REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TOTAL (PHILIPPINES) CORPORATION, Petitioner,	**CTA CASE NO. 7855**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Casanova, and Mindaro-Grulla, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 15 2016 3:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a remanded case involving Total (Philippines) Corporation's claim for refund or issuance of tax credit certificate (TCC) in the amount of Eight Million Eight Hundred Forty-Three Thousand Two Hundred Twenty-Eight Pesos and Thirty Centavos (₱8,843,228.30), representing unutilized input value-added tax (VAT) for the period covering October 1, 2006 to December 31, 2006, pursuant to the Amended Decision dated August 27, 2013 issued by the Court of Tax Appeals *En Banc*.

STATEMENT OF FACTS

Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with and licensed by the Securities and

Exchange Commission (SEC) to do business in the Philippines, with principal office address at Penthouse, Total Corporate Center, 1012 Triangle Drive, North Bonifacio, Bonifacio Global City.[1] It is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN 8RC0000019580 with assigned Taxpayer's Identification Number (TIN) 005-145-964-000.[2]

As stated in its Articles of Incorporation, petitioner's primary purpose is to "acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil products, such as Jet Fuel and liquefied petroleum gas."[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

During the fourth taxable quarter of 2006, petitioner exported goods to companies located in foreign countries and to companies located in Special Economic Zones and Freeport Zones. And it purportedly incurred or paid input taxes on its purchases of VATable goods and services for the said period. As declared in its Quarterly VAT Return[4], the sales and purchases for the fourth quarter of 2006 are as follows:

Zero-rated Sales	Exempt Sales	Sales Subject to 12% VAT	Output Tax	Purchases	Input Tax
₱75,273,816.73	₱150,618.31	₱6,024,195,649.40	₱722,903,477.93	₱5,971,569,508.60	₱716,588,254.94

[1] Par. 1.1, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, pp. 111-112.
[2] Exhibit "C", docket, vol. I, p. 315.
[3] Exhibit "B", docket, vol. I, p. 294.
[4] Exhibits "F" and "G", docket, vol. I, pp. 320-323.

Petitioner filed its application for the issuance of tax credit certificate for the unutilized VAT input taxes in the amount of ₱8,843,228.30, along with all supporting documents, on December 18, 2008[5] with the Large Taxpayers Service-Large Taxpayer Audit and Investigation Division II.

Respondent failed to act on petitioner's claim for refund, prompting petitioner to file this Petition for Review before this Court on December 22, 2008.[6]

Respondent filed his Answer[7] on February 6, 2009, interposing the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's alleged claim for tax credit/refund is subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 6. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 7. Petitioner's judicial claim for tax credit/refund was prematurely filed for failure to comply with the provision of Section 112 (C) of the 1997 National Internal Revenue Code (NIRC), as amended, which states:
>
> > '**Section 112. Refunds or Tax Credits of Input Tax** –
> >
> > **(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*

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[5] Exhibit "D", docket, vol. I, pp. 316-318; Par. 1.6, JSFI, docket, vol. I, p. 114.
[6] Par. 1.7, JSFI, docket, vol. I, p. 114.
[7] Docket, vol. I, pp. 57-63.

> *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.' (Italics supplied)

As stated in the Petition, petitioner filed its administrative claim for tax credit/refund with respondent on 18 December 2008. After only four (4) days or on 22 December 2008, the instant Petition for Review was filed with this Honorable Court. Obviously, the 120-day period given to respondent to decide on the claim has just started. Such action on the part of petitioner is tantamount to a wanton disregard of the doctrine of exhaustion of administrative remedies.

Well settled is the rule that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes (*Zabat vs. Court of Appeals, 338 SCRA 551*). This rule on exhaustion of administrative remedies was explained thus:

> 'The underlying principle of the rule on exhaustion of administrative remedies **rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.** There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solution to disputes. Where the

> enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct errors committed in the administrative forum.' (*Union Bank of the Philippines vs. Court of Appeals, 290 SCRA 198*)

8. *Grantia argumenti* that the instant claim for tax credit/refund was not prematurely filed, it is imperative for petitioner to prove its compliance with the following, viz.:

> a. The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations.
>
> b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003).
>
> c. The submission of complete documents in support of the administrative claim for tax credit/refund pursuant to Section 112 (C) of the 1997 NIRC, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund

which is a condition *sine qua non* prior to the filing of such claim.

d. That the input taxes of P8,843,228.30 allegedly representing unutilized input VAT from its purchases of goods and services attributed/allocated to its export sales and sales to companies located in the special economic zones/freeport zones were:

i. paid by petitioner;
ii. attributable to its zero-rated or effectively zero-rated sales; and,
iii. such input taxes paid should not have been applied against any output tax.

e. That petitioner's claim for tax credit/refund allegedly representing unutilized input VAT in the amount of P8,843,228.30 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the 1997 NIRC, as amended.

9. Furthermore, in an action for tax credit/refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund.

10. 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. (*Philippine Geothermal, Inc. vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005*). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words

too plain to be mistaken and too categorical to be misinterpreted (*Sea-Land Service, Inc. vs. Court of Appeals, 357 SCRA 444*)."

During trial, petitioner presented documentary and testimonial evidence.[8] Respondent's counsel, however, manifested that respondent has no evidence to present.[9]

Petitioner filed its Memorandum[10] on January 17, 2011 and respondent filed his Memorandum[11] on January 17, 2011 through registered mail and received by the Court on January 31, 2011. Afterwards, the case was declared submitted for decision via Resolution[12] dated January 26, 2011.

On June 30, 2011, the Court of Tax Appeals Second Division dismissed the Petition for Review for lack of jurisdiction.[13]

Petitioner then filed a Motion for Reconsideration[14] on July 15, 2011; while respondent filed a Comment (Re: Motion for Reconsideration)[15] on August 9, 2011. In the Resolution[16] dated September 14, 2011, petitioner's motion was denied for lack of merit.

As a result, petitioner filed a Petition for Review[17] before the Court of Tax Appeals *En Banc* on October 3, 2011. Respondent filed a Comment (Re: Petition for Review dated September 30, 2011)[18] on November 14, 2011. In the Resolution[19] dated December 21, 2011, the Court of Tax Appeals *En Banc* resolved to give due course to petitioner's Petition for Review, and ordered both parties to submit their Memoranda.

On February 22, 2012, respondent filed a Manifestation (Re: Resolution dated January 27, 2012)[20] stating therein that respondent

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[8] Formal Offer of Evidence, docket, vol. I, pp. 266-292.
[9] Minutes of the hearing on November 17, 2010, docket, vol. II, p. 539.
[10] Docket, vol. II, pp. 560-579.
[11] Docket, vol. II, pp. 586-606.
[12] Docket, vol. II, p. 585.
[13] Docket, vol. II, pp. 612-624.
[14] Docket, vol. II, pp. 625-647.
[15] Docket, vol. II, pp. 655-683.
[16] Docket, vol. II, pp. 686-690.
[17] Docket, vol. II, pp. 691-726.
[18] Docket, vol. II, pp. 750-780.
[19] Docket, vol. II, pp. 782-783.
[20] Docket, vol. II, pp. 794-796.

is adopting the arguments raised in the Comment to the Petition for Review filed before the Court of Tax Appeals *En Banc* on January 27, 2012 as respondent's Memorandum. Petitioner, on the other hand, filed its Memorandum[21] on March 2, 2012.

In the Decision[22] dated February 21, 2013, the Court of Tax Appeals *En Banc* dismissed the Petition for Review for lack of merit.

Petitioner filed a Motion for Reconsideration[23] on March 21, 2013; while respondent filed a Comment (Re: Motion for Reconsideration dated 20 March 2013)[24] on May 10, 2013.

On August 27, 2013, the Court of Tax Appeals *En Banc* issued an Amended Decision[25], the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Motion for Reconsideration is **PARTIALLY GRANTED**. The Decision dated February 21, 2013 of the Court *En Banc* is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, CTA Case No. 7855 is hereby **REMANDED** to the Second Division of this Court, for a complete determination whether petitioner complied with the other legal requirements in claiming for refund or issuance of a tax credit certificate for its alleged unutilized input VAT incurred from its domestic purchases of taxable goods and services attributable to its zero-rated sales for taxable year 2006.
>
> **SO ORDERED**."

Respondent filed a Motion for Reconsideration (Re: Amended Decision promulgated on 27 August 2013)[26] on September 19, 2013; while petitioner filed its Comment to Respondent's Motion for Reconsideration on the Amended Decision promulgated on 27 August

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[21] Docket, vol. II, pp. 797-830.
[22] Docket, vol. II, pp. 833-845.
[23] Docket, vol. II, pp. 855-866.
[24] Docket, vol. II, pp. 880-894.
[25] Docket, vol. II, pp. 897-916.
[26] Docket, vol. II, pp. 917-931.

2013[27] on November 18, 2013. However, in the Resolution[28] dated December 18, 2013, the Court *En Banc* denied the Motion for Reconsideration for lack of merit.

Respondent filed a Petition for Review[29] on February 24, 2014 through registered mail and received by the Supreme Court on March 5, 2014, but the same was denied in the Resolution[30] dated March 19, 2014.

Respondent filed a Motion for Reconsideration[31] on March 20, 2014 through registered mail and received by the Supreme Court on March 26, 2014. However, in the Resolution[32] dated July 14, 2014, the Supreme Court denied the Motion for Reconsideration with finality. The Entry of Judgment[33] was issued by the Supreme Court on September 5, 2014. Hence, the case was remanded to this Court.

In the Resolution[34] dated April 17, 2015, the Court of Tax Appeals Special Second Division set the case for the presentation of petitioner's evidence. However, during the trial on July 29, 2015, petitioner manifested that it will not present additional evidence in this case. Hence, the parties were granted thirty (30) days to file their respective memoranda.[35]

Petitioner filed its Supplemental Memorandum[36] on September 28, 2015. On the other hand, respondent failed to file a Memorandum as per Records Verification[37] of the CTA Judicial Records Division dated September 30, 2015. Hence, the case was declared submitted for decision as of the promulgation of Resolution dated October 7, 2015.[38]

STATEMENT OF THE ISSUES

[27] As culled from the Resolution dated December 18, 2013, docket, vol. II, p. 937.
[28] Docket, vol. II, pp. 937-945.
[29] Docket, vol. III, pp. 952-981.
[30] Notice issued by the Second Division of the Supreme Court, docket, vol. III, pp. 1033-1034.
[31] Docket, vol. III, pp. 1035-1043.
[32] Notice issued by the Second Division of the Supreme Court, docket, vol. III, pp. 1048-1049.
[33] Docket, vol. III, pp. 1056-1057.
[34] Docket, vol. III, pp. 1060-1062.
[35] Minutes of the hearing, docket, vol. III, p. 1072.
[36] Docket, vol. III, pp. 1080-1105.
[37] Docket, vol. III, p. 1106.
[38] Resolution dated October 7, 2015, docket, vol. III, p. 1107.

The parties submitted the following issues[39] for this Court's resolution:

A. WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

B. WHETHER OR NOT PETITIONER IS REGISTERED AS A VALUE ADDED TAXPAYER PURSUANT TO THE PROVISIONS OF THE 1997 NIRC, AS AMENDED.

C. WHETHER OR NOT PETITIONER HAS COMPLIED WITH THE INVOICING AND ACCOUNTING REQUIREMENTS FOR VAT-REGISTERED PERSONS, AS WELL AS THE FILING AND PAYMENT OF VAT PURSUANT TO THE PROVISIONS OF THE 1997 NIRC, AS AMENDED.

D. WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE FOURTH QUARTER OF TAXABLE YEAR 2006 IN THE TOTAL AMOUNT OF P716,588,254.94, ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS, AND P8,843,228.30 IS PROPERLY ALLOCATED TO ITS ZERO-RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

E. WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2006 THAT ARE ALLOCATED TO ITS ZERO-RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

F. WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT

[39] JSFI, docket, vol. I, pp. 114-115.

CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2006 THAT ARE ALLOCATED TO ITS ZERO-RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

DISCUSSION/RECOMMENDATION

Petitioner's claim finds legal basis on Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder for ready reference:

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

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

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> (C) *Period within which Refund 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."

Pursuant to the above-quoted provision and as laid down by the Supreme Court in a number of cases[40], a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

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

[40] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 and 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Petitioner's compliance with the fifth requisite had already been settled by the Court of Tax Appeals *En Banc* in the following manner:[41]

> "In this case, it was established that petitioner's refund claim pertains to its alleged input tax for the fourth quarter of 2006 (*i.e.*, from October 1 to December 31, 2006), and that the administrative claim (along with all supporting documents) was filed by petitioner with respondent on December 18, 2008. However, it appears that petitioner did not wait for the lapse of the 120-day period under Section 112 of the National Internal Revenue Code (NIRC) of 1997, and it filed its judicial claim on December 22, 2008, or only four (4) days after it filed its administrative claim.
>
> Clearly, while petitioner timely filed its administrative claim, it never complied with the 120+30-day periods under the earlier quoted Section 112(C) of the NIRC of 1997, as amended RA 9337.
>
> Nevertheless, in view of BIR Ruling No. DA-489-03 vis-a-vis the above-quoted jurisprudential pronouncements, petitioner may be excused from complying with the 120+30-day periods as its refund claim was filed within the period from December 10, 2003 until October 6, 2010. Correspondingly, petitioner's Petition for Review in CTA Case No. 7855 is deemed timely filed, pursuant to the *San Roque* case; and therefore, the Court in Division has jurisdiction to entertain the same."

With the timely filing of petitioner's claim for refund of its excess and unutilized input VAT paid for the fourth quarter of 2006, before the administrative and judicial levels, petitioner complied with the fifth requisite.

The Court shall now proceed to determine petitioner's compliance with the other requisites.

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[41] Amended Decision, *Total (Philippines) Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 838 (CTA Case No. 7855), August 27, 2013, docket, vol. II, pp. 897-916.

Anent the first requisite, petitioner alleges that during the fourth quarter of taxable year 2006, it sold goods to companies located in Special Economic Zones and Freeport Zones. Petitioner asserts that such sales are subject to zero-percent (0%) VAT pursuant to Section 106(A)(2) of the NIRC of 1997, as amended.[42]

The Court agrees with petitioner.

Sales by a VAT-registered taxpayer from the customs territory to entities located in export processing zones are considered export sales under Executive Order (E.O.) No. 226, otherwise known as the "Omnibus Investments Code of 1987", the relevant portions of which provide as follows:

> "ARTICLE 23. 'Export Sales' 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 exports 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 without actual exportation the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones**; xxx" *(Emphasis supplied)*

> "ARTICLE 77. *Tax Treatment of Merchandise in the Zone.* – (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic

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[42] Par. 11, petitioner's Memorandum, docket, vol. II, p. 565.

merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

(2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.**" *(Emphasis supplied)*

Moreover, under Sections 8 and 24 of Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995" and Section 15 of RA No. 7227, as amended, otherwise known as "Bases Conversion and Development Act of 1992", the Ecozones and the Clark Freeport Zone shall be treated as separate customs territories and the business establishments operating therein shall be entitled to certain fiscal incentives, to wit:

"SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The **ECOZONES** 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.

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SECTION 24. *Exemption from 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: Jr

(a) Three percent (3%) to 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 supplied)*

"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, located within the territorial jurisdiction of Angeles City, municipalities of Mabalacat and Porac, Province of Pampanga, and the municipalities of Capas and Bamban, Province of Tarlac, in accordance with the provisions as herein provided insofar as applied to the Clark military reservations. The Clark Air Base proper with an area of not more than four thousand four hundred hectares (4,400 has.) with the exception of the twenty-two-hectare commercial area situated near the main gate and the Bayanihan Park consisting of seven and a half hectares (7.5 has.) located outside the main gate of the Clark Special Economic Zone, is hereby declared a freeport zone.

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. However, exportation or removal of goods from the territory of the CFZ 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.
>
> 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." *(Emphasis supplied)*

Since the Ecozone/Freeport Zone is viewed as a foreign territory by legal fiction, sales made by a VAT-registered person in the customs territory to an entity registered and operating within the Ecozone/Freeport Zone are considered exports to a foreign country subject to zero percent VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[43], to wit:

> "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 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

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

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%) VAT." *(Emphasis supplied)*

Similarly, in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*[44], the High Court held:

> "Notably, **while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil.** Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent." *(Emphasis supplied)*

Clearly, sales of goods to entities located in the Special Economic Zones and Freeport Zones are considered "export sales" subject to zero percent VAT rate pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
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> xxx xxx xxx

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[44] G.R. No. 149671, July 21, 2006.

(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.**" *(Emphasis supplied)*

In its amended Quarterly VAT Return[45] for the fourth quarter of 2006, petitioner reported an amount of ₱75,273,816.73 zero-rated sales/receipts out of the total sales/receipts of ₱6,099,620,084.52, as follows:

Particulars	**Amount**
Vatable Sales/Receipts	₱6,009,433,352.91
Sale to Government	14,762,296.57
Zero-rated Sales/Receipts	**75,273,816.73**
Exempt Sales/Receipts	150,618.31
Total Sales/Receipts	₱6,099,620,084.52

As aptly found by the Court-commissioned Independent Certified Public Accountant (CPA)[46], out of the reported zero-rated sales of ₱75,273,816.73, the following amount of ₱1,109,957.08 was not properly supported by VAT zero-rated sales invoices:

Supporting VAT Invoices/Debit Notes were not provided (Exhibit "V-2")	₱ (317,945.72)
Supported by VAT Invoices but no signature of the customer on the face of the invoice and no related delivery note (Exhibits "V-3-1" to "V-3-4")	1,427,902.80
Total	**₱1,109,957.08**

To establish that its clients are Special Economic or Freeport Zone enterprises, petitioner submitted various Certifications issued by the Philippine Economic Zone Authority (PEZA) and Clark Development Corporation (CDC), detailed as follows: *[initials]*

[45] Exhibit "G", docket, vol. I, p. 320.
[46] Mr. Enrico T. Pizarro.

Exhibit	Business Name	Issuing Authority	Validity of Certification
O-1	ANALOG DEVICES GEN. TRIAS, INC.	PEZA	2006
O-2	DUNLOP SLAZENGER (PHILS.) INC.	PEZA	**2001**
O-3	ICHINOMIYA ELECTRONICS PHILS. CORP.	PEZA	2006
O-4	MOOG CONTROLS CORPORATION (PHIL. BRANCH)	PEZA	**Not indicated**
O-5	NIDEC PRECISION PHILS. CORP.	PEZA	2006
O-6	PAN CENTURY SURFACTANTS, INC.	PEZA	2006
O-7	PHOENIX GOLD ENERGY, INC.	CDC	**Feb. 01, 2008 to Jan. 31, 2009**
O-8	R.D. POLICARPIO & CO., INC.	CDC	May 25, 2004 to May 12, 2007
O-9	SAKAMOTO ORIENT CHEMICALS CORP.	PEZA	2006

Since the period covered by the instant claim is the fourth quarter of taxable year 2006, only the Certifications which are indicative of the fact that the named entities therein are duly registered with the PEZA or CDC, as the case may be, and only during the effectivity thereof, which must be within the fourth quarter of 2006, shall be considered valid for purposes of determining petitioner's zero-rated sales for the said period.

Thus, petitioner's sales to the following entities amounting to ₱34,439,708.98 shall be denied of VAT zero-rating for the reasons stated as follows:

1. Effectivity period of Certification has expired: Dunlop Slazenger (Phils), Inc. (2001);
2. Effectivity period cannot be determined because of incompleteness of documents: Moog Controls Corporation (Phil. Branch); and
3. Effectivity period of Certification was after the fourth quarter of 2006, *i.e.*, February 1, 2008 to January 31, 2009: Phoenix Gold Energy, Inc..

Below is the breakdown of the disallowed zero-rated sales of ₱34,439,708.98:

Customer	Date	Invoice No.	Exhibit	Amount
Dunlop Slazenger Phils.				
October 2006				
Dunlop Slazenger Phils.	10/10/2006	40021429	V-1-b-1	₱ 389,790.00
Dunlop Slazenger Phils.	10/11/2006	40021652	V-1-b-3	389,790.00
Dunlop Slazenger Phils.	10/12/2006	40022026	V-1-b-5	389,790.00
Dunlop Slazenger Phils.	10/16/2006	40022444	V-1-b-7	389,790.00

Dunlop Slazenger Phils.	10/18/2006	40022896	V-1-b-9	389,790.00
Dunlop Slazenger Phils.	10/19/2006	40023143	V-1-b-11	389,790.00
Dunlop Slazenger Phils.	10/20/2006	40023368	V-1-b-13	389,790.00
Dunlop Slazenger Phils.	10/23/2006	40023800	V-1-a-16	117,600.00
Dunlop Slazenger Phils.	10/23/2006	40023719	V-1-b-19	389,790.00
Dunlop Slazenger Phils.	10/25/2006	40024083	V-1-b-21	389,790.00
Dunlop Slazenger Phils.	10/26/2006	40024331	V-1-b-23	389,790.00
Dunlop Slazenger Phils.	10/27/2006	40024558	V-1-b-27	389,790.00
Dunlop Slazenger Phils.	10/27/2006	40024715	V-1-b-29	389,790.00
Dunlop Slazenger Phils.	10/30/2006	40025058	V-1-b-31	292,195.00
Dunlop Slazenger Phils.	10/30/2006	40025120	V-1-b-33	389,790.00
Dunlop Slazenger Phils.	10/31/2006	40025383	V-1-a-28	100,800.00
Dunlop Slazenger Phils.	10/31/2006	40025389	V-1-a-29	67,200.00
Subtotal				₱ *5,645,065.00*
November 2006				
Dunlop Slazenger Phils.	11/2/2006	40025478	V-1-b-35	₱ 389,790.00
Dunlop Slazenger Phils.	11/3/2006	40025664	V-1-b-37	389,790.00
Dunlop Slazenger Phils.	11/6/2006	40026215	V-1-b-43	389,790.00
Dunlop Slazenger Phils.	11/7/2006	40026399	V-1-b-47	389,790.00
Dunlop Slazenger Phils.	11/8/2006	40026690	V-1-b-49	389,790.00
Dunlop Slazenger Phils.	11/9/2006	40026848	V-1-b-51	389,790.00
Dunlop Slazenger Phils.	11/10/2006	40027033	V-1-b-55	389,790.00
Dunlop Slazenger Phils.	11/13/2006	40027391	V-1-b-57	389,790.00
Dunlop Slazenger Phils.	11/14/2006	40027645	V-1-b-59	370,000.00
Dunlop Slazenger Phils.	11/15/2006	40027837	V-1-b-63	370,000.00
Dunlop Slazenger Phils.	11/16/2006	40027990	V-1-a-51	52,928.58
Dunlop Slazenger Phils.	11/16/2006	40027992	V-1-a-52	134,400.00
Dunlop Slazenger Phils.	11/16/2006	40027993	V-1-b-65	33,600.00
Dunlop Slazenger Phils.	11/17/2006	40028170	V-1-b-67	172,638.60
Dunlop Slazenger Phils.	11/20/2006	40028552	V-1-a-54	360,000.00
Dunlop Slazenger Phils.	11/21/2006	40028839	V-1-b-71	360,000.00
Dunlop Slazenger Phils.	11/22/2006	40029001	V-1-b-73	360,000.00
Dunlop Slazenger Phils.	11/24/2006	40029585	V-1-a-64	360,000.00
Dunlop Slazenger Phils.	11/28/2006	40030158	V-1-b-87	360,000.00
Dunlop Slazenger Phils.	11/29/2006	40030413	V-1-b-89	360,000.00
Dunlop Slazenger Phils.	11/30/2006	40032088	V-1-b-105	360,000.00
Subtotal				₱ *6,771,887.18*
December 2006				
Dunlop Slazenger Phils.	12/1/2006	40031645	V-1-b-93	₱ 360,000.00
Dunlop Slazenger Phils.	12/7/2006	40031915	V-1-b-103	360,000.00
Dunlop Slazenger Phils.	12/8/2006	40032118	V-1-b-107	360,000.00
Dunlop Slazenger Phils.	12/13/2006	40032701	V-1-b-109	360,000.00
Dunlop Slazenger Phils.	12/13/2006	40032762	V-1-b-111	360,000.00
Dunlop Slazenger Phils.	12/14/2006	40032990	V-1-b-113	360,000.00
Dunlop Slazenger Phils.	12/16/2006	40033337	V-1-b-115	360,000.00
Dunlop Slazenger Phils.	12/18/2006	40033540	V-1-b-117	360,000.00
Dunlop Slazenger Phils.	12/20/2006	40033888	V-1-b-119	360,000.00
Dunlop Slazenger Phils.	12/26/2006	40034712	V-1-b-121	360,000.00
Dunlop Slazenger Phils.	12/29/2006	40035385	V-1-a-131	360,000.00
Dunlop Slazenger Phils.	12/29/2006	40035550	V-1-a-144	43,500.00
Subtotal				₱ *4,003,500.00*
Total - Dunlop Slazenger Phils.				**₱ 16,420,452.18**

Moog Controls Corp. (Phil. Branch)				
December 2006				
Moog Controls Corp.	12/1/2006	40034550	V-1-a-122	₱ *452,144.00*
Total – Moog Controls Corp. (Phil. Branch)				**₱ 452,144.00**
Phoenix Gold Energy Inc.				
December 2006				
Phoenix Gold Energy Inc.	12/4/2006	40031284	V-1-a-70	₱ 492,644.00
Phoenix Gold Energy Inc.	12/6/2006	40031654	V-1-a-74	344,850.80
Phoenix Gold Energy Inc.	12/7/2006	40031918	V-1-a-82	365,031.80
Phoenix Gold Energy Inc.	12/8/2006	40032069	V-1-a-85	344,850.80
Phoenix Gold Energy Inc.	12/11/2006	40032441	V-1-a-86	344,850.80
Phoenix Gold Energy Inc.	12/12/2006	40032574	V-1-a-88	344,850.80
Phoenix Gold Energy Inc.	12/12/2006	40032585	V-1-a-89	492,644.00
Phoenix Gold Energy Inc.	12/12/2006	40032587	V-1-a-90	344,850.80
Phoenix Gold Energy Inc.	12/13/2006	40032815	V-1-a-93	344,850.80
Phoenix Gold Energy Inc.	12/13/2006	40032816	V-1-a-94	344,850.80
Phoenix Gold Energy Inc.	12/14/2006	40032885	V-1-a-95	492,644.00
Phoenix Gold Energy Inc.	12/14/2006	40032916	V-1-a-96	344,850.80
Phoenix Gold Energy Inc.	12/14/2006	40032981	V-1-a-97	344,850.80
Phoenix Gold Energy Inc.	12/15/2006	40033108	V-1-a-99	492,644.00
Phoenix Gold Energy Inc.	12/15/2006	40033131	V-1-a-100	344,850.80
Phoenix Gold Energy Inc.	12/15/2006	40033164	V-1-a-101	344,850.80
Phoenix Gold Energy Inc.	12/16/2006	40033354	V-1-a-102	344,850.80
Phoenix Gold Energy Inc.	12/16/2006	40033355	V-1-a-103	492,644.00
Phoenix Gold Energy Inc.	12/18/2006	40033711	V-1-a-105	344,850.80
Phoenix Gold Energy Inc.	12/19/2006	40033732	V-1-a-106	492,644.00
Phoenix Gold Energy Inc.	12/19/2006	40033746	V-1-a-107	344,850.80
Phoenix Gold Energy Inc.	12/20/2006	40033887	V-1-a-110	350,030.80
Phoenix Gold Energy Inc.	12/20/2006	40033923	V-1-a-111	500,044.00
Phoenix Gold Energy Inc.	12/20/2006	40033939	V-1-a-112	350,030.80
Phoenix Gold Energy Inc.	12/21/2006	40034073	V-1-a-114	500,044.00
Phoenix Gold Energy Inc.	12/21/2006	40034119	V-1-a-115	350,030.80
Phoenix Gold Energy Inc.	12/21/2006	40034159	V-1-a-116	500,044.00
Phoenix Gold Energy Inc.	12/22/2006	40034313	V-1-a-118	350,030.80
Phoenix Gold Energy Inc.	12/22/2006	40034346	V-1-a-119	350,030.80
Phoenix Gold Energy Inc.	12/22/2006	40034365	V-1-a-120	500,044.00
Phoenix Gold Energy Inc.	12/26/2006	40034690	V-1-a-124	350,030.80
Phoenix Gold Energy Inc.	12/27/2006	40034820	V-1-a-127	500,044.00
Phoenix Gold Energy Inc.	12/27/2006	40034850	V-1-a-128	500,044.00
Phoenix Gold Energy Inc.	12/28/2006	40035180	V-1-a-129	350,030.80
Phoenix Gold Energy Inc.	12/28/2006	40035200	V-1-a-130	407,739.80
Phoenix Gold Energy Inc.	12/28/2006	40035090	V-1-b-123	500,044.00
Phoenix Gold Energy Inc.	12/29/2006	40035548	V-1-a-143	350,030.80
Phoenix Gold Energy Inc.	12/29/2006	40035677	V-1-a-145	350,030.80
Phoenix Gold Energy Inc.	12/29/2006	40035683	V-1-a-146	517,218.00
Phoenix Gold Energy Inc.	12/30/2006	40035885	V-1-a-147	500,044.00
Phoenix Gold Energy Inc.	12/30/2006	40035889	V-1-a-148	350,030.80
Phoenix Gold Energy Inc.	12/30/2006	40035844	V-1-b-125	500,044.00
Phoenix Gold Energy Inc.	12/16/2009	40033760	V-1-a-108	492,644.00
Total - Phoenix Gold Energy Inc.				**₱ 17,567,112.80**

DISALLOWED ZERO-RATED SALES – WITHOUT PROPER PEZA/CDC CERTIFICATION	**₱ 34,439,708.98**

In fine, only the sales made by petitioner to Analog Devices Gen. Trias, Inc., Ichinomiya Electronics Phils., Corp., Nidec Precision Phils., Corp., Pan Century Surfactants, Inc., R.D. Policarpio & Co., Inc., and Sakamoto Orient Chemicals Corp., which are all duly supported by PEZA/CDC Certifications and VAT zero-rated sales invoices, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

Accordingly, of the ₱75,273,816.73 zero-rated sales declared by petitioner for the fourth quarter of 2006, only the amount of ₱39,724,150.67 is considered valid, computed as follows:

	Amount
Zero-Rated Sales per VAT return	₱ 75,273,816.73
Less: Disallowances	
Not properly supported by VAT zero-rated sales invoices per ICPA report	1,109,957.08
Without proper PEZA/CDC Certification per this Court's verification	34,439,708.98
Total Disallowances	35,549,666.06
Valid Zero-Rated Sales	**₱39,724,150.67**

Petitioner's valid zero-rated sales amounting to ₱39,724,150.67 is broken down as follows:

Exhibit	Customer	Invoice No.	Date	Amount
OCTOBER 2006				
V-1-a-1	Nidec Precision Phils. Corp.	40019953	10/2/2006	₱ 360,000.00
V-1-a-4	Nidec Precision Phils. Corp.	40020712	10/5/2006	360,000.00
V-1-a-11	Nidec Precision Phils. Corp.	40022208	10/12/2006	480,000.00
V-1-b-15	Nidec Precision Phils. Corp.	40023482	10/20/2006	480,000.00
V-1-b-25	Nidec Precision Phils. Corp.	40024448	10/26/2006	480,000.00
Subtotal				*₱ 2,160,000.00*
V-1-a-19	Pan Century Surfactants Inc.	40024218	10/2/2006	₱ 254,800.00
V-1-a-20	Pan Century Surfactants Inc.	40024219	10/2/2006	254,800.00
V-1-a-21	Pan Century Surfactants Inc.	40024220	10/4/2006	254,800.00
V-1-a-22	Pan Century Surfactants Inc.	40024221	10/6/2006	254,800.00
V-1-a-43	Pan Century Surfactants Inc.	40026482	10/9/2006	254,800.00
V-1-a-44	Pan Century Surfactants Inc.	40026483	10/9/2006	254,800.00
V-1-a-30	Pan Century Surfactants Inc.	40025790	10/11/2006	254,800.00

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V-1-a-31	Pan Century Surfactants Inc.	40025791	10/11/2006	254,800.00
V-1-a-32	Pan Century Surfactants Inc.	40025793	10/16/2006	254,800.00
V-1-a-33	Pan Century Surfactants Inc.	40025794	10/16/2006	254,800.00
V-1-a-34	Pan Century Surfactants Inc.	40025796	10/19/2006	70,237.20
Subtotal				₱ *2,618,237.20*
V-1-a-2	RD Policarpio & Co., Inc.	40020218	10/3/2006	396,261.60
V-1-a-3	RD Policarpio & Co., Inc.	40020662	10/5/2006	566,088.00
V-1-a-5	RD Policarpio & Co., Inc.	40021206	10/9/2006	390,012.00
V-1-a-6	RD Policarpio & Co., Inc.	40021688	10/11/2006	390,012.00
V-1-a-7	RD Policarpio & Co., Inc.	40021838	10/12/2006	182,000.00
V-1-a-8	RD Policarpio & Co., Inc.	40021839	10/12/2006	12,866.80
V-1-a-9	RD Policarpio & Co., Inc.	40022057	10/13/2006	383,762.40
V-1-a-10	RD Policarpio & Co., Inc.	40022069	10/13/2006	383,762.40
V-1-a-13	RD Policarpio & Co., Inc.	40022687	10/17/2006	545,032.00
V-1-a-14	RD Policarpio & Co., Inc.	40023352	10/20/2006	534,904.00
V-1-b-17	RD Policarpio & Co., Inc.	40023669	10/23/2006	534,904.00
V-1-a-17	RD Policarpio & Co., Inc.	40023970	10/24/2006	120,034.00
V-1-a-18	RD Policarpio & Co., Inc.	40023971	10/24/2006	76,480.00
V-1-a-23	RD Policarpio & Co., Inc.	40024332	10/26/2006	520,000.00
V-1-a-24	RD Policarpio & Co., Inc.	40024594	10/27/2006	364,000.00
V-1-a-25	RD Policarpio & Co., Inc.	40024594	10/27/2006	364,000.00
V-1-a-27	RD Policarpio & Co., Inc.	40024919	10/30/2006	520,000.00
Subtotal				₱ *6,284,119.20*
V-1-b-45	Sakamoto Orient Chemicals	40026359	10/13/2006	₱ 211,601.00
V-1-a-26	Sakamoto Orient Chemicals	40024763	10/14/2006	325,756.80
V-1-a-12	Sakamoto Orient Chemicals	40022231	10/16/2006	365,906.00
V-1-b-39	Sakamoto Orient Chemicals	40025795	10/18/2006	256,134.20
V-1-a-15	Sakamoto Orient Chemicals	40023762	10/20/2006	369,036.00
V-1-a-41	Sakamoto Orient Chemicals	40026358	10/24/2006	349,036.00
V-1-b-41	Sakamoto Orient Chemicals	40025797	10/24/2006	256,134.20
V-1-a-35	Sakamoto Orient Chemicals	40025798	10/25/2006	256,134.20
V-1-a-36	Sakamoto Orient Chemicals	40025821	10/27/2006	256,134.20
V-1-a-42	Sakamoto Orient Chemicals	40026391	10/27/2006	332,916.00
V-1-a-37	Sakamoto Orient Chemicals	40025822	10/30/2006	252,000.00
V-1-a-38	Sakamoto Orient Chemicals	40025823	10/31/2006	252,000.00
Subtotal				₱ *3,482,788.60*
Total – October 2006				**₱ 14,545,145.00**
NOVEMBER 2006				
V-1-a-48	Analog Devices Gen Trias, Inc.	40027026	11/10/2006	₱ 563,318.00
V-1-b-91	Analog Devices Gen Trias, Inc.	40030486	11/29/2006	563,318.00
Subtotal				₱ *1,126,636.00*
V-1-a-39	Ichinomiya Electronics Phils., Corp.	40026026	11/4/2006	₱ 10,270.29
V-1-a-62	Ichinomiya Electronics Phils., Corp.	40029485	11/24/2006	10,270.29
Subtotal				₱ *20,540.58*

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V-1-b-53	Nidec Precision Phils. Corp.	40027018	11/10/2006	₱ 360,000.00
V-1-b-61	Nidec Precision Phils. Corp.	40027811	11/15/2006	360,000.00
Subtotal				₱ *720,000.00*
V-1-a-40	RD Policarpio & Co., Inc.	40026110	11/6/2006	₱ 520,000.00
V-1-a-45	RD Policarpio & Co., Inc.	40026587	11/8/2006	514,644.00
V-1-a-46	RD Policarpio & Co., Inc.	40026979	11/10/2006	514,644.00
V-1-a-47	RD Policarpio & Co., Inc.	40026999	11/10/2006	514,644.00
V-1-a-50	RD Policarpio & Co., Inc.	40027908	11/16/2006	514,644.00
V-1-b-69	RD Policarpio & Co., Inc.	40028258	11/17/2006	500,044.00
V-1-a-53	RD Policarpio & Co., Inc.	40028529	11/20/2006	500,044.00
V-1-a-59	RD Policarpio & Co., Inc.	40029205	11/23/2006	500,044.00
V-1-a-60	RD Policarpio & Co., Inc.	40029210	11/23/2006	350,030.80
V-1-a-61	RD Policarpio & Co., Inc.	40029425	11/24/2006	500,044.00
V-1-a-63	RD Policarpio & Co., Inc.	40029581	11/24/2006	350,030.80
V-1-a-65	RD Policarpio & Co., Inc.	40030157	11/28/2006	500,044.00
V-1-a-66	RD Policarpio & Co., Inc.	40030408	11/29/2006	125,000.00
V-1-a-67	RD Policarpio & Co., Inc.	40030827	11/30/2006	500,044.00
Subtotal				₱ *6,403,901.60*
V-1-a-55	Sakamoto Orient Chemicals	40029016	11/2/2006	₱ 242,134.20
V-1-a-56	Sakamoto Orient Chemicals	40029018	11/3/2006	242,134.20
V-1-a-57	Sakamoto Orient Chemicals	40029019	11/6/2006	238,000.00
V-1-a-58	Sakamoto Orient Chemicals	40029020	11/7/2006	242,134.20
V-1-b-75	Sakamoto Orient Chemicals	40029021	11/8/2006	242,134.20
V-1-b-77	Sakamoto Orient Chemicals	40029022	11/8/2006	242,134.20
V-1-b-79	Sakamoto Orient Chemicals	40029023	11/9/2006	242,134.20
V-1-a-49	Sakamoto Orient Chemicals	40027057	11/11/2006	244,325.20
V-1-b-81	Sakamoto Orient Chemicals	40029024	11/13/2006	238,000.00
V-1-b-83	Sakamoto Orient Chemicals	40029025	11/14/2006	242,134.20
V-1-b-85	Sakamoto Orient Chemicals	40029026	11/14/2006	242,134.20
V-1-a-75	Sakamoto Orient Chemicals	40031673	11/20/2006	242,134.20
V-1-a-76	Sakamoto Orient Chemicals	40031675	11/21/2006	242,134.20
V-1-b-95	Sakamoto Orient Chemicals	40031678	11/21/2006	242,134.20
V-1-a-77	Sakamoto Orient Chemicals	40031677	11/22/2006	242,134.20
V-1-a-78	Sakamoto Orient Chemicals	40031680	11/24/2006	238,000.00
V-1-a-79	Sakamoto Orient Chemicals	40031682	11/27/2006	238,000.00
V-1-b-97	Sakamoto Orient Chemicals	40031683	11/28/2006	242,134.20
V-1-b-99	Sakamoto Orient Chemicals	40031684	11/28/2006	242,134.20
V-1-b-101	Sakamoto Orient Chemicals	40031685	11/29/2006	242,134.20
Subtotal				₱ *4,828,338.20*
Total – November 2006				**₱ 13,099,416.38**
DECEMBER 2006				
V-1-a-92	Ichinomiya Electronics Phils., Corp.	40032795	12/13/2006	₱ 10,270.29
Subtotal				₱ *10,270.29*
V-1-a-71	Nidec Precision Phils. Corp.	40031306	12/4/2006	₱ 360,000.00
V-1-a-81	Nidec Precision Phils. Corp.	40031870	12/7/2006	360,000.00
Subtotal				₱ *720,000.00*

V-1-a-68	RD Policarpio & Co., Inc.	40030946	12/1/2006	₱ 500,044.00
V-1-a-72	RD Policarpio & Co., Inc.	40031484	12/5/2006	350,030.80
V-1-a-73	RD Policarpio & Co., Inc.	40031502	12/5/2006	500,044.00
V-1-a-80	RD Policarpio & Co., Inc.	40031729	12/6/2006	350,030.80
V-1-a-83	RD Policarpio & Co., Inc.	40032039	12/8/2006	500,044.00
V-1-a-84	RD Policarpio & Co., Inc.	40032054	12/8/2006	500,044.00
V-1-a-87	RD Policarpio & Co., Inc.	40032479	12/12/2006	500,044.00
V-1-a-91	RD Policarpio & Co., Inc.	40032708	12/13/2006	500,044.00
V-1-a-98	RD Policarpio & Co., Inc.	40033103	12/15/2006	500,044.00
V-1-a-104	RD Policarpio & Co., Inc.	40033458	12/16/2006	500,044.00
V-1-a-109	RD Policarpio & Co., Inc.	40033867	12/20/2006	500,044.00
V-1-a-113	RD Policarpio & Co., Inc.	40034063	12/21/2006	350,030.80
V-1-a-117	RD Policarpio & Co., Inc.	40034293	12/22/2006	500,044.00
V-1-a-123	RD Policarpio & Co., Inc.	40034670	12/26/2006	500,044.00
V-1-a-132	RD Policarpio & Co., Inc.	40035486	12/29/2006	500,044.00
Subtotal				₱ *7,050,620.40*
V-1-a-69	Sakamoto Orient Chemicals	40030985	12/2/2006	₱ 233,041.20
V-1-a-133	Sakamoto Orient Chemicals	40035536	12/4/2006	237,860.00
V-1-a-134	Sakamoto Orient Chemicals	40035537	12/5/2006	241,994.20
V-1-a-135	Sakamoto Orient Chemicals	40035538	12/6/2006	241,994.20
V-1-a-136	Sakamoto Orient Chemicals	40035539	12/7/2006	241,994.20
V-1-a-137	Sakamoto Orient Chemicals	40035540	12/7/2006	241,994.20
V-1-a-138	Sakamoto Orient Chemicals	40035541	12/11/2006	237,860.00
V-1-a-139	Sakamoto Orient Chemicals	40035542	12/12/2006	237,860.00
V-1-a-140	Sakamoto Orient Chemicals	40035543	12/12/2006	237,860.00
V-1-a-141	Sakamoto Orient Chemicals	40035544	12/13/2006	237,860.00
V-1-a-142	Sakamoto Orient Chemicals	40035546	12/14/2006	237,860.00
V-1-a-149	Sakamoto Orient Chemicals	40036938	12/18/2006	237,860.00
V-1-a-150	Sakamoto Orient Chemicals	40036939	12/19/2006	237,860.00
V-1-a-151	Sakamoto Orient Chemicals	40036940	12/19/2006	237,860.00
V-1-a-152	Sakamoto Orient Chemicals	40036942	12/21/2006	237,860.00
V-1-a-121	Sakamoto Orient Chemicals	40034404	12/22/2006	239,226.40
V-1-a-125	Sakamoto Orient Chemicals	40034762	12/28/2006	241,994.20
V-1-a-126	Sakamoto Orient Chemicals	40034765	12/29/2006	237,860.00
Subtotal				₱ ***4,298,698.60***
Total – December 2006				₱ **12,079,589.29**
VALID ZERO-RATED SALES				₱ **39,724,150.67**

Consequently, only the portion of the input VAT claim attributable to the valid zero-rated sales of ₱39,724,150.67 will be considered for refund. The rate to be applied is based on the valid zero-rated sales over the total amount of reported sales, computed as follows:

Valid Zero-Rated Sales	=	₱39,724,150.67	=	0.651256%
Total Declared Sales		₱6,099,620,084.52		

After having resolved that petitioner had VAT zero-rated sales for the fourth quarter of 2006 in the amount of ₱39,724,150.67, the Court shall ascertain the amount of input VAT incurred by petitioner in connection thereto.

In its amended Quarterly VAT Return[47] for the fourth quarter of 2006, petitioner reflected a total amount of ₱715,898,545.59[48] allowable input VAT arising from its amortization of input VAT on purchases of capital goods exceeding ₱1Million, domestic purchases and importation of goods other than capital goods, and domestic purchases of services for the said period, detailed as follows:

Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter	₱ 3,897,238.58
Add: Input Tax on Capital Goods exceeding ₱1Million Purchased this Quarter	934,336.08
Total Unamortized Input Tax on Capital Goods exceeding ₱1Million	₱ 4,831,574.66
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	4,586,947.93
Amortization of Input Tax on Capital Goods exceeding ₱1Million	₱ 244,626.73
Add: Input Tax on -	
Domestic Purchases of Goods Other than Capital Goods	138,184,828.47
Importation of Goods Other than Capital Goods	562,794,961.15
Domestic Purchases of Services	14,674,129.24
Total Allowable Input Tax per return	**₱715,898,545.59**

A review of the Independent CPA report, together with the documents supporting the input VAT claim of ₱715,898,545.59, shows that the amount of ₱121,387,705.84 should be disallowed for not being properly substantiated by VAT invoices or receipts as required under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended. Below is the breakdown of the ₱121,387,705.84 disallowed input VAT:

Findings	Disallowed Input VAT	Exhibit
Certain supporting documents were not provided	₱ 23,593,745.93	W-2
Certain invoices and official receipts were dated outside the quarter	75,995,417.15	W-3

[47] Exhibit "G", docket, vol. I, pp. 320-321.
[48] Exclusive of the ₱411,598,506.73 input tax carry-over from previous quarter.

of claim		
Certain invoices and official receipts did not show the amount of input VAT as separate item	8,953,778.76	W-4
Certain invoices and official receipts with transactions amounting ₱1,000 or more did not show petitioner's TIN	3,064,697.60	W-5
Certain invoices and official receipts did not show the nature of transaction	432,620.00	W-6
Certain invoices and official receipts did not indicate the TIN of the supplier	36,956.46	W-7
Certain invoices and/or official receipts were supported by Non-VAT invoice and/or Non-VAT official receipts	2,358.73	W-8
Input VAT on purchase of capital goods exceeding ₱1Million before November 1, 2005 should have already been claimed in full in 2005 and not amortized over the succeeding periods	2,272.74	W-9
Purchase transactions whose invoices and official receipts were mere photocopies	3,912.00	W-10
Importations with original Import Entry and Internal Revenue Declaration but without Bureau of Customs (BOC) Form 38-A	691,967.00	W-11
Importations with photocopied Import Entry and Internal Revenue Declaration and without BOC Form 38-A	6,708,712.00	W-12
Invoices and/or official receipts with manual alterations	1,807,644.00	W-13-a
Invoices and official receipts issued not in the name of petitioner	93,623.47	W-13-c
Total	**₱121,387,705.84**	

In sum, petitioner's properly substantiated input VAT for the fourth quarter of 2006 amounted only to ₱594,510,839.75 which when compared with its output VAT liability for the same period in the amount of ₱722,903,477.94, there still remains an output VAT due in the amount of ₱128,392,638.19, as shown below:

Total Allowable Input VAT per return	₱ 715,898,545.59
Less: Disallowances	121,387,705.84
Properly Substantiated Input VAT	594,510,839.75
Less: Output VAT	722,903,477.94
Output VAT Still Due	**₱128,392,638.19**

Clearly, petitioner's properly substantiated input VAT for the fourth quarter of 2006 is not enough to cover its output VAT for the same period. While petitioner reported an input VAT carried over from previous quarter in the amount of ₱411,598,506.73[49], the Court found that petitioner failed to present VAT invoices or official receipts to prove the existence of such amount. Hence, the input VAT carry-over of ₱411,598,506.73 cannot be validly applied against petitioner's output VAT pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

[49] Exhibit "G", Line 20A, docket, vol. I, p. 320.

"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. xxx" *(Emphasis supplied)*

Since petitioner's output VAT liability is a lot higher than the valid input VAT, there is no excess input VAT which may be the proper subject of a claim for refund or tax credit under Section 112(A) of the NIRC of 1997, as amended. Consequently, the instant claim must be denied.

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.[50] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[51] In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for the granting of a claim for refund or tax credit.[52]

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[50] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005.
[51] *National Power Corporation vs. Province of Isabela,* G.R. No. 165827, June 16, 2006, citing *Cyanamid Philippines, Inc. vs. Court of Appeals,* 379 Phil. 689, 703 (2000).
[52] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO GRULLA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice