* dated August 8, 2017, Docket – Vol. 3, p. 1467; Exhibit "P-76", Docket – Vol. 3, pp. 1451 to 1455; Minutes of the hearing held on, and Order dated, August 8, 2017, Docket – Vol. 3, pp. 1466, and 1468 to 1469.
[20] Docket – Vols. 3 to 4, pp. 1496 to 1528.
[21] Docket – Vol. 5, pp. 2236 to 2253.
[22] Docket – Vol. 5, pp. 2392 to 2393.

2. Exhibits "P-32", "P-34", "P-38", "P-39", and "P-66", for failure to submit the duly marked exhibits.

Petitioner then filed a *Motion for Partial Reconsideration* on August 6, 2018,[23] praying for the admission of the *BIR Forms No. 1914 (Application for Tax Credits/Refunds) with the Transmittal Letter signed by Yusuke Yamada* which was collectively marked as Exhibit "P-66". Thus, in the Resolution dated September 18, 2018,[24] the Court granted the said *Motion*, and admitted Exhibit "P-66".

At the hearing held on October 11, 2018,[25] the Court noted the manifestation of respondent's counsel that there is no report of investigation, and thus, he would no longer present evidence. In the same hearing, petitioner's counsel manifested that he will file a *Tender of Excluded Evidence*. Thus, petitioner was given fifteen (15) days to file the same.

On October 24, 2018, petitioner filed its *Tender of Excluded Evidence* for Exhibits "P-17", "P-18", "P-21", "P-22", "P-23", "P-24", "P-26" and "P-41",[26] which the Court noted in its Resolution dated January 23, 2019,[27] thereby making the said Exhibits part of the records of the case.

Respondent filed his *Memorandum* on December 3, 2018,[28] while the *Memorandum* of petitioner was filed on January 24, 2019.[29]

The instant case was deemed submitted for decision on January 29, 2019.[30]

THE ISSUE RAISED

The parties submitted this lone issue for this Court's resolution:

"WHETHER PETITIONER IS ENTITLED FOR THE ISSUANCE OF TAX CREDIT CERTIFICATES OR FOR

[23] Docket – Vol. 5, pp. 2396 to 2398.
[24] Docket – Vol. 5, pp. 2402 to 2403.
[25] Minutes of the hearing held on, and Order dated, October 11, 2018, Docket – Vol. 5, pp. 2407 to 2409.
[26] Docket – Vol. 5, pp. 2410 to 2413.
[27] Docket – Vol. 5, pp. 2434 to 2435
[28] Docket – Vol. 5, pp. 2422 to 2431.
[29] Docket – Vol. 5, pp. 2435 to 2473.
[30] Resolution dated January 29, 2019, Docket – Vol. 5, p. 2476.

REFUND OF THE EXCESS UNUTILIZED INPUT VALUE ADDED TAX (VAT) ALLOCABLE AND DIRECTLY ATTRIBUTABLE TO ITS VAT ZERO RATED SALES FOR THE PERIOD FROM 01 APRIL 2014 TO 30 SEPTEMBER 2014 AMOUNTING TO Php38,732,565.26."[31]

Petitioner's arguments:

Petitioner argues that its claim for tax refund should be granted because all the elements necessary are present.

Respondent counter-arguments:

Respondent contends that petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma; that this pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund; that without a validly and duly filed administrative claim for refund, this Court is without jurisdiction to entertain the *Petition for Review*; that petitioner's failure to comply with a condition precedent prior to the institution of its *Petition for Review* makes its dismissible for absence of jurisdiction on the part of this Court; and that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund.

RECOMMENDED RULING

The instant *Petition for Review* must be denied for lack of merit.

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

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[32] provides as follows:

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

[31] Par. 3, JSFI, Docket – Vol. 3, p. 1405.
[32] 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.

(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*, 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.

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 must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[33]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[34]

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

3. the taxpayer is a VAT-registered person;[35]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[36]

5. for zero-rated sales under Section 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 BSP rules and regulations;[37]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[38]

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[33] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.

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

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

[36] *Id.*

[37] *Id.*

[38] *Id.*

7. the input taxes are due or paid;[39]

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;[40] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[41]

Petitioner's administrative and judicial claims were filed within the prescriptive period.

Based on the aforequoted Section 112(A), the filing of the refund claim for tax credit or refund of input VAT before the BIR, must be made within two (2) years from the close of the quarter when the sales were made.

The present claim covers the 1st and 2nd quarters of FY ending March 31, 2015 which closed on June 30, 2014 and September 30, 2014, respectively. Counting two years therefrom, petitioner had until June 30, 2016 for the said 1st quarter, and September 30, 2016 for the 2nd quarter, within which to file its administrative claim for TCC/refund. Clearly, petitioner's administrative claim was timely filed on June 29, 2016.[42]

As for the judicial claim, the same must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under the aforequoted Section 112(C).

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[43] the Supreme Court held:

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[39] *Id.*
[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.
[41] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[42] Exhibit "P-66", BIR Records, pp. 577 to 583.
[43] G.R. No. 182737, March 2, 2016.

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
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> xxx xxx xxx
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[44] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of respondent's decision/ruling or after the expiration of the 120-day period, **<u>whichever is sooner</u>**. In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

In this case, the determination of the 120+30-day period is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from expiration of the 120 days
June 29, 2016	October 27, 2016	November 26, 2016

Accordingly, from the filing of petitioner's administrative claim on June 29, 2016, respondent had 120 days or until October 27, 2016 to act on the said claim. Since respondent failed to act on the said claim on or before October 27, 2016, petitioner had thirty (30) days or until November 26, 2016, within which to file its judicial claim before this Court. Evidently, petitioner's judicial

[44] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013), the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.

appeal by way of the instant *Petition for Review* was, likewise, timely filed on November 25, 2016.[45]

Correspondingly, petitioner has complied with the *first* and *second* requisites.

Petitioner is a VAT-registered person.

As evidenced by its BIR Certificate of Registration No. OCN 8RC0000019980, petitioner is duly registered as a VAT taxpayer, with TIN 006-618-023-000.[46] Thus, petitioner has complied with the *third* requisite.

Not all of the supposed zero-rated or effectively zero-rated sales /receipts of during the 1st & 2nd quarters of FY ending March 31, 2015, qualify as such under the law.

Petitioner maintains that during the period April 1, 2014 to September 30, 2014, it had VAT zero-rated transactions pertaining to: (1) its sales of goods and services to entities registered with the Philippine Export Zone Authority (PEZA), Subic Bay Metropolitan Authority (SBMA), Clark Development Authority (CDA) and Board of Investments (BOI); (2) indent commissions received from its sale of services to Marubeni Corporation-Japan and Bomag Fayat Group, which are allegedly non-resident foreign corporations not engaged in business in the Philippines; and (3) export sales to Hyundai Malaysia.

Sales to entities registered with PEZA, SBMA, CDA and those registered with BOI whose products are 100% exported

Relevant to the resolution of the instant case are the pertinent provisions of Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, which state:

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – x x x

[45] Docket – Vol. 1, p. 10.
[46] Exhibit "P-3", *supra.*

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

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

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the 'Omnibus Investment Code of 1987', and other special laws.

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

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

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

xxx xxx xxx

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

Furthermore, Sections 4.106-5 and 4.108-5 of Revenue Regulations (RR) No. 16-2005, as amended, which implement the foregoing, also provide:

"SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – x x x

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

(a) Export sales. – *"Export Sales"* shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*; (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227*;** (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and ***Provided, finally*, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**

xxx xxx xxx

(c) *'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* **sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate**." *(Emphasis supplied)*

"SEC. 4.108-5. *Zero-Rated Sale of Services.* –

xxx xxx xxx

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

xxx xxx xxx

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

In connection therewith, the special laws specific to this case are RA No. 7227, as amended by RA No. 9400, otherwise known as *"Bases Conversion and Development Act of 1992"*, and RA No. 7916, as amended, otherwise known as *"The Special Economic Zone Act of 1995"*. The relevant portions of said laws are quoted hereunder for easy reference, *viz*:

<u>RA No. 7227, as amended by RA No. 9400</u>:

"SEC. 12. *Subic Special Economic Zone.* – xxx "(b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

(c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone.** In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) of the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, xxx.

xxx." *(Emphasis ours)*

"SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* – Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.

The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. xxx.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within

the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.

xxx xxx xxx

Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones." *(Emphases ours)*

<u>Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748</u>:

"SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis ours)*

"SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted** as follows:

(a) Three percent (3%) of the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." *(Emphasis ours)*

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[47] *to wit*:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the

[47] G.R. No. 150154, August 9, 2005.

ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%)[48] VAT. (*Emphasis supplied*)

Evidently, sales of goods and services by a VAT-registered taxpayer, such as herein petitioner, to entities located in the ecozones, as well as, to BOI-registered entities whose products are 100% exported are considered "export sales" subject to zero percent (0%) VAT rate pursuant to Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5 and 4.108.5 of RR No. 16-2005, as amended.

To prove that its clients are duly registered with the PEZA, SBMA, CDA and BOI, petitioner submitted various Certifications issued by said agencies. Petitioner also presented the letters of the PEZA Director General, BGen Charito B. Plaza, dated October 6, 2016[49] and June 29, 2017[50] addressed to petitioner's Chief Financial Officer, Mr. Yusuke Yamada and Certification issued by the BOI Director, Incentive Service, Ms. Erlinda F. Arcellana, on October 18, 2016[51] confirming the issuance of VAT zero-rating certifications to certain clients of petitioner. Listed below are petitioner's clients for the subject period of claim with the corresponding proof of VAT zero-rating:

Name of Customer	Proof of VAT zero-rating	Exhibit No.	Validity Period
ADNAMA MINING RESOURCES	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
ASIA INTERNATIONAL AUCTIONEERS, INC.	SBMA Certificate of Tax Exemption	P-130-h	May 24, 2014 to May 23, 2015
BERONG NICKEL CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
BIGLIFT PROPERTIES &	SBMA Certificate of Tax	P-33	October 16, 2013 to

[48] Now at 12% VAT rate.
[49] Exhibit "P-4", Docket – Vol. 5, pp. 2272 to 2274.
[50] Exhibit "P-75", Docket – Vol. 5, pp. 2380 to 2381.
[51] Exhibit "P-12", Docket – Vol. 5, p. 2275.

DEVELOPMENT CORPORATION	Exemption		October 15, 2014
BRENT INTERNATIONAL SCHOOL SUBIC, INC.	SBMA Certificates of Tax Exemption	P-130-j; P-130-p	July 24, 2013 to July 23, 2014; July 24, 2014 to July 23, 2015
CAGDIANAO MINING CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
CARMEN COPPER CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
CENTURY PEAK CORPORATION	BOI Certificate No. 2014-123	P-13	April 2 to December 31, 2014
CITINICKEL MINES AND DEVELOPMENT CORPORATION	BOI Certificate No. 2014-111	P-14	February 17 to December 31, 2014
CLARK INTERNATIONAL AIRPORT CORPORATION	CDC Certificate of Registration and Tax Exemption	P-40	April 6, 2013 to April 5, 2016
CORAL BAY NICKEL CORPORATION	Confirmation Letter from PEZA	P-4	For the years 2013 and 2014
C.T.P. CONSTRUCTION AND MINING CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
FCF MINERALS CORP.	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
HOUSE TECHNOLOGY INDUSTRIES PTE., LTD.	Confirmation Letter from PEZA	P-4	For the years 2013 and 2014
HYS-YACHT PHILS LTD. CO. INC.	SBMA Certificate of Tax Exemption	P-130-n	July 15, 2013 to July 14, 2014
JAMJLE PROPERTIES (SUBIC) AND DEVELOPMENT CORPORATION (FORMERLY: JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC)	SBMA Certificate of Tax Exemption	P-35	November 27, 2013 to November 26, 2014
JGC PHILIPPINES, INC.	Confirmation Letter from PEZA	P-75	For the year 2014
K & A METAL INDUSTRIES, INC.	Confirmation Letter from PEZA	P-4	For the year 2014
KROMINCO, INC.	BOI Certification issued Oct. 18, 2016; BOI Certificate No. 2014-053	P-12; P-15	For the year 2014
MAJESTIC LANDSCAPE CORPORATION	Confirmation Letters from PEZA	P-4; P-75	For the years 2013 and 2014
METRO CLARK WASTE MANAGEMENT CORPORATION	CDC Certificate of Registration and Tax Exemption	P-130-o	March 15, 2013 to March 14, 2016
MARCVENTURES MINING AND DEVELOPMENT CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the year 2014
NORTHEAST GROUP OF COMPANIES, INC. (FORMERLY: NORTHEAST FREIGHT FORWARDERS, INC.)	SBMA Certificates of Tax Exemption	P-36 to P-36-A	March 4, 2014 to March 3, 2015; March 4, 2013 to March 3, 2014
PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION	PEZA Certificate No. 2014-0391	P-130-g	For the year 2014
PHIL. BATTERIES INCORPORATED	Confirmation Letter from PEZA	P-4	For the years 2013 and 2014
PLATINUM GROUP METALS CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
RIO TUBA NICKEL MINING CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	For the years 2013 and 2014
SCAD SERVICES (S) PTE., LTD. (PHIL. BRANCH)	Confirmation Letter from PEZA	P-4	For the year 2014
SMART ELECTRONICS MANUFACTURING SERVICE PHILIPPINES, INC. FORMERLY: SAMSUNG ELECTRONICS PHILIPPINES MANUFACTURING CORPORATION	Confirmation Letter from PEZA	P-4	TY 2014
ST. LUKE'S MEDICAL CENTER (GLOBAL CITY) INC. (SLMCGCI)	Confirmation Letter from PEZA	P-4	TY 2014
SUBIC CONSOLIDATED PROJECTS, INC.	SBMA Certificate of Tax Exemption	P-37	January 4, 2014 to January 3, 2015

SUNWEST WATER AND ELECTRIC CO. (SUWECO) INC.	BOI Certification issued Apr. 6, 2011 (as RE Developer under RA 9513)	P-16	
TAGANITO HPAL NICKEL CORPORATION	Confirmation Letter from PEZA	P-4	TY 2014
TAGANITO MINING CORPORATION	BOI Certification issued Oct. 18, 2016	P-12	TY 2014
TAILIN ABRASIVES CORPORATION	SBMA Certificate of Tax Exemption	P-130-m	April 25, 2014 to April 24, 2015
TOYO-INK COMPOUNDS CORPORATION	Confirmation Letter from PEZA	P-75	TY 2014
TRANSCOM WORLDWIDE (PHILIPPINES), INC.	Confirmation Letter from PEZA	P-75	TY 2014
TRANS ASIA CONSTRUCTION DEVELOPMENT CORP.	CDC Certificate of Registration and Tax Exemption	P-130-s	April 1, 2013 to March 31, 2016
UNICHAMP MINERAL PHILIPPINES INC.	Confirmation Letter from PEZA	P-75	TY 2014
VISAYAS SLAKED LIME CORPORATION	Confirmation Letter from PEZA	P-4	TY 2014
WU KONG SINGAPORE PTE. LTD. (PHIL. BRANCH)	Confirmation Letter from PEZA	P-4	TY 2014

Thus, petitioner's sales to the aforementioned entities during the 1st and 2nd quarters of FY ending 2015 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices [for sales of goods] and official receipts (ORs) [for sales of services] in accordance with Sections 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-2005, which are all quoted hereunder:

> "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:

xxx xxx xxx

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

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

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

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

(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 invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

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

> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That: xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; xxx" *(Emphasis ours)*

In addition to the above requirements, the invoices and ORs must state certain information and must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 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"
>
> "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."

Sales of services to nonresident foreign corporations not engaged in business in the Philippines

With respect to petitioner's alleged VAT zero-rated indent commissions from its sales of services to non-resident foreign corporations, Marubeni Corporation-Japan and Bomag Fayat Group, Section 108(B)(2) of the NIRC of 1997, as amended, pertinently provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*-
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* –The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (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);"

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 recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services was performed;[52]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules;[53]

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[52] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 190102, July 11, 2012.

[53] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

3) The services fall under any of the categories under Section 108(B)(2)[54], or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[55] and

4) The services must be performed in the Philippines[56] by a VAT-registered person.

Petitioner was able to establish the *first* essential element, but only in so far as pertaining to Bomag Fayat Group, by presenting: (1) the *Certificate of Non-Registration of Company* [57] issued by the Securities and Exchange Commission (SEC) in favor of Bomag Fayat Group to the effect that the records of the former do not show the registration of Bomag Fayat Group as a corporation or as a partnership, and (2) *Consularized Articles of Association of Bomag Fayat Group*[58] showing that Bomag Fayat Group is registered in Boppard (Germany). The former document proves that Bomag Fayat Group is not doing business in the Philippines while the latter document shows that Bomag Fayat Group is doing business outside the Philippines. Taken together, the said documents establish that Bomag Fayat Group is a non-resident foreign corporation doing business outside the Philippines.

As to the other client, Marubeni Corporation-Japan, petitioner presented the (1) *Certificate of Corporate Filing/Information*[59] issued by the SEC to the effect that the records of the former do not show the registration of Marubeni Corporation-Japan as a corporation or as a partnership and (2) *Consularized Articles of Incorporation of Marubeni Corporation*[60] showing that Marubeni Corporation is situated in Tokyo (Japan). As gleaned from the first document, it was stated that "the registered company names similar to said entity are: Marubeni Corp. (SEC Reg. No. F000000493)" and "Marubeni Phils Corp. (SEC Reg. No. AS96001786)" while the second document explicitly pertains to Marubeni Corporation - Japan. It is also to be noted that based on the VAT zero-rated ORs[61] supporting petitioner's alleged zero-rated sales to Marubeni Corporation-Japan, the sales of services were actually made to Marubeni Corporation. If at all, petitioner has to prove that its sales to Marubeni Corporation qualify for VAT zero-rating. However, since Marubeni

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[54] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.
[55] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra.
[56] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.
[57] Exhibit "P-44", Docket - Vol. 5, p. 2333.
[58] Exhibit "P-45", Docket - Vol. 5, pp. 2334 to 2342.
[59] Exhibit "P-42", Docket - Vol. 5, p. 2316.
[60] Exhibit "P-43", Docket - Vol. 5, pp. 2317 to 2332.
[61] Exhibits "P-123-a", "P-123-c", "P-123-e" and "P-124-bb" to "P-124-bd".

Corporation is doing business in the Philippines, petitioner's sales thereto failed to satisfy the *first* essential element.

Accordingly, the discussion on the remaining elements shall cover the sales to Bomag Fayat Group, petitioner's only client which satisfied the *first* essential element.

Relative to the *second* essential element and in relation to the *fifth* requisite for the granting of input VAT refund, petitioner presented *Certificate of Inward Remittance of Foreign Currency Payments*[62] issued by BDO Unibank, Inc. showing the remittance of Bomag Fayat Group to petitioner. Considering that the certification attests to the fact of payment *"in acceptable foreign currency....and accounted for in accordance with the rules and regulations of the BSP"*,[63] petitioner is considered to have complied with the above-stated *second* essential element.

As regards the *third* essential element that the services rendered should be other than *"processing, manufacturing or repacking goods"*, the same has not been established. Petitioner failed to adduce evidence to prove that the nature of the sale to Bomag Fayat Group was other than *"processing, manufacturing or repacking of goods"*.

Verily, it is no longer necessary to determine petitioner's compliance with the *fourth* element to merit favorable consideration on the subject sales.

Thus, based on the foregoing, petitioner's sales of services to Marubeni Corporation - Japan and Bomag Fayat Group, failed to qualify as subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended.

Export sales to Hyundai Malaysia

As to petitioner's claimed direct export sales, the relevant provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, reads:

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – x x x

[62] Exhibits "P-132-b".

[63] Refer to *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

(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 afore-quoted provision, direct export sales qualify for VAT zero rating if the following conditions are present: (1) there was a sale and actual shipment of goods from the Philippines to a foreign country; (2) the sale was made by a VAT-registered person, and (3) the sale was paid for in acceptable foreign currency.

Thus, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit;

1. the sales invoice as proof of sale of goods
2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country, and
3. the bank credit advice, certificate of bank remittance or any other document proving payment of goods in acceptable foreign currency of its equivalent in goods and services.

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

Moreover, in its 1st and 2nd Quarterly VAT Returns for FY ending March 31, 2015[64], petitioner reported total sales/receipts of ₱2,997,215,120.67, which included zero-rated sales/receipts in the amount of ₱965,855,549.78, broken down as follows:

	1st Quarter	2nd Quarter	Total
Vatable Sales/Receipts-	₱ 1,082,897,132.24	₱ 940,762,558.09	₱ 2,023,659,690.33

[64] Exhibits "P-51" and "P-52", *supra*.

Private			
Sale to Government	5,341,547.40	2,358,333.16	7,699,880.56
Zero-Rated Sales/Receipts	277,253,870.66	688,601,679.12	965,855,549.78
Total Sales/Receipts	**₱1,365,492,550.30**	**₱1,631,722,570.37**	**₱2,997,215,120.67**

In support of its zero-rated sales/receipts, petitioner presented its Schedule of Zero-Rated Sales[65] and various invoices, ORs and other related documents[66], which were examined by the Court-commissioned ICPA, Mr. Conrado M. Briones.

Based on the report of the ICPA[67], the zero-rated sales/receipts in the amount of ₱248,228,527.37, as detailed below, shall be denied VAT zero-rating on the basis the following findings:

Exhibit No.	Findings	1st Quarter	2nd Quarter	Total
P-123 to P-123-e	Export sales of services which are supported by VAT zero-rated ORs issued to companies with foreign address (These pertain to petitioner's sales of services to Marubeni Corporation, Bomag Fayat Group and Daewoo International America Corp. which as stated earlier, failed to meet the documentary requirements for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended)	₱ 5,631,677.32	₱ 102,367,701.76	₱ 107,999,379.08
P-124, P-124-be to P-124-bu	Zero-rated sales of goods which are supported by VAT zero-rated invoices/zero-rated sales of services which are supported by VAT zero-rated ORs but not dated within the quarter (out of covered period)	14,224,766.34		14,224,766.34
P-125 to P-125-b	Zero-rated sales of goods which are supported by VAT zero-rated invoices/zero-rated sale of services which are supported by VAT zero-rated ORs but without date	34,839.00	1,933,920.04	1,968,759.04
P-126 to P-126-	Zero-rated sales of goods	2,305,839.81	11,990,742.31	14,296,582.12

[65] Exhibit "P-86", Amended ICPA Report Binder, Part 2 of 4.
[66] Exhibits "P-119-a" to "P-128-c" and "P-131-a" to "P-131-d".
[67] Exhibit "P-78", Amended ICPA Report Binder, Part 1 of 4, pp. 12 to 13.

ad	supported by documents other than VAT zero-rated invoices			
P-127 to P-127-og	Zero-rated sales of services supported by documents other than VAT zero-rated ORs	4,343,144.85	5,579,866.97	9,923,011.82
P-128 to P-128-c	Zero-rated sales of goods to entities without VAT zero-rating incentive certificate provided	-	2,801,794.06	2,801,794.06
P-129	Without supporting documents presented	8,194,817.60	88,819,417.31	97,014,234.91
Total		**₱34,735,084.92**	**₱213,493,442.45**	**₱248,228,527.37**

In addition, petitioner's alleged zero-rated sales/receipts in the amount of ₱226,124,855.77 shall also be denied VAT zero-rating due to the following reasons, to wit:

Exhibit No.	Customer Name	1st Qtr	2nd Qtr	Total
1. Sale of goods supported by VAT zero-rated invoice but dated outside the period of claim				
P-124-bv	Carmen Copper Corp.		₱ 1,018,127.40	₱ 1,018,127.40
2. Sales to entities without proof of/not qualified for VAT zero-rating				
P-119-kr	Hinatuan Mining Corporation	₱ 15,024.00		15,024.00
P-119-ks	Hinatuan Mining Corporation	63,784.00		63,784.00
P-119-kt	Hinatuan Mining Corporation	15,648.00		15,648.00
P-119-ku	Hinatuan Mining Corporation	5,008.00		5,008.00
P-119-kv	Hinatuan Mining Corporation	23,152.00		23,152.00
P-119-kw	Hinatuan Mining Corporation	1,872.00		1,872.00
P-119-kx	Hinatuan Mining Corporation	21,040.00		21,040.00
P-119-ob	Hinatuan Mining Corporation		2,752.00	2,752.00
P-119-ub	Hinatuan Mining Corporation		19,336.00	19,336.00
P-119-uc	Hinatuan Mining Corporation		1,184.00	1,184.00
P-119-ud	Hinatuan Mining Corporation		20,336.00	20,336.00
P-119-ue	Hinatuan Mining Corporation		18,432.00	18,432.00
P-119-uf	Hinatuan Mining Corporation		19,048.00	19,048.00
P-119-ug	Hinatuan Mining Corporation		100,056.00	100,056.00
P-119-xb	Hinatuan Mining Corporation		5,504.00	5,504.00
P-119-xc	Hinatuan Mining Corporation		30,576.00	30,576.00
P-119-yg	Hinatuan Mining Corporation		64,320.00	64,320.00
P-120-fi	Manila AMC Machinery Corporation	1,517,857.14		1,517,857.14
P-120-hl	Fastech Properties Inc.		105,625.20	105,625.20
P-120-hm	Fastech Properties Inc.		5,720.00	5,720.00
P-120-hn	Fastech Properties Inc.		10,010.00	10,010.00
P-120-iw	Fastech Properties Inc.		14,420.00	14,420.00
P-120-ix	Fastech Properties Inc.		9,291.00	9,291.00
P-120-ks	Fastech Properties Inc.		19,510.00	19,510.00
P-120-kt	Fastech Properties Inc.		26,806.80	26,806.80
P-120-ku	Fastech Properties Inc.		6,924.20	6,924.20
P-120-ln	Fastech Properties Inc.		27,920.00	27,920.00
P-124-g	Fastech Properties Inc.		9,497.60	9,497.60
P-124-bb	Marubeni Corp.		3,569,012.40	3,569,012.40
P-124-bc	Marubeni Corp.		1,220,837.26	1,220,837.26

P-124-bd	Marubeni Corp.		68,205.16	68,205.16
3. Sales to entity with proof of VAT zero-rating but the date of the transaction is outside the validity period				
P-121-cq	Hys-Yacht Phils. Ltd. Co. Inc.		2,480.00	2,480.00
4. Sales of goods supported by VAT zero-rated sales invoices with unreadable details				
P-119-a	Carmen Copper Corp.	37,088.00		37,088.00
P-119-b	Carmen Copper Corp.	6,996.40		6,996.40
P-119-c	Carmen Copper Corp.	20,000.00		20,000.00
P-119-d	Carmen Copper Corp.	1,262,304.00		1,262,304.00
P-119-e	Carmen Copper Corp.	77,200.00		77,200.00
P-119-e	Carmen Copper Corp.	757,560.00		757,560.00
P-119-g	Carmen Copper Corp.	974,312.00		974,312.00
P-119-h	Carmen Copper Corp.	1,104.00		1,104.00
P-119-i	Carmen Copper Corp.	41,286.24		41,286.24
P-119-j	Carmen Copper Corp.	466,840.00		466,840.00
P-119-k	Carmen Copper Corp.	16,880.00		16,880.00
P-119-l	Carmen Copper Corp.	36,664.00		36,664.00
P-119-m	Carmen Copper Corp.	81,694.40		81,694.40
P-119-n	Carmen Copper Corp.	124,127.20		124,127.20
P-119-p	Carmen Copper Corp.	88,584.00		88,584.00
P-119-q	FCF Minerals Corporation	55,921.51		55,921.51
P-119-r	FCF Minerals Corporation	55,289.25		55,289.25
P-119-s	FCF Minerals Corporation	22,045.98		22,045.98
P-119-t	Carmen Copper Corp.	96,976.00		96,976.00
P-119-u	Carmen Copper Corp.	1,231,259.20		1,231,259.20
P-119-v	Carmen Copper Corp.	603,126.80		603,126.80
P-119-w	Carmen Copper Corp.	840,721.12		840,721.12
P-119-x	Carmen Copper Corp.	309,564.00		309,564.00
P-119-z	Carmen Copper Corp.	966,592.00		966,592.00
P-119-aa	Carmen Copper Corp.	531,912.00		531,912.00
P-119-ab	Carmen Copper Corp.	60,950.32		60,950.32
P-119-ac	Carmen Copper Corp.	103,876.80		103,876.80
P-119-ad	Carmen Copper Corp.	1,336,176.00		1,336,176.00
P-119-ae	Carmen Copper Corp.	727,896.00		727,896.00
P-119-af	Carmen Copper Corp.	1,378,008.00		1,378,008.00
P-119-ag	Carmen Copper Corp.	75,200.00		75,200.00
P-119-ah	Carmen Copper Corp.	314,536.00		314,536.00
P-119-ai	Carmen Copper Corp.	909,552.00		909,552.00
P-119-aj	Carmen Copper Corp.	651,512.00		651,512.00
P-119-ak	Carmen Copper Corp.	802,168.00		802,168.00
P-119-al	Carmen Copper Corp.	31,872.00		31,872.00
P-119-am	Carmen Copper Corp.	710,280.00		710,280.00
P-119-an	Carmen Copper Corp.	2,952,544.00		2,952,544.00
P-119-ao	Carmen Copper Corp.	2,650,440.00		2,650,440.00
P-119-ap	Carmen Copper Corp.	1,230,911.68		1,230,911.68
P-119-aq	Carmen Copper Corp.	842,715.76		842,715.76
P-119-ar	Carmen Copper Corp.	815,062.40		815,062.40
P-119-as	Carmen Copper Corp.	551,070.40		551,070.40
P-119-bd	Carmen Copper Corp.	282,715.20		282,715.20
P-119-be	Carmen Copper Corp.	10,752.80		10,752.80
P-119-bf	Carmen Copper Corp.	2,521,300.00		2,521,300.00
P-119-bg	Carmen Copper Corp.	32,496.00		32,496.00
P-119-bh	Berong Nickel Corporation	47,136.00		47,136.00
P-119-bi	Carmen Copper Corp.	69,952.00		69,952.00
P-119-bj	Carmen Copper Corp.	404,296.00		404,296.00
P-119-bk	Carmen Copper Corp.	256,094.40		256,094.40
P-119-bl	Carmen Copper Corp.	306,216.00		306,216.00
P-119-bm	Carmen Copper Corp.	112,112.00		112,112.00

P-119-bn	Carmen Copper Corp.	72,576.00		72,576.00
P-119-bo	Carmen Copper Corp.	91,616.00		91,616.00
P-119-bp	Carmen Copper Corp.	10,032.00		10,032.00
P-119-bq	Carmen Copper Corp.	15,648.00		15,648.00
P-119-ce	Carmen Copper Corp.	276,480.00		276,480.00
P-119-cf	Carmen Copper Corp.	1,262,304.00		1,262,304.00
P-119-cg	Carmen Copper Corp.	21,584.00		21,584.00
P-119-ch	Carmen Copper Corp.	665,360.00		665,360.00
P-119-ci	Carmen Copper Corp.	124,080.00		124,080.00
P-119-cm	Carmen Copper Corp.	194,512.00		194,512.00
P-119-cn	Carmen Copper Corp.	20,760.00		20,760.00
P-119-co	Carmen Copper Corp.	141,782.40		141,782.40
P-119-cp	Carmen Copper Corp.	15,232.00		15,232.00
P-119-cq	Carmen Copper Corp.	135,984.00		135,984.00
P-119-cr	Carmen Copper Corp.	162,320.00		162,320.00
P-119-cs	Carmen Copper Corp.	3,645,324.64		3,645,324.64
P-119-ct	Carmen Copper Corp.	276,480.00		276,480.00
P-119-cv	Carmen Copper Corp.	2,691,530.80		2,691,530.80
P-119-cw	Carmen Copper Corp.	628,616.00		628,616.00
P-119-cx	Carmen Copper Corp.	23,664.00		23,664.00
P-119-da	Carmen Copper Corp.	114,328.00		114,328.00
P-119-db	Carmen Copper Corp.	388,792.00		388,792.00
P-119-dc	Carmen Copper Corp.	72,192.00		72,192.00
P-119-dd	Carmen Copper Corp.	63,744.00		63,744.00
P-119-dg	Carmen Copper Corp.	367,196.80		367,196.80
P-119-dh	Berong Nickel Corporation	21,240.00		21,240.00
P-119-di	Berong Nickel Corporation	318,624.00		318,624.00
P-119-dr	Berong Nickel Corporation	124,816.00		124,816.00
P-119-fm	Berong Nickel Corporation	38,688.00		38,688.00
P-119-fn	Berong Nickel Corporation	173,792.00		173,792.00
P-119-fo	Berong Nickel Corporation	208,912.00		208,912.00
P-119-fp	Berong Nickel Corporation	31,712.00		31,712.00
P-119-fq	Berong Nickel Corporation	37,760.00		37,760.00
P-119-fr	Berong Nickel Corporation	119,992.00		119,992.00
P-119-hg	Carmen Copper Corp.	74,200.00		74,200.00
P-119-hh	Carmen Copper Corp.	580,227.76		580,227.76
P-119-hi	Carmen Copper Corp.	607,651.20		607,651.20
P-119-hj	Carmen Copper Corp.	276,480.00		276,480.00
P-119-ho	Carmen Copper Corp.	8,392.00		8,392.00
P-119-ht	Carmen Copper Corp.	96.00		96.00
P-119-hv	Carmen Copper Corp.	22,176.00		22,176.00
P-119-hw	FCF Minerals Corporation	24,360.00		24,360.00
P-119-hx	FCF Minerals Corporation	4,150.00		4,150.00
P-119-hy	Carmen Copper Corp.	3,743.70		3,743.70
P-119-ic	Carmen Copper Corp.	14,128.00		14,128.00
P-119-id	Carmen Copper Corp.	6,824.00		6,824.00
P-119-ie	Carmen Copper Corp.	27,368.00		27,368.00
P-119-if	Carmen Copper Corp.	7,344.00		7,344.00
P-119-ig	Carmen Copper Corp.	150,144.00		150,144.00
P-119-ih	Carmen Copper Corp.	263,120.00		263,120.00
P-119-ii	Carmen Copper Corp.	158,888.00		158,888.00
P-119-io	Carmen Copper Corp.	947,172.00		947,172.00
P-119-ip	Carmen Copper Corp.	1,504,150.80		1,504,150.80
P-119-iq	Carmen Copper Corp.	396,467.76		396,467.76
P-119-ir	Carmen Copper Corp.	1,467,886.32		1,467,886.32
P-119-is	Carmen Copper Corp.	661,797.80		661,797.80
P-119-it	Carmen Copper Corp.	3,040.00		3,040.00

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P-119-iu	Carmen Copper Corp.	401,152.00		401,152.00
P-119-iy	Carmen Copper Corp.	544,320.00		544,320.00
P-119-jd	Carmen Copper Corp.	145,192.00		145,192.00
P-119-je	Carmen Copper Corp.	221,188.64		221,188.64
P-119-jf	Carmen Copper Corp.	923,518.24		923,518.24
P-119-ji	Carmen Copper Corp.	270,184.00		270,184.00
P-119-jj	Carmen Copper Corp.	24,400.00		24,400.00
P-119-jk	Carmen Copper Corp.	121,696.00		121,696.00
P-119-jl	Carmen Copper Corp.	1,179,728.00		1,179,728.00
P-119-jm	Carmen Copper Corp.	257,920.00		257,920.00
P-119-jo	Carmen Copper Corp.	355,488.00		355,488.00
P-119-jq	Carmen Copper Corp.	42,893.60		42,893.60
P-119-jr	Carmen Copper Corp.	116,552.00		116,552.00
P-119-js	Carmen Copper Corp.	133,440.00		133,440.00
P-119-jt	Carmen Copper Corp.	156,448.00		156,448.00
P-119-ju	Carmen Copper Corp.	160,120.00		160,120.00
P-119-jw	Carmen Copper Corp.	2,258,976.30		2,258,976.30
P-119-jx	Carmen Copper Corp.	819,232.00		819,232.00
P-119-jy	Carmen Copper Corp.	960.00		960.00
P-119-jz	Carmen Copper Corp.	549,127.68		549,127.68
P-119-ka	Carmen Copper Corp.	151,624.60		151,624.60
P-119-kb	Carmen Copper Corp.	647,113.60		647,113.60
P-119-kc	Carmen Copper Corp.	36,864.00		36,864.00
P-119-kd	Carmen Copper Corp.	357,872.00		357,872.00
P-119-ki	Carmen Copper Corp.	12,012.40		12,012.40
P-119-kj	Carmen Copper Corp.	57,216.00		57,216.00
P-119-kk	Carmen Copper Corp.	43,952.00		43,952.00
P-119-kl	Carmen Copper Corp.	14,198.40		14,198.40
P-119-km	Carmen Copper Corp.	24,752.00		24,752.00
P-119-kn	Carmen Copper Corp.	12,752.00		12,752.00
P-119-ko	Carmen Copper Corp.	401,808.00		401,808.00
P-119-lf	Carmen Copper Corp.	178,231.60		178,231.60
P-119-lg	Carmen Copper Corp.	530,129.60		530,129.60
P-119-lh	Carmen Copper Corp.	654,142.00		654,142.00
P-119-li	Carmen Copper Corp.	176,136.00		176,136.00
P-119-ls	Carmen Copper Corp.	315,568.00		315,568.00
P-119-lt	Carmen Copper Corp.	767,920.00		767,920.00
P-119-lu	Carmen Copper Corp.	283,104.00		283,104.00
P-119-lw	Carmen Copper Corp.	1,849,140.00		1,849,140.00
P-119-lx	Carmen Copper Corp.	183,762.40		183,762.40
P-119-ly	Carmen Copper Corp.	1,167,142.80		1,167,142.80
P-119-lz	Carmen Copper Corp.	1,074,124.00		1,074,124.00
P-119-ma	Carmen Copper Corp.	204,824.00		204,824.00
P-119-mb	Carmen Copper Corp.	754,120.00		754,120.00
P-119-mc	Carmen Copper Corp.	28,328.00		28,328.00
P-119-md	Carmen Copper Corp.	405,408.64		405,408.64
P-119-me	Carmen Copper Corp.	4,080.00		4,080.00
P-119-mf	Carmen Copper Corp.	723,237.04		723,237.04
P-119-mg	Carmen Copper Corp.		160.00	160.00
P-119-mh	Carmen Copper Corp.		10,624.00	10,624.00
P-119-mi	Carmen Copper Corp.		127,488.00	127,488.00
P-119-mj	Carmen Copper Corp.		56,832.00	56,832.00
P-119-mk	Carmen Copper Corp.		670,400.00	670,400.00
P-119-ml	Carmen Copper Corp.		30,288.00	30,288.00
P-119-mm	Carmen Copper Corp.		447,304.00	447,304.00
P-119-mn	Carmen Copper Corp.		701,416.00	701,416.00
P-119-mo	Carmen Copper Corp.		602,240.00	602,240.00

P-119-mp	Carmen Copper Corp.		2,240.00	2,240.00
P-119-mq	Adnama Mining Resources Inc		312,000.00	312,000.00
P-119-mr	Carmen Copper Corp.		36,088.00	36,088.00
P-119-ms	Carmen Copper Corp.		419,008.00	419,008.00
P-119-mt	Carmen Copper Corp.		138,208.40	138,208.40
P-119-mu	Carmen Copper Corp.		86,349.12	86,349.12
P-119-mv	Carmen Copper Corp.		493,437.12	493,437.12
P-119-mw	Carmen Copper Corp.		1,020,296.00	1,020,296.00
P-119-mx	Carmen Copper Corp.		798,993.60	798,993.60
P-119-my	Carmen Copper Corp.		385,703.36	385,703.36
P-119-mz	Carmen Copper Corp.		258,776.00	258,776.00
P-119-na	Carmen Copper Corp.		497,765.60	497,765.60
P-119-nb	Carmen Copper Corp.		708,544.00	708,544.00
P-119-nc	Carmen Copper Corp.		37,249.04	37,249.04
P-119-nd	Carmen Copper Corp.		646,438.32	646,438.32
P-119-ns	Carmen Copper Corp.		91,664.00	91,664.00
P-119-nt	Carmen Copper Corp.		177,424.00	177,424.00
P-119-nv	FCF Minerals Corporation		267,379.25	267,379.25
P-119-oc	Carmen Copper Corp.		28,064.40	28,064.40
P-119-od	Carmen Copper Corp.		81,184.00	81,184.00
P-119-of	Carmen Copper Corp.		327,152.00	327,152.00
P-119-og	Carmen Copper Corp.		1,075,728.00	1,075,728.00
P-119-oh	Carmen Copper Corp.		49,536.00	49,536.00
P-119-oi	Carmen Copper Corp.		4,020,397.51	4,020,397.51
P-119-oj	Carmen Copper Corp.		2,141,298.32	2,141,298.32
P-119-ok	Carmen Copper Corp.		172,697.60	172,697.60
P-119-ol	Carmen Copper Corp.		239,336.00	239,336.00
P-119-om	Carmen Copper Corp.		427,870.80	427,870.80
P-119-on	Carmen Copper Corp.		662,768.00	662,768.00
P-119-op	Carmen Copper Corp.		592,224.00	592,224.00
P-119-oq	Carmen Copper Corp.		902,229.60	902,229.60
P-119-or	Carmen Copper Corp.		248,092.80	248,092.80
P-119-os	Carmen Copper Corp.		26,650.40	26,650.40
P-119-ot	Carmen Copper Corp.		5,619,106.30	5,619,106.30
P-119-ou	Carmen Copper Corp.		70,224.00	70,224.00
P-119-ov	Carmen Copper Corp.		228,960.00	228,960.00
P-119-ow	Carmen Copper Corp.		24,928.00	24,928.00
P-119-ox	Carmen Copper Corp.		253,040.00	253,040.00
P-119-oy	Carmen Copper Corp.		683,200.00	683,200.00
P-119-oz	Carmen Copper Corp.		1,096.00	1,096.00
P-119-pa	Carmen Copper Corp.		4,160.00	4,160.00
P-119-pb	Carmen Copper Corp.		144,624.00	144,624.00
P-119-pc	Carmen Copper Corp.		87,040.00	87,040.00
P-119-pd	Carmen Copper Corp.		38,672.00	38,672.00
P-119-pe	Carmen Copper Corp.		124,720.00	124,720.00
P-119-px	Carmen Copper Corp.		245,160.00	245,160.00
P-119-py	Carmen Copper Corp.		706,408.00	706,408.00
P-119-pz	Carmen Copper Corp.		1,762,021.20	1,762,021.20
P-119-qa	Carmen Copper Corp.		23,475.20	23,475.20
P-119-qb	Carmen Copper Corp.		7,344.00	7,344.00
P-119-qc	Carmen Copper Corp.		71,240.00	71,240.00
P-119-qd	Carmen Copper Corp.		1,096.00	1,096.00
P-119-qe	Carmen Copper Corp.		49,600.00	49,600.00
P-119-qf	Carmen Copper Corp.		1,160.00	1,160.00
P-119-qg	Carmen Copper Corp.		565,241.60	565,241.60
P-119-qh	Carmen Copper Corp.		618,105.60	618,105.60
P-119-qi	Carmen Copper Corp.		974,080.00	974,080.00

P-119-qj	Carmen Copper Corp.		300,112.00	300,112.00
P-119-qk	Carmen Copper Corp.		148,640.00	148,640.00
P-119-ql	Carmen Copper Corp.		13,536.00	13,536.00
P-119-qm	Carmen Copper Corp.		11,816.00	11,816.00
P-119-qn	Carmen Copper Corp.		676,840.80	676,840.80
P-119-qp	Carmen Copper Corp.		1,077,221.60	1,077,221.60
P-119-qq	Carmen Copper Corp.		105,296.00	105,296.00
P-119-qr	Carmen Copper Corp.		1,992,490.00	1,992,490.00
P-119-qs	Carmen Copper Corp.		230,512.00	230,512.00
P-119-qt	FCF Minerals Corporation		26,658.27	26,658.27
P-119-qu	FCF Minerals Corporation		49,397.25	49,397.25
P-119-qv	FCF Minerals Corporation		1,544.42	1,544.42
P-119-qx	FCF Minerals Corporation		50,370.58	50,370.58
P-119-qy	Carmen Copper Corp.		34,392.00	34,392.00
P-119-qz	Carmen Copper Corp.		25,046.40	25,046.40
P-119-ra	Carmen Copper Corp.		968.00	968.00
P-119-rb	Carmen Copper Corp.		269,784.00	269,784.00
P-119-rc	Carmen Copper Corp.		86,272.00	86,272.00
P-119-rd	Carmen Copper Corp.		582,704.00	582,704.00
P-119-re	Carmen Copper Corp.		727,832.00	727,832.00
P-119-rf	Carmen Copper Corp.		1,322,552.00	1,322,552.00
P-119-rg	FCF Minerals Corporation		32,093.41	32,093.41
P-119-rh	FCF Minerals Corporation		417.39	417.39
P-119-ri	FCF Minerals Corporation		26,818.47	26,818.47
P-119-rj	FCF Minerals Corporation		7,000.77	7,000.77
P-119-rk	FCF Minerals Corporation		61,214.87	61,214.87
P-119-rl	FCF Minerals Corporation		26,818.47	26,818.47
P-119-rm	FCF Minerals Corporation		26,818.47	26,818.47
P-119-rn	FCF Minerals Corporation		55,813.94	55,813.94
P-119-ro	FCF Minerals Corporation		39,413.28	39,413.28
P-119-rp	FCF Minerals Corporation		128,850.33	128,850.33
P-119-rq	FCF Minerals Corporation		1,792.08	1,792.08
P-119-rr	FCF Minerals Corporation		21,330.95	21,330.95
P-119-rs	FCF Minerals Corporation		86,568.59	86,568.59
P-119-rt	FCF Minerals Corporation		5,537.75	5,537.75
P-119-ru	FCF Minerals Corporation		3,231.73	3,231.73
P-119-rv	FCF Minerals Corporation		3,192.76	3,192.76
P-119-rw	FCF Minerals Corporation		156,289.25	156,289.25
P-119-rx	FCF Minerals Corporation		1,906.39	1,906.39
P-119-ry	FCF Minerals Corporation		1,758.31	1,758.31
P-119-rz	FCF Minerals Corporation		22,146.67	22,146.67
P-119-sa	FCF Minerals Corporation		4,457.04	4,457.04
P-119-sb	FCF Minerals Corporation		1,272.08	1,272.08
P-119-sc	FCF Minerals Corporation		35,739.49	35,739.49
P-119-sd	FCF Minerals Corporation		50,370.58	50,370.58
P-119-se	FCF Minerals Corporation		18,486.30	18,486.30
P-119-sg	Carmen Copper Corp.		193,472.00	193,472.00
P-119-sh	Carmen Copper Corp.		69,536.00	69,536.00
P-119-sl	Carmen Copper Corp.		5,500,000.00	5,500,000.00
P-119-sm	Carmen Copper Corp.		5,667,031.19	5,667,031.19
P-119-sr	Carmen Copper Corp.		173,552.00	173,552.00
P-119-ss	Carmen Copper Corp.		968,147.52	968,147.52
P-119-st	Carmen Copper Corp.		775,373.20	775,373.20
P-119-su	Carmen Copper Corp.		624,926.40	624,926.40
P-119-sv	Carmen Copper Corp.		104,840.00	104,840.00
P-119-sw	Carmen Copper Corp.		34,512.00	34,512.00
P-119-sx	Carmen Copper Corp.		248,100.00	248,100.00

P-119-sy	Carmen Copper Corp.		31,393.76	31,393.76
P-119-ta	Carmen Copper Corp.		5,030.60	5,030.60
P-119-tb	Carmen Copper Corp.		433,008.00	433,008.00
P-119-tc	Carmen Copper Corp.		645,688.00	645,688.00
P-119-td	Carmen Copper Corp.		1,362,950.40	1,362,950.40
P-119-te	Carmen Copper Corp.		1,255,151.60	1,255,151.60
P-119-tg	Carmen Copper Corp.		195,808.40	195,808.40
P-119-th	Carmen Copper Corp.		30,400.00	30,400.00
P-119-ti	Carmen Copper Corp.		38,032.00	38,032.00
P-119-tj	Taganito Mining Corp.		70,024.00	70,024.00
P-119-tk	Taganito Mining Corp.		268,496.00	268,496.00
P-119-tl	Taganito Mining Corp.		87,768.00	87,768.00
P-119-tm	Taganito Mining Corp.		126,160.00	126,160.00
P-119-tr	Carmen Copper Corp.		955,408.00	955,408.00
P-119-ts	Carmen Copper Corp.		1,376.00	1,376.00
P-119-tt	Carmen Copper Corp.		174,416.00	174,416.00
P-119-tu	Carmen Copper Corp.		131,200.00	131,200.00
P-119-tx	Carmen Copper Corp.		382,690.00	382,690.00
P-119-ty	Carmen Copper Corp.		3,672.00	3,672.00
P-119-tz	Carmen Copper Corp.		123,184.00	123,184.00
P-119-ua	Carmen Copper Corp.		26,361.60	26,361.60
P-119-uk	Carmen Copper Corp.		109,200.00	109,200.00
P-119-ul	Carmen Copper Corp.		3,840.00	3,840.00
P-119-um	Carmen Copper Corp.		43,864.00	43,864.00
P-119-un	Carmen Copper Corp.		15,776.00	15,776.00
P-119-uo	Carmen Copper Corp.		29,178.00	29,178.00
P-119-up	Carmen Copper Corp.		885,602.45	885,602.45
P-119-uq	Carmen Copper Corp.		34,912.00	34,912.00
P-119-ur	Carmen Copper Corp.		297,328.00	297,328.00
P-119-us	Carmen Copper Corp.		99,120.00	99,120.00
P-119-ut	Carmen Copper Corp.		935,536.00	935,536.00
P-119-uu	Carmen Copper Corp.		36,984.00	36,984.00
P-119-uv	Taganito Mining Corp.		72,400.00	72,400.00
P-119-uw	Cagdianao Mining Corporation		23,080.00	23,080.00
P-119-ux	Carmen Copper Corp.		621,504.80	621,504.80
P-119-vc	Carmen Copper Corp.		103,104.00	103,104.00
P-119-vd	Carmen Copper Corp.		141,760.00	141,760.00
P-119-ve	Carmen Copper Corp.		780,392.00	780,392.00
P-119-vf	Carmen Copper Corp.		10,832.00	10,832.00
P-119-vg	Carmen Copper Corp.		626,632.00	626,632.00
P-119-vh	Carmen Copper Corp.		1,405.51	1,405.51
P-119-vi	Carmen Copper Corp.		585,662.40	585,662.40
P-119-vl	Carmen Copper Corp.		418,880.00	418,880.00
P-119-vp	Carmen Copper Corp.		12,206,112.79	12,206,112.79
P-119-vq	Carmen Copper Corp.		11,808.00	11,808.00
P-119-vr	Carmen Copper Corp.		36,672.00	36,672.00
P-119-vs	Carmen Copper Corp.		1,743,709.60	1,743,709.60
P-119-vt	Carmen Copper Corp.		59,864.00	59,864.00
P-119-vu	Carmen Copper Corp.		768,624.00	768,624.00
P-119-vv	Carmen Copper Corp.		169,312.00	169,312.00
P-119-vw	Carmen Copper Corp.		137,592.00	137,592.00
P-119-vx	Carmen Copper Corp.		244,032.00	244,032.00
P-119-vy	Carmen Copper Corp.		150,548.00	150,548.00
P-119-vz	Carmen Copper Corp.		12,152.00	12,152.00
P-119-wa	Carmen Copper Corp.		56,208.00	56,208.00
P-119-wb	Carmen Copper Corp.		278,700.00	278,700.00
P-119-wc	Carmen Copper Corp.		182,776.00	182,776.00

P-119-wd	Carmen Copper Corp.		356,488.00	356,488.00
P-119-we	Carmen Copper Corp.		336,972.76	336,972.76
P-119-wf	Carmen Copper Corp.		1,243,598.40	1,243,598.40
P-119-wg	Carmen Copper Corp.		332,992.00	332,992.00
P-119-wh	Carmen Copper Corp.		562,688.00	562,688.00
P-119-wi	Carmen Copper Corp.		172,697.60	172,697.60
P-119-wj	Carmen Copper Corp.		183,184.00	183,184.00
P-119-wk	Carmen Copper Corp.		417,832.00	417,832.00
P-119-wl	Carmen Copper Corp.		646,136.00	646,136.00
P-119-wm	Carmen Copper Corp.		418,064.00	418,064.00
P-119-wn	Carmen Copper Corp.		170,616.00	170,616.00
P-119-wo	Carmen Copper Corp.		780,392.00	780,392.00
P-119-wp	Carmen Copper Corp.		360,200.00	360,200.00
P-119-wq	Carmen Copper Corp.		733,344.00	733,344.00
P-119-wr	Carmen Copper Corp.		727,832.00	727,832.00
P-119-ws	Carmen Copper Corp.		393,746.80	393,746.80
P-119-wt	Carmen Copper Corp.		733,244.80	733,244.80
P-119-wx	Carmen Copper Corp.		3,740.80	3,740.80
P-119-wy	Carmen Copper Corp.		35,528.00	35,528.00
P-119-zq	Carmen Copper Corp.		201,040.00	201,040.00
P-119-zr	Carmen Copper Corp.		449,848.00	449,848.00
P-119-zs	Carmen Copper Corp.		209,728.00	209,728.00
P-119-zt	Carmen Copper Corp.		2,206,104.00	2,206,104.00
P-119-zv	Carmen Copper Corp.		5,619,106.30	5,619,106.30
P-119-zw	Carmen Copper Corp.		558,600.00	558,600.00
P-119-zx	Carmen Copper Corp.		255,360.00	255,360.00
P-119-zy	Carmen Copper Corp.		361,072.00	361,072.00
P-119-zz	Carmen Copper Corp.		324,840.00	324,840.00
P-119-aaa	Carmen Copper Corp.		379,905.00	379,905.00
P-119-aad	Carmen Copper Corp.		172,697.60	172,697.60
P-119-aae	Carmen Copper Corp.		796,288.80	796,288.80
P-119-aaf	Carmen Copper Corp.		39,160.00	39,160.00
P-119-aaj	Carmen Copper Corp.		612,064.00	612,064.00
P-119-aam	Carmen Copper Corp.		567,265.60	567,265.60
P-119-aan	Carmen Copper Corp.		5,134,944.00	5,134,944.00
P-119-aao	Carmen Copper Corp.		14,656.00	14,656.00
P-119-aap	Carmen Copper Corp.		168,832.00	168,832.00
P-119-aaq	Carmen Copper Corp.		997,504.00	997,504.00
P-119-aar	Carmen Copper Corp.		650,997.44	650,997.44
P-119-aas	Carmen Copper Corp.		3,630,032.00	3,630,032.00
P-119-aat	Carmen Copper Corp.		300,287.60	300,287.60
P-119-aau	Carmen Copper Corp.		7,008.00	7,008.00
P-119-aav	Carmen Copper Corp.		10,832.00	10,832.00
P-119-aaw	Carmen Copper Corp.		866,919.20	866,919.20
P-119-aax	Carmen Copper Corp.		696,314.00	696,314.00
P-119-aay	Carmen Copper Corp.		295,518.00	295,518.00
P-119-aaz	Carmen Copper Corp.		93,376.00	93,376.00
P-119-aba	Carmen Copper Corp.		605,773.60	605,773.60
P-119-abb	Carmen Copper Corp.		91,577.28	91,577.28
P-119-abc	Carmen Copper Corp.		46,960.00	46,960.00
P-119-abd	Carmen Copper Corp.		713,879.60	713,879.60
P-119-abe	Carmen Copper Corp.		956,808.80	956,808.80
P-119-abf	Carmen Copper Corp.		1,887,946.00	1,887,946.00
P-119-ace	Carmen Copper Corp.		337,848.00	337,848.00
P-119-acf	Carmen Copper Corp.		143,040.00	143,040.00
P-119-acg	Carmen Copper Corp.		488,480.00	488,480.00
P-119-ach	Carmen Copper Corp.		11,354.00	11,354.00

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P-119-aci	Carmen Copper Corp.		705,584.80	705,584.80
P-119-acj	Carmen Copper Corp.		179,155.00	179,155.00
P-119-ack	Carmen Copper Corp.		12,800.00	12,800.00
P-119-acr	Berong Nickel Corporation		28,952.00	28,952.00
P-119-acs	Berong Nickel Corporation		58,888.00	58,888.00
P-119-act	Berong Nickel Corporation		247,664.00	247,664.00
P-119-acu	Berong Nickel Corporation		148,416.00	148,416.00
P-119-acv	Carmen Copper Corp.		1,437,477.28	1,437,477.28
P-119-acw	Carmen Copper Corp.		172,697.60	172,697.60
P-119-acx	Carmen Copper Corp.		1,758,924.16	1,758,924.16
P-119-acy	Carmen Copper Corp.		975,328.00	975,328.00
P-119-acz	Carmen Copper Corp.		1,712,642.47	1,712,642.47
P-119-ada	Carmen Copper Corp.		999,332.00	999,332.00
P-119-adb	Carmen Copper Corp.		222,720.00	222,720.00
P-119-adc	Carmen Copper Corp.		608,064.00	608,064.00
P-119-add	Carmen Copper Corp.		6,496,200.00	6,496,200.00
P-119-ade	Carmen Copper Corp.		909,200.00	909,200.00
P-119-adf	Carmen Copper Corp.		861,296.00	861,296.00
P-119-adg	Carmen Copper Corp.		67,480.00	67,480.00
P-119-adh	Carmen Copper Corp.		130,472.00	130,472.00
P-119-adi	Carmen Copper Corp.		6,706,875.00	6,706,875.00
P-120-fj	K & A Metals Industries Inc	83,253.91		83,253.91
P-120-gh	Phil. Ass. Smelting & Ref. Corp.	42,529.68		42,529.68
P-120-gi	Phil. Ass. Smelting & Ref. Corp.	215,600.00		215,600.00
P-120-gj	Phil. Ass. Smelting & Ref. Corp.	26,056.00		26,056.00
P-120-gk	Phil. Ass. Smelting & Ref. Corp.	297,904.00		297,904.00
P-120-gm	Coral Bay Nickel Corporation		6,672.00	6,672.00
P-120-gy	Toyo-ink Compound Corp.		91,668.16	91,668.16
P-120-hb	Majestic Landscape Corporation		10,800.00	10,800.00
P-120-hc	Scad Services (S) Pte Ltd		20,197.00	20,197.00
P-120-hd	Scad Services (S) Pte Ltd		15,405.00	15,405.00
P-120-he	Wu Kong Singapore Pte Ltd		74,462.00	74,462.00
P-120-hf	Wu Kong Singapore Pte Ltd		31,237.00	31,237.00
P-120-hg	Wu Kong Singapore Pte Ltd		34,837.00	34,837.00
P-120-hh	Wu Kong Singapore Pte Ltd		18,918.00	18,918.00
P-120-hi	Wu Kong Singapore Pte Ltd		24,940.00	24,940.00
P-120-hj	Wu Kong Singapore Pte Ltd		8,323.00	8,323.00
P-120-hk	Wu Kong Singapore Pte Ltd		6,183.00	6,183.00
P-120-ie	Phil. Ass. Smelting & Ref. Corp.		4,576.00	4,576.00
P-120-if	Phil. Ass. Smelting & Ref. Corp.		111,841.00	111,841.00
P-120-iy	K & A Metals Industries Inc		58,833.12	58,833.12
P-120-iz	Phil. Ass. Smelting & Ref. Corp.		91,040.00	91,040.00
P-120-ja	Phil. Ass. Smelting & Ref. Corp.		19,161.30	19,161.30
P-120-jb	Phil. Ass. Smelting & Ref. Corp.		103,488.00	103,488.00
P-120-jn	Phil. Ass. Smelting & Ref. Corp.		81,792.00	81,792.00
P-120-jv	Phil. Ass. Smelting & Ref. Corp.		401,392.00	401,392.00
P-120-kx	Phil. Ass. Smelting & Ref. Corp.		15,412.22	15,412.22
P-120-ky	Phil. Ass. Smelting & Ref. Corp.		88,400.00	88,400.00
P-121-f	Biglift Properties and Dev't Corporation	155,200.00		155,200.00
P-121-bm	Biglift Properties and Dev't Corporation		30,098.50	30,098.50
P-121-bo	Jamjle Properties (Subic) and Development Corporation		18,032.00	18,032.00
	Total	**₱70,887,400.11**	**₱155,237,455.66**	**₱226,124,855.77**

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In sum, out of the reported zero-rated sales/receipts of ₱965,855,549.78, only the amount of ₱491,502,166.64, as computed below, qualify for VAT zero-rating for the 1st and 2nd quarters of FY 2015, in compliance with the *fourth and fifth* requisites:

	1st Quarter	2nd Quarter	Total
Total Reported Zero-Rated Sales	₱ 277,253,870.66	₱ 688,601,679.12	₱ 965,855,549.78
Less: Sales denied of VAT zero-rating			
Per ICPA Report	₱ 34,735,084.92	₱ 213,493,442.45	₱ 248,228,527.37
Per Court's further verification	70,887,400.11	155,237,455.66	226,124,855.77
Total denied zero-rated sales	₱ 105,622,485.03	₱ 368,730,898.11	₱ 474,353,383.14
Valid Zero-Rated Sales	**₱171,631,385.63**	**₱ 319,870,781.01**	**₱491,502,166.64**

Having found that petitioner had VAT zero-rated sales/receipts in the total amount of ₱491,502,166.64 for the 1st and 2nd quarters of FY 2015, there is only a partial compliance with *fourth* and *fifth* requisites for the grant of refund or tax credit of input VAT in the instant case.

The Court shall then proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate.

The input VAT being claimed do not appear to be transitional input taxes.

The claimed input taxes do *not* appear to be 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 the 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."

Parenthetically, 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.[68]

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

Not all input VAT being claimed are due or paid.

For the 1st and 2nd quarters of FY ending March 31, 2015, petitioner declared input taxes in the total amount of ₱213,262,523.90, out of which the amount of ₱38,732,565.26 is the subject of petitioner's claim, to wit:

Input taxes as declared per VAT returns:

	1st Quarter[69]	**2nd Quarter**[70]	**Total**
Input Tax Deferred on Capital Goods exceeding 1M from Previous Quarter *(Line 20B)*	₱ 2,536,494.62	₱ 2,341,279.16	₱ 4,877,773.78
Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period *(Line 23A)*	2,341,279.16	2,146,063.68	4,487,342.84
Input tax Amortized for the period	**₱ 195,215.46**	**₱ 195,215.48**	**₱ 390,430.94**
Add: Current Input Taxes			
On Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 2,018,767.00	₱ 2,324,534.67	₱ 4,343,301.67
On Importation of Goods Other than Capital Goods *(Line 21H)*	77,440,495.00	116,638,791.74	194,079,286.74
On Domestic Purchase of Services *(Line 21J)*	7,635,627.03	6,813,877.52	14,449,504.55
Total Current Input Tax	**₱87,094,889.03**	**₱125,777,203.93**	**₱212,872,092.96**
Total Input Taxes for the period	**₱87,290,104.49**	**₱125,972,419.41**	**₱213,262,523.90**

Input taxes as per subject claim[71]*:*

	1st Quarter	**2nd Quarter**	**Total**

[68] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.
[69] Exhibit "P-51", Docket - Vol. 5, p. 2355.
[70] Exhibit "P-52", Docket - Vol. 5, p. 2357.
[71] Petition for Review, *supra*, pp. 47 to 51.

Total Input Taxes for the period	87,290,104.50	125,972,419.41	213,262,523.91
Less: Input tax on VATable sale of machineries from current purchases	10,826,087.33	15,617,857.58	26,443,944.91
Input tax on zero-rated sale of machineries from current purchases	-	3,174,088.90	3,174,088.90
Input tax directly identified and allocable to Government Sales	432,223.15	196,479.24	628,702.39
Input tax on current purchase of machineries not sold within the quarter	36,594,962.67	58,214,345.52	94,809,308.19
Total Common Input Tax allocable to VATable and VAT zero-rated sales	39,436,831.35	51,943,737.07	91,380,568.42
Multiply by Zero-rated Sales	277,253,870.66	599,972,499.81	877,226,370.47
Divide by Total Sales	1,365,492,550.30	1,543,093,391.06	2,908,585,941.36
Common Input Tax allocable VAT Zero-Rated Sales	8,007,377.36	20,196,323.80	28,203,701.16
Add: Input tax on zero-rated sale of machineries which were imported in current period	-	3,174,088.90	3,174,088.90
Input Tax on zero-rated sale of machineries which were imported in prior years but sold only this quarter	1,916,746.18	5,438,029.01	7,354,775.19
Total Input Taxes claimed for refund	**9,924,123.55**	**28,808,441.71**	**38,732,565.26**

In support of its reported input taxes, petitioner submitted various sales invoices, ORs, Import Entry and Internal Revenue Declarations (IEIRDs), Statements of Settlement of Duties and Taxes (SSDTs), Bureau of Customs (BOC) ORs and other related documents[72], which were examined by the ICPA.

Summarized below are petitioner's input taxes for the 1st and 2nd quarters of FY ending March 31, 2015, in the total amount of ₱222,676,463.05, as accounted for by the ICPA:

Particulars	1st Quarter	2nd Quarter	Total	Exhibit "P-78" *(Parts 2 and 3 of 4)*
1. Input tax on current quarter's importations directly related to VATable sale of machineries in the same quarter	₱ 10,826,087.49	₱ 26,112,683.17	₱ 36,938,770.66	P-87 to P-89
2. Input tax on the importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter	-	7,160,803.32	7,160,803.32	P-90 to P-91
3. Input tax on current purchase of machineries not sold within the quarter	36,594,997.12	47,604,742.51	84,199,739.63	P-92 to P-94
4. Common input tax allocable between VATable and zero-			-	

[72] Exhibits "P-87-a" to "P-88", "P-90-a" to "P-91-a", "P-92-a" to "P-94", "P-95-a" to "P-100", and "P-102-a" to "P-114-a".

rated sales				
a. Input tax on current quarter's importations	₱ 35,813,772.21	₱ 39,770,571.01	₱ 75,584,343.22	P-95 to P-101
b. Input tax on current quarter's domestic purchases	9,654,394.03	9,138,412.19	18,792,806.22	P-102 to P-115
subtotal	₱ 45,468,166.24	₱ 48,908,983.20	₱ 94,377,149.44	
Total	**₱92,889,250.85**	**₱129,787,212.20**	**₱222,676,463.05**	

Based on the ICPA Report, the input VAT in the amount of ₱89,847,207.17 shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended:[73]

Exhibit Reference	Description	1st Quarter	2nd Quarter	Total
1. Input tax on current quarter's importations directly related to VATable sale of machineries in the same quarter				
P-88	Traced to E2M schedule only	₱ 1,695,775.62	₱ 2,571,737.33	₱ 4,267,512.95
P-89	Without supporting documents presented	213,914.02	-	213,914.02
	Subtotal	***₱ 1,909,689.64***	***₱ 2,571,737.33***	***₱ 4,481,426.97***
2. Input tax on the importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter				
P-91	Supported by IEIRDs* and traced to E2M schedule	-	₱ 278,938.36	₱ 278,938.36
	Subtotal	-	***₱ 278,938.36***	***₱ 278,938.36***
3. Input tax on current purchase of machineries not sold within the quarter				
P-93	Supported by IEIRDs* and traced to E2M schedule	₱ 981,664.00	₱ 3,488,882.64	₱ 4,470,546.64
P-94	Traced to E2M schedule only	-	2,535,536.67	2,535,536.67
	Subtotal	***₱ 981,664.00***	***₱ 6,024,419.31***	***₱ 7,006,083.31***
4. Common input tax allocable between VATable and zero-rated sales				
a. Input tax on current quarter's importations				
P-96	Supported by IEIRDs* and traced to E2M schedule	₱ 19,497,549.43	₱ 37,149,691.23	₱ 56,647,240.66
P-97	Supported by IEIRDs*	-	1,289,660.76	1,289,660.76
P-100	Traced to E2M schedule only	1,981,276.98	270,018.19	2,251,295.17
P-101	Without supporting documents presented	465.78	101,082.83	101,548.61
b. Input tax on current quarter's domestic purchases				
P-104	Domestic purchases of goods properly supported by VAT invoices/purchase of services properly supported by VAT ORs, that are issued in the name of the petitioner with the petitioner's complete TIN, address, business style, and with valid Authority to Print (ATP) and signature but the	419,269.09	475,286.52	894,555.61

[73] Exhibit "P-78", Amended ICPA Report Binder, Part 1 of 4, pp. 4 to 8.

	VAT amount is not shown separately in the invoice/OR			
P-105	Domestic purchases of goods not properly supported by VAT invoices/purchases of services not properly supported by VAT ORs	531,047.64	689,445.67	1,220,493.31
P-106	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs not dated within the same taxable year or dated in the subsequent quarter	167,381.98	66,687.88	234,069.86
P-107	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs without date	7,530.20	16,540.57	24,070.77
P-108	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT ORs without valid ATP	59,624.75	1,151.90	60,776.65
P-109	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs with missing and/or incorrect company name	25,442.30	51,438.10	76,880.40
P-110	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs with missing and/or incorrect TIN	202,910.66	395,988.95	598,899.61
P-111	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs with missing and/or incorrect registered address	52,424.02	74,768.58	127,192.60
P-112	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs with missing and/or incorrect business style	122,776.28	329,283.56	452,059.84
P-113	Domestic purchases of goods supported by VAT invoices/purchase of services supported by VAT ORs with a note "This document is not valid for claiming input taxes" which was erased	141.54	360.00	501.54

P-114	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR with missing signature of cashier or authorized representative/s	257.14	-	257.14
P-115	Domestic purchases without supporting invoices/ORs presented	7,590,626.05	6,510,629.95	14,101,256.00
	Subtotal	***₱30,658,723.84***	***₱47,422,034.69***	***₱78,080,758.53***
	Total	**₱33,550,077.48**	**₱56,297,129.69**	**₱89,847,207.17**

**IEIRDs are without machine validation.*

In addition to the above disallowances, the following common input VAT due or paid on current quarter's domestic purchases of goods and services and input VAT due on capital goods exceeding ₱1M, in the aggregate amount of ₱421,500.63 shall likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforementioned VAT law and regulations:

Exhibit No.	Name of Supplier	1st Qtr.	2nd Qtr.	Total
A. Disallowed input taxes due				
A.1 Common input taxes due on domestic purchases of goods				
Supported by VAT invoice but with no year indicated therein				
P-102-ap	Asiaco Commercial	₱ 246.43		₱ 246.43
Supported by VAT invoices but without the BIR ATP				
P-102-cs	RM Conejos Tire Supply		₱ 3,724.29	3,724.29
P-103-d	OTR Tyre Mart Inc		2,282.14	2,282.14
Supported by VAT invoices but without the TIN and/or address of petitioner				
P-102-di	EEB Aire Marketing		696.43	696.43
P-103-a	Jemtech I.T. Solutions Inc.		814.29	814.29
P-103-b	Dinlys Industrial Sales		617.14	617.14
P-103-i	Macro Hardware & Construction Supply Co., Inc.		771.43	771.43
P-103-o	Adam Gas and Trading Corp		1,012.50	1,012.50
P-103-w	Computer World Marketing		1,130.36	1,130.36
P-103-ai	J T Oils Phils Inc		1,714.29	1,714.29
P-103-am	Adam Gas and Trading Corp		578.57	578.57
P-103-ap	TSF Salonga Music & Sports Center		482.14	482.14
P-103-ba	Sasa Shell Station		250.45	250.45
Supported by VAT invoices with unreadable details				
P-103-n	Mc Bride Corporation		3,750.00	3,750.00
P-103-ab	Panda Construction Supply Inc		150.00	150.00
Supported by VAT invoices wherein the input VAT amounts were not separately shown				
P-103-ad	Greenlight Enertech Trading Co.		3,507.32	3,507.32
P-103-al	Trust Marketing and Auto Supply		289.29	289.29
P-103-ay	Ladriano Enterprises		459.64	459.64

Supported by VAT invoice issued not in petitioner's name and the input VAT amount was not separately shown				
P-103-av	Vexnus Corporation		160.71	160.71
	Subtotal	***₱ 246.43***	***₱ 22,390.99***	***₱ 22,637.42***
A.2. Input taxes due on purchases of capital goods exceeding ₱1Million amortized for the period				
Without supporting documents		₱ 195,215.46	₱ 195,215.48	₱ 390,430.94
	Subtotal	***₱195,215.46***	***₱195,215.48***	***₱390,430.94***
Total disallowed input taxes due		***₱195,461.89***	***₱217,606.47***	***₱413,068.36***
B. Disallowed input taxes paid (Common input taxes paid on domestic purchases of services)				
Overclaimed input taxes paid				
P-102-bc	Vismin GV Hotel Inc (claimed amount of ₱154.29 less OR amount of ₱77.14)	₱ 77.15		₱ 77.15
P-102-bl	Marco Polo Davao (claimed amount of ₱240.16 less OR amount of ₱219.00)	21.16		21.16
P-102-ey	Midtown Bistro Italiano Corp. (claimed amount of ₱126.25 less OR amount of ₱113.57)		₱ 12.68	12.68
P-102-fc	Wang fu of Singapore Corporation (claimed amount of ₱400.31 less OR amount of ₱367.50)		32.81	32.81
Supported by VAT ORs but without the TIN and/or address of petitioner				
P-102-fj	Gerry's Grill		314.46	314.46
P-103-cc	King Bee Food Corporation		176.79	176.79
P-103-bv	Premier Islands Management Corp. (Hotel Del Rio)		1,166.79	1,166.79
P-103-cb	Evergreen Tavern Development and Management Corp		407.14	407.14
Supported by VAT ORs wherein the input VAT amounts were not separately shown				
P-103-bd	SBSN Luggage and More Storage and Services Inc		417.86	417.86
P-103-bg	Izakaya Kappo Tsukiji		2,472.88	2,472.88
P-103-bk	Wilmer Resort Hotel and Restaurant		117.86	117.86
P-103-bs	Philtranco Service Enterprise Inc		199.36	199.36
P-103-bz	Premier Islands Management Corp. (Hotel Del Rio)		315	315
P-103-ca	Premier Islands Management Corp. (Hotel Del Rio)		255	255
P-103-ck	Asiaten Pension House		166.07	166.07
P-103-cs	Philtranco Service Enterprise Inc		142	142
P-103-cx	Sterling Insurance Company Inc		526.72	526.72
P-103-cz	Eric John 93 Machine Works		128.57	128.57
P-103-dj	World Safety Organization (WSO) International Office for Philippines Inc.		771.43	771.43
P-103-dm	Asiaten Pension House		166.07	166.07
Supported by VAT OR without the TIN and address of petitioner and the input VAT amount was not separately shown				
P-103-bj	Tropical Sun Inn		326.79	326.79
Supported by VAT OR issued not in petitioner's name				
P-103-by	Dinagat Island Electric Cooperative Inc		217.68	217.68
Total disallowed input taxes paid		***₱ 98.31***	***₱ 8,333.96***	***₱ 8,432.27***
Grand Total		**₱195,560.20**	**₱225,940.43**	**₱421,500.63**

In sum, out of the reported input VAT of ₱213,262,523.90, petitioner was able to substantiate only the amount of ₱122,993,816.10, computed as follows:

Particulars	Reported Input VAT	Disallowances		Substantiated Input VAT
		Per ICPA Report	Per Court's further verification	
1st Quarter of FY 2015				
1. Input tax on current quarter's importations directly related to VATable sale of machineries in the same quarter	₱10,826,087.49	₱1,909,689.64	-	₱8,916,397.85
2. Input tax on the importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter	-	-	-	-
3. Input tax on current purchase of machineries not sold within the quarter	36,594,997.12	981,664.00	-	35,613,333.12
4. Common input tax allocable between VATable and zero-rated sales	[74]39,673,804.42	30,658,723.84	₱344.74	9,014,735.84
Input VAT on purchases of capital goods exceeding 1M amortized for the period	195,215.46	-	195,215.46	-
Subtotal	**₱87,290,104.49**	**₱33,550,077.48**	**₱195,560.20**	**₱53,544,466.81**
2nd Quarter of FY 2015				
1. Input tax on current quarter's importations directly related to VATable sale of machineries in the same quarter	₱26,112,683.17	₱2,571,737.33	-	₱23,540,945.84
2. Input tax on the importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter	7,160,803.32	278,938.36	-	6,881,864.96
3. Input tax on current purchase of machineries not sold within the quarter	[75]43,732,805.51	6,024,419.31	-	37,708,386.20
4. Common input tax allocable between VATable and zero-rated sales	[76]48,770,911.93	47,422,034.69	₱30,724.95	1,318,152.29
Input VAT on purchases of capital goods exceeding 1M amortized for the period	195,215.48	-	195,215.48	-
Subtotal	**₱125,972,419.41**	**₱56,297,129.69**	**₱225,940.43**	**₱69,449,349.29**

[74] Input VAT of ₱45,468,166.24 accounted for by the ICPA (as presented earlier) less Excess input VAT accounted in the amount of ₱5,794,361.82 (see Exhibit "P-78", Amended ICPA Report Binder, Part 1 of 4, p. 8, par. 5.a, 2nd table).

[75] Input VAT of ₱47,604,742.51 accounted for by the ICPA (as presented earlier) less Excess input VAT accounted in the amount of ₱3,871,937.00 (see Exhibit "P-78", Amended ICPA Report Binder, Part 1 of 4, p. 8, par. 5.a, 2nd table).

[76] Input VAT of ₱48,908,983.20 accounted for by the ICPA (as presented earlier) less Excess input VAT accounted in the amount of ₱138,071.27 (see Exhibit "P-78", Amended ICPA Report Binder, Part 1 of 4, p. 8, par. 5.a, 2nd table).

Total	**₱213,262,523.90**	**₱89,847,207.17**	**₱421,500.63**	**₱122,993,816.10**

Petitioner also included in its claim for the 1st and 2nd quarters, the amounts of ₱1,916,746.18 and ₱5,438,029.01, respectively, or the sum of ₱7,354,775.19 pertaining to "input tax on zero-rated sale of machineries which were imported in prior years but sold only this quarter". However, a perusal of the ICPA Report together with the supporting documents reveals that the claimed input VAT of ₱5,665,274.40, detailed below, must be disallowed for non-compliance with the substantiation requirements under the VAT law and regulations:

Exhibit/ Reference	Findings	1st Quarter	2nd Quarter	Total
P-116-e	The supporting document referenced hereto does not pertain to this input VAT line item.	-	₱ 663,855.00	₱ 663,855.00
P-117	Supported by IEIRDs but without machine validation	₱ 123,249.03	4,729,228.02	4,852,477.05
P-118	Without supporting documents presented	103,996.36	56,850.73	160,847.09
	Total	₱ 227,245.39	₱ 5,449,933.75	₱ 5,677,179.14
	Less: Input VAT accounted by the ICPA but not included in the amount claimed	-	11,904.74	11,904.74
	Net	**₱227,245.39**	**₱5,438,029.01**	**₱5,665,274.40**

Hence, out of the claimed ₱7,354,775.19 "*input tax on zero-rated sale of machineries which were imported in prior years but sold only this quarter*", only the amount of ₱1,689,500.79 pertaining to the 1st quarter (₱7,354,775.19 less ₱5,665,274.40) may be refunded being properly substantiated.

In view of the foregoing, only the amount of ₱124,683,316.89 are considered as duly substantiated input VAT for the 1st and 2nd quarters of FY 2015, as computed below:

	1st Quarter	2nd Quarter	Total
Substantiated input VAT due or paid on current purchases	₱ 53,544,466.81	₱ 69,449,349.29	₱ 122,993,816.10
Substantiated input VAT paid on importations in prior years	1,689,500.79	-	1,689,500.79
Total substantiated input VAT due or paid for FY 2015	**₱55,233,967.60**	**₱69,449,349.29**	**₱124,683,316.89**

As a corollary, from the ₱124,683,316.89 total substantiated input VAT due or paid for the 1st and 2nd quarters of FY 2015, petitioner complied with the *seventh* requisite, *i.e.*, the input VAT was due or paid, but only to the extent of ₱18,904,253.88, broken down as follows:

	1st Quarter	2nd Quarter	Total
Input VAT due and paid on current purchases			
Input taxes paid on importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter *(item no. 2 on summary of substantiated input VAT due or paid for the 2nd quarter)*	-	₱ 6,881,864.96	₱ 6,881,864.96
Common input taxes due and paid allocable between VATable and zero-rated sales *(item no. 4 on summary of substantiated input VAT due or paid)*	₱ 9,014,735.84	1,318,152.29	10,332,888.13
Input VAT paid on importations in prior years (directly related to zero-rated sales of machineries in this quarter)	1,689,500.79	-	1,689,500.79
Total	**₱10,704,236.63**	**₱8,200,017.25**	**₱18,904,253.88**

A portion of petitioner's substantiated input taxes due or paid are attributable to its zero-rated or effectively zero-rated sales.

To reiterate, the *eight* requisite is to the effect that the input VAT 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.

As regards the input VAT paid on current and prior year importations, in the respective amounts of ₱6,881,864.96 and ₱1,689,500.79, the ICPA found that the same were attributable to petitioner's zero-rated sales by matching the importation documents of the sold machineries to the corresponding sales invoices evidencing the sale thereof to entities registered with PEZA, SBMA or BOI.[77] However, further verification reveals that petitioner failed to establish that the input VAT of ₱318,387.24 on the importation from Bomag Fayat Group during the 2nd quarter is attributable to its zero-rated sales as the imported machineries indicated in the related

[77] Exhibits "P-90" and "P-116", Amended ICPA Report Binders, Parts 2 of 4 and 3 of 4, respectively.

IEIRD[78] do not match with the sold machineries per the corresponding sales invoice.[79] Hence, the input VAT paid on current importations for the 2nd quarter and on prior years' importations for the 1st quarter that are attributable to petitioner's valid zero-rated sales/receipts only amounted to ₱6,563,477.72 (₱6,881,864.96 less ₱318,387.24) and ₱1,689,500.79, respectively.

As to the common input taxes due or paid, considering that petitioner had other kinds of sales, *i.e.*, sales to private entities and sales to government and its substantiated common input taxes due or paid in the amounts of ₱9,014,735.84 for the 1st quarter and ₱1,318,152.29 for the 2nd quarter cannot be directly or entirely attributed to any of the transactions, the same shall be allocated proportionately on the basis of the volume of its sales for the respective quarters, thus:

Period	**VATable Sales/Receipts-Private (a)**	**Sales to Gov't (b)**	**Zero-Rated Sales/Receipts (c)**	**Total Sales/Receipts (d = a+b+c)**
1st Quarter	₱1,082,897,132.24	₱5,341,547.40	₱277,253,870.66	₱1,365,492,550.30
2nd Quarter	940,762,558.09	2,358,333.16	688,601,679.12	1,631,722,570.37
1st Quarter Substantiated input VAT due and paid attributable to:				
VATable Sales/Receipts - Private (a/d x ₱9,014,735.84)				₱7,149,091.80
Sales to Gov't (b/d x ₱9,014,735.84)				35,263.93
Zero-Rated Sales/Receipts (c/d x ₱9,014,735.84)				1,830,380.11
Total				**₱9,014,735.84**
2nd Quarter Substantiated input VAT due and paid attributable to:				
VATable Sales/Receipts - Private (a/d x ₱1,318,152.29)				₱759,974.98
Sales to Gov't (b/d x ₱1,318,152.29)				1,905.13
Zero-Rated Sales/Receipts (c/d x ₱1,318,152.29)				556,272.19
Total				**₱1,318,152.29**

Thus, for purposes of the *eight* requisite, the input VAT attributable to petitioner's valid zero-rated or effectively zero-rated sales/receipts only amounted to ₱10,639,630.81, as computed below:

	1st Quarter	**2nd Quarter**	**Total**
Input VAT paid on importations made in the 2nd quarter directly related to zero-rated sale of machineries in the same quarter	-	₱6,563,477.72	₱6,563,477.72
Input VAT paid on importations in prior years directly related to zero-rated sales of machineries in this quarter	₱1,689,500.79		1,689,500.79
Common input VAT due or paid allocable to zero-rated sales	1,830,380.11	556,272.19	2,386,652.30
Total Input VAT attributable to zero-rated sales/receipts	**₱3,519,880.90**	**₱7,119,749.91**	**₱10,639,630.81**

[78] Exhibit "P-90-b".
[79] Exhibit "P-128-b".

Petitioner had no unutilized input taxes available for refund.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales/receipts, We now determine whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales to private entities in the amount of ₱40,366,410.47 from its output VAT liability of ₱242,839,162.84 on the said sales, petitioner still has a net output VAT payable of ₱202,472,752.37, as computed below:

	1st Quarter	2nd Quarter	Total
Output VAT per Returns[80]	₱ 129,947,655.87	₱ 112,891,506.97	₱ 242,839,162.84
Less: Input VAT attributable to VATable sales to private entities			
(₱8,916,397.85 + ₱7,149,091.80)	₱ 16,065,489.65		₱ 16,065,489.65
(₱23,540,945.84 + ₱759,974.98)		₱ 24,300,920.82	24,300,920.82
Total	₱ 16,065,489.65	₱ 24,300,920.82	₱ 40,366,410.47
Net Output VAT Payable	**₱113,882,166.22**	**₱88,590,586.15**	**₱202,472,752.37**

Since the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales/receipts shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales/receipts of ₱10,639,630.81 is apparently lower than the net output VAT payable of ₱202,472,752.37. Consequently, petitioner still has net output VAT still due of ₱191,833,121.56, computed as follows:

	1st Quarter	2nd Quarter	Total
Net Output VAT Payable	₱ 113,882,166.22	₱ 88,590,586.15	₱ 202,472,752.37
Less: Input VAT attributable to zero-rated sales	3,519,880.90	7,119,749.91	10,639,630.81
Net Output VAT Still Due	**₱110,362,285.32**	**₱81,470,836.24**	**₱191,833,121.56**

Although petitioner's Amended Quarterly VAT Return for the 1st quarter of FY 2015 reflected the amount of ₱389,650,183.81[81] as *"Input Tax Carried Over from Previous Period"*, petitioner has failed to substantiate the same. Relative thereto, it must be emphasized that in cases filed before this Court,

[80] Line 15B of Exhibits "P-51' and "P-52", Docket - Vol. 5, pp. 2355 and 2357, respectively.
[81] Line 20A of Exhibit "P-51", Docket - Vol. 5, p. 2355.

which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[82]

Consequently, the input tax carry-over of ₱389,650,183.81, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> "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:
>
> xxx xxx xxx
>
> (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, 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."[83]

Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the pertinent period or periods.

Thus, petitioner failed to fulfill the *ninth* requisite, *i.e.,* that the input taxes have not been applied against output taxes during and in the succeeding

[82] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[83] NIRC of 1997, as amended by R.A. 9361, November 21, 2006.

quarters. Accordingly, the instant claim for refund/issuance of TCC on petitioner's alleged unutilized input VAT must necessarily fail.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[84] Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[85] The pieces of evidence presented entitling a taxpayer to an exemption, are also *strictissimi* scrutinized and must be duly proven.[86] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[87]

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:

(On Leave)
ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[84] *Citibank N.A. vs. Court of Appeals and the Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[85] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No. 127105, June 25, 1999.

[86] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[87] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 citing *J.R.A. Philippines, Inc. v. CIR*, G.R. No. 171307, August 28, 2013.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Acting 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