REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

S&WOO CONSTRUCTION PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9533**
	Members:
- versus -	**UY,** *Chairperson* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 24 2020 10:20a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This *Petition for Review* prays that the Court render judgment ordering Respondent to refund or issue a tax credit certificate in favor of Petitioner in the aggregate amount of Php58,939,902.58, representing its unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the fourth quarter of calendar year ("CY") 2015 and first quarter of CY 2016.[1]

The Parties

Petitioner S&Woo Construction Philippines, Inc. is a corporation duly organized and existing under laws of the Philippines, with principal office address at U-2C JC Velasco Bldg., National Road, Maahas, Los Baños, Laguna.[2]

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1 Docket, Summary of the Case, Pre-Trial Order dated August 15, 2017, p. 273.
2 *Id.,* Exhibit "P-1", pp. 88 to 111.

It is registered with the Bureau of Internal Revenue ("BIR"), with Tax Identification Number ("TIN") 009-130-930-000.[3]

On the other hand, Respondent, Commissioner of Internal Revenue, is vested by the National Internal Revenue Code ("NIRC") of 1997, as amended, with the authority to decide, approve, and grant tax refund. He may be served with summons and other Court processes at the BIR, National Office Building, Agham Road, Diliman, Quezon City.[4]

The Facts

On September 6, 2016, Petitioner filed with the BIR an *Application for Tax Credits / Refunds* (BIR Form No. 1914),[5] and letter dated September 09, 2016, requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT amounting to Php44,354,629.84, for the first quarter of CY 2016.[6]

Subsequently, on September 09, 2016, Petitioner filed with the BIR another *Application for Tax Credits / Refunds* (BIR Form No. 1914),[7] and letter dated September 09, 2016,[8] requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT amounting to Php14,585,272.73, for the fourth quarter of CY 2015.

Petitioner then filed the instant *Petition for Review* on February0 2, 2017.[9]

On April 21, 2017, Respondent filed his *Answer*,[10] interposing the following defenses, to wit:

> "4. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and based on language in the law

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3 *Id.*, Exhibit "P-2", p. 112.
4 *Id.*, Joint Stipulation of Facts and Issues (JSFI), Stipulation of Facts, p. 224.
5 *Id.*, Exhibit "P-10", p. 134.
6 *Id.*, Exhibit "P-9", pp. 129 to 133.
7 *Id.*, Exhibit "P-8", p. 128.
8 *Id.*, Exhibit "P-7", pp. 123 to 127.
9 *Id.*, pp. 10 to 20.
10 *Id.*, pp. 61 to 65.

too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

5. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

6. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, Petitioner must prove compliance with the following requisites:

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

7. Claims for refund are construed strictly against the taxpayer and in favor of the Government, thus Petitioner must prove compliance with foregoing requirements.

8. Under Section 112(C) of the NIRC of 1997, as amended, the Commissioner has one hundred twenty (120) days from the submission of complete documents within which to act on the petition for refund/credit.

Sec. 112. Refunds or Credits of Input Tax

xxx xxx xxx

(C) Period within which Refund or Tax Credit shall be made. — In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection**

> **(A) hereof.** In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

9. To reiterate, the above provision shows that the 120-day period will only commence to run upon the submission of complete documents in support of the application for refund filed. Further, Section 7 of Republic Act No. 9282 provides for the jurisdiction of the Court of Tax Appeals, to wit:

> SECTION 7. Section 7 of the same Act is hereby amended to read as follows:
>
> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action in which case the inaction shall be deemed a denial.

10. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because Respondent CIR still has to investigate and ascertain the validity of the claim.

11. Only action taken by the Commissioner in response to taxpayer-claimant's written claim for refund/credit would constitute the decision which is appealable to the Court of Tax Appeals.

12. Since Petitioner failed to submit the complete documents to support its claim, the 120day period will not commence to run rendering the Honorable Court without jurisdiction over the pending case.

13. Petitioner is charged with the heavy burden of proving that it has complied with and satisfied all the documentary requirements to be entitled to the tax refund.

14. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted."

The Pre-Trial Conference was set and held on July 11, 2017.[11]

Respondent transmitted the *BIR Records* for the instant case on May 29, 2017.[12]

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[11] *Id.,* Notice of Pre-Trial Conference dated April 24, 2017 and Minutes of the hearing held on and Order dated July 11, 2017, pp. 67 to 68 and 220 to 222.

[12] *Id.,* Compliance dated May 29, 2017, pp. 73 to 74.

Respondent's Pre-Trial Brief was filed on July 05, 2017,[13] while Petitioner's *Pre-Trial Brief* was submitted on July 06, 2017.[14]

On July 28, 2017, the parties filed their *Joint Stipulation of Facts and Issues* ("JSFI").[15]

Thereafter, the Independent Certified Public Accountant ("ICPA") Report was submitted on August 09, 2017.[16]

On August 15, 2017, the Pre-Trial Order was issued, deeming the termination of the Pre-Trial Conference.[17]

The trial of the case proceeded.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Cheol Beom Lee,[18] Accounting Manager of Petitioner; and (2) Ms. Krista V. Bambao,[19] the Court-commissioned ICPA.[20]

On March 28, 2018, Petitioner filed its *Formal Offer of Evidence.*[21] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence* on April 11, 2018.[22] Thus, in the Resolution dated June 07, 2018,[23] the Court admitted Petitioner's Exhibits, *except* for Exhibits "P-16", "P-17-4", "P-18-3", "P-18-4", "P-19-3", "P-19-4", "P-19-5", "P-19-6", "P-19-7", "P-19-8", "P-19-9", "P-20-10", "P-20-11", "P-20-12", "P-20-13", "P-20-14", "P-20-15", "P-21-2", "P-21-3", "P-22-21", "P-22-22", "P-22-23", "P-22-24", "P-22-25", "P-22-26", "P-22-27", "P-24-5", "P-24-6", "P-24-7", "P-24-8", "P-24-9", "P-24-10", "P-24-11", "P-24-12", "P-24-13", "P-24-14", "P-24-15", "P-24-16", "P-25-1", "P-25-2", "P-26-1", "P-26-2", "P-26-3", "P-26-4", "P-27-2", "P-27-3", "P-27-4", "P-27-5", "P-27-6", "P-27-7", "P-27-8", "P-27-9", "P-27-10", "P-27-11", "P-27-12", "P-27-13", "P-27-14", "P-27-15", "P-27-16", "P-27-17", "P-27-18", "P-27-19",

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13 *Id.,* pp. 77 to 79.
14 *Id.,* pp. 80 to 87.
15 *Id.,* pp. 224 to 227.
16 *Id.,* pp. 229 to 270.
17 *Id.,* Pre-Trial Order dated August 15, 2017, pp. 273 to 277.
18 *Id.,* Exhibit "P-12" and Minutes of the hearing held on and Order dated October 09, 2017, pp. 139 to 151 and 283 to 284.
19 *Id.,* Exhibit "P-32" and Minutes of the hearing held on and Order dated March 13, 2018, pp. 287 to 299 and 303 to 304.
20 *Id.,* Oath of Commission dated July 11, 2017 and Minutes of the hearing held on, and Order dated, July 11, 2017, pp. 219 and 220 to 222.
21 *Id.,* pp. 307 to 320.
22 *Id.,* Refer to Motion to Admit Comment, pp. 332 to 334.
23 *Id.,* pp. 338 to 340.

"P-27-20", "P-27-21", "P-27-22", "P-27-23", "P-27-24", "P-27-25", "P-27-26", "P-27-27", "P-27-28", "P-27-29", "P-28-1", "P-28-2", "P-28-3", "P-28-4", "P-28-5", "P-28-6", "P-28-7", "P-28-8", "P-28-9", "P-28-10", "P-28-11", "P-28-12", "P-28-13", "P-28-14", "P-29-1", "P-30-2", "P-30-4", "P-30-5", "P-30-6", "P-30-7", and "P-30-8", for failure to present the originals for comparison.

At the hearing held on January 24, 2019, Respondent's counsel manifested that he will not present any evidence in this case. By agreement, both parties were given thirty (30) days to file their respective memoranda.[24]

Subsequently, Petitioner filed its *Memorandum* on February 26, 2019,[25] while Respondent filed his *Memorandum* on March 25, 2019.[26]

The instant case was deemed submitted for decision on March 29, 2019.[27]

The Issue

The parties submitted this sole issue[28] for the Court's resolution, to wit:

> "1. Whether Petitioner is entitled to its claim for refund or issuance of tax credit certificate in the amount of **Pesos: Fifty-Eight Million Nine-Hundred Thirty-Nine Thousand Nine Hundred Two & 58/100 (P58,939,902.58)** representing its unutilized/excess input VAT credits for the fourth quarter ('Q4') of calendar year ('CY') 2015 and the first quarter (Q1) of CY 2016."

Petitioner's arguments:

Petitioner argues that it is a VAT-registered entity as required under Section 112(A) of the NIRC of 1997, as amended, and its pertinent regulations; that it is engaged in zero-rated transactions; that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of Petitioner were duly supported by VAT invoices or official receipts; and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's counter-arguments:

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24 *Id.,* Minutes of the hearing held on and Order dated January 24, 2019, pp. 351 to 352.
25 *Id.,* pp. 357 to 375.
26 *Id.,* pp. 378 to 384.
27 *Id.,* Resolution dated March 29, 2019, p. 387.
28 *Id.,* JSFI, Stipulation of Issues, p. 225.

Respondent counter-argues that only the "creditable input taxes" that are "directly attributable" may be refunded; that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer; and that the taxpayer must present convincing evidence to substantiate a claim for refund.

Discussion/Ruling

This Court partially grants the instant *Petition for Review.*

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

Sections 112(A) and (C) of the NIRC of 1997, as amended provides:

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

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[29]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[30]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is a VAT-registered person;[31]

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[29] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

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

[31] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[32]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[33]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[34]
7. the input taxes are due or paid;[35]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[36] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[37]

Petitioner's administrative and judicial claims were timely made.

The *first* requisite pertains to the filing of the refund claim for 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 fourth quarter of CY 2015 and first quarter of CY 2016, which closed on December 31, 2015 and March 31, 2016, respectively. Counting two (2) years from the said dates, Petitioner had until December 31, 2017 and March 31, 2018, respectively, within which to file its administrative claim for refund or issuance of tax credit certificate.

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32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.

37 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, April 27, 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, August 03, 2010.

Petitioner's administrative claims for the said quarters were seasonably filed, as shown below:

Period Covered	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
Fourth quarter of CY 2015	December 31, 2015	December 31, 2017	September 9, 2016[38]
First quarter of CY 2016	March 31, 2016	March 31, 2018	September 6, 2016[39]

Thus, there is no doubt that Petitioner was able to fulfill the *first* requisite.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Considering that there is no indication that Respondent issued a decision relative to Petitioner's administrative claims, the determination of the 120+30-day period, as applied to this case, is shown as follows:

Period Covered	Date of Filing of Administrative Claim	End of 120 days for BIR Commissioner to decide the claim	End of 30 days from expiration of the 120 days	Date of Filing of Petition for Review
Fourth quarter of CY 2015	September 09, 2016	January 07, 2017	February 06, 2017	February 02, 2017
First quarter of CY 2016	September 06, 2016	January 04, 2017	February 03, 2017	

As shown above, the instant *Petition for Review* covering the fourth quarter of CY 2015 and first quarter of CY 2016 was filed on February 02, 2017. Thus, Petitioner's judicial claim was likewise timely made.

Such being the case, Petitioner fulfilled the above-stated *first* and *second* requisites.

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38 Docket, Exhibits "P-7" and "P-8", pp. 123 to 128.
39 *Id.,* Exhibits "P-9" and "P-10", pp. 129 to 134.

Petitioner is a VAT-registered person.

Petitioner complied with the *third* requisite considering that it is a VAT-registered taxpayer under BIR Certificate of Registration OCN No. 1R0000822965 and with TIN 009-130-930-000.[40]

Petitioner had zero-rated sales or effectively zero-rated sales, but only during the fourth quarter of CY 2015.

Petitioner avers that all of its services were rendered to Samsung Electro-Mechanics Philippines Corporation ("SEMPHIL"), an entity registered with the Philippine Economic Zone Authority ("PEZA"); and that as such, the fees paid to Petitioner by SEMPHIL for the services purchased are subject to zero percent (0%) VAT.

We agree with Petitioner.

Section 108(B)(3) of the NIRC of 1997, as amended, reads:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
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> xxx xxx xxx
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" (*Emphasis supplied*)

[40] *Id.,* Exhibit "P-2", p. 112.

The applicable law in this case is is RA No. 7916, as amended by RA No. 8748, otherwise known as "The Special Economic Zone Act of 1995", which provides that an ecozone is considered a separate customs territory, and the business establishments operating within such ecozone are entitled to certain fiscal incentives. Sections 8 and 24 of the said law provide:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." (*Emphasis supplied*)
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx" (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,*[41] the Supreme Court said:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist,

[41] G.R. No. 150154, August 09, 2005.

recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

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

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT[42]. (*Emphasis supplied*)

Based on the foregoing doctrinal pronouncements, since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and *services* made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT.

In other words, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil.

42 Now at twelve percent (12%) VAT rate.

Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed exports and treated as export sales. These sales are zero-rated or subject to tax rate of zero percent (0%).[43]

In this case, it was established that Petitioner's sole client, SEMPHIL, is a PEZA-registered entity for the subject period of claim as evidenced by PEZA Certificate of Registration No. 97-074 dated October 16, 1997,[44] PEZA Certifications dated December 09, 2014[45] and December 11, 2015,[46] respectively. Thus, its sales of services to SEMPHIL are indeed considered as "export sales" subject to VAT at zero percent (0%) rate, pursuant to the above-quoted provisions and jurisprudence.

Nevertheless, relative to its zero-rated transactions, Petitioner must further comply with the invoicing requirements mandated by the NIRC of 1997, as amended, as well as by revenue regulations implementing them,[47] specifically, Sections 113 (A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1 (A)(2), (B)(1) and (2)(a),(c) of Revenue Regulations ("RR") No. 16-05, which are all quoted hereunder:

<u>Sections 113 of the NIRC of 1997, as amended</u>:

"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**.

[43] Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc., G.R. No. 149671, July 21, 2006.
[44] Docket, Exhibit "P-3", p. 321.
[45] *Id.,* Exhibits "P-4-1", p. 322.
[46] *Id.,* Exhibit P-4-2", p. 323.
[47] Takenaka Corporation–Philippine Branch v. Commissioner of Internal Revenue, G.R. No. 193321, October 19, 2016, *citing* Western Mindanao Power Corporation v. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.

(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;

xxx xxx xxx

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

xxx xxx xxx

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) 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." *(Emphases supplied)*

<u>Sections 4.113-1 of RR No. 16-05</u>:

"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;

xxx xxx xxx

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

xxx xxx xxx

(3) In the case of sales in the amount of one thousand pesos (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." (*Emphases supplied)*

In addition to the above-stated requirements, the official receipts must likewise be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide as follows:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or **for services rendered** valued at Twenty-five pesos (P25.00) or more, **issue duly registered receipts** or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service..." *(Emphases supplied)*

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis supplied)*

Thus, only the sales of services supported by the above-stated documents, having the required information, shall qualify for VAT zero-rating.

In its Amended Quarterly VAT Returns for the fourth quarter of CY 2015[48] and first quarter of CY 2016[49], Petitioner declared no other revenues except for the zero-rated gross receipts in the aggregate amount of Php750,422,196.00[50]. The Court, however, finds that the supporting official

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[48] Docket, Exhibit "P-5", p. 324.
[49] *Id.,* Exhibit "P-6", p. 326.
[50]

	4th Quarter of CY 2015	1st Quarter of CY 2016	Total

receipts issued by Petitioner to SEMPHIL do not cover the whole amount of Php750,422,196.00, but only to the extent of Php750,063,575.00, broken down as follows:

Exhibit	Official Receipt No.	Date (Day-Month-Year)	Amount (in US Dollar)	Peso Equivalent
"P-15-1"	0001	24-Nov-2015	$ 3,269,000.00	Php154,123,543.00
"P-15-2"	0003	11-Dec-2015	10,298,000.00	485,880,236.00
"P-15-3"	0004	31-Mar-2016	2,387,000.00	110,059,796.00
Total			**$15,954,000.00**	**Php750,063,575.00**

Nevertheless, upon scrutiny of Official Receipt Nos. "0001" and "0004", the same do not indicate whether the sales were zero-rated. Thus, the same should be denied VAT zero-rating for failure to comply with one of the invoicing requirements under the aforequoted provisions, *i.e.*, that the term "zero-rated sale" shall be written or printed prominently on the official receipt. As a corollary, only Official Receipt No. "0003" qualify for VAT zero-rating, since it is compliant with the said requirements.

Such being the case, for purposes of the *fourth* requisite, only the sales of services covering the fourth quarter of CY 2015 amounting to Php485,880,236.00 (equivalent to $10,298,000.00) may be treated as zero-rated sales.

Considering that Petitioner failed to fully prove that it had valid zero-rated sales for the first quarter of CY 2016, the claimed input VAT corresponding for the same quarter allegedly attributable thereto should be denied outright. To reiterate, there must be zero-rated sales or effectively zero-rated sales to which the input VAT sought to be refunded are attributable. Consequently, only the input VAT for the fourth quarter of CY 2015 attributable to zero-rated sales for the same quarter may be a proper subject of determination whether the same is refundable under Section 112(A) of the NIRC of 1997, as amended.

There is no need to comply with the fifth requisite.

	(Exhibit P-5)	(Exhibit P-6)	
Vatable Sales/Receipts	-	-	-
Zero-Rated Sales/Receipts	Php640,362,400.00	Php110,059,796.00	Php750,422,196.00
Exempt Sales/Receipts	-	-	-
Total Sales/Receipts	**Php640,362,400.00**	**Php110,059,796.00**	**Php750,422,196.00**

The *fifth* requisite is to the effect that Petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, but only for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), all of the NIRC of 1997, as amended. Since the legal basis for Petitioner's zero-rated sales is Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748, as earlier shown, the instant case need not comply with the said *fifth* requisite.

We now proceed to determine whether Petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of tax credit certificate for the fourth quarter of CY 2015.

The input taxes being claimed are not transitional input taxes.

In its Amended Quarterly VAT Returns for the fourth quarter of CY 2015,[51] Petitioner declared input VAT due of Php376,536.28 from domestic purchases of goods other than capital goods and input VAT paid of Php14,208,736.46 from domestic purchases of services, or input VAT in the total amount of Php14,585,272.74, which is the subject of the present claim, broken down as follows:

	Fourth Quarter of CY 2015
Input VAT due on: Domestic Purchases of Goods other than Capital Goods	Php 376,536.28
Input VAT paid on: Domestic Purchase of Services	14,208,736.46
Total	**Php14,585,272.74**

The above input taxes do not appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

"SEC. 111. *Transitional/Presumptive Input Tax Credits.* -

[51] Docket, Exhibits "P-5" and "P-6" (Lines 21F and 21J), pp. 324 and 326.

> (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 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 or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[52]

As there is no showing that the claimed input VAT for the fourth quarter of CY 2015 are transitional input VAT, Petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

The input taxes being claimed for refund are due or paid and are attributable to zero-rated sales.

The *seventh* requisite for the successful prosecution of input VAT claim is to the effect that the input VAT being refunded should be due or paid. Thus, the fulfillment of the said requisite would depend on Petitioner's compliance with the invoicing and substantiation requirements provided by law, as quoted earlier.

The input VAT in the total amount of Php316,410.24 for the fourth quarter of CY 2015 should be disallowed from Petitioner's claim, for failure to meet the substantiation requirements prescribed under Sections 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.113-1 of RR No. 16-05, as amended, to wit:

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52 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 158885 and 170680, April 02, 2008.

Name of Supplier	Date (Day-Month-Year)	Doc. No.	Exhibit	Fourth Quarter CY 2015	Findings
Under Annex 6-1					
JUNG-IL BUSINESS CONSULTING CORP.	30-Oct-__	01164	"P-17-2"	Php 57,600.00	Incomplete Date
Under Annex 6-3					
ABOUT SHABU-SHABU AND GRILL	29-Dec-2015	2345	"P-19-2"	28,103.57	Input taxes claimed supported by VAT Registered Official Receipt but without TIN of Petitioner; Amount of VAT not separately indicated
Under Annex 6-6					
CHMI HOTELS AND RESIDENCES, INC.	19-Dec-2015	56429	"P-22-1"	6,942.86	Amount of Input VAT is not separately indicated
JP'S KOREAN CUISINE MANAGEMENT CORP.	6-Nov-2015	7646	"22-7"	4,854.64	Amount of Input VAT is not separately indicated
Unaccounted Purchases[53]				218,909.17	

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[53] Docket, Exhibit "P-13", Annexes 6-1 to 6-14, pp. 257 to 270.

Reference to ICPA Report	**4th Quarter of CY 2015**
Annex 6-1	Php 109,755.01
Annex 6-3	37,360.71
Annex 6-4	8,871.43
Annex 6-5	30,160.71
Annex 6-6	13,678,009.73
Annex 6-10	25,589.92
Annex 6-11	232,782.98
Annex 6-12	142,386.33
Annex 6-14	101,446.75
Total per actual footing	Php 14,366,363.57

TOTAL				**Php316,410.24**	

Moreover, in view of the denial of certain Exhibits in the Resolution dated June 7, 2018[54] for failure to present the originals for comparison, the following input VAT in the aggregate amount of Php743,657.62 should likewise be disallowed from Petitioner's claim, broken down as follows:

Name of Supplier	Date (Day-Month-Year)	Doc. No.	Exhibit	Fourth Quarter CY 2015
Under Annex 6-1				
SPRINGHILL HOLDINGS CORP.	8-Dec-2015	502	"P-17-4"	Php 26,785.72
Under Annex 6-3				
CHMI HOTELS AND RESIDENCES, INC.	24-Dec-2015	57104	"P-19-9"	9,257.14
Under Annex 6-5				
TECHROM COMPUTER CORP.	3-Nov-2015	05901	"P-21-2"	16,982.14
TECHROM COMPUTER CORP.	3-Nov-2015	05900	"P-21-3"	13,178.57
Under Annex 6-6				
SOONMI HARDWARE CORP.	20-Dec-2015	00252	"P-22-21"	4,143.36
SOONMI HARDWARE CORPORATION	20-Dec-2015	00254	"P-22-22"	95,910.00
SOONMI HARDWARE CORPORATION	20-Dec-2015	00253	"P-22-23"	85,801.85
Under Annex 6-10				
SAHAR INTERNATIONAL TRADING INC.	7-Dec-2015	0854	"P-26-4"	25,589.92
Under Annex 6-11				
FLORANGEL R. BRAID	5-Dec-2015	006	"P-27-2"	12,794.96
KSN TRADING	2-Dec-2015	0049	"P-27-3"	3,456.00
MI SO RE KOREAN RESTAURANT	8-Dec-2015	6172	"P-27-4"	10,574.46
SUNWOO ENTERPRISES	3-Dec-2015	0062	"P-27-5"	5,351.79

Less: Total input VAT claim for the fourth quarter of CY 2015	14,585,272.74
Unaccounted difference	Php 218,909.17

[54] *Id.,* Resolution dated June 07, 2018, pp. 338 to 340.

ALTERNATE REALITIES, INC	3-Nov-2015	001663	"P-27-6"	54,045.92
ALTERNATE REALITIES, INC	3-Nov-2015	001664	"P-27-7"	16,071.43
CALAMBA PREMIERE INTERNATIONAL PARK ASSOCIATION, INC.	17-Nov-2015	54367	"P-27-8"	30,420.00
CCSC CONDOMINIUM RENTAL	3-Nov-2015	004	"P-27-9"	58,345.03
FLORANGEL R. BRAID	4-Nov-2015	002	"P-27-10"	23,571.43
FLORANGEL R. BRAID	4-Nov-2015	005	"P-27-11"	12,794.96
J&J TRANSPO	9-Nov-2015	05614	"P-27-12"	5,357.00
Under Annex 6-12				
J&J TRANSPO	16-Oct-2015	0553	"P-28-1"	8,036.00
J&J TRANSPO	24-Oct-2015	0555	"P-28-2"	8,036.00
J&J TRANSPO	24-Oct-2015	0554	"P-28-3"	8,036.00
J&J TRANSPO	26-Oct-2015	0556	"P-28-4"	8,893.00
J&J TRANSPO	26-Oct-2015	0558	"P-28-5"	8,893.00
J&J TRANSPO	25-Nov-2015	0569	"P-28-6"	32,478.33
J&J TRANSPO	26-Nov-2015	0562	"P-28-7"	7,768.00
J&J TRANSPO	22-Dec-2015	0580	"P-28-8"	53,496.00
J&J TRANSPO	28-Dec-2015	0581	"P-28-9"	6,750.00
Under Annex 6-14				
ABOUT SHABU-SHABU AND GRILL	14-Dec-2015	2307	"P-30-4"	21,200.04
SOGAMIGA FINE DINING INC.	21-Dec-2015	06272	"P-30-5"	4,423.93
ZEROSAM COMPUTERS INC.	22-Nov-2015	0051	"P-30-6"	12,840.00
FLORANGEL R. BRAID	12-Dec-2015	005	"P-30-7"	25,589.92
JOHN WILTER LAND, INC.	8-Dec-2015	2812	"P-30-8"	26,785.72
TOTAL				**Php743,657.62**

Based on the foregoing, relative to Petitioner's compliance with the *seventh* requisite, out of the claimed input VAT of Php14,585,272.74 for the fourth quarter of CY 2015, only the remaining input VAT due or paid of Php13,525,204.88, which is properly substantiated by VAT invoices or official receipts, represents Petitioner's valid input VAT for the said period, computed as follows:

Particulars	Fourth Quarter CY 2015
Total input VAT claim	Php 14,585,272.74
Less:	
Input Vat on Denied Exhibits	743,657.62
Disallowed input VAT	316,410.24
Total valid input VAT	**Php 13,525,204.88**

The input VAT of Petitioner is attributable to its zero-rated sales for the fourth quarter of 2015.

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

Considering that Petitioner had no other type of sales in the fourth quarter of CY 2015, *except* for the <u>declared</u> zero-rated sales in the total amount of Php640,362,400.00,[55] the validly substantiated input VAT for the fourth quarter of CY 2015 amounting to Php13,525,204.88 is attributable thereto.

Thus, for purposes of, and with regard to Petitioner's compliance with, the *eight* requisite, only the amount of Php10,262,360.41 represents Petitioner's valid input VAT attributable to valid zero-rated sales for the fourth quarter of CY 2015, computed as follows:

Valid Zero-Rated Sales	Php485,880,236.00
Divided by the Total Declared Zero-rated Sales	Php640,362,400.00
Multiplied by Total Valid Input VAT	Php 13,525,204.88

[55] *Id.,* Exhibit "P-5", p. 324.

Valid Input VAT attributable to Valid Zero-Rated Sales	Php 10,262,360.41

However, Respondent, in his Memorandum,[56] contends as follows, to wit:

> "Section 112 of the National Internal Revenue Code of 1997 uses the word 'directly attributable' and not the word 'entirely attributable'. Therefore, the fact of 'direct attributability' must be established. Thus, it is erroneous to immediately assume that all the valid input tax is directly attributable to Petitioner's zero-rated sales without establishing how it factored in the production chain. It does not necessarily follow that when a taxpayer has zero-rated sales alone, all its input tax is automatically directly attributable to such zero-rated sales.
>
> xxx xxx xxx
>
> From the definitions provided by law,[57] it is Respondent's position that the input tax must come from purchases of goods and services that form part of the finished product of the taxpayer. It must be directly used in the chain of production. Let us bear in mind that the law used the word 'directly'. This means that the connection between the purchases and the finished product is 'concrete' and not 'imaginary' or 'remote'."

In support of the foregoing contentions, Respondent invokes the ruling in the cases of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* ("2011 *Atlas* case"),[58] and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* ("2007 *Atlas* case"),[59] collectively referred to as the "*Atlas* cases", to wit:

<u>2011 *Atlas* case</u>:

> "The CTA, applying the abovementioned rules, in its Decision dated August 24, 1998, came out with the following factual findings:
>
> > The formal offer of evidence of the Petitioner failed to include photocopy of its export documents,

[56] *Id.,* pp. 378 and 384.
[57] Referring to Section 110(A)(1)(a) of the NIRC of 1997, as amended.
[58] G.R. No. 159471, January 26, 2011.
[59] G.R. Nos. 141104 & 148763, June 08, 2007.

> as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export sales of goods. **Without the export documents, the purchase invoice/receipts submitted by the Petitioner as proof of its input taxes cannot be verified as being <u>directly attributable</u> to the goods so exported.**" *(Emphasis provided by Respondent; Underscoring ours)*

<u>2007 *Atlas* case</u>:

"Granting *arguendo* that the application of Petitioner corporation for the refund/credit of the input VAT on its zero-rated sales in the first quarter of 1992 was actually and timely filed, Petitioner corporation still failed to present together with its application the required supporting documents, whether before the BIR or the CTA. As the Court of Appeals ruled—

> In actions involving claims for refund of taxes assessed and collected, the burden of proof rests on the taxpayer. As clearly discussed in the CTA's decision, Petitioner failed to substantiate its claim for tax refund. Thus:
>
> xxx xxx xxx
>
> > There is the need to examine the sales invoice or receipts in order to ascertain the actual amount or quantity of goods sold and their selling price. **Without them, this Court cannot verify the correctness of Petitioner's claim inasmuch as the regulations require that the input taxes being sought for refund should limited to the portion that is <u>directly and entirely attributable</u> to the particular zero-rated transaction.** In this

> instance, the best evidence of such transaction are the said sales invoices or receipts.

xxx xxx xxx." *(Emphasis provided by Respondent; Underscoring ours)*

Respondent's contentions are untenable.

A plain reading of Section 112(A) of the NIRC of 1997, as amended, as quoted earlier, would reveal that the law merely states that the creditable input VAT should be *"attributable"* to the zero-rated or effectively zero-rated sales. In other words, nowhere does the said Section 112(A) say that the refundable creditable input VAT should be *"**directly** attributable"* to such sales. It is elementary that where the law does not distinguish, none must be made. *Ubi lex non distinguit nec nos distingere debemos.*[60]

Indeed, in a claim for refund under Section 112 of the NIRC, the claimant must show that: (1) it is engaged in zero-rated sales of goods or services; and (2) it paid input VAT that are <u>attributable</u> to zero-rated sales. **Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or serves subject to VAT (output) but at zero rate.**[61]

Admittedly, the words *"directly...attributed"* were used under the same provision. However, the said words merely relate to a situation where the creditable input VAT cannot be *"directly...attributed"* to any transaction, in which case the proportionate allocation thereof is called for on the basis of the volume of sales. It does **not**, in any way, qualify the preceding sentences of the same Section 112(A) which will have the effect of making the refundable input VAT are only those which are *"directly attributable"* to zero-rated or effectively zero-rated sales.

Thus, there is no legal basis for Respondent's stand that the fact of *"direct attributability"* must be established.

We cannot rely on the rulings in the *Atlas* cases being invoked by Respondent, for the simple reason that the said cases were decided under RR

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60 Commissioner of Internal Revenue v. Commission on Audit, Et. Al., G.R. Nos. 101976 and 102258, January 29, 1993.

61 Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, July 23, 2018.

No. 5-87 dated September 1, 1987,[62] as amended by RR No. 3-88 dated February 15, 1988,[63] Section 16 of which provides, in part, as follows:

> "In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund." *(Emphasis and underscoring ours)*

Understandably, on the basis thereof, the Supreme Court required and ruled in the said *Atlas* cases that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

Section 23 of RA No. 9337 reads:

> "SEC. 23. *Implementing Rules and Regulations.* – The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations pertaining to value-added tax shall be deemed revoked.**" *(Emphasis and underscoring supplied)*

Pursuant to the foregoing provision, rules and regulations pertaining to VAT issued before the effectivity of RA No. 9337, such as RR Nos. 5-87 and 3-88, shall be deemed revoked upon the issuance of the rules and regulations implementing the said law which should be done not later than June 30, 2005.

On June 22, 2005, the Secretary of Finance, upon the recommendation of Respondent, issued RR No. 14-2005, also known as the *"Consolidated Value-Added Tax Regulations of 2005"*, which became effective on July 01, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 01, 2005, which took effect on November 01, 2005. The latter RR, in turn, has undergone several amendments thereafter.

Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of July 01, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for

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[62] SUBJECT: Value-Added Tax

[63] SUBJECT: Regulations Governing the Application of Zero-Rate, Exemption on Certain Transactions Related to Exporters, and Refunds of Input Taxes.

refund should be *"directly and entirely attributable"* to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the requirement that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales, has not been retained. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, as applied to the said *Atlas* cases, is no longer binding, upon the effectivity of RR No. 14-2005, *i.e.*, on July 01, 2005.

Considering that the CY under consideration is 2016, the provisions of RR Nos. 5-87 and 3-88, as applied to the above-stated *Atlas* cases, may no longer be validly applied to the instant case.

The input taxes being claimed have not been applied against output taxes during and in the succeeding quarters.

Having determined that Petitioner had valid input VAT attributable to its zero-rated sales in the fourth quarter of CY 2015, the Court shall now determine whether the same was applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

As already mentioned, Petitioner had no other type of sales except for zero-rated sales for the fourth quarter of CY 2015, as such, it follows that there is no output VAT against which Petitioner could apply its input VAT for the same period.

Moreover, Petitioner deducted the input VAT amount of Php14,585,272.74[64] as *"VAT Refund/TCC claimed"* in its Amended Quarterly VAT Return for the fourth quarter of CY 2015, in the same quarter when such input taxes were incurred or paid. By virtue thereof, the subject claim, which includes the above-stated amount of Php10,262,360.41, was no longer carried-over to the succeeding quarter.[65]

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64 Docket, Exhibit "P-5" (Line 23D), p. 324.
65 *Id.,* Refer to Exhibit "P-6", p. 326.

In fine, Petitioner is deemed to have fulfilled the said *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is ordered to refund, or issue a tax credit certificate in favor of Petitioner in the amount of **Php10,262,360.41**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the fourth quarter of CY 2015.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice