REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TETRA PAK PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10237**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 19 2023 4:20 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed on December 27, 2019 by petitioner Tetra Pak Philippines, Inc., praying for the reversal and setting aside of the decision of respondent Commissioner of Internal Revenue in his Notice of Denial; and that a new one be rendered ordering respondent to refund and/or issue a tax credit certificate ("TCC") in favor of petitioner in the amount of ₱20,826,859.40, representing petitioner's alleged excess and/or unutilized creditable input value-added tax ("VAT") incurred from its purchases of goods and services attributable to its zero-rated sales for the third (3rd) quarter of calendar year ("CY") 2017.

THE PARTIES

Petitioner Tetra Pak Philippines, Inc. is a corporation duly organized under Philippine laws, with principal office at the 19th Floor, Twenty-Five Seven Mckinley, 25th Street Corner, 7th Avenue, Fort Bonifacio, Taguig City.[2] Its primary purpose is to

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[1] Docket, pp. 6-27.
[2] Certificate of Filing of Amended Articles of Incorporation dated April 24, 2002 and Amended Articles of Incorporation adopted on February 14, 2002; Exhibits P-1 and P-1-1, Docket, pp. 750-751.

engage in the importation, exportation, distribution, leasing, servicing, and maintenance of propriety Tetra Pak filling and packaging equipment and materials among various food processors.[3]

Petitioner is also registered with the Large Taxpayers Services Division of the Bureau of Internal Revenue ("BIR") under Tax Identification Number ("TIN") 000-169-584-000.[4]

Respondent, on the other hand, is the Commissioner of the BIR who is empowered by law to act upon and approve claims for refund, tax credit certificates, and other matters involving the enforcement of the National Internal Revenue Code ("NIRC").[5] He may be served with orders and processes of this Court through the Office of the Commissioner, BIR National Office Bldg., Diliman, Quezon City.

THE FACTS

During the period covering July 1, 2017 to September 30, 2017 ("3rd Quarter"), petitioner's operating revenues were sourced from the sale of its packing equipment, materials, and other related services to its customers, which include non-resident foreign corporations and entities registered with the Board of Investment ("BOI") and the Philippine Economic Zone Authority ("PEZA"), to which it reported zero-rated sales, as follows:[6]

Covered Period	Zero-rated Sale
July	₱ 150,196,819.69
August	₱ 127,198,801.02
September	₱ 70,445,088.17
TOTAL	**₱347,840,708.88**

During the same period, petitioner reported VATable sales amounting to ₱652,418,018.41. Thus, petitioner's sales for the 3rd quarter of CY 2017 amounted to ₱1,000,258,727.29, broken down as follows:

[3] *Id.*
[4] BIR Certificate of Registration, Exhibits P-2 and P-3, Docket, pp. 762-764.
[5] Paragraph 1.1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 458.
[6] Schedule of Sales for the third quarter of calendar year 2017, Exhibit P-9, Docket, p. 792.

Sales	Amount
VATable sales	₱ 652,418,018.41
Zero-rated sales	₱ 347,840,708.88
VAT-exempt sales	-
TOTAL	**₱1,000,258,727.29**

In the course of generating the aforesaid zero-rated, petitioner imported and/or purchased goods and services in the aggregate amount of ₱712,350,163.94, for which input VAT amounting to ₱85,150,710.56 was allegedly paid. Further, out of the total input VAT incurred, ₱78,290,162.21 was applied to petitioner's output VAT liability of the same amount for the same period. Petitioner added that the excess input VAT in the said period amounting to ₱20,826,859.40 was not applied against any output VAT in the succeeding quarters of CYs 2017, 2018, 2019, and 2020.[7]

Allegedly, the excess input VAT of ₱20,826,859.40 is directly attributable and allocable to petitioner's zero-rated sales, as follows:

Input VAT on importations directly attributable to zero-rated sales	₱ 18,992,702.00
Input VAT on purchases of goods allocable to zero-rated sales	₱ 169,248.29
Input VAT on purchases of services allocable to zero-rated sales	₱ 1,664,909.11
TOTAL	**₱ 20,826,859.40**

On September 30, 2019, petitioner filed with the Regular Large Taxpayer Audit Division ("RLTAD") III of the BIR a claim for refund of its excess and/or unutilized creditable input VAT in the amount of ₱20,826,859.40, together with the complete supporting documents in compliance with the requirements of Revenue Memorandum Circular ("RMC") No. 17-2018.[8]

On November 29, 2019, petitioner received the Denial Letter of the RLTAD III,[9] prompting it to file the instant *Petition for Review* before the Court on December 27, 2019.

[7] Amended/Quarterly VAT Returns filed for the subsequent periods, Exhibits P-23 to P-31, Docket, pp. 841-858.
[8] BIR Form No. 1914 with the attached Sworn Statement filed with the BIR Regular LTAD III on September 30, 2019, Cover Letter of SGV & Co. stamped received by the BIR Regular LTAD III on September 30, 2019, and Checklist of Mandatory Requirements for VAT Credit/Refund, Exhibits "P-5" to "P-7" respectively, Docket, pp. 767-789.
[9] Undated Denial Letter from the BIR, signed by OIC - Assistant Commissioner of Internal Revenue - Large Taxpayer Service Mr. Manuel V. Mapoy, received by Tetra Pak on November 29, 2019, CTA Docket, Exhibit "P-35." CTA Records, Vol. 2, p. 962.

After being given two extension periods to file the *Answer*, respondent filed a *Motion To Admit Attached Answer*[10] on July 2, 2020, which the Court granted in its Resolution[11] dated July 8, 2020. In the same Resolution, the Court also allowed petitioner to file its *Reply* to respondent's *Answer* within ten (10) days from notice under Section 6, Rule 11 of the 1997 Rules of Civil Procedure, as amended.

In his *Answer*,[12] respondent interposed as a defense that petitioner is not entitled to a refund of its alleged excess and/or unutilized input VAT for the 3rd quarter of CY 2017 in the amount of ₱20,826,859.40 for failure to substantiate its administrative claim. Citing the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[13] ("*Pilipinas Total Gas*"), respondent argues that since a decision has been rendered in this case denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner can longer submit documents it did not present at the administrative level. For respondent, the only issue to be resolved by the Court is whether the denial was proper, given the evidence submitted at the administrative level.

On August 20, 2020, petitioner filed its *Reply*.[14] On even date, *Pre-Trial Briefs* were filed by petitioner[15] and respondent.[16]

After the *Pre-Trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[17] on September 23, 2020, based on which a *Pre-Trial Order*[18] was issued on October 2, 2020.

The trial then ensued, during which petitioner presented its witnesses, namely: (1) Ms. Russel A. Magallanes, its Reporting and Tax Analyst; and (2) Mr. Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant ("ICPA").

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[10] Docket, pp. 94-98.
[11] Docket, p. 112.
[12] Docket, pp. 100-110.
[13] G.R. No. 207112, December 8, 2016.
[14] Docket, pp. 120-130.
[15] Docket, pp. 131-154.
[16] Docket, pp. 419-422.
[17] Docket, pp. 458-465.
[18] Docket, pp. 467-472.

By way of a Judicial Affidavit,[19] **Ms. Russel A. Magallanes** testified that she is currently the Reporting and Tax Analyst of petitioner responsible for (a) the preparation and filing of petitioner's financial statements and tax returns; (b) making reports and coordinating financial matters with petitioner's Accounting Manager; (c) coordinating and communicating with the BIR, together with Accounting Manager, on all tax-related matters, including refund claims; (d) coordinating and communicating with petitioner's consultants on matters involving petitioner's claims for unutilized input VAT and other tax-related concerns; and (e) retaining custody of documents involving petitioner's tax compliance for each taxable year.

She declared that the instant case involves petitioner's claim for a refund amounting to ₱20,826,859.40, representing excess and/or unutilized input VAT attributable to its zero-rated sales of goods and services for the 3rd quarter of CY 2017. She is familiar with the instant case because she closely coordinated and worked with the team from Sycip Gorres Velayo & Co. ("SGV & Co.") in preparing for and filing petitioner's administrative claim for VAT refund for the 3rd quarter of CY 2017 and all the required supporting documents with the BIR. She also closely coordinated with, and assisted their counsel, Angara Abello Concepcion Regala & Cruz Law Offices ("ACCRALAW"), concerning petitioner's judicial claim.

She further declared that petitioner is a corporation duly incorporated and registered with the Securities and Exchange Commission ("SEC"), authorized to engage in the selling, importation, exportation, distribution, leasing, servicing, and maintenance of propriety Tetra Pak filling and packaging equipment and materials among various food processors, as reflected in its Amended Articles of Incorporation filed with the SEC. Petitioner is also a VAT-registered entity, as shown in its Certificate of Registration and updated Certificate of Registration, both issued by the BIR.

On September 30, 2019, petitioner, through its authorized representative SGV & Co., filed its administrative claim for refund ("BIR Form No. 1914") of its unutilized input VAT amounting to ₱20,826,859.40 attributable to its zero-rated sales for the 3rd quarter of CY 2017. Attached to the BIR Form No. 1914 are the Cover Letter, the Checklist of the documents, the required Sworn Statements, and the supporting documents,

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[19] Docket, pp. 160-191.

in compliance with the requirements of RMC No. 54-2014, as amended.

When asked about petitioner's zero-rated sales, Ms. Magallanes testified that for the 3rd quarter of CY 2017, petitioner generated and recorded zero-rated sales of ₱347,840,708.88. According to her, the amount was treated as zero-rated sales because they consisted of (a) sales of packaging materials/goods and other related services made to entities which are registered with the BOI, PEZA, and the Department of Trade and Industry – Export Marketing Bureau ("DTI-EMB"), which are entitled to VAT zero-rating on their purchases from suppliers/vendors; and (b) foreign-currency-denominated sales of services in favor of petitioner's non-resident foreign affiliates not doing business in the Philippines.

On the other hand, when asked about petitioner's excess and unutilized input VAT for the 3rd quarter of CY 2017, she declared that for the 3rd quarter of CY 2017, petitioner's input VAT payments may be broken down as follows:

Transaction Subject to VAT	**Transaction Value**	**Amount of Input VAT paid**
Domestic purchases of goods other than capital goods	₱ 4,055,211.11	₱ 486,625.33
Importation of goods other than capital goods	661,147,767.00	79,337,732.04
Domestic purchases of services	39,891,439.33	4,786,972.72
Services rendered by non-residents	4,494,837.22	539,380.47
Purchases without input VAT	2,760,909.28	-
TOTAL	**₱712,350,163.94**	**₱85,150,710.56**

According to Ms. Magallanes, the purchases, importations, and input VAT paid for the 3rd quarter of CY 2017 were duly reported in petitioner's Amended Quarterly VAT Return. Also, petitioner had input VAT carried over from the previous periods in the amount of ₱42,107,558.04, which is likewise indicated as a line item in the Amended Quarterly VAT Return for the 3rd quarter of CY 2017.

Ms. Magallanes further testified that since petitioner generated VATable and zero-rated sales during the 3rd quarter of CY 2017, a portion of the input VAT is attributable and allocable to the zero-rated sales amounting to ₱347,840,708.88, identified as follows:

Input VAT	Amount
Input VAT on purchases of goods allocable to zero-rated sales	₱ 169,248.29
Input VAT on purchases of services allocable to zero-rated sales	1,664,909.11
Input VAT on importations directly attributable to zero-rated sales	18,992,702.00
TOTAL	**₱20,826,859.40**

According to Ms. Magallanes, the input VAT attributable to zero-rated sales and being claimed for refund was not utilized in the 3rd quarter of CY 2017 and any subsequent quarters. However, on November 29, 2019, petitioner received a letter from the BIR, signed by Mr. Manuel V. Mapoy, the OIC-Assistant Commissioner of the Large Taxpayer Service, stating that petitioner's administrative claim for refund was denied.

ICPA **Glenn Ian D. Villanueva**, also by way of a Judicial Affidavit,[20] testified that based on his review, the amount of unutilized input VAT from domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchase of services, and services rendered by non-residents attributable to VAT zero-rated sales for the 3rd quarter ended September 30, 2017, that can be claimed for refund, is ₱19,876,878.30.

There being no more witnesses to present, petitioner rested its case and formally offered its documentary evidence *via* its *Formal Offer of Documentary Evidence*[21] filed on June 24, 2021, which the Court partly admitted in the Resolution[22] dated November 26, 2021.

On his turn to present evidence, respondent presented Revenue Officer ("RO") III, Ms. Carolyn V. Mendoza, as his lone witness.

[20] Exhibit P-63, docket, pp. 487-409.
[21] Docket, pp. 728-749.
[22] Docket, pp. 730-731.

RO **Carolyn V. Mendoza** testified through her Judicial Affidavit[23] that she is currently assigned at RLTAD III of the BIR. According to her, she came to know petitioner when the latter filed a claim for refund of alleged unutilized input VAT for the period July 1, 2017 to September 30, 2017 in the amount of ₱20,826,859.40, as some of her duties and responsibilities are to review and evaluate the documents supporting the claims for excess input tax refunds in accordance with approved authority under existing revenue issuances. She also stated that petitioner was informed of the audit through a Tax Verification Notice[24] ("TVN") dated October 4, 2019 issued to her.

RO Mendoza likewise declared that based on the Revised Checklists of Mandatory Requirements on Claims for VAT Credit/Refund, petitioner submitted documents supporting its application for VAT refund for July 1, 2017 to September 30, 2017.

She further declared that after verification of the documents submitted by petitioner, the VAT refund application for the 3rd quarter of the taxable year 2017 was denied, resulting in a deficiency VAT exposure amounting to ₱20,826,859.40.

Finally, she declared that a denial letter was sent to petitioner informing the latter of the result of the audit/examination of petitioner's refund claim.

There being no other witnesses to be presented, and considering that there are only a few documents to be offered, respondent moved for an oral formal offer of exhibits, which the Court granted and admitted all of respondent's offered documentary exhibits. Upon the instance of petitioner's counsel, petitioner is given a period of five (5) days from March 21, 2022, to file the necessary motion in relation to the Court's Resolution dated November 26, 2021. Respondent is granted the same period from receipt of petitioner's motion to file *Comment*.[25]

On April 7, 2022, the Court received petitioner's *Tender of Excluded Evidence*,[26] filed through registered mail on March 25, 2022. Respondent failed to file his comment thereto despite due notice.[27]

[23] Docket, pp. 1202-1208.
[24] Exhibit R-2, BIR Records, p. 105.
[25] Minutes of the Hearing, Docket, p. 1217.
[26] Docket, pp. 1232-1236.
[27] Records Verification Report, p. 1240.

On May 24, 2022, the Court issued a Resolution[28] noting petitioner's *Tender of Excluded Evidence.* In the same Resolution, the instant case was submitted for decision, considering that the parties had already submitted their Memoranda.

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the following issues are submitted for the resolution of the Court:

A. WHETHER PETITIONER IS ENTITLED TO A REFUND OR TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AMOUNT OF ₱20,826,859.40 REPRESENTING ITS EXCESS AND/OR UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES OF GOODS AND SERVICES FOR THE THIRD QUARTER OF CY 2017 BASED ON THE DOCUMENTS SUBMITTED; and

B. WHETHER THE DOCUMENTS SUBMITTED BY PETITIONER AT THE ADMINISTRATIVE LEVEL WERE SUFFICIENT TO JUSTIFY ITS CLAIM FOR REFUND.

Petitioner's Arguments:

Petitioner submits that it is entitled to the refund or issuance of a tax credit certificate of the ₱20,826,859.40 input VAT, which is attributable and/or allocable to its zero-rated sales in the 3rd quarter of CY 2017, as it has complied with all the requisites to be entitled to such refund or tax credit, to wit:

1. It is a VAT-registered taxpayer;

2. Its sales of ₱347,840,708.88 for the 3rd quarter of CY 2017 are VAT zero-rated;

3. The input VAT it paid is directly attributable and allocable to its zero-rated sales for the 3rd quarter of CY 2017;

[28] Docket, pp. 1303-1304.

4. It had excess input VAT for the 3rd quarter of CY 2017 that was not applied against any output VAT liability nor utilized for any subsequent quarters;

5. It timely filed its administrative claim for refund within two (2) years from the close of the taxable quarter when the zero-rated sales were made; and

6. It filed its judicial claim for refund within thirty (30) days from receipt of respondent's decision denying the claim on November 29, 2019.

Petitioner likewise argues that respondent's denial of its claim for a refund for the 3rd quarter of CY 2017 is incorrect and without basis. According to petitioner, the BIR record shows that it was denied due process as there was no proper evaluation of its administrative claim for refund, which was resolved thirty (30) days from its filing. Further, the reason cited for the denial of its claim for refund was based on unverified third-party information of which petitioner was not given a fair opportunity to controvert their existence. Furthermore, records show that no actual audit was conducted over petitioner's taxable year 2017 as no Letter of Authority ("LOA") was issued. For petitioner, respondent cannot raise issues on undeclared sales discrepancies against petitioner's claim without a valid LOA.

Petitioner also argues that it should not be barred from presenting evidence to substantiate its claim for refund. Invoking the Supreme Court ruling in the *Pilipinas Total Gas* case, petitioner asserts that a taxpayer shall only be barred from presenting additional evidence before the Court of Tax Appeals ("CTA"): (1) if its administrative claim was denied by the BIR due to failure to submit supporting documents despite notice; and (2) if the additional evidence to be presented before the CTA pertains to the same documents previously requested at the administrative level. Further, Rule 12, Section 2(a) of the Revised Rules of the Court of Tax Appeals ("RRCTA") empowers the Court to receive evidence during the trial of cases under Rule 4, Section 3 of the RRCTA. Also, it has been repeatedly ruled that "*failure to submit documents in the administrative level is not fatal to the case in the judicial level, as such is litigated de novo and decided based on what has been presented*

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and formally offered by the parties during the trial."[29] Once a claim for refund is elevated to the CTA, the latter "*is not barred from receiving, evaluating, and appreciating evidence submitted before it.*"[30]

Finally, petitioner argues that the rule that claims for refund are strictly construed against the taxpayer only applies when the taxpayer fails to meet the quantum of evidence required to prove entitlement to the refund. For petitioner, this does not apply as it complied with all the requisites to be entitled to refund or issuance of TCC of the ₱20,826,859.40 input VAT.

Respondent's Arguments:

For his part, respondent counters that the instant *Petition for Review* must be dismissed for failure of petitioner to substantiate its administrative claim for refund. According to respondent, since a decision has been rendered in this case denying petitioner's administrative claim for a refund for failure to substantiate its administrative claim, petitioner cannot submit documents it did not present at the administrative level. Moreso, the Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level.

Further, respondent argues that after the evaluation of the documents submitted by petitioner, the following findings and observations were disclosed, to wit:

a. Disallowed Input Tax on Overclaimed Importation;

b. Disallowed Input Tax on Overclaimed Purchases;

c. Output Tax on Zero-rated Sales that should be subject to 12% VAT for not having a supporting BOI/PEZA/TIEZA Registration Certificate and Annual Letter of Incentives;

d. Output Tax on Undeclared Sales; and

e. Disallowed Input VAT.

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[29] *Commissioner of Internal Revenue vs. Oriental Assurance Corporation*, CTA *EB* No. 1881, July 5, 2019; *Commissioner of Internal Revenue vs. Philippine Bank Communications*, CTA *EB* Case No. 933, October 7, 2013; *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, CTA *EB* Case No. 775, July 24, 2012.
[30] *Filminera Resources Corporation vs. Commissioner of Internal Revenue*, CTA *EB* Case No. 1466, October 19, 2017.

In closing, respondent submits that in an action for a refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Here, petitioner's claim for a refund has no basis in fact and law. Hence, the instant petition should be denied for lack of merit, says respondent.

THE COURT'S RULING

Pertinent to the resolution of the instant case are paragraphs (A) and (C) of Section 112 of the National Internal Revenue Code ("NIRC") of 1997, as amended, which 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 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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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days[31] from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not

[31] As amended under Sec. 36 of R.A. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) law. The previous number of days was 120 days.

> proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, jurisprudence has laid down specific requisites the taxpayer-applicant must comply with to obtain a credit/refund of input VAT successfully. Said requisites may be classified into distinct categories as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[32]

2. In case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

<u>Concerning the taxpayer's registration with the BIR</u>:

3. The taxpayer is a VAT-registered person;[33]

<u>In relation to the taxpayer's output VAT</u>:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]

5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), of the NIRC

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[32] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

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

[34] *Ibid.*

of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[35]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;[36]

7. The input taxes have not been applied against output taxes during and in the succeeding quarters;[37]

8. The input taxes are due or paid;[38] and

9. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume.[39]

First and second requisites: Petitioner's administrative and judicial claims for refund were timely filed.

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

The present claim covers the 3rd quarter of CY 2017, which closed on September 30, 2017. Counting two (2) years from the said date, petitioner had until September 30, 2019 to file its administrative claim for a refund. Hence, petitioner's

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

administrative claim was timely filed on September 30, 2019, in compliance with the *first* requisite. [40]

The *second* requisite is to the effect that the judicial refund claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the ninety (90)-day period under the afore-quoted Section 112(C) of the NIRC of 1997, as amended.

In this case, from filing the petitioner's administrative claim on September 30, 2019, respondent had ninety (90) days, or until December 29, 2019, to act on the claim. Records show that on November 28, 2019, or before the lapse of the 90 days, respondent denied petitioner's refund claim. Petitioner received the denial on November 29, 2019;[41] thus, it had 30 days from November 29, 2019, or until December 29, 2019, to file a judicial claim. Petitioner seasonably filed the instant *Petition for Review* on December 27, 2019.[42]

Based on the foregoing, petitioner has complied with the *first* and *second* requisites.

Third requisite: Petitioner is a VAT-registered person.

Petitioner likewise satisfied the *third* requisite as evidenced by its registration with the BIR Large Taxpayers Service as a VAT-registered taxpayer, with TIN 000-169-584-000.[43]

Fourth and fifth requisites: Petitioner had zero-rated sales during the 3rd Quarter of CY 2017 but only in the amount of ₱138,686,178.60.

The *fourth* and *fifth* requisites require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b), and 108(B)(1) and (2), of the NIRC of 1997, as amended, the

[40] Exhibits "P-5" to "P-7", Docket – Vol. II, pp. 767 to 789.
[41] Exhibit "R-3", BIR Records – Folder 2, pp. 216 to 219.
[42] Docket – Vol. I, pp. 7 to 32.
[43] Exhibit "P-3", Docket – Vol. II, p. 764.

acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In its Amended 3rd Quarterly VAT Return for CY 2017,[44] petitioner declared an aggregate amount of ₱1,000,258,727.29 sales/receipts, which consisted of VATable sales/receipts of ₱652,418,018.41 and zero-rated sales/receipts of ₱347,840,708.88 as follows:

	Amount
VATable Sales/Receipts	₱ 652,418,018.41
Zero-Rated Sales/Receipts	347,840,708.88
Total Sales/Receipts	**₱ 1,000,258,727.29**

Petitioner's alleged zero-rated sales/receipts amounting to ₱347,840,708.88 and its supporting documents were examined by the Court-commissioned ICPA, Reyes Tacandong & Co., as represented by Mr. Glenn Ian D. Villanueva. It was found that the zero-rated sales/receipts consisted of the following:[45]

Zero-rated sale of goods to export-oriented and BOI-registered entities	₱ 319,753,621.03
Zero-rated sale of goods to PEZA-registered entities	25,674,333.63
Zero-rated sale of service to NRFC	2,412,754.22
Total	**₱ 347,840,708.88**

Upon further scrutiny of petitioner's pieces of evidence, the Court finds that the zero-rated sales/receipts amounting to ₱347,840,708.88 are further broken down as follows:

Sales of Goods:	
Export sales of goods to export-oriented enterprises whose export sales exceed 70% of total annual production	₱ 226,051,197.31
Considered export sales of goods to BOI-registered entities	92,178,770.55
Considered export sales of goods to PEZA-registered entities	25,674,333.63
Considered export sales of goods to EMB-registered entities	1,523,653.17
Subtotal	**345,427,954.66**
Sales of Services to non-resident foreign client-affiliates	2,412,754.22
Total Zero-Rated Sales/Receipts	**₱ 347,840,708.88**

[44] Exhibit "P-8", Docket – Vol. II, pp. 790 to 791.
[45] Exhibit "P-38", ICPA Report (p. 5).

Export sales of goods to export-oriented enterprises whose export sales exceed 70% of total annual production, amounting to ₱226,051,197.31.

Petitioner allegedly made the following zero-rated sales to export-oriented enterprises:[46]

Axelum Resources Corporation	₱ 110,969,568.96
Century Pacific Agricultural Ventures, Inc.	115,081,628.35
Total sales to export-oriented enterprise	**₱ 226,051,197.31**

Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, states that:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) Rate and Base of Tax. – x x x
>
> (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
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production; *xxx* (*Emphasis supplied*)

Based on the foregoing, for the sale of goods to an export-oriented enterprise whose export sales exceed 70% of total annual production to be qualified as a zero-rated sale, the following essential elements must be met:

1.) The sale was made by a VAT-registered person;

2.) The buyer must be considered as an export-oriented enterprise; and,

3.) The goods sold must be used as raw materials or packaging materials for the goods exported by the export-oriented enterprise.

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[46] Exhibit "P-9", Docket – Vol. II, pp. 792 to 794.

For the *first* essential element, it is settled that petitioner is a VAT-registered person.

On the *second* essential element, Section 4.106-5(a)(3) of Revenue Regulations ("RR") No. 16-05 provides that any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise.

Petitioner presented the respective BOI Letter Endorsement for VAT zero-rating of the customers mentioned above to prove that they are export-oriented enterprises whose export sales exceed 70% of the total annual production of the preceding taxable year, with details shown as follows:[47]

Export-Oriented Enterprise	**Percentage of Export Sales to Total Sales**	**Period When Export Sales Were Made**
Axelum Resources Corporation	82.00%	January to November 2016
Century Pacific Agricultural Ventures, Inc.	79.04%	January 1 to December 31, 2016

The above information provided in the BOI Letters shows that the export sales of Axelum Resources Corporation ("Axelum") exceeded 70% of its total production in 2016, the year preceding the taxable year 2017, when petitioner's sales were made to Axelum. However, the period when Axelum made the export sales only covered January to November 2016 and not the whole of CY 2016.

Without the information for December 2016, the Court cannot ascertain whether Axelum indeed made export sales exceeding 70% of its **total annual production** of the preceding CY 2016. As such, Axelum cannot be considered an export-oriented enterprise for purposes of VAT zero-rating.

Consequently, petitioner's sales to Axelum in the amount of ₱110,969,568.96 do not qualify as zero-rated sales.

On the other hand, Century Pacific Agricultural Ventures, Inc. ("Century Pacific") is indeed considered an export-oriented enterprise for making export sales exceeding 70% of its total annual production of the preceding taxable CY 2016, thus

[47] Exhibits "P-10" and "P-12", Docket – Vol. II, pp. 795 and 797.

qualifying petitioner's sales to it amounting to ₱115,081,628.35 during the 3rd quarter of CY 2017 to VAT zero-rating.

Lastly, as for the *third* essential element, a VAT-registered person claiming VAT zero-rated sale of goods to an export-oriented enterprise whose export sales exceed 70% of total annual production must present the following:

1.) The sales invoice as proof of the sale of goods; and,

2.) The goods sold must be used as raw materials or packaging materials for the goods ultimately exported by the export-oriented enterprise.

Concerning the first item, in proving its zero-rated sales, petitioner must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

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

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

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

The above provision on invoicing requirement is further implemented by Section 4.113-1(A) and (B) of RR No. 16-05, as amended, to wit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial</u> <u>invoices</u>, prepared at least in duplicate, showing the date of transaction,

hw

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

For petitioner's export sales to qualify for VAT zero-rating under Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, it is required that a VAT SI should be issued for each sale of goods, the information contained therein must comply with the applicable provisions previously cited, such as the imprinted word "zero-rated," the taxpayer's TIN-VAT number, the buyer's TIN and address, and the description of the goods sold.

A perusal of petitioner's SIs issued to Century Pacific[48] during the 3rd quarter of CY 2017 shows that the same complied with the invoicing requirements laid down in Section 113 of the NIRC of 1997, as amended, and RR No. 16-05, as amended.

As regards the second item, petitioner must present proof that the goods sold to the export-oriented enterprise are used as raw materials or packaging materials of the goods ultimately exported by the latter.

Upon scrutiny, the Court finds that the SIs issued to Century Pacific indicated the description of the goods sold as various packaging materials, in satisfaction of the second item under the *third* essential element.

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[48] Exhibits "P-41-13" to "P-41-20", "P-41-24" to "P-41-25", "P-41-28" to "P-41-29", "P-41-35" to "P-41-36", "P-41-45" to "P-41-46", "P-41-56" to "P-41-63", "P-41-69, "P-41-77" to "P-41-83", "P-41-98" to "P-41-99", "P-41-101" to "P-41-103", "P-41-124" to "P-41-128", "P-41-136" to "P-41-139", "P-41-145" to "P-41-147", and "P-41-159".

Verily, out of the ₱226,051,197.31 reported total export sales of goods to export-oriented-enterprise whose export sales exceed 70% of total annual production, only the amount of ₱115,081,628.35 satisfied the essential elements to qualify as VAT zero-rated sales.

"Considered export sales" to BOI, PEZA, and EMB registered entities amounting to ₱92,178,770.55, ₱25,674,333.63, and ₱1,523,653.17, respectively.

Petitioner allegedly made the following "*considered export sales*":

Sales of goods to BOI-registered entities	₱ 92,178,770.55
Sales of goods to PEZA-registered entities	25,674,333.63
Sales of goods to EMB-registered entities	1,523,653.17
Total Considered Export Sales	**₱119,376,757.35**

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) Rate and Base of Tax. – *x x x*
>
> (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; *xxx* (*Emphasis supplied*)

From the foregoing provision, for a "*considered export sale*" to qualify as zero-rated, the following essential elements must be present:

1. The sale was made by a VAT-registered person; and
2. The sale qualifies as zero-rated sales under the Omnibus Investment Code ("OIC") or other special laws.

/n

As for the *first* essential element, it is settled that petitioner is a VAT-registered person, as earlier discussed.

As for the *second* essential element, any VAT-registered person claiming VAT zero-rated "*considered export sales*" must present, among others, the following documents:

1. The SI as proof of the sale of goods; and

2. Proof of entitlement to zero-rating under the OIC or other special laws.

As for the first type of document, petitioner presented the SIs for its alleged "*considered export sales*" to the following customers:[49]

		Sales Invoice Exhibits
Sale of goods to BOI-registered entities:		
Celebes Coconut Corporation	₱ *10,735,858.87*	"P-41-1" to "P-41-5", "P-41-21" to "P-41-23", "P-41-26" to "P-41-27", "P-41-37" to "P-41-42", "P-41-44", "P-41-52", "P-41-55", "P-41-71" to "P-41-74", "P-41-84" to "P-41-96", "P-41-100", "P-41-129" to "P-41-135", "P-41-140" to "P-41-144", "P-41-151" to "P-41-156", and "P-41-158"
Peter Paul Coconut Water Corp.	*81,442,911.68*	
Subtotal	***92,178,770.55***	
Sale of goods to PEZA-registered entity *(Del Monte Philippines, Inc.)*	***25,674,333.63***	"P-41-6" to "P-41-12", "P-41-51", "P-41-53", "P-41-68", "P-41-70", "P-41-97", "P-41-123", "P-41-148" to "P-41-150", "P-41-157", and "P-41-205"
Sale of goods to an EMB-registered entity *(Superstar Coconut Products Co. Inc.)*	***1,523,653.17***	"P-41-43" and "P-41-54"
Total considered export sales	**₱119,376,757.35**	

A perusal of the SIs supporting petitioner's "*considered export sales*" shows that an amount of ₱33,036,237.77 must be disallowed for failure to comply with the invoicing requirements under Section 113 of the NIRC of 1997, as amended, and RR No. 16-05, detailed as follows:

[49] Exhibit "P-9", Docket – Vol. II, pp. 792 to 794.

Exhibit No.	Customer	SI No.	SI Date	Amount in US Dollar	Amount in Philippine Peso
Sale of goods supported by VAT sales invoice but DOES NOT indicate the nature or description of goods sold.					
"P-41-205"	Del Monte Philippines, Inc.	2110030019	29-Sep-2017	N/A	₱ 30,638.86
Sale of goods supported by VAT sales invoice but DOES NOT indicate buyer's TIN.					
"P-41-73"	Peter Paul Coconut Water Corp	2110029066	03-Aug-2017	$ 61,621.87	₱ 3,105,126.03
"P-41-74"	Peter Paul Coconut Water Corp	2110029081	03-Aug-2017	33,715.57	1,698,927.57
"P-41-84"	Celebes Coconut Corporation	2110029306	15-Aug-2017	16,691.26	852,589.56
"P-41-85"	Celebes Coconut Corporation	2110029307	15-Aug-2017	16,436.04	839,552.92
"P-41-86"	Peter Paul Coconut Water Corp	2110029308	15-Aug-2017	8,786.23	448,800.63
"P-41-87"	Peter Paul Coconut Water Corp	2110029323	16-Aug-2017	54,216.88	2,783,494.62
"P-41-88"	Peter Paul Coconut Water Corp	2110029324	16-Aug-2017	54,537.33	2,799,946.52
"P-41-89"	Peter Paul Coconut Water Corp	2110029329	16-Aug-2017	68,195.20	3,501,141.57
"P-41-90"	Peter Paul Coconut Water Corp	2110029330	17-Aug-2017	15,682.00	805,270.70
"P-41-91"	Peter Paul Coconut Water Corp	2110029331	17-Aug-2017	15,065.89	773,633.45
"P-41-92"	Peter Paul Coconut Water Corp	2110029410	23-Aug-2017	62,530.00	3,204,037.20
"P-41-93"	Peter Paul Coconut Water Corp	2110029411	23-Aug-2017	74,404.59	3,812,491.19
"P-41-94"	Peter Paul Coconut Water Corp	2110029412	23-Aug-2017	11,075.46	567,506.57
"P-41-95"	Peter Paul Coconut Water Corp	2110029413	23-Aug-2017	35,184.48	1,802,852.76
"P-41-96"	Peter Paul Coconut Water Corp	2110029414	23-Aug-2017	24,461.89	1,253,427.24
"P-41-97"	Del Monte Philippines, Inc.	2110029416	24-Aug-2017	39,811.49	2,039,144.52
"P-41-100"	Celebes Coconut Corporation	2110029422	24-Aug-2017	53,058.49	2,717,655.86
	Subtotal			**$645,474.67**	**₱33,005,598.91**
Total disallowed considered export sales				**$645,474.67**	**₱33,036,237.77**

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In VAT refund/credit claims, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[50] Moreover, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[51]

As for the second type of document, the required proof of entitlement to VAT zero-rating depends on which regime the alleged zero-rated sales fall, namely: (1) sales under the OIC or (2) sales under other special laws.

Sales under the OIC pertain to sales to BOI-registered entities, for which petitioner made during the 3rd quarter of CY 2017 in the amount of ₱92,178,770.55, out of which ₱30,966,454.39[52] is disallowed for failure to comply with the invoicing requirements as discussed earlier. This leaves an allowable amount of ₱61,212,316.16 sales to BOI-registered entities, subject to proof of entitlement to VAT zero-rating.

Section 4.106-5(a)(5) of RR No. 16-05 provides 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 BOI, which shall be good for one year unless subsequently re-issued by the BOI.

In *Commissioner of Internal Revenue vs. Filminera Resources Corporation ("Filminera* case"*)*,[53] the Supreme Court ruled that sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met:

1.) The buyer is a BOI-registered manufacturer/producer;

2.) The buyer's products are 100% exported; and,

3.) The BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of

[50] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[51] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[52] Exhibits "P-41-73" to "P-41-74", "P-41-84" to "P-41-96", and "P-41-100" with an aggregate invoice amount of ₱30,966,454.39 is disallowed for failure to indicate the buyer's TIN in the sales invoice.
[53] G.R. No. 236325, September 16, 2020.

> zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

Accordingly, petitioner must present the following documents:

1.) The buyer's Certificate of Registration with the BOI; and,

2.) The BOI Certification that the buyer exported 100% of its products.

Here, petitioner made sales to alleged BOI-registered entities – Celebes Coconut Corporation ("Celebes") and Peter Paul Coconut Water Corporation ("Peter Paul").

As for Celebes, petitioner presented said buyer's BOI Certificate of Registration No. 2010-075 issued on March 19, 2010.[54] Further, its registration with the BOI can be verified from the BOI Certification indicating that Celebes, with BOI Registration Nos. 2002-017, 2010-075, and 2011-080, has exported 100% of its total sales for the period January to December 31, 2016, and the Certification is valid for purposes of VAT zero-rating from January 30 to December 31, 2017.[55]

However, the above BOI Certification cannot be recognized to prove entitlement to VAT zero-rating for the subject period of the claim.

As elucidated in the *Filminera* case, the validity period of the BOI certification should not be confused with the period identified in the certification when the buyer exported 100% of its products. The certification's validity period is intended to accord zero-rating status to sales made during the extended period but not as proof that [the buyer] exported its entire products during the same period. Instead, the certification serves as an authority for [the supplier] to accord zero-rating status to sales made to [the buyer]. For the sales made to [the buyer] during the [period of claim for refund by the supplier] to qualify as zero-rated sales, the BOI must still certify that [the buyer] exported its entire product [for the period subject of the claim for refund by the supplier]. Without the certification from

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[54] Exhibit "P-47-2".
[55] Exhibit "P-11", Docket – Vol. II, p. 796.

the BOI attesting to actual exportation by [the buyer] of its entire products [for the period subject of the claim for refund by the supplier], the sales made during that period are not zero-rated export sales.

As in this case, the BOI Certification of Celebes indicates that its 100% export sales were identified for January to December 31, 2016, and not from January to December 2017, which is the period subject of the present claim for refund by petitioner. Thus, all sales made to Celebes during the 3rd quarter of CY 2017 cannot qualify as "*considered export sales*" subject to zero percent (0%) VAT.

As for Peter Paul, petitioner presented its BOI Certificate of Registration with Registration No. 2010-96 and its "SPECIFIC TERMS AND CONDITIONS" and "GENERAL TERMS AND CONDITIONS."[56] However, no supporting BOI Certification for Peter Paul was presented. As such, the Court cannot ascertain whether Peter Paul exported 100% of its products for the 3rd quarter of CY 2017. Consequently, all of petitioner's sales to it cannot qualify as "*considered export sales*" subject to zero percent (0%) VAT.

On the other hand, sales under special laws include sales made to special economic zones under Republic Act ("RA") No. 7916, which grants PEZA the authority to incentivize entities registered within the special economic zones.

In this case, petitioner's sale to a PEZA-registered entity, Del Monte Philippines, Inc. ("Del Monte"), during the 3rd quarter of CY 2017 amounted to ₱25,674,333.63, out of which ₱2,069,783.38[57] is disallowed for failure to comply with the invoicing requirements as discussed earlier. This leaves an allowable amount of ₱23,604,550.25 in sales to Del Monte, subject to proof of entitlement to VAT zero-rating.

For this purpose, petitioner must present a PEZA Certification showing that the buyer is a PEZA-registered entity and is entitled to a VAT zero-rating during the subject period of the claim.

[56] Exhibit "P-14", Docket – Vol. II, pp. 801 to 814.

[57] Exhibit "P-41-97" with invoice amount of ₱2,039,144.52 is disallowed for failure to indicate the buyer's TIN in the sales invoice, while Exhibit "P-41-205" with invoice amount of ₱30,638.86 is disallowed for failure to indicate the nature or description of goods sold in the sales invoice.

Petitioner presented Del Monte's PEZA Certification with Certificate No. 2017-1195 showing that it is registered with PEZA with Registration No. 07-68 and is entitled to VAT zero-rating for the year 2017.[58]

Another type of sales under special laws is a sale made to an eligible exporter pursuant to RA No. 7844, otherwise known as the Export Development Act, which grants export incentives to organizations accredited by the Export Development Council *[now Export Marketing Bureau ("EMB")]* to support measures provided by the government to exporters and encourage investment in the export sector.

Petitioner claims that its sales to an EMB-registered entity, Superstar Coconut Product Co. Inc. ("Superstar"), amounting to ₱1,523,653.17 during the 3rd quarter of CY 2017 are considered export sales entitled to VAT zero-rating. In support, petitioner presented the Certificate of Accreditation with Accreditation No. EMB-1712 of Superstar as an eligible exporter under RA No. 7844, which the EMB issued on May 16, 2017, and is valid until May 15, 2018.[59]

RMC No. 17-96 dated February 20, 1996, clarified that accreditation as an exporter under the Export Development Act is different from the requirement to qualify as an export-oriented enterprise, thus:

> REVENUE MEMORANDUM CIRCULAR NO. 17-96
>
> SUBJECT: *Clarification of Issues Affecting Zero-Rated Sales and Claims for Input Tax Credit/Refund under Republic Act No. 7716, Otherwise Known as the "Expanded VAT Law"*
>
> xxx xxx xxx
>
> Q-12 Explain the distinction between the requirement for accreditation under the Export Development Act ("earns at least 50% of its normal operating revenues from the sale of its products or services abroad for foreign currency") and requirement to qualify as an export-oriented enterprise ("whose export sales exceed 70% of the total annual production of the preceding taxable year").

[58] Exhibit "P-13", Docket – Vol. II, p. 800.
[59] Exhibit "P-15", Docket – Vol. II, p. 815.

> A-12 The 50% requirement is only for *accreditation as an exporter* under the Export Development Act while the *70%* requirement is for entitlement to apply for *effective zero-rating* of transactions under Sec. 100(2)(a)(3) (*now Sec. 106(A)(2)(a)(3) of the NIRC of 1997, as amended*) and Sec. 102(2)(b)(5) (*now Sec. 108(B)(5) of the NIRC of 1997, as amended,*) by export-oriented enterprises.

Before the enactment of RA No. 9337, which amended the NIRC of 1997, sales made to entities accredited under the Export Development Act fell under the zero-rated export sales under the then Section 100(2)(a)(3) *(now Sec. 106(A)(2)(a)(3))* of the NIRC of 1997, as amended, as implemented by Section 4.100-2(a)(3) of RR No. 7-95 *(now Section 4.106-5(a)(3) of RR No. 16-05),* which provides that any enterprise whose export sales exceed 70% of the total annual production of the preceding taxable year shall be considered an export-oriented enterprise upon accreditation as such under the provisions of the Export Development Act (RA No. 7844) and its implementing rules and regulations.

However, upon enactment of RA No. 9337 and its implementing RR No. 16-05, the phrase *"upon accreditation as such under the provisions of the Export Development Act (R.A. 7844) and its implementing rules and regulations"* was deleted. Nevertheless, in BIR Ruling No. 010-09 dated May 8, 2009, respondent had to elaborate on the matter of entitlement to VAT zero-rating of sales to Bureau of Export Trade Promotion ("BETP")[60]-accredited exporters *vis-à-vis* the effectivity of RA No. 9337 and its implementing RR No. 16-2005, to wit:

> Pursuant to RR No. 16-2005, all exporters except for direct export sales, are required to apply in order to qualify for VAT zero-rating. Thus, under RR No. 16-2005, suppliers of raw materials and packaging supplies and or contractors or subcontractors of services of such exporters are required to apply for effective zero-rating.
>
> However, RR No. 4-2007 issued on February 7, 2007 amended certain provisions of RR No. 16-2005, viz.:
>
>> "Section 6. *Effectively Zero-Rated.* — Sec. 4.106-6 of RR No. 16- 2005 is hereby amended to read as follows:
>>
>> SEC. 4.106-6. *Meaning of the term 'Effectively Zero-Rated Sale of Goods and Properties.* — The term "effectively zero-rated sale

[60] Formerly Export Development Council, now Export Marketing Bureau.

> of goods and properties" shall refer to the local sale of goods and properties by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement."
>
> It is argued that since RR No. 4-2007 did not reproduce the "prior application clause" that was expressly stated in RR No. 16-2005, it follows that the procedure has reverted to that existing under RMO No. 9-00, i.e., sales of goods, properties and services made by VAT-registered suppliers to BOI-registered manufacturers-exporters with 100% export sales shall be accorded automatic zero-rating without necessity of applying for and securing prior approval of the application for zero-rating.
>
> RMO No. 9-2000 under which you claim automatic zero-rating for your client, deals with only one subject and proclaims just one policy, namely according the benefit of automatic zero-rating treatment only to sales made by VAT-registered suppliers of goods properties and services to BOI-registered manufacturers whose manufactured products are 100% exported to foreign countries. This is clearly announced in the title of the RMO and embodied in Section 3 thereof which reads that "(s)ales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions . . . ." **Assuming RMO No. 9-2000 was not repealed, it will, therefore, not apply to BETP-registered manufacturers because the export sale referred to in the RMO is that as defined in E.O. No. 226 as implemented by BOI and <u>not R.A. No. 7844 as implemented by BETP.</u>**
>
> In view of the foregoing, this Office hereby holds that **sales by VAT registered suppliers to a BETP-accredited exporter need prior application for VAT zero-rating with the BIR.**" (*Emphasis and underscoring supplied*)

Based on the foregoing, even in the advent of RA No. 9337, mere accreditation under the Export Development Act is not sufficient proof that sales to an accredited entity are entitled to a VAT zero-rating. Consequently, all petitioner's sales to an EMB-registered entity, Superstar, during the 3rd quarter of CY 2017 cannot qualify as "*considered zero-rated*" export sales.

In sum, out of petitioner's alleged "*considered export sales*" for the 3rd quarter of CY 2017 amounting to ₱119,376,757.35, only the amount of ₱23,604,550.25 (pertaining to sales to Del Monte) qualify as VAT zero-rated sales.

Sale of services to non-resident affiliates amounting to ₱2,412,754,22.

Petitioner alleges that its gross receipts from its non-resident foreign affiliates for the 3rd quarter of CY 2017 pertained to service fees for services rendered by petitioner in the Philippines as incidents to its supply of machines and equipment. Consequently, the service fees paid by the non-resident affiliates in favor of petitioner for the 3rd quarter of CY 2017 were subject to zero percent (0%) VAT.[61]

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

1) The services fall under any of the categories under Section 108(B)(2),[62] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[63]

2) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[64]

3) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules; and[65]

4) The service must be performed in the Philippines[66] by a VAT-registered person.

[61] Petitioner's Memorandum (Par. 4.10), Docket – Vol. III, p. 1248.

[62] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[63] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

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

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

[66] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

Petitioner allegedly made effectively zero-rated sales of services to its non-resident affiliates amounting to US$47,469.74 or ₱2,412,754.22 for the 3rd quarter of CY 2017, as follows:[67]

	Sales in US Dollar	Sales in Philippine Peso
Tetra Pak Packaging Solutions SPA	$ 12,306.82	₱ 623,006.81
Tetra Pak South East Asia Pte Ltd	7,126.55	362,071.38
Tetra Pak Packaging Solutions AB	21,571.17	1,096,528.49
Tetra Pak Thailand Limited	6,465.20	331,147.54
Total	**$ 47,469.74**	**₱ 2,412,754.22**

In support of these sales, petitioner presented the following documents:

1.) Documents showing the foreign incorporation of the foregoing entities;[68]

2.) Philippine SEC Certifications of Non-Registration[69] of the same to prove that they are not doing business in the Philippines;

3.) SIs[70] and Audited Financial Statements for the period ending December 31, 2017[71] ("2017 AFS") proving the sales of services thereto during the 3rd quarter of CY 2017; and,

4.) Tetra Laval Netting Agreement ("TLNA"), [72] Clearing Summaries, [73] Settlement Summary Reports, [74] and Bank Statements[75] to prove payments of these services.

With respect to the *first* essential element, it requires that the sales of services pertain to services other than *"processing, manufacturing or repacking goods."* As disclosed in its 2017 AFS, petitioner's service fees earned for 2017 pertains to services rendered as incidents to the supply of machines and equipment.[76]

[67] Petitioner's Memorandum (Par. 4.15), Docket – Vol. III, pp. 1280 to 1281.
[68] Exhibits "P-16" to "P-19", Docket – Vol. II, pp. 816 to 837.
[69] Exhibit "P-48".
[70] Exhibits "P-41-161" to "P-41-204".
[71] Exhibit "P-33", Docket – Vol. II, pp. 861 to 961.
[72] Exhibit "P-43".
[73] Exhibits "P-44-1-A" to "P-44-1-C".
[74] Exhibits "P-44-3-A" to "P-44-3-C".
[75] Exhibits "P-45-1" to "P-45-4".
[76] Exhibit "P-33", Docket – Vol. II, p. 883.

However, a perusal of the SIs supporting the sales of services to non-resident affiliates amounting to US$47,469.74 or ₱2,412,754.22 shows that the following sales are partly sales of goods in the amount of US$27,045.99 or ₱1,372,942.46 and partly sales of services in the amount of US$6,039.00 or ₱306,092.50:

Exh No.	Customer	SI No.	SI Date	FX Rate Used	Sale of Goods		Sale of Services (Labor)		Total Invoice Amount	
					Amount in US$	Amount in Php	Amount in US$	Amount in Php	Amount in US$	Amount in Php
"P-41-161"	Tetra Pak Packaging Solutions SPA	2110028537	04-Jul-2017	50.54	275.94	13,947.38	91.50	4,624.87	367.44	18,572.25
"P-41-162"	Tetra Pak Packaging Solutions SPA	2110028538	04-Jul-2017	50.54	275.94	13,947.38	91.50	4,624.87	367.44	18,572.25
"P-41-163"	Tetra Pak Packaging Solutions SPA	2110028539	04-Jul-2017	50.54	275.94	13,947.38	91.50	4,624.87	367.44	18,572.25
"P-41-164"	Tetra Pak Packaging Solutions AB	2110028556	06-Jul-2017	50.60	173.68	8,788.21	122.00	6,173.20	295.68	14,961.41
"P-41-165"	Tetra Pak Packaging Solutions SPA	2110028562	10-Jul-2017	50.58	290.31	14,683.88	488.00	24,683.04	778.31	39,366.92
"P-41-166"	Tetra Pak Packaging Solutions SPA	2110028563	10-Jul-2017	50.58	290.31	14,683.88	488.00	24,683.04	778.31	39,366.92
"P-41-168"	Tetra Pak Packaging Solutions SPA	2110028826	19-Jul-2017	50.77	786.51	39,931.11	366.00	18,581.82	1,152.51	58,512.93
"P-41-169"	Tetra Pak Packaging Solutions AB	2110028827	19-Jul-2017	50.77	14,863.25	754,607.20	732.00	37,163.64	15,595.25	791,770.84
"P-41-171"	Tetra Pak Packaging Solutions SPA	2110028938	28-Jul-2017	50.56	287.60	14,541.06	183.00	9,252.48	470.60	23,793.54
"P-41-172"	Tetra Pak Packaging Solutions SPA	2110028939	28-Jul-2017	50.56	287.60	14,541.06	183.00	9,252.48	470.60	23,793.54
"P-41-173"	Tetra Pak Packaging Solutions SPA	2110028940	28-Jul-2017	50.56	275.94	13,951.53	91.50	4,626.24	367.44	18,577.77
"P-41-174"	Tetra Pak Packaging Solutions SPA	2110028941	28-Jul-2017	50.56	206.63	10,447.21	152.50	7,710.40	359.13	18,157.61
"P-41-175"	Tetra Pak Packaging Solutions SPA	2110028942	28-Jul-2017	50.56	275.94	13,951.53	91.50	4,626.24	367.44	18,577.77
"P-41-177"										
"P-41-178"	Tetra Pak Packaging Solutions AB	2110029047	01-Aug-2017	50.46	347.03	17,511.13	30.50	1,539.03	377.53	19,050.16
"P-41-179"	Tetra Pak Packaging	2110029048	01-Aug-2017	50.46	206.63	10,426.55	152.50	7,695.15	359.13	18,121.70

	Solutions SPA									
"P-41-180"	Tetra Pak Packaging Solutions SPA	21100 29050	01-Aug-2017	50.46	275.94	13,923.93	91.50	4,617.09	367.44	18,541.02
"P-41-181"	Tetra Pak Packaging Solutions SPA	21100 29051	01-Aug-2017	50.46	206.63	10,426.55	152.50	7,695.15	359.13	18,121.70
"P-41-182"	Tetra Pak Packaging Solutions SPA	21100 29052	01-Aug-2017	50.46	206.63	10,426.55	152.50	7,695.15	359.13	18,121.70
"P-41-183"	Tetra Pak Packaging Solutions SPA	21100 29053	01-Aug-2017	50.46	275.94	13,923.93	91.50	4,617.09	367.44	18,541.02
"P-41-184"	Tetra Pak Packaging Solutions SPA	21100 29054	01-Aug-2017	50.46	279.50	14,103.57	91.50	4,617.09	371.00	18,720.66
"P-41-185"	Tetra Pak Packaging Solutions SPA	21100 29056	01-Aug-2017	50.46	206.63	10,426.55	152.50	7,695.15	359.13	18,121.70
"P-41-187"	Tetra Pak Packaging Solutions SPA	21100 29058	01-Aug-2017	50.46	275.94	13,923.93	91.50	4,617.09	367.44	18,541.02
"P-41-188"	Tetra Pak Packaging Solutions SPA	21100 29172	08-Aug-2017	50.35	206.63	10,404.85	152.50	7,679.14	359.13	18,083.99
"P-41-189"	Tetra Pak Packaging Solutions SPA	21100 29173	08-Aug-2017	50.36	279.50	14,074.23	91.50	4,607.48	371.00	18,681.71
"P-41-190"	Tetra Pak Packaging Solutions SPA	21100 29174	08-Aug-2017	50.35	283.94	14,297.80	183.00	9,214.96	466.94	23,512.76
"P-41-193"	Tetra Pak Packaging Solutions AB	21100 29419	24-Aug-2017	51.22	347.03	17,774.88	30.50	1,562.21	377.53	19,337.09
"P-41-196"	Tetra Pak Packaging Solutions AB	21100 29587	08-Sep-2017	50.93	787.45	40,104.83	274.50	13,980.28	1,061.95	54,085.11
"P-41-197"	Tetra Pak Packaging Solutions AB	21100 29588	08-Sep-2017	50.93	787.45	40,104.83	274.50	13,980.28	1,061.95	54,085.11
"P-41-199"	Tetra Pak Packaging Solutions AB	21100 29590	08-Sep-2017	50.93	347.03	17,674.24	30.50	1,553.36	377.53	19,227.60
"P-41-200"	Tetra Pak Packaging Solutions SPA	21100 29691	14-Sep-2017	50.97	1,377.25	70,205.32	183.00	9,328.42	1,560.25	79,533.74
"P-41-201"	Tetra Pak Packaging Solutions AB	21100 29698	18-Sep-2017	51.17	497.90	25,475.05	183.00	9,363.20	680.90	34,838.25
"P-41-202"	Tetra Pak Packaging Solutions AB	21100 29700	18-Sep-2017	51.16	787.45	40,289.88	274.50	14,044.79	1,061.95	54,334.67
"P-41-203"	Tetra Pak Packaging Solutions AB	21100 29701	18-Sep-2017	51.17	497.90	25,475.05	183.00	9,363.20	680.90	34,838.25
					27,045.99	**1,372,942.46**	**6,039.00**	**306,092.50**	**33,084.99**	**1,679,034.96**

The sales of goods in the amount of US$27,045.99 or ₱1,372,942.46 must be disallowed outright as they are not in the nature of services other than *"processing, manufacturing or repacking goods."* On the other hand, the remaining amount of US$20,423.75 or ₱1,039,811.77 is indeed pertaining to services other than *"processing, manufacturing or repacking goods."*

As for the *second* essential element, the Supreme Court held in *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*[77] that for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, the claimant must establish the two components of a client's nonresident foreign corporation ("NRFC") status, *viz.*: (1) that its client was established under the laws of a country not the Philippines or, is not a domestic corporation; **and** (2) that it is not engaged in trade or business in the Philippines.

There must be sufficient proof of **both** of these components: showing that the clients are foreign corporations and are not doing business in the Philippines.

Petitioner undoubtedly satisfied the *second* essential element by showing its client-affiliates' proof of foreign incorporation and their respective Philippine SEC Certificate of Non-Incorporation, proving that its clients-affiliates are non-resident foreign corporations doing business outside the Philippines.

The *third* essential element requires that the payment for such services should be in acceptable foreign currency and accounted for in accordance with BSP rules.

Petitioner, under the TLNA,[78] is a party to the Tetra Laval Netting System ("TLNS"), which means, in brief, that companies within the Tetra Laval group have a system for setting off debts against another company in the Tetra Laval group of companies by credits towards the same company. Tetra Laval Finance & Treasury Ltd, Pully Branch ("TLFT") is responsible for handling the Tetra Laval Netting System. TLFT regularly performs a summing-up of the balances between the companies involved, which is communicated to each company concerned.

[77] G.R. No. 234445, July 15, 2020.
[78] Exhibit "P-43".

Under the TLNA, petitioner assigns and reports to TLFT its outgoing invoices to other companies within the Tetra Laval group of companies, which are members of the TLNS ("Intercompany Invoices"). TLFT accepts the assignment. It will pay to petitioner all amounts of the intercompany invoices. TLFT will succeed the companies within the Tetra Laval group of companies involved as creditors towards the debtors and consequently be entitled to all the payments made by the debtors with regard to the assigned intercompany invoices. TLFT will be responsible for informing the companies within the Tetra Laval group of companies of this factoring/netting system.

Under the foregoing netting agreement, petitioner received Clearing Summaries from TLFT, which details the amounts payable to and receivable from petitioner's affiliates, including petitioner's non-resident clients, for the months of July, August, and September 2022.[79] These amounts are offset against each other and show that petitioner has a net amount payable for said months. TLFT issued Settlement Summary Reports[80] for instructions on the remittance of the petitioner's payment of the net amount payable. The Bank Statements issued by Citibank N.A.[81] show the remittance of payments from petitioner's bank account to TLFT.

Verily, offsetting arrangements as proof that zero-rated sales are paid for in acceptable foreign currency accounted for in accordance with BSP rules is acceptable under RMC No. 42-03, which provides:

> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;

[79] Exhibits "P-44-1-A" to "P-44-1-C".
[80] Exhibits "P-44-3-A" to "P-44-3-C".
[81] Exhibits "P-45-1" to "P-45-4".

b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;

c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;

d. Documents or correspondence regarding offsetting arrangements;

e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;

f. Documents to prove actual export of goods;

g. Documents to prove that the sales are zero-rated sales.

Further, Revenue Memorandum Order ("RMO") No. 047-20, which consolidates and updates the guidelines and procedures on the processing of claims for VAT credit/refund, provides that in case of constructive remittance, such as offsetting arrangement, secure a copy of **any** of the following:

- Board resolution as to the offsetting arrangement;

- Intercompany debit or credit memo on the amount of constructive remittance under the offsetting arrangement;

- Loan documents or proofs of intercompany advances.

Indeed, petitioner complied with the foregoing requirements in proving offsetting arrangements as verified from the SIs issued to its foreign affiliates, TLNA, Clearing Summaries, and Settlement Summary Reports. Hence, petitioner satisfied the *third* essential element in proving the zero-rated sale of services to foreign affiliates.

The *fourth* essential element requires that the services be performed in the Philippines. However, petitioner failed to satisfy this requirement as the documents it presented to support the sales of services to non-resident foreign affiliates do not indicate that the services described therein were indeed performed in the Philippines.

In sum, petitioner's reported sales of services to its non-resident foreign client-affiliates in the amount of ₱2,412,754.22 (US$47,469.74) failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

More importantly, petitioner failed to present the VAT official receipts to substantiate the "gross receipts" from the sale of services to its non-resident foreign affiliates, contrary to the invoicing requirements under Section 113(A)(2) of the NIRC of 1997, as amended.

To recapitulate, out of the ₱347,840,708.88 total zero-rated sales reported by petitioner for the 3rd quarter of CY 2017, only the amount of ₱138,686,178.60 qualifies as zero-rated sales while the amount of ₱209,154,530.28 must be disallowed for purposes of claiming refund herein, thus:

Sales of Goods:	**Zero-Rated Sales Reported for the 3rd Quarter of CY 2017**	***Less:*** **Disallowances for failure to establish the essential elements to qualify as zero-rated sales**	**Qualified Zero-Rated Sales**
Export sales of goods to export-oriented enterprise whose export sales exceed 70% of total annual production	₱ 226,051,197.31	₱ 110,969,568.96	₱ 115,081,628.35
Considered export sales of goods to BOI-registered entities	92,178,770.55	92,178,770.55	-
Considered export sales of goods to PEZA-registered entities	25,674,333.63	2,069,783.38	23,604,550.25
Considered export sales of goods to EMB-registered entities	1,523,653.17	1,523,653.17	-
Subtotal	**345,427,954.66**	**206,741,776.06**	**138,686,178.60**
Sales of Services to non-resident foreign client-affiliates	2,412,754.22	2,412,754.22	-
Total zero-rated sales	**₱347,840,708.88**	**₱209,154,530.28**	**₱138,686,178.60**

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Having found that petitioner had VAT zero-rated sales in the total amount of ₱138,686,178.60 for the 3rd quarter of CY 2017, the Court shall proceed to determine whether petitioner has complied with the remaining requisites:

a. *Sixth Requisite*: the input taxes are not transitional input taxes;

b. *Seventh Requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters;

c. *Eighth Requisite*: the input taxes are due or paid; and

d. *Ninth Requisite*: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated based on sales volume.

Petitioner declared a total of ₱127,258,268.60 input VAT for the 3rd quarter of CY 2017 comprising of the ₱42,107,558.04 input VAT carried over from the previous period and ₱85,150,710.56 input VAT from current transactions,[82] to wit:

Input VAT carried over from previous period	**₱ 42,107,558.04**
Input VAT from current transactions:	
Domestic purchases of goods other than capital goods	486,625.33
Importation of goods other than capital Goods	79,337,732.04
Domestic purchases of services	4,786,972.72
Services rendered by non-residents	539,380.47
Total current input VAT	**85,150,710.56**
Total input VAT reported for the 3rd quarter of CY 2017	**₱127,258,268.60**

Out of the ₱85,150,710.56 reported total input VAT from current transactions, petitioner claims for refund the alleged excess and/or unutilized input VAT amount of ₱20,826,859.40,[83] broken down as follows:[84]

[82] Exhibit "P-8", Docket – Vol. II, pp. 790 to 791.
[83] *Id* at Line 23D.
[84] Exhibit "P-6" (Cover Letter of SGV & Co in support of petitioner's administrative claim for refund filed on September 30, 2019), Docket -Vol. II, p. 787.

Input VAT on purchase of goods allocable to zero-rated sales	₱ 169,248.29
Input VAT on purchase of services allocable to zero-rated sales	1,664,909.11
Input VAT on importations directly attributable to zero-rated sales	18,992,702.00
Total excess input VAT claimed for refund	**₱20,826,859.40**

Sixth requisite: The input taxes are not transitional.

Section 111(A) of the NIRC of 1997, as amended, provides:

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether they previously paid taxes in the acquisitions of their beginning inventory of goods, materials, and supplies. During the transition period from non-VAT to VAT status, the transitional input tax credit alleviates the impact of the VAT on the taxpayer.[85]

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

Seventh requisite: The subject input taxes have not been applied against output taxes during and in the succeeding quarters.

[85] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

The Supreme Court, in *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) vs. Commissioner of Internal Revenue*[86] (*"Chevron"*), ruled that:

> "*xxx*, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence." (*Emphasis and underscoring supplied*)

Clearly, concerning its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or

2. Refund all the input taxes attributable to zero-rated sales.

In the present case, petitioner effectively opted to avail of the second option. Petitioner's reported total input VAT from current transactions amounted to ₱85,150,710.56, of which the amount of ₱20,826,859.40 is allegedly attributable to its zero-rated sales, subject of the instant claim for refund, while the remaining input VAT of ₱64,323,851.16 is attributable to its VATable sales. To pay for its output VAT liability of ₱78,290,162.21 for the 3rd quarter of CY 2017, petitioner utilized its input VAT carried over from the previous period in the amount of ₱42,107,558.04 and a portion of its input VAT from current purchases attributable to its VATable sales in the

[86] G.R. No. 215159, July 5, 2022.

amount of ₱36,182,604.17, thus, leaving an amount of ₱28,141,246.99 excess input VAT from current purchases attributable to its VATable sales, which was carried over to the succeeding quarter.[87] Since the ₱20,826,859.40 input VAT allegedly attributable to its zero-rated sales is *undiminished* of any output VAT liability, petitioner is claiming a refund of the entire ₱20,826,859.40, as shown below:

	Per Amended 3rd Quarterly VAT Return ***(Exh. "P-8")***[88]		**Input VAT Attributable to**		
			VATable Sales ***(a less b)***	**Zero-Rated Sales**[89]	
Output VAT Due	₱78,290,162.21				
Less: Input VAT Carried from Previous Period	42,107,558.04				
Excess Output VAT Over Input VAT from the Previous Period	₱36,182,604.17				
Less: Input VAT from Current Transactions					
Domestic Purchases of Goods Other Than Capital Goods	₱ 486,625.33		₱ 317,377.04	₱ 169,248.29	
Importation of Goods Other Than Capital Goods	79,337,732.04	*(a)*	60,345,030.04	18,992,702.00	*(b)*
Domestic Purchases of Services & Services Rendered by Non-Residents	5,326,353.19		3,661,444.08	1,664,909.11	
Total	₱85,150,710.56		₱64,323,851.16	₱ 20,826,859.40	
Excess Input VAT as of the 3rd quarter of CY 2017	₱48,968,106.39				
Excess Input VAT Carried-Over to Succeeding Quarter	28,141,246.99				
Amount of Input VAT Claimed for Refund/TCC per Petition for Review	**₱20,826,859.40**				

Petitioner's Amended 3rd Quarterly VAT Return for 2017 shows that the subject claim of ₱20,826,859.40 was deducted as "VAT Refund/TCC claimed" (under Line 23D),[90] preventing the carry-over or application of such input taxes in the following taxable quarter/s. Hence, petitioner is deemed to have fulfilled the *seventh* requisite for the refund/tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended.

Eighth requisite: Not all input taxes being claimed are due or paid.

[87] Exhibit "P-23", Line 20A, Docket – Vol. II, p. 841.
[88] Docket – Vol. II, pp. 790 to 791.
[89] Exhibit "P-6" (Cover Letter of SGV & Co in support of petitioner's administrative claim for refund filed on September 30, 2019), Docket -Vol. II, p. 787.
[90] Exhibit "P-8", Docket – Vol. II, p. 791.

Anent the *eighth requisite* in claiming a VAT refund, it is indispensable for petitioner to provide supporting documents proving that the input taxes claimed during the 3rd quarter of CY 2017 were due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, to wit:

> SEC. 110. *Tax Credits*. —
>
> (A) *Creditable input Tax*. —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
>
> (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof,

exceeds One million pesos (₱1,000,000): Provided, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided*, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

"SECTION 4.110-1. *Credits For Input Tax.* — "Input tax" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the NIRC of 1997, as amended.

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

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the NIRC of 1997, as amended, shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

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

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

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

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC of 1997, as amended,

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

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

(d) Transactions "deemed sale" under Sec. 106 (B) of the NIRC of 1997, as amended;

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

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

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

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

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

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

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

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

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

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

SECTION 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the NIRC of 1997, as amended.

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the NIRC of 1997, as amended.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the NIRC of 1997, as amended.

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

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

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

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

It is categorically stated that to be entitled to input tax credits, the same must be evidenced by VAT SI or OR issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended, which were quoted earlier.

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

Accordingly, petitioner submitted VAT SIs and ORs,[91] to support its input taxes from domestic purchases of goods and

[91] Exhibits "P-52-1" to "P-52-209".

services; BIR Forms No. 1600[92] to support the input taxes withheld from services rendered by non-residents; and Single Administrative Documents ("SAD"), Statements of Settlement of Duties and Taxes ("SSDT"), Informal Import Declaration and Entry, Bureau of Customs ("BOC") ORs,[93] and a Certification dated September 27, 2019 issued by the BOC Revenue Accounting Division ("RAD"), of duties, taxes and other charges collected and remitted to the Bureau of Treasury for the 3rd quarter of CY 2017,[94] to support input taxes from importations.

The ICPA's examination of the aforesaid documents disclosed that input VAT from domestic purchases and importations amounting to ₱1,596,649.96 and ₱4,675,566.00, respectively, must be disallowed for failure to comply with the invoicing and substantiation requirements under the NIRC of 1997, as amended, and its implementing regulations, to wit:[95]

Particulars	**Reference**	**Input VAT**
a. Payment for services supported with documents other than VAT OR	*Annex E-2*	₱ 282,429.93
b. Purchase of goods and payments for services supported with VAT Invoice and VAT OR but the VAT amount is not separately indicated, the Company's name, TIN and/or address is not indicated/incorrect/incomplete, nature of payment is not indicated, and/or the alterations are not countersigned by the authorized representative	*Annex E-3 to E-7*	775,291.05
c. Purchase of goods and payment for services supported with VAT Invoice and VAT OR but the Company's name, TIN and/or address is not indicated/incorrect/incomplete, the nature of payment is not indicated, and/or the alterations are not countersigned by the authorized representative	*Annex E-8 to E-10*	314,727.85
d. Purchase of goods and payment for services supported with VAT Invoice and VAT OR but the nature of payment is not indicated, business style is incorrect, the amount claimed is different than the amount per support, and/or the alterations are not countersigned by the authorized representative	*Annex E-11 to E-15*	224,201.13
Total Disallowed Input VAT		**₱1,596,649.96**

[92] Exhibits "P-53-1" to "P-53-3".
[93] Exhibits "P-54-1" to "P-54-528".
[94] Exhibit "P-55".
[95] Exhibit "P-38", ICPA Report (pp. 14 and 16).

Particulars	Reference	Input VAT
a. Input VAT on importation under e2m Customs System supported with SAD, SSDT and Certification from BOC RAD dated outside the taxable quarter	*Annex H-4*	₱ 10,963.00
b. Input VAT on importation supported with Informal Import Declaration and Entry, BOC OR and Certification from BOC RAD, but the Company name in BOC OR is not indicated	*Annex H-5*	2,022.00
c. Input VAT on importation supported with Informal Import Declaration and Entry and Certification from BOC RAD but without BOC OR	*Annex H-6*	2,661.00
d. Input VAT on importation under e2m Customs System not supported with SAD and/or SSDT	*Annex H-7*	4,477,768.00
e. Input VAT on importation under e2m Customs System not supported with Informal Import Declaration and Entry and/or BOC OR	*Annex H-8*	182,152.00
Total Disallowed Input VAT		**₱4,675,566.00**

Upon further verification, the Court finds that the following input taxes amounting to ₱413,522.72 must likewise be disallowed for failure to meet the invoicing and substantiation requirements under existing law and regulations:

Exhibit No.	Supplier	SI/OR No.	SI/OR Date	Amount
Input VAT from Domestic Purchase of Goods Other Than Capital Goods				
Petitioner's (buyer's) TIN is not indicated				
"P-52-92"	WIZ Winner Construction Services, Inc.	6789/6790	24-Jul-2017	₱ 59,562.00
"P-52-93"	WIZ Winner Construction Services, Inc.	6792	11-Aug-2017	1,965.02
Disallowed input VAT from domestic purchase of goods other than capital goods				***₱ 61,527.02***
Input VAT from Domestic Purchase of Services				
OR date is altered without countersignature of authorized representative				
"P-52-34"	Ernesto De Guzman Balacua	1155	11-Aug-2017	***₱261,738.00***
Amount of VAT is not separately indicated				
"P-52-39"	GEA Westfalia Separator Phils. Inc.	0005058	11-Sep-2017	***₱ 58,113.45***
No nature of payment is indicated (sales invoice attached to support the OR is incomplete)				
"P-52-14"	Angara Abello Concepcion Regala & Cruz Law Offices	119468	31-Aug-2017	₱ 3,578.64

"P-52-20"	Cilberlift Freight International, Inc.	09200	21-Jul-2017	803.98
"P-52-55"	Reynaldo G. Cortidor	0000010	27-Jul-2017	27,761.63
	Subtotal			***₱ 32,144.25***
Disallowed input VAT from domestic purchase of services				**₱351,995.70**
Total disallowed input VAT				**₱413,522.72**

Summarizing the above findings relative to petitioner's compliance with the *eighth* requisite, the Court finds that out of the ₱85,150,710.56 total declared current input VAT for the 3rd quarter of CY 2017, only ₱78,464,971.87 pertains to validly substantiated input VAT, as computed below:

	Domestic Purchase of Goods Other Than Capital Goods	**Domestic Purchase of Services**	**Importation of Goods Other Than Capital Goods**	**Services Rendered by Non-residents**	**Total**
Total claimed input VAT	*₱ 486,625.33*	*₱ 4,786,972.72*	*₱ 79,337,732.04*	*₱ 539,380.47*	*₱ 85,150,710.56*
Less: Disallowances					
Per ICPA report	104,135.59	1,492,514.38	4,675,566.00	-	6,272,215.97
Per this Court's further verification	61,527.02	351,995.70	-	-	413,522.72
Total disallowances	*165,662.61*	*1,844,510.08*	*4,675,566.00*	-	*6,685,738.69*
Validly substantiated input VAT	**₱320,962.72**	**₱2,942,462.64**	**₱74,662,166.04**	**₱539,380.47**	**₱78,464,971.87**

Ninth requisite: A portion of the validly substantiated input taxes of ₱78,464,971.87 is attributable to petitioner's zero-rated sales for the 3rd quarter of CY 2017.

The *ninth* requisite is that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sales and taxable sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume.

As determined earlier, petitioner's valid input VAT for the 3rd quarter of CY 2017 amounted to ₱78,464,971.87, which consisted of the following:

Input VAT on importation of goods other than capital goods		₱ 74,662,166.04
Input VAT on domestic purchases of goods other than capital goods	₱ 320,962.72	
Input VAT on domestic purchases of services	2,942,462.64	
Input VAT on services rendered by non-residents	539,380.47	3,802,805.83
Total Valid Input VAT		**₱78,464,971.87**

Specifically Identified Input VAT

Regarding the ₱74,662,166.04 input VAT on importations, the ICPA found that petitioner specifically identifies importations directly related to its zero-rated sales. To determine how much of the valid input taxes on importations are specifically identified as pertaining to valid zero-rated sales, the ICPA traced each importation and zero-rated sales indicated in petitioner's matching schedule, using the import entry and SI number. Based on the ICPA's verification, the ₱74,662,166.00 valid input VAT on importations is identified explicitly as follows:[96]

Input VAT Specifically Identified	**Annex Reference to Exhibit "P-38"**	**VAT Amount**
Refundable Input VAT		
1) Input VAT related to valid zero-rated sales declared in the 3rd quarter 2017 VAT Return	*Annex I*	₱ 18,582,204.00
2) Input VAT related to valid zero-rated sales not declared in the 3rd quarter 2017 VAT return but the input VAT is claimed in the 3rd quarter 2017 VAT return[97]	*Annex J*	171,866.00
Non-Refundable Input VAT		
3) Input VAT related to sales not valid for zero-rating for the 3rd quarter of 2017 (Annex A-2)	*Annex I*	32,567.00
4) Input VAT related to sales not declared as zero-rated sales in the 3rd quarter of 2017 VAT return	*Annex I*	146,457.00
5) Input VAT related to sales subject to 12% VAT (Residual amount)		55,729,072.00
Total		**₱74,662,166.00**

[96] Exhibit "P-38"; p. 17.
[97] Per Annex I, Exhibit "P-38".

From the foregoing, the Court notes that out of the ₱74,662,166.00 valid input VAT on importations, only the amounts of ₱18,582,204.00 and ₱171,866.00 are directly attributable to zero-rated sales.

A perusal of the ICPA report shows that the said ₱171,866.00 input VAT is related to the following zero-rated sales not declared in the 3rd Quarter 2017 VAT return:

Input VAT			**Related Valid Zero-Rated Sales**				
Exh.	**Date Paid**	**Amount**	**Customer**	**Exh**	**Invoice Number**	**Invoice Date**	**Amount**
P-54-19	07/14/2017	₱ 144,055.00	Century Pacific Agricultural Ventures Inc	P-59-1	2110028225	6/19/2017	₱ 810,176.40
P-54-297	09/12/2017	25,794.00	Century Pacific Agricultural Ventures Inc	P-59-4	2110030189	10/12/2017	188,470.93
				P-59-5	2110030190	10/12/2017	1,154,652.50
P-54-479	09/21/2017	2,017.00	Franklin Baker, Incorporated	P-59-3	2110030247	10/19/2017	13,932,060.00
				P-59-2	2110032466	3/21/2018	2,321,565.00
	Total	**₱171,866.00**				**Total**	**₱18,406,924.83**

As can be seen from the above table, the alleged related zero-rated sales were made *not* during the 3rd quarter of 2017, when the input VAT of ₱171,866.00 was incurred and paid.

It bears stressing that for purposes of determining when petitioner can be said to be legally entitled to claim a refund of input tax due or paid, what should matter is not the date when the purchases of goods and services were made, but rather, the date when petitioner's zero-rated sales were made. Indeed, it is only at the time of such sale that petitioner can establish with definiteness that the input taxes due or paid were, in fact, either directly attributable or otherwise, allocable to its zero-rated sales.

Thus, the input VAT of ₱171,866.00 is not refundable for being outside the claim period.

With regard to the ₱18,582,204.00 input VAT on importations, the ICPA found that the said amount is identified specifically to petitioner's sales to Century Pacific Agricultural Ventures Inc., Axelum Resources Corp., and Celebes Coconut Corporation declared in the 2017 3rd Quarterly VAT Return, detailed as follows:

Input VAT	**Related Zero-Rated Sales**[98]	
	Customer	**Amount of Valid Zero-Rated Sales**
₱ 9,799,517.00	Century Pacific Agricultural Ventures Inc	₱ 106,124,619.77
8,146,747.00	Axelum Resources Corp.	97,768,878.41
635,940.00	Celebes Coconut Corporation	8,394,994.25
₱18,582,204.00		**₱ 212,288,492.43**

However, as discussed earlier, petitioner's sales to Axelum Resources Corp. and Celebes Coconut Corporation do not qualify for a VAT zero-rating. Thus, the input VAT directly attributable to them in the amounts of ₱8,146,747.00 and ₱635,940.00, respectively, cannot be refunded. On the other hand, petitioner's sales to Century Pacific Agricultural Ventures, Inc. qualify for VAT zero-rating; hence, the input VAT of ₱9,799,517.00 directly attributable to it may be refunded.

Not Specifically Identified Input VAT Subject to Allocation

We proceed to the remaining validly supported input VAT of ₱3,802,805.83 arising from petitioner's domestic purchases of goods other than capital goods, domestic purchases of services, and services rendered by non-residents.

Considering that the ₱3,802,805.83 input VAT cannot be directly identified with specific sales, We shall proportionately allocate the said input VAT based on petitioner's total sales (VATable sales and zero-rated sales), as shown below:

	Amount *[a]*		**Allocation Factor** *[c = a ÷ b]*	**Allocated Input VAT** *[e= c x d]*	
Valid Zero-Rated Sales	₱ 138,686,178.60		13.865031%	₱ 527,260.19	
Disallowed Zero-Rated Sales	209,154,530.28		20.910043%	795,168.34	
VATable Sales	652,418,018.41		65.224926%	2,480,377.30	
Total Reported Sales	**₱1,000,258,727.29**	*[b]*	**100.000000%**	**₱3,802,805.83**	*[d]*

Thus, from the foregoing, only the input VAT of ₱527,260.19 is allocable to petitioner's valid zero-rated sales of ₱138,686,178.60.

[98] Annex I, Exhibit "P-38".

In fine, with regard to petitioner's compliance with the *ninth* requisite, only the amount of ₱10,326,777.19 represents its valid input VAT directly attributable and allocable to its valid zero-rated sales of ₱138,686,178.60, as summarized below:

		Input VAT Attributable		
	Amount of Sales	**Input VAT Specifically Identified**	**Ratable Portion of Input VAT Not Specifically Identified**	**Total Valid Input VAT**
Valid Zero-Rated Sales	**₱ 138,686,178.60**	**₱9,799,517.00**	**₱527,260.19**	**₱10,326,777.19**
Disallowed Zero-Rated Sales	209,154,530.28	9,133,577.00[99]	795,168.34	9,928,745.34
VATable Sales	652,418,018.41	55,729,072.00	2,480,377.30	58,209,449.30
Total	₱1,000,258,727.29	₱74,662,166.00	₱3,802,805.83	₱ 78,464,971.83

In sum, out of the total claim of ₱20,826,859.40, petitioner has sufficiently proven that it is entitled to a refund or issuance of tax credit certificate in the amount of ₱10,326,777.19 representing its unutilized/unapplied input VAT which is attributable to its zero-rated sales for the 3rd quarter of CY 2017.

WHEREFORE, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱10,326,777.19** representing its unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of CY 2017.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[99]

	Annex Reference to Exh. "P-38"	Amount
Input VAT related to valid zero-rated sales not declared in the 3rd quarter 2017 VAT return	Annes J	₱ 171,866.00
Input VAT related to sales not valid for zero-rating for the 3rd quarter of 2017	Annex I	32,567.00
Input VAT related to sales not declared as zero-rated sales in the 3rd quarter 2017 VAT return	Annex I	146,457.00
Input VAT related to disallowed zero-rated sales to Axelum Resources Corp		8,146,747.00
Input VAT related to disallowed zero-rated sales to Celebes Coconut Corporation		635,940.00
		₱9,133,577.00

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice