REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No.9717

Members:

DEL ROSARIO, *Chairperson,*
FABON-VICTORINO, and
MANAHAN, *JJ.*

Promulgated:
FEB 04 2020 : 8:57 a.m.

x- -x

DECISION

MANAHAN, J.:

The Petition for Review filed by Orica Philippines, Inc. prays for the refund or issuance of a tax credit certificate (TCC) in the amount of ₱14,957,902.88, allegedly representing petitioner's unutilized input value-added tax (VAT) attributable to its export sales for the third quarter of fiscal year (FY) 2015 ended September 30, 2015, or the period from April 1, 2015 to June 30, 2015.[1]

THE PARTIES

Petitioner is a corporation registered with the Philippine Securities and Exchange Commission.[2] It is registered as a taxpayer and assigned with Taxpayer's Identification Number 000-059-661-000.[3]

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[1] Summary of the Case, Pre-Trial Order dated May 7, 2018, Docket, p. 243.
[2] Part I, Par. 1.a, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 238.
[3] Part I, Par. 1.c, Stipulation of Facts, JSFI, Docket, p. 238.

Respondent Commissioner of Internal Revenue is authorized to decide, approve and grant applications for refund and/or issuance of tax credit representing a taxpayer's excess internal revenue tax payments.[4]

THE FACTS

On June 30, 2017, petitioner filed an *Application for Tax Credits / Refunds* (BIR Form No. 1914) with the Bureau of Internal Revenue (BIR), covering the period from April 1, 2015 to June 30, 2015 in the amount of ₱14,957,902.88, with the corresponding *Checklist of Mandatory Requirements for Claims for VAT Credit/Refund* and letter request dated June 13, 2015 for the refund of petitioner's excess/unutilized input tax credits for the covered period.[5]

On October 18, 2017, petitioner received the undated letter signed by Ms. Teresita M. Angeles, OIC - Assistant Commissioner for the Large Taxpayers Service of the Bureau of Internal Revenue (BIR), denying petitioner's claim for TCC for the period April 1, 2015 to June 30, 2015 (3rd Quarter of FY ending September 30, 2015), representing excess/unutilized input VAT payments for the said period, for lack of factual and legal bases.[6]

On November 17, 2017, petitioner filed the instant *Petition for Review*.[7]

Within the extended time granted by the Court,[8] respondent filed his *Answer* on March 2, 2018.[9]

The pre-trial conference was held on April 12, 2018.[10]

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[4] Part I, Par. 1.b, Stipulation of Facts, JSFI, Docket, p. 238.
[5] Par. 1(d), Stipulation of Facts, JSFI, Docket, p. 239; Exhibit "P-18", Docket, p. 396; Exhibit "P-17", Docket, pp. 360 to 365.
[6] Par. 1(e), Stipulation of Facts, JSFI, Docket, p. 239; Exhibit "P19", Docket, pp. 367 to 368.
[7] Docket, pp. 10 to 25.
[8] Respondent's *Urgent Motion For Extension of Time To File Answer*, Docket, pp. 67 to 69; Order dated February 21, 2018, Docket, p. 71.
[9] Docket, pp. 72 to 78.
[10] Notice of Pre-Trial Conference dated March 6, 2018, Docket, pp. 80 to 81; Minutes of the hearing held on, and Order dated, April 12, 2018, Docket, pp. 230, and 231 to 232, respectively.

Respondent's *Pre-Trial Brief* was submitted on April 4, 2018;[11] while the Pre-Trial Brief of petitioner was filed on April 6, 2018.[12]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on April 27, 2018.[13] On May 7 2018, the Pre-Trial Order dated May 7, 2018 was issued,[14] approving the said JSFI and deeming the termination of the pre-trial.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Mr. Jesson Cortes,[15] petitioner's Tax Analyst; (2) Mr. Mikhail J. Escoto,[16] and (3) Mr. Ranier C. Matriano,[17] both Senior Consultants of Isla Lipana & Co.'s Tax Department; and (4) Mr. Emmanuel Y. Mendoza,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The ICPA Report was submitted to this Court on May 22, 2018.[20]

Respondent transmitted the *BIR Records* for the instant case on July 2, 2018.[21]

On July 16, 2018, petitioner filed its *Formal Offer of Evidence with Manifestation.*[22]

In the Resolution dated August 31, 2018,[23] this Court admitted petitioner's Exhibits, but denied the following:

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[11] Docket, pp. 82 to 84.
[12] Docket, pp. 87 to 99.
[13] Docket, pp. 238 to 241.
[14] Docket, pp. 243 to 248.
[15] Exhibit "P-20", Docket, pp. 108 to 121; Minutes of the hearing held on, and Order dated, May 23, 2018, Docket, pp. 260 and 261, respectively.
[16] Exhibit "P-22", Docket, pp. 176 to 181; Minutes of the hearing held on, and Order dated, May 23, 2018, Docket, pp. 260 and 261, respectively.
[17] Exhibit "P-21", Docket, pp. 186 to 193; Minutes of the hearing held on, and Order dated, June 20, 2018, Docket, pp. 286 and 287 to 288, respectively.
[18] *Judicial Affidavit of Emmanuel Y. Mendoza,* Docket, pp. 265 to 285; Minutes of the hearing held on, and Order dated, June 20, 2018, Docket, pp. 286, and 287 to 288, respectively.
[19] *Oath of Commission* dated April 12, 2018, Docket, p. 229; *Judicial Affidavit of Emmanuel Y. Mendoza,* Docket, pp. 218 to 223; Minutes of the hearing held on, and Order dated, April 12, 2018, Docket, pp. 230, and 231 to 232, respectively.
[20] Petitioner's *Transmittal Memo*, Docket, p. 259.
[21] Respondent's *Compliance*, Docket, pp. 289 to 291.
[22] Docket, pp. 296 to 312.
[23] Docket, pp. 388 to 390.

1. Exhibits "P-1", "P-15", and "P-15-1", for failure to present the originals for comparison; and

2. Exhibits "P-38-31", "P-38-52", "P-38-81" to "P-38-84", "P-38-88", "P-38-120", "P-39-7", "P-39-61", "P-39-150" to "P-39-151", "P-39-191" to "P39-192", "P-39-381", "P-45-24" and "P-45-37", for not having been found in the records of the case.

Respondent likewise presented documentary and testimonial evidence. Respondent also presented his lone witness, Ms. Edalyn Naty Dayacap,[24] a Revenue Officer III of the BIR.

In the Order dated September 25, 2018,[25] the instant case was transferred to this Court's First Division.

On October 2, 2018, the *Respondent's Formal Offer of Evidence* was filed.[26] On October 18, 2018, petitioner filed its *Comment/Opposition (to Respondent Commissioner of Internal Revenue's Formal Offer of Evidence)*.[27] In the Resolution dated December 11, 2018,[28] the Court admitted respondent's exhibits, and gave the parties a period of thirty (30) days from notice to file their respective memoranda.

Subsequently, respondent's *Memorandum* was filed on January 9, 2019,[29] while petitioner's *Memorandum* was filed on February 4, 2019.[30]

The present case was submitted for decision on February 11, 2019.[31]

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[24] Exhibit "R-12", Docket, pp. 381 to 385; Minutes of the hearing held on, and Order dated, September 17, 2018, Docket, pp. 393 and 394, respectively.
[25] Docket, p. 407.
[26] Docket, pp. 395 to 398.
[27] Docket, pp. 402 to 406.
[28] Docket, pp. 413 to 414.
[29] Docket, pp. 415 to 423.
[30] Docket, pp. 425 to 453.
[31] Resolution dated February 11, 2019, Docket, p. 455.

THE ISSUES

Petitioner and respondent failed to stipulate as to the issue to be resolved, thus, the parties submitted their separate issues for this Court's resolution,[32] to wit:

> "1. Whether Petitioner is entitled to its claim for refund in the amount of **Fourteen Million Nine Hundred Fifty-Seven Thousand Nine Hundred Two & 88/100 (₱14,957,902.88)** representing its unutilized input value added tax attributable to its zero-rated sales for the third quarter of FY ended 30 September 2015 or the period 1 April 2015 to 30 June 2015.
>
> 2. Whether respondent correctly denied the claim for refund in the amount of ₱14,957,902.88 allegedly representing petitioner's unutilized input VAT for the third quarter of FY ended 30 September 2015, based on the documents submitted."

Petitioner's arguments:

Petitioner asserts that it sufficiently complied with all the conditions necessary to claim a refund of excess or unutilized input VAT under Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended and pertinent regulations, to wit:

1. That it is a VAT-registered entity;
2. That both the administrative and judicial claims for refund were filed within the prescriptive period;
3. That petitioner is engaged in zero-rated or effectively zero-rated transactions;
4. That the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts;
5. That the claimed input VAT payments were not applied against any output tax in the succeeding periods;
6. That petitioner correctly filed the Amended Quarterly VAT Return for the third quarter of FY 2015 in compliance with Revenue Memorandum Circular (RMC) No. 43-2008;

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[32] Stipulation of Issues, JSFI, Docket, p. 239.

7. That the noted outstanding liabilities from prior periods were already paid and settled by petitioner; and
8. That petitioner was able to secure a Certificate of No Similar Claim from the Bureau of Customs (BOC) pursuant to RMC No. 53-98.

Respondent's counter-arguments:

In his Answer filed on March 2, 2018, we quote the arguments propounded by respondent, thus:

> "4. Petitioner failed to submit supporting documents to prove entitlement to the claimed refund.
>
> 4.1 The claim was properly denied based on the documents submitted in the administrative level, the same is in accordance with Revenue Memorandum Circular No. 54-2014, pertinent portion of which reads:
>
>> 'The application of VAT refund/ tax credit must be accompanied by complete supporting documents as enumerated in Annex 'A' (Checklist of Mandatory Requirements for Claim for Vat/Refund) hereof. In addition, the taxpayer shall attach statement under oath attesting to the completeness of the submitted documents xxx.
>>
>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The claim for refund shall be denied where the taxpayer/claimant failed to submit the complete documents. xxx'
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> 4.2 Review of the documents submitted, revealed that petitioner failed to comply with Section 112 (A) of the NIRC of 1997, which reads:
>
>> '**SEC. 112. Refunds or Tax Credits of Input Tax.**–
>>
>> **(A) Zero-rated or Effectively Zero-rated Sales.**– Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made,

apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales xxx.

4.3 Petitioner filed on June 30, 2015 its claim for refund and at the same time manually amended its VAT return for the 3rd quarter. Petitioner made a manual filing of the amended return signed by Mr. Ranier Matriano of Isla Lipana & Co. due to technical problems encountered in the eFPS environment which states `network connection interrupted'. However, the said return was not filed via eFPS within fifteen (15) days from the date of manual filing which is required under RMC No. 43-2008.

4.4 Further, verification of eFPS showed that petitioner filed six returns (1 original and 5 amended returns) but not one in those returns matched the return manually filed on June 30, 2017 amended return. The return filed on July 1, 2017 cannot be considered as basis of refund because it is beyond the last day of filing the return. Hence, its amended return filed on March 30, 2017 will be the basis of its final VAT returns. Under such return no VAT refund/TCC claimed was reflected.

4.5 Likewise, the signatory of the amended return was not duly authorized to sign petitioner's return, in violation of Section 52 of the NIRC of 1997, as amended, which states:

> **`SEC. 52. *Corporation Returns.* -(A) *Requirements*.** - Every corporation subject to
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> the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines, shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter XII of this Title. **The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer**.'

4.6 In addition, petitioner failed to comply with RMO 53-98, as petitioner failed to submit a certification form [*sic*] BOC that it has not filed a similar claim covering the same period.

4.7 Petitioner also failed to fully account sales official receipts/invoices vis a vis sale per VAT returns and non-submission of complete bank credit memos/advice to prove inward receipts of foreign currency for export sales and reconciliation of export sales and dollar remittance in violation of Section 112 of NIRC of 1997, as amended.

4.8 Petitioner failed to comply with the invoicing requirements. Petitioner failed to submit original sales invoices/official receipts. Certified photocopies were issued by Mr. Ranier Matriano, Senior Tax Consultant of Isla Lipana and not the custodian of the above invoices and receipts. Hence, verification thereof is necessary to determine accuracy of the photocopies submitted under Section 113 of the NIRC of 1997, as amended.

4.9 Further, verification with Accounts Monitoring Division showed that petitioner has outstanding liabilities and that the issuance of tax credit certificate cannot be given due course until the stated delinquency assessments have been resolve/paid. Below is the list of petitioner's outstanding liability, to wit:

Case No.	**Taxable Year**	**Tax Type**	**Basic**	**Increments**	**Total**
FAS-7-88-89-91-002750	1990	IT	4,709,310.00	7,778,878.91	12,488,188.91
	1998	VAT	3,774,349.86	3,799,349.87	7,573,699.73
FAS-1-88-89-91-002749	1988-1999	IT	274,412.59	223,621.95	498,034.54
			8,758,072.45	**11,801,850.73**	**20,559,923.18**

4.10 Based on the foregoing, respondent humbly submits that the claim for tax credit certificate was denied properly for lack of factual and legal basis

The present case must be decided based on the doctrine enunciated in the case of Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue.

5 It must be first pointed out that the Commissioner of Internal Revenue rendered a decision denying the claim for refund at the administrative level. Such being the case, the Honorable CTA's jurisdiction becomes strictly appellate in nature. As held by the Honorable Supreme Court in ***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue:***

> 'A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CT A would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim.'

5.1 As held by the Supreme Court, in these cases where an administrative claim for refund has been denied, jurisdiction of the Honorable CTA shifts from a trial court to an appellate tribunal. The Supreme Court is quite emphatic that there can be no such trial de novo stating:

> 'It does become imperative for the taxpayer to show the CTA that not only he is entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is thus crucial for a

> taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.'

5.2 As a matter of fact, in these types of cases, the Supreme Court confined judicial review to the same documents submitted at the administrative level. This was stressed as follows:

> 'It is thus crucial for a taxpayer in a judicial claim for refund or tax credit to show that is administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a documents requested by the BIR at the administrative level by filing the said document before the CTA.'

5.3 Since a decision has been rendered in this case denying the claim for refund for failure to substantiate its claim, petitioner cannot present documents it did not submit at the administrative level. The Honorable Court is confined to a more limited issue of whether the substantiation was enough and relatively, was the denial proper."

RULING OF THE COURT

We find it imperative to resolve the issue raised by respondent that the present case must be decided based on the doctrine enunciated in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case")[33], before we delve into the other substantive issues.

Respondent, citing the ruling of the Supreme Court in the *Pilipinas Total Gas* case, avers that since he rendered a decision denying the claim for refund at the administrative level, this Court's jurisdiction becomes strictly appellate in nature. Based on this conclusion, respondent argues that petitioner can no longer present documents (in its judicial appeal) that it did not

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

submit at the administrative level and that this Court is confined to the more limited issue of whether the substantiation was enough and relatively, whether the denial was proper.

We find respondent's argument bereft of merit.

The contention that this Court should consider evidence introduced in the administrative level and exclude those which have been newly submitted in the judicial level goes against the nature of the Court as a court of record pursuant to Section 8 of RA 1125 as amended by RA 9282, and we quote:

> "Section 8. *Court of record; seal; proceedings.* - **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence." (emphasis supplied)

The Supreme Court, in the case entitled *CIR vs. Manila Mining Corporation*[34] has clearly linked the concept of the CTA being a "court of record" to an entity which possesses an authority to conduct *trial de novo,* and we quote:

> "The Court notes with approval the findings of the CTA:
>
> xxx xxx xxx
>
> Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) **where the parties must present their evidence accordingly, if they desire the Court to take such evidence into consideration."** (emphasis supplied)

Consistent with the basic principle that a court shall not consider evidence which has not been formally offered,[35] parties who come to court are required to prove every aspect of their case and submit their evidence. This point has been clarified by

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[34] G.R. No. 153204, August 31, 2005.

[35] Rule 132

Section 34. *Offer of Evidence.* The Court shall consider no evidence which has not been formally offered. The purpose of which the evidence is offered must be specified.

the Supreme Court in the case of *Philippine Airlines, Inc. vs. CIR*,[36] when it ruled in this manner:

> **"No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals.** Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud or error of law, as contended by the Commissioner. **As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.**" (emphasis supplied)

To put emphasis on the principle of trial *de novo* in cases filed before the CTA, we quote the case entitled *CIR vs. PNB*,[37] where the Supreme Court declared thus:

> "More importantly, the Court of Tax Appeals is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. **Cases filed in the Court of Tax Appeals are litigated *de novo*. Thus, respondent should prove every minute aspect of its case by presenting and formally offering and submitting to the Court of Tax Appeals (all evidence)...required for the successful prosecution of (its) administrative claim."**

We now proceed to analyze the merits of the subject claim for refund, *i.e.*, whether petitioner satisfied all documentary and evidentiary requirements to warrant a grant of said claim.

We first take a look at the reasons for the denial of the claim for refund in the administrative level. For easy reference, we quote the undated denial letter[38] of respondent as follows:

> "**ORICA PHILIPPINES INC.**
> 11/F Tower 2 Rockwell Business Center
> Ortigas Avenue, Ugong
> City of Pasig
> TIN: 000-059-661
>
> Sir/Madam:
>
> xxx xxx xxx

[36] G.R. Nos. 206079-80 and 206309, January 17, 2018.
[37] G.R. No. 180290, September 29, 2014.
[38] Exhibit "P-19", Docket, pp. 367 to 368.

You failed to submit complete supporting documents as follows:

1. Complete/accurate account of 3rd Quarter VAT returns reflecting the amount of P14,957,902.88 claim for refund within two (2) years after the close of the taxable quarters when the sale was made, in accordance with Section 112(A) of the Tax Code in relations (sic) to Revenue Memorandum Circular No. 43-2008, requiring the return to be lodged/filed via EFPS 15 days from date of manual filing to ensure submission of complete and accurate data for uploading to the BIR Integrated System;

2. Certificate from Bureau of Customs that you have not filed similar claim covering the same period from as required under Revenue Memorandum Order No. 53-98 Annex B-1; and

3. Original sales invoices/official receipts in violation of Section 113 of the Tax Code. Certified photocopies of documents must be issued by the custodian of the above invoices/receipts

xxx xxx xxx

Likewise, verification with Accounts Receivable Monitoring Division showed that you have outstanding liabilities and that issuance of TCC cannot be given due course until the stated delinquency assessments below have been resolved/paid, to wit:

Case No.	Taxable year	Tax Type	Basic	Increments	Total
	1990	IT	4,709,310.00	7,778,878.91	P 12,488,188.91
FAS-7-88-89-91-002750	1988	VT	3,774,349.86	3,799,349.87	7,573,699.73
FAS-1-88-89-91-002749	1988-1989	IT	274,412.59	223,621.95	498,034.54
			8,758,072.45	**11,801,850.73**	**P20,559,923.18**

Accordingly, we regret to inform you that your claim for tax credit certificate is hereby denied for lack of factual and legal bases.

xxx xxx xxx

Very truly yours,

CAESAR R. DULAY
Commissioner of Internal Revenue

By:

(Signed)
TERESITA M. ANGELES
OIC-Assistant Commissioner
Large Taxpayers Service"

Based on the foregoing contents of the letter denial, there are four (4) reasons for the denial of petitioner's administrative claim, to wit: (1) failure to submit a complete/accurate account of 3rd Quarterly VAT Returns reflecting the amount of ₱14,957,902.88 claim; (2) failure to submit a Certificate from the BOC that petitioner has not filed a similar claim as required under Revenue Memorandum Order (RMO) No. 53-98; (3) failure to submit original sales invoices/official receipts in violation of Section 113 of the Tax Code; and (4) petitioner has outstanding tax liabilities.

As regards the *first* reason, We agree with the following disquisitions of petitioner regarding the matter, to wit:

> "35. This allegation is without basis. The difference in the Manually filed Amended Quarterly VAT Return and the subsequent Quarterly VAT Return filed via eFPS does not affect the claim of the Petitioner since the error was eventually corrected. This was even validated and verified by the ICPA in his testimony and report (Exhibits 'P-51' and 'P-52').
>
> 36. In fact, a comparison of the manually filed Amended Quarterly VAT Return for the third quarter of FY 2015 filed on 30 June 2017 (Exhibits 'P-5', 'P-5-1', and 'P-5-2') and the Amended Quarterly VAT Return for the third quarter of FY 2015 filed via eFPS on 01 July 2017 clearly show the amount of refund amounting to ₱14,957,902.88.
>
> 37. RMC No. 43-2008 also did not state that the Amended VAT Return to be filed via eFPS should exactly be the same as the *(sic)* filed manually. xxx."[39]

[39] Petitioner's *Memorandum*, Docket, p. 444.

More importantly, there is no indication that the supposed failure to comply with the requirement under RMC No. 43-2008 is a ground for the denial of a refund claim.

As to the *second* reason, the same cannot be a justifiable reason for the denial of the administrative claim. It must be emphasized that there is nothing in RMO No. 53-98 that requires the submission of the complete documents enumerated in the said issuance for a grant of a refund or credit of input VAT.[40]

As regards the *fourth* reason, the same is likewise not justifiable. A document showing that petitioner has no outstanding liabilities is not one of the documents required to be submitted under RMC No. 54-2014[41]. This administrative issuance only requires that the application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" thereof. Thus, petitioner cannot be expected to have presented the same. Nevertheless, petitioner was able to prove that its stated tax liabilities for the years 1988 to 1990 have already been settled, with the issuance by the BIR of the Certificate of Availment (Compromise Settlement) dated April 12, 2018.[42]

However, We find that the *third* reason, *i.e.,* failure to submit original sales invoices/official receipts in violation of Section 113 of the 1997 NIRC, as amended, may be a valid ground for the denial of the claim.

In *Commission of Internal Revenue vs. Hantex Trading Co., Inc.,*[43] the Supreme Court ruled:

> "xxx...**the general rule is that administrative agencies such as the BIR are not bound by the technical rules of evidence. It can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness.**

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[40] *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 207112, December 8, 2015, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation),* G.R. No. 205055, July 18, 2014.

[41] SUBJECT: Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, as amended.

[42] Refer to Exhibit "P-23", Docket, p. 369.

[43] G.R. No. 136975, March 31, 2005.

> xxx. **Mere photocopies of the Consumption Entries have no probative weight if offered as proof of the contents thereof.** The reason for this is that such copies are mere scraps of paper and are of no probative value as basis for any deficiency income or business taxes against a taxpayer. Indeed, in *United States v. Davey,*[44] the U.S. Court of Appeals (2nd District) ruled that **where the accuracy of a taxpayer's return is being checked, the government is entitled to use the original records rather than be forced to accept purported copies which present the risk of error or tampering.**
>
> xxx xxx xxx
>
> The original copies of the Consumption Entries were of prime importance to the BIR. This is so because such entries are under oath and are presumed to be true and correct under penalty of falsification or perjury. Admissions in the said entries of the importers' documents are admissions against interest and presumptively correct.
>
> In fine, **petitioner acted arbitrarily and capriciously in relying on and giving weight to the machine copies of the Consumption Entries in fixing the tax deficiency assessments against the respondent.**" *(Emphasis supplied)*

On the basis of the foregoing jurisprudential pronouncement, while administrative agencies, such as the BIR, are not bound by technical rules of evidence, it may, nevertheless, choose to give weight or ignore evidence submitted to it, depending on its trustworthiness. Such being the case, the BIR, as an administrative agency, is given leeway to decide whether to give weight or ignore any evidence submitted to it, depending on its trustworthiness. Respondent was thus justified in *not* relying on the photocopies submitted by petitioner at the administrative level which were not certified by the custodian of the pertinent documents, and in denying, on the basis thereof, petitioner's administrative claim.

In any event, petitioner likewise failed to show its entitlement to the claim for refund or tax credit under substantive law, as enunciated in the *Pilipinas Total Gas* case. As will be shown hereafter, petitioner has not shown full

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[44] 543 F.2d 996 (1976).

compliance with the requisites for the grant of the refund or issuance of TCC.

Requisites for the grant of the refund or issuance of TCC under the law.

Section 112(A) and (C) of the 1997 NIRC, as amended, read as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> *(A) Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> 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 provisions, in order to be entitled to the refund or issuance of TCC of unutilized/excess input VAT attributable to zero-rated or effectively zero-rated sales, compliance with the following requisites is necessary:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;
3. there must be zero-rated or effectively zero-rated sales;
4. input taxes were incurred or paid;
5. such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

We shall discuss petitioner's compliance with the above requisites in *seriatim.*

Petitioner is a VAT-registered taxpayer.

As clearly shown in its BIR Certificate of Registration No. OCN. 8RC0000911345E dated March 16, 2017,[45] petitioner is a duly registered taxpayer with tax identification number (TIN) 000-059-661. Thus, petitioner has satisfied the *first* requisite.

The claim for refund was timely filed.

Respondent contends that petitioner's administrative claim was properly denied based on the documents submitted in the administrative level pursuant to the provisions of RMC No. 54-2014.[46] Respondent also alleges that petitioner failed to comply with Section 112 (A) of the NIRC of 1997.

We do not agree.

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[45] Exhibit "P-3".
[46] Supra.

Pursuant to Section 112(A) of the 1997 NIRC, as amended, a taxpayer who seeks refund or credit of input tax must file an administrative claim with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the third quarter of FY ended 30 September 2015 or the period 1 April 2015 to 30 June 2015. Thus, petitioner's administrative claim must be filed on or before the close of the third quarter of 2017 or on 30 June 2017. Evidently, petitioner's *Application for Tax Credit/ Refund* (BIR Form No. 1914) filed on June 30, 2017[47] is well within the prescribed period.

As regards the filing of the judicial claim, Section 112(C) of the 1997 NIRC, as amended, provides that respondent has one hundred twenty (120) days from the date of submission of the complete documents, in support of the application for refund or tax credit certificate, within which to grant or deny the claim. In case of full or partial denial by respondent, petitioner's recourse is to file an appeal to this Court within thirty (30) days from receipt of respondent's decision. However, should respondent fail to render a decision after the said 120-day period, petitioner's remedy is to appeal respondent's inaction to this Court within the period of thirty (30) days.

Simply put, Section 112(C) speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with this Court.[48]

Thus, counting the 120 days in this case, respondent has until October 28, 2017 to act on petitioner's claim. A perusal of the records shows that on October 18, 2017,[49] a letter from respondent was received by petitioner denying the said administrative claim. Counting thirty (30) days thereon, petitioner must file its judicial appeal on or before November 17,

[47] Exhibit "P-18".
[48] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[49] Exhibit "P-19".

2017. Considering that the instant *Petition for Review* was filed on said date, we declare that the same was timely made.

Petitioner had zero-rated or effectively zero-rated sales.

Petitioner asserts that it had zero-rated sales to foreign customers, which were paid for in acceptable foreign currency and accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules; and to customers registered with the Board of Investments (BOI).

Sections 106(A)(2)(a)(1) and (5) of the 1997 NIRC, as amended, state:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> (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*;
>
> 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."

Pursuant to the foregoing provision, in order for an export sale to qualify as zero-rated, the following conditions must be present, to wit:

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;
2.) the sale was made by a VAT registered person;

3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4.) the payment was accounted for in accordance with the rules and regulations of the BSP.

Furthermore, Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended, as implemented by Section 4.106.5[50] of Revenue Regulations (RR) No. 16-2005, the sales of goods to BOI-registered manufacturer/producer whose products are 100% exported are considered export sales, thus, accorded automatic zero-rating treatment.

Corollary thereto, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the 1997 NIRC, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, provides that a VAT-taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:

---

[50] **SEC. 4.106-5. _Zero-Rated Sales of Goods or Properties._** –xxx

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.

xxx xxx xxx

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.

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

xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

xxx xxx xxx

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

xxx xxx xxx

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

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

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

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

xxx xxx xxx

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

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

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

Moreover, the sales invoices must be duly registered with the BIR as prescribed under Sections 237 and 238 of the 1997 NIRC, 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. . . . ." (emphasis supplied)

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

As a logical outcome of the foregoing provisions, 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. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Whereas, for the considered export sales made to BOI-registered entities entitled to exemptions under the Omnibus Investments Code of 1987, any VAT-registered person claiming VAT zero-rated sales must present at least two (2) types of documents, to wit:

1. the sales invoice as proof of sale of goods; and
2. the Certification issued by the BOI certifying that the purchaser is a BOI-registered manufacturer/producer whose products are 100% exported.

Additionally, the sales invoice supporting the export sales must be registered with the BIR and must contain all the required information under the laws and regulations, such as the imprinted word "zero-rated" and taxpayer's TIN-VAT number.

Consequently, only the export sales supported by the said documents shall qualify for VAT zero-rating under Sections 106(A)(2)(a)(1) and (5) of the 1997 NIRC, as amended.

In its Amended Quarterly VAT Return for the third quarter of FY 2015,[51] petitioner declared the total amount of sales of ₱655,539,178.56, which includes the zero-rated sales of ₱382,626,926.52, detailed as follows:

Vatable Sales-Private	₱ 272,912,252.04
Zero-Rated Sales	**382,626,926.52**
Total Sales	₱ 655,539,178.56

[51] Exhibit "P-29-1".

In support of its zero-rated sales, petitioner submitted various sales invoices[52], certificates of bank remittances[53] and BOI Certificates issued to BOI-registered entities[54], which were examined by the Independent Certified Public Accountant (ICPA), Emmanuel Y. Mendoza of Mendoza Querido & Co.

In the ICPA Report, a total of ₱383,613,736.96 zero-rated sales were accounted for, as summarized below:[55]

Findings	Reference	Zero-Rated Sales
Export sale of goods supported by invoices and inward remittance advice	Annex A-5	₱ 206,205,836.36
Export sale of goods supported by invoices only	Annex A-6	614,694.93
Zero-rated sale of goods to BOI-registered companies with Certification	Annex A-4	176,793,205.67
Total		**₱383,613,736.96**

Further verification of the ICPA Report and the submitted documents reveals that petitioner's export sale of goods in the total amount of ₱206,820,531.29 (total of ₱206,205,836.36 and ₱614,694.93) was not sufficiently substantiated, hence, shall be denied VAT zero-rating. The findings of the Court are as follows:

1. All of the export sales included in *Annexes A-5* and *A-6* of the ICPA Report have no proof of actual shipment. Although it can be gleaned from the Formal Offer of Evidence (FOE)[56] that petitioner offered as evidence Exhibits "P-36-A1 to P-36-A4;P-37-1 to P-37-2" described as "Bill of lading and/or export declaration of Petitioner's export sales of goods", the actual documents marked as "P-36-A1 to P-36-A4;P-37-1 to P-37-2" pertain to sales invoices and not to bills of lading or export declarations.

[52] Exhibits "P-35-1" to "P-35-259", "P-36-A1" to "P-36-A4" and "P-37-1" to "P-37-2".
[53] Exhibits "P-36-B1" to "P-36-B2".
[54] Exhibits "P-30-1" to "P-30-5".
[55] ICPA Report, pp. 5 to 6, Pars. 1 to 5.
[56] Docket, pp. 308 to 309, item no. 36.

2. The sales invoice referenced to Exhibit "P-36-A4-5" supporting the sale to Orica International Pte Ltd-Asia in the amount of ₱5,606,049.87, which is included in *Annex A-5* of the ICPA Report, was not found in the records of the case.

3. *The export sale of goods supported by invoices only* under *Annex A-6* of the ICPA Report also has no proof of payment in acceptable foreign currency accounted for in accordance with the BSP rules.

Likewise, the zero-rated sales to BOI-registered companies in the amount of ₱25,809,694.25 must also be denied VAT zero-rating for the reasons stated hereunder:

Exhibit No.	**Name of Customer**	**Amount**
Sales without BOI Certification to the effect that the following customers are BOI-registered manufacturer/producer whose products are 100% exported for the period April 1 to June 30, 2015		
P-35-61; P-30-2	Greenstone Resources Corporation	₱ 1,685,838.00
P-35-62; P-30-2	Greenstone Resources Corporation	337,167.60
P-35-63; P-30-2	Greenstone Resources Corporation	582,254.16
P-35-64; P-30-2	Greenstone Resources Corporation	724,270.80
P-35-65; P-30-3	Lepanto Consolidated Mining Co.	2,702,500.00
P-35-66; P-30-3	Lepanto Consolidated Mining Co.	1,332,300.00
P-35-158; P-30-2	Greenstone Resources Corporation	437,400.00
P-35-159; P-30-2	Greenstone Resources Corporation	387,415.12
P-35-160; P-30-2	Greenstone Resources Corporation	1,303,976.15

P-35-161; P-30-2	Greenstone Resources Corporation	260,795.23
P-35-162; P-30-2	Greenstone Resources Corporation	1,937,075.60
P-35-163; P-30-2	Greenstone Resources Corporation	48,675.00
P-35-164; P-30-3	Lepanto Consolidated Mining Co.	253,200.00
P-35-165; P-30-3	Lepanto Consolidated Mining Co.	3,336,900.00
P-35-166; P-30-3	Lepanto Consolidated Mining Co.	23,500.00
P-35-177; P-30-2	Greenstone Resources Corporation	(48,675.00)
P-35-241; P-30-2	Greenstone Resources Corporation	(966.42)
P-35-242; P-30-2	Greenstone Resources Corporation	(4,832.10)
P-35-244; P-30-2	Greenstone Resources Corporation	599,104.62
P-35-245; P-30-2	Greenstone Resources Corporation	2,407,928.95
P-35-246; P-30-2	Greenstone Resources Corporation	481,585.79
P-35-247; P-30-2	Greenstone Resources Corporation	112,000.00
P-35-248; P-30-2	Greenstone Resources Corporation	437,400.00
P-35-249; P-30-3	Lepanto Consolidated Mining Co.	3,170,300.00
Sale without BOI Certification to the effect that it is BOI-registered manufacturer/producer whose products are 100% exported for the period April 1 to June 30, 2015 and the sales invoice is not stamped or without the words "zero-rated sales" imprinted therein		
P-35-243; P-30-2	Greenstone Resources Corporation	2,995,523.10
Supported by sales invoice not stamped or without the words "zero-rated sales" imprinted therein		

P-35-207	Carmen Copper Corporation	307,057.65
	Total	**₱25,809,694.25**

It must be noted that the ₱383,613,736.96 zero-rated sales accounted for by the ICPA is higher than the ₱382,626,926.52[57] zero-rated sales declared per amended Quarterly VAT Return by ₱986,810.44. Since petitioner failed to identify the composition of the said difference to determine whether or not the same formed part of the disallowances by the Court, all of the denied zero-rated sales are considered as part of the amount reported per return.

Thus, out of petitioner's reported zero-rated sales of ₱382,626,926.52, only the amount of ₱149,996,700.98, as computed below, qualified for VAT zero-rating under Sections 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended.

Reported Zero-Rated Sales		₱ 382,626,926.52
Less: Disallowed export sale of goods	₱206,820,531.29	
Disallowed zero-rated sale of goods to BOI-registered companies	25,809,694.25	232,630,225.54
Valid Zero-Rated Sales		**₱149,996,700.98**

Petitioner incurred input taxes attributable to its zero-rated sales.

In its Amended Quarterly VAT Return for the third quarter of FY 2015,[58] petitioner reported current input taxes in the total amount of ₱47,707,373.12, out of which the amount ₱14,957,902.88 is the subject of the instant claim, as shown below:

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[57] Exhibit "P-29-1", *Line 17.*
[58] Exhibit "P-29-1".

Input tax on Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 4,086,657.65
Input tax on Importation of Goods Other than Capital Goods *(Line 21H)*	35,781,735.29
Input tax on Domestic Purchases of Services *(Line 21J)*	7,158,529.16
Input tax on Services Rendered by Non-residents *(Line 21L)*	680,451.02
Total Current Input taxes	**₱47,707,373.12**
Less: Output Tax *(Line 19B)*	32,749,470.24
Amount claimed for refund	**₱14,957,902.88**

In support of its reported input VAT, petitioner submitted various invoices and official receipts (ORs)[59], *Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld* (BIR Forms No. 1600)[60], Statement of Settlement of Duties and Taxes (SSDTs), Bank/Bureau of Customs (BOC) ORs, and BOC Import Entry and Internal Revenue Declaration (IEIRDs)[61], which were examined by the ICPA. The findings of the ICPA are summarized as follows:[62]

	Findings and Observation	Reference	Amount
	Properly Substantiated:		
1	Domestic purchase of services supported by VAT ORs	Annexes B-1 & B-5	₱ 4,232,370.15
2	Domestic purchase of goods supported by VAT invoices	Annexes B-2 & B-6	3,774,860.30
3	Importation of goods other than capital goods supported by SSDT and BOC IEIRD certified "FOR BIR PURPOSE" by the BOC	Annexes B-4 & B-12	35,296,651.59

[59] Exhibits "P-38-1" to "P-39-462", "P-42-1" to "P-43-4" and "P-45-1" to "P-47" except for the denied exhibits.
[60] Exhibits "P-40-1" to "P-40-3".
[61] Exhibits "P-41-1" to "P-41-24", "P-44-1" to "P-44-8" and "P-48-1" to "P-49-5".
[62] "Annex B" of ICPA Report.

4	Purchase of services rendered by Non-Residents supported by BIR Form 1600	Annex B-3	680,451.02
	Subtotal of Properly Substantiated		***₱43,984,333.06***
	Not Properly Substantiated:		
5	Domestic purchase of services supported by documents other than VAT ORs	Annex B-8	₱ 81,205.31
6	Domestic purchase of goods supported by documents other than VAT invoices	Annex B-9	32,873.03
7	Difference of input tax on domestic purchase of services per schedule and input tax per supporting OR	Annex B-5	222,070.39
8	Difference of input tax on domestic purchase of goods per schedule and input tax per supporting invoices[63]	Annex B-6	240.00
9	Domestic purchase of services and goods supported by VAT ORs or VAT invoices but dated outside the period of claim	Annex B-10	201.96
10	Domestic purchase of services and goods without supporting documents	Annex B-11	1,949,701.75
11	Importation of goods other than capital goods supported by BOC certified SSDT but the BOC IEIRD were not BOC certified	Annex B-13	15,146.00
12	Importation of goods other than capital goods supported by SSDT and BOC IEIRD but not certified by the BOC	Annex B-7	393,844.94
13	Discrepancy on schedule of local purchases vs. VAT Return		951,663.57
14	Discrepancy on schedule of importations vs. VAT Return		76,092.76
	Subtotal of Not Properly Substantiated		***₱ 3,723,039.71***
	Total		**₱47,707,372.77**[64]

[63] The total amount as computed is ₱240.00 and not ₱240.01 as per ICPA Report.
[64] With ₱0.02 difference from the ICPA report due to item no. 6 (₱0.01) and footing error on the subtotal of not properly substantiated by the ICPA (₱0.01).

The above findings of the ICPA under "*Not Properly Substantiated*" pertaining to item nos. 5, 6, 8, 9, 10, 13 and 14 (as highlighted above), in the total amount of ₱3,091,978.38, should be disallowed for failure to meet the substantiation requirements as prescribed under Sections 110(A) and 113(A) and (B) of the 1997 NIRC, as amended, in relation to Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended.

In addition, the input VAT in the amount of ₱2,124,448.78 shall also be disallowed for the reasons stated hereunder:

Exhibit No.	**Name of Supplier**	**Amount**	**Reason for disallowance**
P-38-2	All Waste Services Inc.	₱ 4,628.57	Overclaim (Amount per claim of ₱16,598.93 less amount per OR of ₱11,970.36)
P-38-5	Baguio Country Club Corp.	240.00	Supported by document other than VAT OR
P-38-6	Baguio Country Club Corp.	240.00	Supported by document other than VAT OR
P-38-7	Baguio Country Club Corp.	240.00	Supported by document other than VAT OR
P-38-31	Monark Equipment Corp.	13,234.35	The supporting document was denied admission by the Court
P-38-48	Silversocket Enterprises	4,285.71	Supported by document other than VAT OR
P-38-51	Thomas Cowan & Co. Inc.	227.39	Supported by VAT OR but dated outside the period of claim
P-38-52	Tompdeg Farm	5,089.29	The supporting document was denied admission by the Court
P-38-54	Valley Golf & Country Club, Inc.	384.00	Supported by VAT OR with supplier's TIN but without the word "VAT", issued not in petitioner's name, without the address and TIN of petitioner and dated outside the period of claim

P-38-58	Continental Cargo Carriers Inc.	6,177.01	Overclaim (Amount per claim of ₱123,608.74 less amount per OR of ₱117,431.73)
P-38-61 to 63	DJS Engineering and Construction	112.91	Overclaim (Amount per claim of ₱6,322.92 less amount per OR of ₱6,210.01)
P-38-64	EOM Manpower and General Services	2,125.23	Overclaim (Amount per claim of ₱30,683.47 less amount per OR of ₱28,558.24)
P-38-70	G.A. Rueda Trucking	251,282.22	Supported by document with notation "THIS DOCUMENT IS NOT VALID FOR CLAIMING INPUT TAXES"
P-38-74	Globe Telecom Inc	2,628.97	Overclaim (Amount per claim of ₱6,718.51 less amount per OR of ₱4,089.54)
P-38-79	Monark Equipment Corp.	34,157.14	Supported by document other than VAT OR
P-38-81	Philippine Long Distance Telephone (PLDT)	212.37	The supporting document was denied admission by the Court
P-38-82	PLDT	160.71	The supporting document was denied admission by the Court
P-38-83	PLDT	160.71	The supporting document was denied admission by the Court
P-38-84	PLDT	3,727.99	The supporting document was denied admission by the Court
P-38-88	PLDT	5,089.29	The supporting document was denied admission by the Court
P-38-97	Didipio Community	3,164.26	Supported by VAT OR with alteration on date but without countersignature and without the phrase "THIS INVOICE/OR SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP" required under RMO 12-2013[65]

[65] SUBJECT: Prescribing Work-around Guidelines and Procedures in the Processing of Authority to Print (ATP) Official Receipts (ORs), Sales Invoices (SIs) and Other Commercial Invoices (CIs) in the Interim Period until the On-line ATP System Pursuant to RR No. 18-2012 is Fully Developed. (Dated May 2, 2013).

P-38-104	Jurassic Freight Service	93,904.55	Overclaim (Amount per claim of ₱105,261.69 less amount per OR of ₱11,357.14)
P-38-119	PLDT	160.25	Supported by VAT OR but dated outside the period of claim
P-38-120	PLDT	162.00	The supporting document was denied admission by the Court
P-38-121	PLDT	160.71	Supported by VAT OR but dated outside the period of claim
P-39-7	Integrated Computer Systems, Inc.	21,532.06	The supporting document was denied admission by the Court
P-39-60	Macro Hardware and Construction	3,857.14	Supported by VAT invoice but dated outside the period of claim
P-39-61	Macro Hardware and Construction	8,047.98	The supporting document was denied admission by the Court
P-39-87	Polymaster Industrial Corporation	26,787.86	Supported by VAT invoice but dated outside the period of claim
P-39-114	Toyota Taytay Rizal, Inc.	3,424.18	Overclaim (Amount per claim of ₱161,459.89 less amount per invoice of ₱158,035.71)
P-39-150	Istudio Computer Center	3,375.00	The supporting document was denied admission by the Court
P-39-151	J.T Oil Phil. Inc	1,452.16	The supporting document was denied admission by the Court
P-39-171	Macro Hardware and Construction	231.43	Supported by VAT invoice but dated outside the period of claim
P-39-179	Morse Hydraulics System Corporation	337.18	Supported by VAT invoice but without the BIR's Authority to Print (ATP)
P-39-191	Philippine Environmental	6,214.29	The supporting document was denied admission by the Court
P-39-192	PLDT	3,832.02	The supporting document was denied admission by the Court
P-39-228	Severo Sy Ling, Inc	1,910.79	Supported by VAT invoice with alteration on date but without countersignature
P-39-260 to 261	Champion Fine Tooling Corp.	6,160.72	Amount accounted by the ICPA twice

P-39-354	Morse Hydraulics System Corporation	9,642.86	Supported by VAT invoice but without the phrase " THIS INVOICE/OR SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP" required under RMO 12-2013
P-39-380	Packagemakers Incorporated	16,339.29	The referenced exhibit does not pertain to the details of the transaction
P-39-381	Pan Pacific Industrial Sales Inc	1,596.00	The supporting document was denied admission by the Court
P-40-1	Non-resident Supplier	246,378.98	Supported by BIR Form 1600 but without the corresponding payment confirmation
P-40-2	Non-resident Supplier	248,024.83	Supported by BIR Form 1600 but without the corresponding payment confirmation
P-40-3	Non-resident Supplier	186,047.21	Supported by BIR Form 1600 but without the corresponding payment confirmation
P-42-2 to 4	EOM Manpower and General Services	120.53	Overclaim (Amount per claim of ₱6,749.52 less amount per OR of ₱6,628.99)
P-42-5	Federal Phoenix	89,937.45	Overclaim (Amount per claim of ₱168,599.55 less amount per OR of ₱78,662.10)
P-42-5	Federal Phoenix	39,346.50	Supported by VAT OR but dated outside the period of claim (total of ₱624.65, ₱8.51, ₱44.64, ₱3,178.97, ₱152.40, ₱2.53, ₱57.74, ₱0.96, ₱0.89, ₱53.00, ₱317.18, ₱22,587.89, ₱170.56 and ₱12,146.58)
P-42-6	G.A. Rueda Trucking	584,374.72	Supported by document with notation "THIS DOCUMENT IS NOT VALID FOR CLAIMING INPUT TAXES"
P-42-6	G.A. Rueda Trucking	600.01	Overclaim (Amount per claim of ₱584,974.73 less amount per OR of ₱584,374.72)

P-42-7	Greenfield	10,850.00	Overclaim (Amount per claim of ₱22,500.00 less amount per OR of ₱11,650.00)
P-42-8	ICTSI	4,199.08	Overclaim (Amount per claim of ₱21,947.00 less amount per ORS of ₱5,940.90, ₱5,225.46, ₱505.00, ₱5,063.80 and ₱1,012.76)
P-42-8	ICTSI	17,747.92	Supported by VAT OR but dated outside the period of claim (total of ₱5,940.90, ₱5,225.46, ₱505.00, ₱5,063.80 and ₱1,012.76)
P-42-9	PLDT	1,807.12	Overclaim (Amount per claim of ₱5,453.96 less amount per OR of ₱3,646.84)
P-42-9	PLDT	3,646.84	Supported by VAT OR but dated outside the period of claim
P-42-10	RC Tugade	1.55	Overclaim (Amount per claim of ₱112,137.01 less amount per OR of ₱112,135.46)
P-42-11	TNT Express Worldwide	50,601.15	Overclaim (Amount per claim of ₱59,574.16 less amount per ORs of ₱7,843.85 and ₱1,129.16)
P-42-11	TNT Express Worldwide	8,973.01	Supported by VAT OR but dated outside the period of claim (total of ₱7,843.85 and ₱1,129.16)
P-42-12	Vantaztic Incorporation	19,530.00	Overclaim (Amount per claim of ₱39,060.00 less amount per OR of ₱19,530.00)
P-44-A1	Instantel	50,322.00	Supported by BOC OR but dated outside the period of claim
P-44-A3	Renishaw Oceania Pty Ltd	14,136.00	Supported by BOC OR but dated outside the period of claim
P-44-A6	Orica Australia Pty Ltd	1,047.00	Supported by BOC OR with unreadable amount of VAT
P-44-A7	GH Varley Pty Ltd	59.94	Overclaim (Amount per claim of ₱4,350.94 less amount per BOC OR of ₱4,291.00)
	Discrepancy on VAT Return vs. ICPA's findings	0.35	Overclaim (total current input taxes per VAT return of

			₱47,707,373.12 less total input VAT as accounted by ICPA of ₱47,707,372.77
	Total	**₱2,124,448.78**	

Thus, out of the reported input VAT of ₱47,707,373.12, only the amount of ₱42,490,945.96 represents petitioner's valid input VAT, as computed below:

Total Reported Input VAT		₱ 47,707,373.12
Less: Disallowances		
Per ICPA Report	₱3,091,978.38	
Per Court's further verification	2,124,448.78	5,216,427.16
Valid Input VAT		**₱42,490,945.96**

However, a portion of the ₱42,490,945.96 shall be applied against the reported output VAT liability of ₱32,749,470.24[66]. Consequently, only the remaining input VAT of ₱9,741,475.72 can be attributed to the declared zero-rated sales of ₱382,626,926.52 and only the input VAT of ₱3,818,835.32 is attributable to the valid zero-rated sales of ₱149,996,700.98, computed as follows:

Valid Input VAT	₱ 42,490,945.96
Less: Output tax	32,749,470.24
Excess Input VAT	₱ 9,741,475.72
Divide by Declared Zero-Rated Sales	382,626,926.52

[66] Exhibit "P-29-1", *Line 19B.*

Multiply by Valid Zero-Rated Sales	149,996,700.98
Excess Input VAT attributable to Zero-Rated Sales	**₱ 3,818,835.32**

Petitioner failed to prove that the excess input taxes were not applied against any output VAT liability.

Based on petitioner's Amended Third Quarterly VAT Return for FY 2015,[67] the input VAT claim of ₱14,957,902.88 was deducted as *"VAT Refund/TCC Claimed"* and the overpayment for the same period which is to be carried over to the succeeding fourth quarter of FY 2015 amounted to ₱183,950,068.83. However, as can be gleaned from the Amended Fourth Quarterly VAT Return for FY 2015,[68] petitioner reported as *"Input Tax Carried Over from Previous Period"* the amount of ₱198,907,971.71, which is higher than the tax overpayment from previous quarter in the amount of ₱183,950,068.83 by ₱14,957,902.88. *This only shows that the ₱14,957,902.88 claimed for refund although deducted from the allowable input VAT for the third quarter of FY 2015 was still carried over to the succeeding fourth quarter of the same fiscal year, and thus, may still be utilized against the output VAT liability for the latter period or periods.*

Moreover, even if the Amended First Quarterly VAT Return for FY 2016[69] reflected a lower amount of ₱92,961,961.39 as *"Input Tax Carried Over from Previous Period"* than the Tax Overpayment of ₱175,982,534.30 from the previous Amended Fourth Quarterly VAT Return for FY 2015,[70] still, it cannot be ascertained whether the difference thereof in the amount of ₱83,020,572.91 (₱175,982,534.30 less ₱92,961,961.39), which was not included in the amount carried forward, actually includes the claimed amount of ₱14,957,902.88. Hence, the subject claim may still form part of the ₱92,961,961.39 carried over to the first quarter of FY 2016 and, consequently, be

[67] Exhibit "P-29-1", *Lines 23D* and *29*.
[68] Exhibit "P-29-2", *Line 20A*.
[69] Exhibit "P-29-3", *Line 20A*.
[70] Exhibit "P-29-2", *Line 29*.

applied to the output VAT liability in the said quarter and the succeeding taxable quarters.

Basic is the rule that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.[71]

Since petitioner failed to sustain the burden placed upon it by presenting proof that its excess input VAT was not applied against any output VAT liability, the last requisite for the entitlement of the refund/issuance of TCC was not met. Consequently, the instant claim for refund/issuance of TCC must necessarily fail.

A claim for refund of excess or unutilized input VAT is in the nature of a tax exemption. Strict adherence to the conditions prescribed by law is required of the taxpayer.[72]

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

Accordingly, petitioner's claim for refund for alleged excess input VAT attributable to its export sales for the third quarter of fiscal year (FY) 2015 ended September 30, 2015, or the period from April 1, 2015 to June 30, 2015 in the total amount of P14,957,902.88 is **DENIED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[71] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[72] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice