Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

HEDCOR SIBULAN, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8166
For: Refund

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated: DEC 2 1 2016

x- x
1:00 p.m.

DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed by Hedcor Sibulan, Inc. as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[2], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[3], as amended.

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[1] Docket, vol. I, pp. 5-16.
[2] Sec. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of 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 for action, in which case the inaction shall be deemed a denial;

x x x x x x

[3] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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Petitioner seeks the refund or issuance of a tax credit certificate in the amount of ₱39,514,045.36, allegedly representing its unutilized input value-added tax (VAT) on purchases of goods and services for the third (3rd) quarter of calendar year (CY) 2008 attributable to its zero-rated sales of generated power.

Petitioner Hedcor Sibulan, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at Sta. Cruz, Davao del Sur.[4] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer's Identification No. 005-633-984-000.[5] Petitioner was incorporated on December 2, 2005, the primary purpose of which is to "engage in the business of owning, developing, constructing, operating, repairing, and maintaining of hydroelectric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations".[6]

> (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 or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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> x x x x x x

[4] Par. 2, Admitted Facts, Amended Joint Stipulation of Facts and Issues (Amended JSFI), Docket, vol. II, p. 1063.
[5] Par. 9, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1064.
[6] Par. 7, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1064.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner owns a hydroelectric power plant (42 MW Sibulan Hydro Electric Power Plant). It consists of two (2) independent hydroelectric projects namely, Upstream Plant A with installed capacity of about 16.5 MW and Downstream Plant B with installed capacity of about 26 MW; which has been duly certified by the Department of Energy (DOE) as consistent with the Power Development Plan (PDP) of the government.[7]

On March 7, 2007, petitioner entered into a Power Supply Agreement (PSA)[8] with Davao Light and Power Company, Inc. (DLPCI). Under the said Agreement, petitioner will sell its generated power through its hydroelectric power plants to DLPCI.

On October 20, 2008, petitioner filed with the Revenue District Office (RDO) No. 115 of the BIR its Original Quarterly VAT Return[9] for the 3rd quarter of CY 2008. Subsequently, petitioner filed its Amended Quarterly VAT Return[10] for the same quarter on June 23, 2010, reflecting the following relevant details:

VATable Sales		₱ -
Zero-Rated Sales		-
Total		₱ -
Output tax due		₱ -
Less: Allowable input tax		
Input tax carried over from previous period		₱ 75,195,300.69
Domestic purchase of goods other than capital goods	₱ 4,414,111.47	
Domestic purchase of services	₱35,099,933.89	39,514,045.36

[7] Par. 11, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065; Exhibits "P-2-1" to "P-2-2", Docket, vol. III, pp. 1118-1119.
[8] Exhibit "P-1", Docket, vol. II, pp. 828-934.
[9] Par. 12, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065; Exhibit "P-7", Docket, vol. II, p. 948.
[10] Par. 13, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065; Exhibit "P-8", Docket, vol. II, p. 954.

Total allowable input tax		₱ 114,709,346.05
VAT payable (overpayment)		₱(114,709,346.05)

On June 25, 2010, petitioner filed with BIR RDO No. 115 a written application for the refund or issuance of tax credit certificate (TCC) and an Application for Tax Credits/Refund (BIR Form No. 1914) for its unutilized input VAT for the second to fourth quarters of CY 2008 in the total amount of ₱107,888,643.12. The said application includes the unutilized input VAT paid and incurred by petitioner during the 3rd quarter of CY 2008 in the total amount of ₱39,514,045.36.[11]

However, respondent failed to decide on petitioner's administrative claim for refund of its excess and unutilized input VAT for the third quarter of CY 2008.[12] Hence, petitioner filed the instant Petition for Review on September 30, 2010.

On October 21, 2010, respondent filed an Answer[13] and interposed the following special and affirmative defenses:

> "5. Taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.
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> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 7. Petitioner must prove it is entitled to a claim for refund under the strictest terms.
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> 8. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.
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> 9. Petitioner must prove that the same alleged VAT input taxes was not utilized against any output tax liability.

[11] Par. 14, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065.
[12] Par. 15, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065.
[13] Docket, vol. I, pp. 175-183.

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10. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

11. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

12. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112 (A) of the NIRC of 1997.

13. The claim for refund in the amount of Thirty Nine Million Five Hundred Fourteen Thousand Forty Five and 36/100 Pesos (P39,514,045.36) allegedly representing accumulated and unutilized VAT input taxes it paid for the 3rd quarter of CY 2008 is not properly documented. To support its claim, it is indispensable for petitioner to prove the following:

a) Registration requirements of a value-added taxpayer in compliance with Section 9.236.1 (a) of Revenue Regulations No. 16-2005 and Section 236 of the NIRC of 1997, as amended;

b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the NIRC of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);

c) Petitioner must prove that it has fully complied with the requirements of Section 9.236.1.a of RR No. 16-2005 and Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim;

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d) In relation thereto, Section 112 (C) of the NIRC of 1997, as amended, requires submission of complete documents in support of the application for tax refund filed with respondent before the one hundred twenty (120) day period shall apply and before petitioner could avail of the judicial remedies provided by law. Ergo, petitioner's failure to submit proof of compliance with the aforesaid requirements warrants the dismissal of the instant Petition for Review.

14. In the case entitled *'San Roque Power Corp. vs. Commissioner of Internal Revenue'*, the Supreme Court had the occasion to say:

'In order to claim a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:

1. The taxpayer is VAT-registered;

2. The tax-payer is engaged in zero-rated or effectively zero-rated sales;

3. The input taxes are due or paid;

4. The input taxes are not transitional input taxes;

5. The input taxes have not applied against output taxes during and in the succeeding quarters;

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (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;

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and that 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; and

9. The claim is filed within 2 years after the close of the taxable quarter when such sales were made.'

15. For a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

16. Corollary thereto, Sec. 4.110.8 of RR 16-2005 explicitly provides:

'Input Taxes for tie importation of goods or the domestic purchases of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sales, or subject 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 imported goods; (2) For domestic purchases of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code.'

17. Likewise, for a judicial claim to prosper, the party must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts *(Commissioner of Internal Revenue vs. Manila Mining*

Corporation, 468 SCRA 571). Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

18. In its Petition for Review, petitioner stated that it filed an Amended Quarterly VAT Return for the 3rd quarter of CY 2008 on June 23, 2010. Moreover, petitioner alleged that it filed an administrative claim for tax credit/refund on its unutilized input VAT covering the same period on June 25, 2010.

19. The filing of the Petition for Review on September 30, 2010 was premature based on the pertinent provision of Section 112 (C) of the NIRC of 1997, as amended, to wit:

> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, <u>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.</u>
>
> 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. (Underscoring supplied)

20. Suffice it to say respondent was not given an opportunity to act on the matter. As clearly provided for in the abovementioned provision, respondent should have been given a period of one hundred twenty (120) days from the filing of petitioner's application for refund or issuance of TCC and Application for Tax Credits/Refunds within which to resolve the administrative application for refund. Manifestly, it is only after the expiration of the aforesaid period that petitioner is given 30 days within which to elevate the same before the Honorable Court of Tax Appeals. Ergo, since petitioner prematurely filed

its judicial claim prior to the lapse of the period provided for in Section 112 (C) of the NIRC of 1997, as amended the Honorable Court cannot acquire jurisdiction over the instant case.

21. To recapitulate, since petitioner prematurely filed the Petition for Review on September 30, 2010, the Honorable Court has no jurisdiction to hear and decide the instant case.

22. The provision of law regarding prescriptive periods is jurisdictional, compliance with which is essential for this Honorable Court to exercise authority over the instant case. Such statutes or rules are construed as mandatory as they have been absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharger of business and are necessary incident to the proper, efficient and orderly discharge of official functions.

23. Furthermore, it is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. Petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual basis of its claim for refund.

24. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed *strictissimi juris* against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)*. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law and he cannot be permitted to rely upon vague implications. *(BPI Leasing Corporation v. the Honorable Court of Appeals, et al., G.R. No. 127624, November 18, 2003)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service vs. Court of Appeals, 357 SCRA 444)*.

25. All told, petitioner's claim for refund filed before the Honorable Court should be denied for lack of jurisdiction and/or lack of merit."

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A Notice of Pre-Trial Conference was issued by the Court on October 22, 2010, setting the case for pre-trial conference on November 11, 2010.[14] Accordingly, respondent's Pre-Trial Brief[15] was filed on November 8, 2010; while petitioner's Pre-Trial Brief[16] was filed on November 25, 2010.

On November 25, 2010, the parties submitted their Joint Stipulation of Facts and Issues[17]. The Court, in a Resolution[18] dated January 17, 2011, approved the parties' joint stipulations and terminated the pre-trial.

On March 9, 2011, respondent filed a Motion to Dismiss[19] on the ground of lack of jurisdiction for failure of petitioner to file a judicial claim for refund within the period prescribed by law, in violation of Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent alleges that petitioner filed its judicial claim prematurely; hence, the Court has no jurisdiction to take cognizance of the case and should dismiss the petition.

On April 5, 2011, petitioner filed its Comment/Opposition (Re: Respondent's Motion to Dismiss dated 4 March 2011)[20], in compliance with the Court's Resolution[21] dated March 11, 2011.

The former Second Division[22], in a Resolution[23] dated April 12, 2011, dismissed petitioner's judicial claim for being prematurely filed.

On April 29, 2011, petitioner filed a Motion for Reconsideration[24] and on May 27, 2011, respondent filed his Comment Petitioner's Motion for Reconsideration (Re: Resolution dated 12 April 2011)[25]. On

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[14] Docket, vol. I, p. 185.
[15] Docket, vol. I, pp. 186-189.
[16] Docket, vol. I, pp. 203-217.
[17] Docket, vol. I, pp. 226-232.
[18] Docket, vol. I, p. 234.
[19] Docket, vol. I, pp. 265-271.
[20] Docket, vol. I, pp. 300-319.
[21] Docket, vol. I, p. 274.
[22] Composed of Associate Justice Juanito C. Castañeda, Jr., Associate Justice Caesar A. Casanova, and Associate Justice Cielito N. Mindaro-Grulla.
[23] Docket, vol. I, pp. 321-326.
[24] Docket, vol. I, pp. 330-366.
[25] Docket, vol. I, pp. 376-400.

June 14, 2011, the former Second Division issued a Resolution[26] denying petitioner's Motion for Reconsideration for lack of merit.

On July 18, 2011, petitioner filed a Petition for Review[27] with the Court of Tax Appeals (CTA) *En Banc* to assail the above Resolutions, docketed as CTA EB No. 798. On the other hand, respondent filed his Comment (Re: Petition for Review Resolution dated August 9, 2011)[28] on September 5, 2011.

In compliance with the CTA *En Banc* Resolution[29] dated October 3, 2011, respondent filed his Memorandum[30] on November 15, 2011; while the Memorandum for Petitioner[31] was filed on November 16, 2011. Hence, the case was submitted for decision.

On December 6, 2012, the CTA *En Banc* rendered a Decision[32] dismissing the Petition for Review for lack of merit and affirming the Resolutions dated April 12, 2011 and June 14, 2011 of the former Second Division.

Petitioner filed a Motion for Reconsideration[33] on January 24, 2013. Respondent filed his Comment (Re: Petitioner's Motion for Reconsideration)[34] on March 11, 2013.

Meanwhile, on February 12, 2013, the Supreme Court promulgated the consolidated case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue* (*San Roque* case)[35], which reinforced the doctrine in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi)*[36] that the 120+30-day period is mandatory and jurisdictional, but recognized a period of exception to its applicability, *i.e.*, the period from the issuance of BIR

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[26] Docket, vol. I, pp. 403-408.
[27] Docket, vol. I, pp. 413-469.
[28] Docket, vol. I, pp. 497-514.
[29] Docket, vol. I, pp. 518-519.
[30] Docket, vol. I, pp. 530-550.
[31] Docket, vol. I, pp. 552-612.
[32] Docket, vol. II, pp. 615-630.
[33] Docket, vol. II, pp. 652-665.
[34] Docket, vol. II, pp. 669-680.
[35] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[36] G.R. No. 184823, October 6, 2010.

Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted.

On May 30, 2013, the CTA *En Banc* issued an Amended Decision[37] in light of the *San Roque* case. The CTA *En Banc* ruled that even though petitioner filed its judicial claim for refund or tax credit of excess and unutilized input VAT before the lapse of the 120-day waiting period, still, petitioner's judicial claim was filed on September 30, 2010, or within the period of exception established by the *San Roque* case, thereby granting petitioner's Motion for Reconsideration, reversing and setting aside the CTA *En Banc's* Decision dated December 6, 2012, and remanding CTA Case No. 8166 to the Court in Division for further proceedings.

Respondent filed a Motion for Reconsideration (Re: Decision Promulgated May 30, 2013)[38] on June 20, 2013, praying that the CTA *En Banc's* Amended Decision dated May 30, 2013 be set aside and the Decision dated December 6, 2012 be reinstated; which was denied in the Resolution[39] dated November 20, 2013.

As a result, respondent filed a Petition[40] with the Supreme Court, docketed as G.R. No. 210271.

On February 17, 2014, the Supreme Court issued a Resolution[41] denying the petition for failure to sufficiently show any reversible error in the assailed judgment.

Respondent then filed a Motion for Reconsideration (Resolution dated February 17, 2014)[42], which the Supreme Court likewise denied with finality via Resolution[43] dated June 11, 2014.

Consequently, an Entry of Judgment[44] was issued by the Second Division of the Supreme Court proclaiming that the Resolution dated

[37] Docket, vol. II, pp. 683-694.
[38] Docket, vol. II, pp. 700-716.
[39] Docket, vol. II, pp. 741-754.
[40] Docket, vol. II, pp. 760-772.
[41] Docket, vol. II, p. 777.
[42] Docket, vol. II, pp. 778-791.
[43] Docket, vol. II, p. 793.
[44] Docket, vol. II, pp. 796 and 798.

February 17, 2014 became final and executory and recorded in the Book of Entries of Judgments on August 14, 2014.

In view of the foregoing, the case was remanded to the Court in Division for further proceedings.

On February 4, 2015, the Court issued a Resolution[45] setting the presentation of petitioner's evidence on February 23, 2015.

On February 18, 2015, petitioner filed an Omnibus Motion (i. To Cancel the Hearing on February 23, 2015; ii. For Leave to Re-open the Pre-Trial; and iii. To Defer the Presentation of Petitioner's Evidence)[46], which was granted by the Court in a Resolution[47] dated February 23, 2015. The case was set for pre-trial on April 6, 2015.[48]

On April 27, 2015, the parties submitted their Amended Joint Stipulation of Facts and Issues[49]. Then on May 5, 2015, the Court approved the same and terminated the pre-trial.[50]

On May 6, 2015, upon motion of petitioner, this Court commissioned Emmanuel Y. Mendoza, partner of Mendoza Querido & Co., as Independent Certified Public Accountant (CPA) for the case.[51]

During trial, petitioner presented Ms. Arlene Galace – petitioner's former General Accountant[52] and Emmanuel Y. Mendoza – the Court-commissioned Independent CPA[53].

On July 15, 2015, petitioner filed its Formal Offer of Evidence (With Motion for Leave to Correct Marking of Exhibits)[54], submitting Exhibits "P-1", "P-2-1", "P-2-2", "P-3", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-15-a", "P-18" to "P-

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[45] Docket, vol. II, pp. 801-803.
[46] Docket, vol. II, pp. 804-808.
[47] Minutes of Hearing dated February 23, 2015, Docket, vol. II, p. 809.
[48] *Ibid.*
[49] Docket, vol. II, pp. 1063-1076.
[50] Pre-Trial Order, Docket, vol. II, pp. 1078-1081.
[51] Minutes of Hearing dated May 6, 2015, Docket, vol. II, p. 1083.
[52] Minutes of Hearing dated May 6, 2015, Docket, vol. II, p. 1083; Exhibit "P-15", Docket, vol. II, pp. 1013-1026.
[53] Minutes of Hearing dated June 15, 2015, Docket, vol. III, p. 1098; Exhibit "262", Docket, vol. III, pp. 1088-1097.
[54] Docket, vol. III, pp. 1105-1117.

206", "P-207", "P-208" and "P-209", "P-210" to "P-213", "P-214" to "P-217", "P-218" to "P-221", "P-222" to "P-225", "P-226" to "P-229", "P-230" to "P-233", "P-234", "P-235", "P-236" and "P-237", "P-238", "P-239", "P-240" to "P-259", "P-260", "P-261", "P-262", and "P-262-a"; which were admitted by this Court in the Resolutions[55] dated August 27, 2015 and November 26, 2015.

Petitioner's documentary exhibits are as follows:

Exhibit	Description:
P-1	Power Supply Agreement (PSA) executed between Petitioner and Davao Light and Power Company, Inc. (DLPCI) dated March 7, 2007
P-2-1	Certificate of Compliance No. 10-05-GN-16816 issued by the Energy Regulatory Commission (ERC) for Petitioner's Hydroelectric Power Plant B on May 24, 2010
P-2-2	Certificate of Compliance No. 10-08-GN-56-16881 issued by the ERC for Petitioner's Hydroelectric Power Plant A on August 9, 2010
P-3	2nd Indorsement issued by the Chief of the Contracts Division – Legal Services of the Department of Energy (DOE) addressed to the Assistant Director for Corporate and Partnership Registration of the SEC
P-5	Memorandum of Agreement between Petitioner and DOE dated July 14, 2008
P-6	Petitioner's letter filed with the ERC on December 10, 2007 requesting the issuance of Certificate of Compliance
P-7	Petitioner's Original Quarterly VAT Return for the 3rd quarter of calendar year (CY) 2008
P-8	Petitioner's Amended Quarterly VAT Return for the 3rd quarter of CY 2008
P-9	Petitioner's Original Quarterly VAT Return for the 4th Quarter of CY 2008
P-10	Petitioner's Original Quarterly VAT Return for the 1st quarter of CY 2009
P-11	Petitioner's Original Quarterly VAT Return for the 2nd quarter of CY 2009
P-12	Petitioner's Original Quarterly VAT Return for the 3rd quarter of CY 2009
P-13	Petitioner's Original Quarterly VAT Return for the 4th quarter of CY 2009
P-14	Petitioner's Original Quarterly VAT Return for the 1st quarter of CY 2010

[55] Docket, vol. III, pp. 1138-1139 and 1158-1159.

P-15	Sworn Statement of Ms. Arlene Galace to Questions Propounded by Atty. Mary Grace Aileen V. Estoy dated March 30, 2015
P-15-a	Signature of Ms. Arlene Galace in her Sworn Statement dated March 30, 2015
P-18 to P-206	Supporting documents for input VAT for the 3rd quarter of CY 2008
P-207	Company's schedule of input VAT for the 3rd quarter of CY 2008
P-208 and P-209	Original quarterly VAT returns for the 3rd and 4th quarters of CY 2008
P-210 to P-213	Original Quarterly VAT Returns for the 1st to 4th quarters of CY 2009
P-214 to P-217	Amended Quarterly VAT Returns for the 1st to 4th quarters of CY 2010
P-218 to P-221	Amended Quarterly VAT Returns for the 1st to 4th quarters of CY 2011
P-222 to P-225	Amended Quarterly VAT Returns for the 1st to 4th quarters of CY 2012
P-226 to P-229	Original Quarterly VAT Returns for the 1st to 4th quarters of CY 2013
P-230 to P-233	Original Quarterly VAT Returns for the 1st and 2nd quarters of CY 2014 and Amended Quarterly VAT Returns for the 3rd and 4th quarters of CY 2014
P-234	Original Quarterly VAT Return for the 1st Quarter of CY 2015
P-235	Certificate of Endorsement issued by the DOE
P-236 and P-237	Certificates of Compliance of Plants A and B issued by the ERC
P-238	PSA between Petitioner and DLPCI dated March 7, 2007
P-239	Schedule of Petitioner's zero-rated sales for the 1st to 4th quarters of CY 2010
P-240 to P-259	Supporting documents for Petitioner's zero-rated sales for the 1st to 4th quarters of CY 2010
P-260	Petitioner's Audited Financial Statements for CY 2010
P-261	Report of the Independent Certified Public Accountant (ICPA) on the results of the procedure performed relative to Petitioner's claim for refund of its unutilized input tax covering the 3rd quarter of CY 2008
P-262	Sworn Statement of Mr. Emmanuel Y. Mendoza to Questions Propounded by Atty. Mary Grace Aileen V. Estoy dated June 10, 2015
P-262-a	Signature of Mr. Mendoza in his Sworn Statement dated June 10, 2015

On the other hand, during the hearing held on June 15, 2015, counsel for respondent manifested that he has no witness to present. Upon motion of the parties, the Court granted both parties thirty (30) days from receipt of the Court's resolution on petitioner's formal offer of evidence to file their respective memoranda.[56]

On February 12, 2016, this case was submitted for decision, considering petitioner's Memorandum[57] filed through registered mail on January 27, 2016 and received by the Court on February 5, 2016 and respondent's Manifestation[58] filed on October 9, 2015, adopting the arguments raised in his Answer filed on October 21, 2010 as his Memorandum.[59]

The parties submitted the following issues[60] for this Court's resolution:

> "17.1. Whether or not Petitioner's unutilized input VAT for the 3rd quarter of CY 2008 amounting to Php39,514,045.36 is duly substantiated by documentary evidence in the form of invoices and official receipts;
>
> 17.2. Whether or not Petitioner's unutilized input VAT for the 3rd quarter of CY 2008 amounting to Php39,514,045.36 was applied or credited against any output VAT of the Petitioner in the same quarter and subsequent taxable quarter or quarters; and
>
> 17.3. Whether or not the input VAT on Petitioner's domestic purchases of goods and services for the 3rd quarter of CY 2008 is attributable to its zero-rated sales of generated power."

The foregoing issues can be summarized into one main issue, to wit:

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[56] Minutes of Hearing dated June 15, 2015, Docket, vol. III, p. 1098.
[57] Docket, vol. III, pp. 1174-1207.
[58] Docket, vol. III, p. 1152.
[59] Docket, vol. III, p. 1210.
[60] Issues, Amended JSFI, Docket, vol. II, pp. 1065-1066.

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of ₱39,514,045.36 as alleged excess and unutilized input VAT on domestic purchases of goods and services attributable to its zero-rated sales of generated power for the 3rd quarter of CY 2008."

Petitioner argues that it is entitled to a refund of its unutilized input taxes attributable to its zero-rated sales of generated power pursuant to Sections 108(B)(7), 110(B), and 112(A) and (C) of the NIRC of 1997, as amended.

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

"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.

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 Section 112(A) and (C) of the NIRC of 1997, as amended, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. the claimant must be a VAT-registered person;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the administrative and judicial claims for refund were filed within the prescribed period.

Sixth Requisite:
Petitioner's administrative and judicial claims were seasonably filed

The Court shall first determine petitioner's compliance with the sixth requisite which pertains to the timeliness of the filing of petitioner's claim.

Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning period would always be the end of the quarter when the pertinent sales or transactions were made, regardless of when the input VAT was paid.[61]

Note that the reckoning point for counting the two-year period to file an administrative claim for refund or credit of unutilized input VAT is the close of the taxable quarter when the zero-rated sales were made. Hence, what is important is not the quarter when the purchases of goods or services were made and the corresponding input taxes were incurred or paid, but rather, the quarter when the zero-rated sales were made. For indeed, it is at the time the zero-rated sales were made that petitioner can establish with definiteness that the input taxes incurred or paid were in fact attributable to its zero-rated sales.

As found by the Court-commissioned Independent CPA, Mr. Emmanuel Y. Mendoza, petitioner did not have sales from its generated power for the 3rd quarter of CY 2008 since during this period, construction of its two hydroelectric power plants was still ongoing. It was only in the year 2010 when these power plants became operational and generated power which was sold to DLPCI.[62] Thus, petitioner declared zero-rated sales in its 2010 Quarterly VAT Returns[63].

Since the claimed input VAT incurred/paid for the 3rd quarter of 2008 may be attributable to the zero-rated sales in 2010, the following shall be the timeline from which the administrative claim may be filed:

Quarter Ending	**2-Year Prescriptive Period**	
	Start	**End**
March 31, 2010	April 1, 2010	March 31, 2012
June 30, 2010	July 1, 2010	June 30, 2012
September 30, 2010	October 1, 2010	September 30, 2012
December 31, 2010	January 1, 2011	December 31, 2012

As can be seen from the above table, only the reported unutilized input taxes as of the end of the first (1st) quarter of 2010 are ripe for refund/issuance of TCC when the administrative claim[64] was filed on June 25, 2010.

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[61] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. No. 198729-30, January 15, 2014.
[62] Exhibit "P-261", p. 16.
[63] Exhibits "P-214" to "P-217".
[64] Par. 14, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065.

In relation thereto, Section 110(B) of the NIRC of 1997, as amended, states in part that "If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: xxx *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

In applying the afore-mentioned provisions, the Court finds that as of the date of filing of petitioner's administrative claim on June 25, 2010, the entire unutilized input VAT for the 3rd quarter of 2008 amounting to ₱39,514,045.36 may be the subject of a claim for refund or issuance of TCC as it is in the nature of an excess "Input Tax Carried Over from Previous Period", which may be attributed to the reported zero-rated sales for the first quarter of 2010.

Therefore, counting from March 31, 2010, the close of the first quarter of 2010, petitioner's administrative claim filed on June 25, 2010, was well within the two-year prescriptive period.

As discussed earlier, the timeliness of petitioner's judicial appeal was already settled by the Court of Tax Appeals *En Banc* in its Amended Decision in CTA EB No. 798 dated May 30, 2013, which was effectively affirmed by the Supreme Court through its Minute Resolution dated February 17, 2014.

Hence, petitioner timely filed both its administrative and judicial claims.

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

First Requisite:
Petitioner is a VAT-registered entity

Petitioner complied with the first requisite considering that it is registered with the BIR as a VAT taxpayer in accordance with Section

236 of the NIRC of 1997, as amended, with Taxpayer Identification No. 005-633-948-VAT.[65]

Second Requisite: Petitioner had zero-rated sales

On the second requisite, Section 108(B)(7) of the NIRC of 1997, as amended, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero percent (0%) VAT, to wit:

> "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:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

Further, Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, implementing the foregoing provision, qualified the applicability of such zero-rating as follows:

> "SECTION 4.108-5. *Zero-Rated Sale of Services.* –
>
> xxx xxx xxx

[65] Par. 9, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1064.

> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however*, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

Corollary to the above provisions, Section 4.108-3(f) of Revenue Regulations No. 16-2005 states:

> "SECTION 4.108-3. *Definitions and Specific Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts: *Provided*, That sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> '*Generation companies*' refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Clearly, from the foregoing, to qualify for VAT zero-rating, petitioner must prove by sufficient evidence that it is engaged in the sale of power or fuel generated through renewable sources of energy.

Petitioner was incorporated on December 2, 2005, the primary purpose of which is "to engage in the business of owning, developing, constructing, operating, repairing, and maintaining of hydroelectric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating, and/or owning power generation plants and/or converting stations".[66]

Petitioner's 42 MW Sibulan Hydro Electric Power Plant consisting of two (2) independent hydroelectric projects namely, Upstream Plant A with installed capacity of about 16.5 MW and Downstream Plant B with installed capacity of about 26 MW have been duly certified by the DOE as consistent with the Power Development Plan of the government.[67] Both Plants A and B were duly issued with Certificates of Compliance by the Energy Regulatory Commission.[68]

Pursuant to the Power Supply Agreement[69] executed between petitioner and DLPCI on March 7, 2007, the former undertook to supply the latter with its electricity requirements in its Franchise Area. Accordingly, the agreement shall expire on the twelfth (12th) year from Phase I Supply or early commencement thereof.

In its Amended Quarterly VAT Return[70] for the first quarter of 2010, petitioner reflected zero-rated sales/receipts in the amount of ₱20,316,218.41, pertaining to its gross receipts from sales of electricity to DLPCI as evidenced by the VAT zero-rated sales invoice[71] and official receipt (OR)[72] issued by petitioner to DLPCI for the same period.

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[66] Par. 7, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1064.
[67] Par. 11, Admitted Facts, Amended JSFI, Docket, vol. II, p. 1065.
[68] Exhibits "P-2-1" to "P-2-2", Docket, vol. III, pp. 1118-1119.
[69] Exhibit "P-1", Docket, vol. II, pp. 828-934.
[70] Exhibit "P-214".
[71] Exhibit "P-240".
[72] Exhibit "P-241".

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Such sales of electricity generated through a renewable source of energy, particularly, hydropower, qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended.

Third Requisite:
Petitioner incurred
or paid input taxes

To prove that petitioner incurred/paid the excess input VAT amounting to ₱39,514,045.36 for the 3rd quarter of 2008, it submitted various suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), and bank official receipts for the remittance of BOC duties and taxes[73]; which were all examined by the Independent CPA.

Upon scrutiny of the Independent CPA Report and the related supporting documents, the Court agrees with the Independent CPA's findings that the input taxes in the amount of ₱516,138.17 should be disallowed for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8, and 4.113-1 of RR No. 16-05, as amended. Below is the detailed breakdown of the disallowed input VAT amounting to ₱516,138.17:[74]

Findings	**ICPA Report *(Exh. "P-261")* Annex**	**Exhibit No.**	**Amount**
Domestic Purchase of Services			
Not properly substantiated:			
Input VAT on domestic purchase of services supported by VAT ORs wherein the amount of input VAT in the OR does not tie up with the amount of input VAT in the Company's Schedule	A-2	P-88	₱ 7,152.32
Input VAT on domestic purchase of services supported by documents other than VAT ORs	A-3	P-89 to P-92	56,305.56
Input VAT on domestic purchase of services supported by ORs with no BIR Authority to Print	A-4	P-93 to P-94	306,847.02
Input VAT on domestic purchase of services supported by VAT ORs dated outside period of claim	A-5	P-95 to P-96	1,516.15
Input VAT on domestic purchase of services supported by ORs printed with "NON-VAT/NV"	A-6	P-97	53,678.00
Input VAT on domestic purchase of services supported by ORs printed with "NOT A VALID SOURCE OF INPUT VAT"	A-7	P-98	2,359.07

[73] Exhibits "P-18" to "P-206".

[74] Exhibit "P-261", Annex A.

Input VAT on domestic purchase of services posted twice in the Company's schedule	A-8		405.50
Input VAT on domestic purchase of services with no available supporting documents	A-9		1,215.97
			₱ 429,479.59
Domestic Purchase of Goods			
Not properly substantiated:			
Input VAT on domestic purchase of goods supported by VAT invoices wherein the amount of input VAT in the invoice does not tie up with the amount of input VAT in the Company's Schedule	A-11	P-177	₱ 198.95
Input VAT on domestic purchase of goods supported by documents other than VAT invoices	A-12	P-178 to P-188	974.41
Input VAT on domestic purchase of goods supported by invoices with no BIR Authority to Print	A-13	P-189	35.36
Input VAT on domestic purchase of goods supported by VAT invoices dated outside period of claim	A-14	P-190 to P-200	83,560.65
Input VAT on domestic purchase of goods supported by invoices printed with "NON-VAT/NV"	A-15	P-201	58.93
Input VAT on domestic purchase of goods with no available supporting documents	A-16		1,830.28
			₱ 86,658.58
TOTAL			**₱516,138.17**

In addition, petitioner's claimed input VAT in the amount of ₱6,218,334.86, as detailed below, should also be disallowed for non-compliance with the substantiation requirements under the afore-mentioned VAT law and regulations:

ICPA Report (*Exh. "P-261"*) Annex	Exhibit No.	Supplier	OR/Invoice No.	OR/Invoice Date	Input VAT Amount
Domestic Purchase of Services:					
Supported with VAT OR but no separate amount indicated for the VAT					
A-1	P-20	ABOITIZ & COMPANY, INC.	102449	8/21/2008	₱ 7,519.00
A-1	P-21	ABOITIZ & COMPANY, INC.	102878	9/19/2008	7,519.00
A-1	P-22	ABOITIZ & ENERGY SOLUTIONS	1858	8/5/2008	42,000.00
A-1	P-23	ABOITIZ & ENERGY SOLUTIONS	1933	9/23/2008	42,000.00
A-1	P-24	ABOITIZ EQUITY VENTURES	02515	8/4/2008	192.60
A-1	P-25	ABOITIZ EQUITY VENTURES	02618	9/2/2008	128.40
A-1	P-26	ABOITIZ EQUITY VENTURES	02688	9/26/2008	363.00
A-1	P-27	ABOITIZ EQUITY VENTURES	02692	9/26/2008	80.40
A-1	P-37	CEBU PRAEDIA DEV. CORP	2960	9/8/2008	235.71
A-1	P-41	EDCOP	16012	7/3/2008	301,830.00
A-1	P-42	EDCOP	16013	7/5/2008	30,816.00
A-1	P-43	EDCOP	16014	7/28/2008	35,880.00
A-1	P-44	EDCOP	16019	8/29/2008	31,200.00
A-1	P-45	EDCOP	16020	8/29/2008	33,240.00
A-1	P-46	EDCOP	16021	8/29/2008	33,420.00
A-1	P-47	EDCOP	16015	8/4/2008	317,046.00
A-1	P-48	EDCOP	16022	9/5/2008	872,269.09
A-1	P-49	EDCOP	16025	9/20/2008	31,200.00

A-1	P-53	GENSAN STAR SECURITY & ALLIED SERVICES INC	2467	9/22/2008	1,339.29
A-1	P-55	GREAT STREET CONSTRUCTION EQUIPT RENTALS	1273	7/5/2008	80,475.27
A-1	P-57	HOUSE OF TRAVEL INC	22135	7/31/2008	4,500.00
A-1	P-58	HOUSE OF TRAVEL INC	22460	9/19/2008	2,458.00
A-1	P-59	JJ DRILLTEK CO	1213	8/11/2008	129,160.20
A-1	P-66	KARL'S KOFFEE KORNER	2615	7/10/2008	34.29
A-1	P-67	KARL'S KOFFEE KORNER	2534	7/3/2008	37.50
A-1	P-68	MANTIS SECURITY SERVICES INC	2763	7/18/2008	405.50
A-1	P-69	MANTIS SECURITY SERVICES INC	2813	8/29/2008	405.50
A-1	P-70	MANTIS SECURITY SERVICES INC	2788	8/5/2008	5,288.57
A-1	P-71	NDT-PHILS INSPECTION SERVICES CORP	0376	9/18/2008	89,820.00
A-1	P-72	QUIKWAY CAROMOVERS INTERNATIONAL INC	1038	8/14/2008	6,354.98
A-1	P-73	QUIKWAY CAROMOVERS INTERNATIONAL INC	1039	8/14/2008	6,354.98
A-1	P-74	QUIKWAY CAROMOVERS INTERNATIONAL INC	1043	8/21/2008	13,045.94
A-1	P-75	QUIKWAY CAROMOVERS INTERNATIONAL INC	1044	8/21/2008	6,522.97
A-1	P-76	QUIKWAY CAROMOVERS INTERNATIONAL INC	1049	8/27/200/	26,091.88
A-1	P-77	QUIKWAY CAROMOVERS INTERNATIONAL INC	1055	9/3/2008	13,045.94
A-1	P-78	QUIKWAY CAROMOVERS INTERNATIONAL INC	1054	9/3/2008	19,568.91
A-1	P-79	SAFEWAY PROTECTIVE & INVESTIGATION AGENCY	6777	7/3/2008	1,339.29
A-1	P-80	SAFEWAY PROTECTIVE & INVESTIGATION AGENCY	6781	7/21/2008	1,339.29
A-1	P-81	SAFEWAY PROTECTIVE & INVESTIGATION AGENCY	6785	8/6/2008	1,339.29
A-1	P-83	T&T PHILIPPINES	0005	9/16/2008	982,592.40
A-1	P-84	TOYOTA DAVAO CITY INC	176531	7/8/2008	672.53
A-1	P-85	TOYOTA DAVAO CITY INC	176810	8/8/2008	629.77
A-1	P-86	TOYOTA DAVAO CITY INC	176959	8/29/2008	1,004.34
A-1	P-87	TOYOTA DAVAO CITY INC	177111	9/19/2008	431.58
A-2	P-88	PONTMAIN RESOURCES INC	00947 & 50	10/7/2008	53,533.39
Overclaimed input VAT					
A-1	P-82	SOLID SHIPPING LINES INC	186126	7/4/2008	2.45
		Input VAT Per Claim ₱176.04			
		Less: Input VAT Per OR 173.59			
		Overclaimed Input VAT ₱ 2.45			
				Subtotal	***₱3,234,733.25***
Domestic Purchase of Goods:					
Supported with VAT invoice but no separate amount indicated for the VAT					
A-10	P-103	BANKEROHAN FLYING V GAS STATION	13954	9/9/2008	₱ 368.17
A-10	P-104	BLUEGRE COFFEE CORP	19282	7/3/2008	81.43
A-10	P-105	BLUEGRE COFFEE CORP	19896	8/21/2008	93.75
A-10	P-106	BLUEGRE COFFEE CORP	19530	8/5/2008	102.86
A-10	P-113	DC TECH MICRO SERVICES	76017	7/25/2008	139.30
A-10	P-114	DC TECH MICRO SERVICES	76257	8/7/2008	565.18
A-10	P-115	EXOR LPG CENTER	36445	7/22/2005	347.68
A-10	P-116	EXOR LPG CENTER	36885	9/13/2008	318.75
A-10	P-164	PINLAC PRINTING PRESS	2482	8/21/2008	696.41

A-10	P-173	ULAS HARDWARE	806833	7/16/2008	8.04
A-10	P-176	WHOLESOME FOODS INC	0836	9/1/2008	16.07
Supporting VAT invoice issued not in petitioner's name					
A-10	P-117	GH OFFICE DEPOT	298177	7/24/2008	237.54
A-10	P-118	GH OFFICE DEPOT	298305	7/26/2008	79.18
A-10	P-119	GH OFFICE DEPOT	298306	7/26/2008	87.40
A-10	P-120	GH OFFICE DEPOT	299123	8/2/2008	69.43
A-10	P-121	JH HARDWARE CO	8287	7/5/2008	91.81
A-10	P-141	MIT & COMPANY	145559	8/5/2008	471.44
Supporting VAT invoice without BIR authority to print					
A-10	P-146	PHELP'S DODGE PHIL. ENERGY PROD.	28031	7/10/2008	184,653.43
A-10	P-147	PHELP'S DODGE PHIL. ENERGY PROD.	28754	7/31/2008	174,615.05
A-10	P-148	PHELP'S DODGE PHIL. ENERGY PROD.	28890	8/2/2008	177,256.73
A-10	P-149	PHELP'S DODGE PHIL. ENERGY PROD.	28889	8/2/2008	176,464.22
A-10	P-150	PHELP'S DODGE PHIL. ENERGY PROD.	28876	8/4/2008	177,520.90
A-10	P-151	PHELP'S DODGE PHIL. ENERGY PROD.	28885	8/4/2008	177,256.73
A-10	P-152	PHELP'S DODGE PHIL. ENERGY PROD.	29121	8/6/2008	172,501.70
A-10	P-153	PHELP'S DODGE PHIL. ENERGY PROD.	29042	8/6/2008	162,991.66
A-10	P-154	PHELP'S DODGE PHIL. ENERGY PROD.	29171	8/7/2008	182,540.09
A-10	P-155	PHELP'S DODGE PHIL. ENERGY PROD.	29170	8/7/2008	165,105.00
A-10	P-156	PHELP'S DODGE PHIL. ENERGY PROD.	29173	8/9/2008	174,350.88
A-10	P-157	PHELP'S DODGE PHIL. ENERGY PROD.	29172	8/9/2008	183,596.76
A-10	P-158	PHELP'S DODGE PHIL. ENERGY PROD.	29210	8/12/2008	184,917.60
A-10	P-159	PHELP'S DODGE PHIL. ENERGY PROD.	29209	8/12/2008	184,917.60
A-10	P-160	PHELP'S DODGE PHIL. ENERGY PROD.	29328	8/19/2008	184,917.60
A-10	P-161	PHELP'S DODGE PHIL. ENERGY PROD.	29329	8/19/2008	184,917.60
A-10	P-162	PHELP'S DODGE PHIL. ENERGY PROD.	29327	8/19/2008	105,667.20
A-10	P-163	PHELP'S DODGE PHIL. ENERGY PROD.	29656	8/26/2008	25,624.30
Overclaimed input VAT					
A-10	P-169	SACRED HEART GAS STATION	66251	9/1/2008	12.12
		Input VAT per Claim ₱ 59.47			
		Less: Input VAT per Invoice 47.35			
		Overclaimed Input VAT ₱ 12.12			
				Subtotal	***₱2,983,601.61***
				TOTAL	**₱6,218,334.86**

In sum, out of petitioner's input VAT claim of ₱39,514,045.36, only the amount of ₱32,779,572.33 as computed below, is duly substantiated:

Input VAT claim		₱ 39,514,045.36
Less: Disallowances		
Per Independent CPA Findings	₱ 516,138.17	
Per this Court's Further Verification	₱6,218,334.86	6,734,473.03
Refundable Input VAT		**₱32,779,572.33**

Fourth and Fifth Requisites: Petitioner's input taxes were

unutilized and attributable to its zero-rated sales

Since petitioner's sales for the first quarter of 2010 were all zero-rated, the substantiated input VAT of ₱32,779,572.33 is entirely attributable thereto.

Further, although the claimed input VAT was carried over in petitioner's succeeding Quarterly VAT Returns, the same was deducted as "VAT Refund/TCC Claimed" in the Amended Quarterly VAT Return for the fourth quarter of 2010[75] and was no longer carried forward to the subsequent Quarterly VAT Returns[76].

It was noted, however, that the total amount deducted as "VAT Refund/TCC Claimed" in the 4th Quarterly VAT Return for 2010 was ₱385,134,836.20.[77] And as correctly noted by the Independent CPA, such amount included the subject claim of ₱39,514,045.36.[78]

Prior to and until such time that it was deducted as a VAT Refund/TCC Claimed in the VAT Returns, petitioner did not incur any output VAT liability. And since the claimed input VAT was deducted in petitioner's 4th Quarterly VAT Return for 2010, it can be ascertained that it will no longer be utilized as credit for any future output VAT liability.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱32,779,572.33** representing petitioner's unutilized input taxes for the 3rd quarter of 2008 attributable to its zero-rated sales.

SO ORDERED.

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

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[75] Exhibit "P-217".
[76] Exhibits "P-218" to "P-234".
[77] Exhibit "P-217", Line 23D.
[78] Exhibit "P-261", p. 9.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice