CTA Form No. 8

22-000279-0055

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10882

PETROTRADE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **July 9, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 13, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PETROTRADE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10882**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JUL 09 2026 3:50PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Petrotrade Philippines, Inc. (**petitioner**) pursuant to Section 3(a),[2] Rule 8 in relation to Section 3(a)(1),[3] Rule 4 of the Revised Rules of the Court of

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[1] Filed on 10 June 2022, Division Docket, Volume I, pp. 7-42.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) **A party adversely affected by a decision**, ruling or the inaction **of the Commissioner of Internal Revenue** on disputed assessments **or claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **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:
(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[.]

Tax Appeals (**RRCTA**), challenging respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) total denial of its administrative claim for refund or issuance of tax credit certificate (**TCC**) in the amount of ₱38,812,218.95. The amount claimed represents excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services, and importations attributable to zero-rated sales for the third (3^{rd}) quarter of calendar year (**CY**) 2020.

PARTIES TO THE CASE

Petitioner is a corporation organized under Philippine law and registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. 196991 and 94 Scout Rallos St., Sacred Heart, Quezon City as its principal office.[4] It is likewise registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer's Identification Number (**TIN**) 000-658-115-00000 under Revenue District Office (**RDO**) No. 124 – Excise Large Taxpayers Audit Division (**ELTAD**) II.[5] Petitioner is engaged in the wholesale or retail trading of all kinds of petroleum products and domestic shipping operations and hauling services.[6]

Respondent, on the other hand, is the duly appointed CIR of the BIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and other tax laws, rules and regulations. He or she holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

On 22 October 2020, petitioner filed its BIR Form No. 2550-Q or Quarterly VAT Return for the 3^{rd} quarter of CY 2020 (**Original VAT Return**), through the BIR's Electronic Filing and Payment System (**eFPS**).[7]

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[4] Certificate of Filing of Amended Articles of Incorporation, Exhibit "P-2", Division Docket, Volume I, p. 402. See also Amended Articles of Incorporation, Exhibit "P-3", id., pp. 403-412.

[5] BIR Certificate of Registration, Exhibit "P-6", id., pp. 422-424.

[6] Corporate Information, Note 1 (General Information), 2020 Audited Financial Statements, Exhibit "P-10", id., p. 449.

[7] Exhibit "P-21", id., pp. 533-534.

Petitioner filed amended returns on the following dates: 14 April 2021[8] (**First Amended VAT Return**), 19 May 2021[9] (**Second Amended VAT Return**), and 25 May 2021[10] (**Third Amended VAT Return**).

In its Third Amended VAT Return, petitioner declared total sales of ₱852,387,579.53, which included zero-rated sales of ₱420,794,369.87. Petitioner also declared that it incurred input tax during the 3rd quarter of CY 2020 in the total amount of ₱78,883,757.02, composed of:[11]

Input Tax Source	**Amount**
Domestic Purchases of Goods Other than Capital Goods	₱2,448,590.22
Importation of Goods Other than Capital Goods	67,802,932.84
Domestic Purchases of Services	8,632,233.96
Total Input Tax from Current Transactions	**₱78,883,757.02**

Signaling its intent to refund the portion of the said input tax attributable to its zero-rated sales, petitioner deducted ₱38,942,192.06 from its Total Available Input Tax.[12]

On 12 January 2022, petitioner filed with respondent's ELTAD II an administrative claim for refund of ₱38,812,218.95 representing the input tax attributable to its zero-rated sales for the 3rd quarter of CY 2020.[13] The amount claimed was computed as follows:[14]

Sales	**Amount of Sales**	**Percentage of each sale to total sales**	**Output Tax**
Vatable Sales	431,593,209.66	50.63%	51,791,185.16
Zero-rated sales	420,794,369.87	49.37%	-
Total	852,387,579.53	100.00%	51,791,185.16
Purchases	**Total Input Tax**	**Percentage of Zero-rated Sales over Total Sales**	**Total Amount being Claimed for Refund**
Importations	67,077,661.26	49.37%	33,113,929.44
Local purchases of goods and services	11,542,814.25	49.37%	5,698,289.51
Total	78,620,475.51		**38,812,218.95**

8 Exhibit "P-22-1", id., pp. 535-536.
9 Exhibit "P-22-2", id., pp. 537-538.
10 Exhibit "P-22-3", id., pp. 539-540.
11 Id.
12 Id., Line 23(D).
13 Letter-Request for Administrative Claim, Exhibit "P-27", id., pp. 557-558. See also Application for Tax Credit/Refund (BIR Form 1914), Exhibit "P-28", id., p. 559.
14 See Annex A-1 to the ICPA Report, id., p. 281.

After filing its administrative claim, petitioner again amended its VAT return for the 3rd quarter of CY 2020 on 22 April 2022[15] (**Fourth Amended VAT Return**). Among other amendments, petitioner reduced the amount of its claim (from ₱38,942,192.06 in the Third Amended Return) to ₱26,829,290.09.

On 12 May 2022, petitioner received respondent's Letter dated 10 May 2022[16] (**Denial Letter**) informing petitioner that its claim for refund for the 3rd quarter of CY 2020 is denied due to its failure to deduct the amount claimed in its quarterly VAT return for the 3rd quarter of CY 2021.

PROCEEDINGS BEFORE THE COURT

Aggrieved, petitioner filed the present Petition for Review[17] on 10 June 2022. The case was raffled to the Court's Second Division, which issued the Summons on respondent on 20 June 2022.[18]

After being granted an extension, respondent eventually filed his or her Answer on 22 August 2022.[19] In his or her Answer, respondent insisted that petitioner's administrative claim for refund was properly denied as it failed to comply with Revenue Memorandum Order (**RMO**) No. 47-2020,[20] specifically the latter's requirement that the quarterly VAT returns for the relevant quarter must show the deduction of the amount claimed from the available input tax filed on or before the date of the application for the VAT refund. According to respondent, petitioner did not reflect the amount claimed for refund for the 3rd quarter of CY 2020 in its VAT return for the 3rd quarter of CY 2021, which should have been amended on or before its administrative claim was filed. Petitioner's failure to do so resulted in the overstatement of carry-over amounts in the succeeding returns. Finally, respondent averred that petitioner's claim for refund, being in the nature of a tax

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15 Exhibit "P-22-4", id., pp. 541-542.
16 Exhibit "P-1" / "R-2", BIR Records, Folder 8 of 8, pp. 344-345.
17 Supra at note 1.
18 Division Docket, Volume I, p. 54.
19 See (1) Motion for Extension of Time to File Answer, id., pp. 56-58; (2) Order dated 28 July 2022, extending respondent's deadline to file an Answer until 22 August 2022., id., p. 60; and (3) Answer, id., pp. 61-68.
20 Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit/Refund Except Those under the Authority and Jurisdiction of the Legal Group.

exemption, must be construed in *strictissimi juris* against the taxpayer and in favor of the government.

Subsequently, the Pre-Trial Conference was set on 24 November 2022.[21] In anticipation, the parties filed their respective Pre-Trial Briefs beforehand.[22] Pre-Trial Conference proceeded as scheduled.[23]

On 09 January 2023, the parties filed their Joint Stipulation of Facts and Issues[24] (**JSFI**). On the same day, petitioner sought the commissioning of George V. Villaruz (**Villaruz**) to serve as the Independent Certified Public Accountant (**ICPA**) for the case.[25]

Meanwhile, respondent elevated the BIR records on 11 January 2023.[26]

The Court admitted and approved the parties' JSFI.[27] With the issuance of the Pre-Trial Order[28] on 25 January 2023, pre-trial is deemed terminated.

The case was then transferred to this Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[29]

Satisfied with ICPA Villaruz's competence and independence, the Court appointed the latter as the case's ICPA during the hearing on 27 September 2023.[30]

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21 See Notice of Pre-Trial Conference dated 08 September 2022, Division Docket, Volume I, pp. 78-79.
22 See (1) petitioner's Pre-Trial Brief filed on 18 November 2022, id., pp. 80-110; and (2) respondent's Pre-Trial Brief filed on 21 November 2022, id., pp. 111-113.
23 See Order dated 24 November 2022, id., pp. 117-118.
24 Id., pp. 169-192.
25 Motion to Avail of the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals, id., pp. 193-196.
26 Compliance, id., pp. 199-201.
27 See Resolution dated 22 January 2023, id., p. 204.
28 Id., pp. 207-217.
29 Notice of Resolution dated 29 May 2023, id., p. 218.
30 See Order dated 27 September 2023, id., pp. 249-250.

On the same day, petitioner presented Alfie I. Herrera (**Herrera**), its Finance Manager, as its first witness.[31] Through his Judicial Affidavit, Herrera testified that: (1) petitioner imports fuel such as industrial fuel oil, marine gas oil, and automotive diesel oil for export; (2) petitioner's zero-rated sales declared in its VAT returns for the 3rd quarter of CY 2020 refers to its sale of bunker fuel to international shipping companies to be used for international shipping operations; (3) since petitioner's purchases for the said period included 12% input taxes, a substantial portion of this input taxes are attributable to petitioner's zero-rated sales, which were not utilized in the quarter they were incurred and were not used in subsequent periods; (4) after allocating petitioner's input taxes of ₱78,620,475.51 to its zero-rated sales (which composed 49.37% of its total sales), petitioner have ₱38,812,219.51 unutilized input taxes, which is the subject of the present claim for refund; (5) petitioner filed its administrative claim with respondent on 12 January 2022, within two (2) years from the close of 3rd quarter of CY 2020; and (6) petitioner received respondent's letter dated 10 May 2022 denying its administrative claim on 12 May 2022.[32]

No cross-examination was conducted.[33]

Next to testify was ICPA Villaruz, who took the witness stand on 14 November 2023.[34] By way of his Judicial Affidavit, he testified that: (1) he is the Court-commissioned ICPA; (2) pursuant to the Court's instructions, he prepared the ICPA Report dated 30 October 2023;[35] (3) on 10 November 2023, he submitted the ICPA Report to the Court, together with a USB[36] containing the scanned copies of the documents he examined; (4) to verify that petitioner's sales were indeed sold to foreign vessels, he accessed an International Maritime Organization (**IMO**) report entitled "GISIS Ship and Company Particulars"[37] (**IMO Report**) which is readily available in IMO's website; (5) based on the results of his examination, petitioner is entitled to the refund of unutilized input tax of ₱25,431,286.74 (out of its claim of ₱38,812,218.95);

[31] Id.

[32] See Judicial Affidavit of Alfie I. Herrera subscribed on 10 June 2022, Exhibit "P-85", USB attached to the Petition for Review, supra at note 1.

[33] TSN dated 27 September 2023, p. 22.

[34] See Order dated 14 November 2023, Division Docket, Volume I, pp. 646-647.

[35] Exhibit "P-100", id., pp. 254-312.

[36] Exhibit "P-100-2", USB.

[37] See (1) Printout of IMO's website, Exhibit "P-408", id.; (2) Summary of printouts of screenshots of GISIS Ship and Company Particulars, Exhibit "P-409", id.; (3) Printouts of vessel details from the IMO website, Exhibit "P- 410" to "P-454", id., and (4) Printout of vessels details from the Vessel Finder found in the IMO's website, Exhibit "P-455".

for the period 01 July 2020 to 30 September 2020; (6) the difference of ₱13,380,932.21 represents (*i*) the remaining output tax of ₱12,690,786.07, and (*ii*) disallowed input tax of ₱690,146.14.[38]

In his cross-examination, ICPA Villaruz maintains that IMO's website can be used to verify whether the vessels were actually operating outside the Philippines.[39]

During redirect examination, he pointed out that the Philippines is a member of the IMO.[40] He also testified that he wrote a letter[41] to the IMO requesting for (1) the official publication of the IMO Convention and (2) a certified list of IMO's member countries.[42]

No re-cross examination was conducted.[43]

Following the presentation of its witnesses, petitioner filed its Formal Offer of Evidence[44] (**FOE**) on 04 December 2023 and offered Exhibits "P-1" to "P-605", with sub-markings, to prove its entitlement to its claim for refund. Respondent did not interpose specific objection to the exhibits but only as to the manner they were identified and subject to the condition that they have faithfully complied with the necessity of comparison with the original documents.[45] The Court reconsidered and admitted petitioner's documents, except for the following:[46]

Exhibit No.	Document	Reason for Denial
P-11	Quarterly VAT Return for the 4th quarter of CY 2019	Failure of the exhibit formally offered and

[38] See Judicial Affidavit of George C. Villaruz subscribed on 13 November 2023, Exhibit "P-99", Division Docket, Volume I, pp. 321-348.
[39] TSN dated 14 November 2023, pp. 10-11
[40] Id., p. 18.
[41] Exhibit "P-605".
[42] Supra at note 39, at pp. 18-19.
[43] Id., p. 21.
[44] Division Docket, Volume I, pp. 352-401.
[45] Comment (On Petitioner's Formal Offer of Evidence) filed on 28 December 2023, Division Docket, Volume II, pp. 652-654.
[46] See (1) Resolution dated 02 May 2024, id., pp. 660-667; (2) Petitioner's Omnibus Motion for Reconsideration filed on 22 May 2024, id., pp. 668-744 (with annexes); (3) Resolution dated 30 July 2024, id., pp. 752-757; (4) Petitioner's Compliance (with Attached Copy of Certification dated August 9, 2024) filed on 09 August 2024, id., pp. 758-764 (with attachment); (5) Resolution dated 22 October 2024, id., pp. 775-776; (6) Compliance (with Attached Hard Copies of the Originally Marked Exhibits "P-38", "P-44", and "P-55") filed on 04 November 2024, id., pp. 777-788 (with attachments); and (7) Resolution dated 03 March 2025, id., pp. 793-797.

Exhibit No.	Document	Reason for Denial
		identified to correspond to the document actually marked
P-456-2	Assessment Notice No. L-1018354	Failure to present the originals for comparison
P-457-2	Assessment Notice No. L-1018338	
P-458-2	Assessment Notice No. L-1022199	
P-459-2	Assessment Notice No. L-1022204	
P-460-3	Customs Payment Receipt	
P-584	Original Certificate of Registration with the BIR	
P-588	Authority to Use CAS dated May 2, 2008	
P-592	Letter from the Department of Foreign Affairs (**DFA**) dated December 10, 2020	
P-593	Certificate issued by the DFA dated December 10, 2020	
P-594	Instrument of Accession	
P-595	Senate Resolution No. 220 (Resolution Concurring in the Ratification of the International Convention on the Simplification and Harmonization of Customs Procedures as Amended)	
P-37	Request for Certification with the Maritime Industry Authority (**MARINA**) dated November 23, 2020	For not being found in the records

During respondent's turn to present evidence on 24 April 2025, Revenue Officer (**RO**) Raymond D. Hernandez (**Hernandez**) took the witness stand as respondent's sole witness.[47] By way of his Judicial Affidavit, RO Hernandez testified on the following: (1) he was the RO who conducted the verification and examination of petitioner's claim for refund for the 3rd quarter of CY 2020; (2) after reviewing the documents, he recommended the denial of petitioner's claim through Memorandum Report[48] dated 03 March 2022; (3) his recommendation was approved, hence, respondent issued the Denial Letter[49] on 10 May 2022, which petitioner received on 12 May 2022; and (4) he identified the BIR Records[50] for case.[51]

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47 See Order dated 24 April 2025, id., pp. 799-800.
48 Exhibit "R-1", BIR Records, Folder 8, pp. 323-340.
49 Supra at note 16.
50 Exhibit "R-3".
51 See Judicial Affidavit of Revenue Officer Raymond D. Hernandez dated 22 Augst 2022, Exhibit "R-4", Division Docket, Volume I, pp. 73-76.

On cross-examination, RO Hernandez admitted that under the BIR Revised Checklist of Mandatory Requirements under RMO No. 47-2020,[52] the taxpayer is required to submit only the VAT return corresponding to the covered period and not the VAT returns for the succeeding periods.[53] He also admitted that petitioner amended its VAT return for the 3rd quarter of CY 2021 after its filing of the present claim, and that petitioner is allowed to amend its returns as long as there is no Letter of Authority (**LOA**) issued to the taxpayer.[54]

On redirect examination, RO Hernandez clarified further that the amended VAT return for the 3rd quarter of CY 2021 was filed after the issuance of the Denial Letter.[55]

There were no re-cross examination questions.[56]

Afterwards, respondent offered his or her documentary evidence composed of Exhibits "R-1" to "R-4".[57] Without specific objections from petitioner, the Court admitted the said exhibits, subject to its final evaluation and appreciation of their probative value in relation to the issues raised.[58]

With the filing of petitioner's Memorandum[59] and respondent's Manifestation[60] that the Answer (and the arguments raised therein) are being adopted as his or her memorandum, the Court submitted the case for decision on 10 July 2025.[61]

ISSUE

The sole issue for this Court's resolution is –

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52 Supra at note 20.
53 TSN dated 24 April 2025, pp. 7-9.
54 Id., pp. 9-10.
55 Id., pp. 11.
56 Id.
57 Id.
58 Id.
59 Filed on 26 May 2025, Division Docket, Volume II, pp. 802-833.
60 Filed on 27 June 2025, pp. 838-840.
61 See Notice of Resolution dated 10 July 2025, id., p. 844.

WHETHER PETITIONER PETROTRADE PHILIPPINES, INC. IS ENTITLED TO ITS CLAIM FOR REFUND IN THE TOTAL AMOUNT OF ₱38,812,218.95, ALLEGEDLY REPRESENTING ITS UNUTILIZED AND EXCESS INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES/RECEIPTS FOR THE 3RD QUARTER OF TAXABLE YEAR (TY) 2020.[62]

ARGUMENTS

In support of the petition, petitioner argues that it has complied with all the requisites for a claim for refund, to wit: (1) it is a VAT-registered taxpayer; (2) it is engaged in zero-rated sales; (3) the subject input taxes are due and paid; (4) the input taxes being claimed are attributable to zero-rated sales and those input taxes which cannot be directly attributed have been proportionately allocated; (5) the input taxes claimed have not been applied in the succeeding quarters; (6) the claim was filed within two (2) years after the close of the taxable quarter when the sales were made; and (7) the present judicial claim was filed within thirty (30) days from the receipt of the Denial Letter.

Moreover, contrary to respondent's claim, the amount being claimed for refund was deducted in its Amended Quarterly VAT Returns for the 3rd quarter of CY 2021 filed on 20 April 2022 and 29 May 2022. That these amendments were made after the filing of the administrative claim is not a valid ground for respondent to deny petitioner's claim.[63]

On the other hand, respondent maintains that petitioner's administrative claim for refund was properly denied since petitioner did not reflect the claim for refund in the CY 2021 3rd quarter VAT return, which should have been amended on or before the claim was filed. In other words, the amount being claimed for refund for the 3rd quarter of CY 2020 should have been deducted from carry-over amounts in the amended returns for the 3rd quarter of CY 2021. Petitioner's failure to do so resulted in the overstatement of carry-over amounts in the succeeding returns. Finally, respondent averred that petitioner's claim for refund, being in the nature of a tax exemption, must be construed in *strictissimi juris* against the taxpayer and in favor of the government.[64]

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62 Pre-Trial Order, supra at note 28.
63 Id.
64 Answer, supra at note 19.

RULING OF THE COURT

After a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant petition partly meritorious.

Petitioner anchors its claim on Sections 110(B),[65] 112(A) and (C) of the NIRC of 1997, as amended by Republic Act (**RA**) No. 10963 or Tax Reform for Acceleration and Inclusion (**TRAIN**), which are quoted hereunder:

> ...
>
> **SEC. 110.** *Tax Credits.* — ...
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *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.
>
> ...
>
> **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:

65 As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES".

> *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.
>
> ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.[66]
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[67] (**Deutsche**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input tax attributable to zero-rated sales, to wit:

> ...
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
> ...

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66 Italics in the original text.

67 G.R. No. 234445, 15 July 2020; Citations omitted.

Based on the foregoing, the Court will proceed to determine whether petitioner complied with the aforementioned requisites. For an orderly discussion, We shall start with the third (3rd) requisite, followed by the first (1st) and second (2nd) requisites, then the fourth (4th) requisite.

3RD REQUISITE: THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES ARE MADE.

In accordance with Section 112(A) and (C) of the NIRC of 1997, as amended by TRAIN, the administrative claim for refund of unutilized input tax must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales are made.

Petitioner's present claim covers the 3rd quarter of CY 2020. Counting two (2) years from the close of the 3rd quarter on 30 September 2020, petitioner had until 30 September 2022 to file its administrative claim before respondent. Thus, petitioner's administrative claim lodged with the CIR on 12 January 2022,[68] was filed on time.

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days or until 12 April 2022, to decide on petitioner's administrative claim. However, this 90-day period was extended for another 30 days under Revenue Regulations (**RR**) No. 01-2022,[69] as clarified in Revenue Memorandum Circular (**RMC**) No. 16-2022[70] due to

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68 Supra at note 13.

69 Extension of the Deadlines for the Filing of Returns and Payment of the Corresponding Taxes Due Thereon, Revenue Regulations No. 1-2022, 20 January 2022. Section 1 of which provides: "Purpose. — In view of the declaration by the COVID-19 Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) placing various parts of the country under Alert Level 3 or higher and taking into account the mandate of Presidential Proclamation No. 1218 for all government agencies to continue rendering full assistance to and cooperation with each other in order to curtail and eliminate the threat of COVID-19, the statutory deadlines for the ... (ii) filing of application for tax refund, including claim for Value-Added Tax (VAT) refund; **(iii) processing of VAT refund**; ... falling due during the period declared as Alert Level 3 or higher are hereby extended."

70 Clarifying the Scope and Coverage of the Extension of Deadlines Granted Pursuant to Revenue Regulations No. 1-2022, 31 January 2022. It provides, among others, that "Also, the extension shall apply to the processing period prescribed for VAT refund processing. For example, if the VAT refund claim was filed on the December 15, 2021, the 90-day processing period is until March 14,

the Covid-19 pandemic. Thus, respondent's Denial Letter issued on 10 May 2022 was issued before the additional 30 days expired on 12 May 2022.

As such, petitioner had 30 days from its receipt of the Denial Letter on 12 May 2022 or until 11 June 2022, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 10 June 2022.[71] Such being the case, the Court finds that petitioner satisfied the 3rd requisite.

1ST REQUISITE: PETITIONER MUST BE VALUE-ADDED TAX (VAT) REGISTERED.

Undeniably, petitioner is a VAT-registered taxpayer with TIN 000-658-115-00000, as shown in its BIR Certificate of Registration Number OCN 124RC20210000000522.[72]

2ND REQUISITE: PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2nd requisite requires that the taxpayer be engaged in zero-rated or effectively zero-rated sales.

Petitioner alleges that it is engaged in zero-rated sales as it sells its bunker fuels to persons engaged in international shipping, where the goods are used for international shipping operations.

Section 106(A)(2)(a)(6) of the NIRC of 1997, as amended, provides:

...

SEC. 106. Value-Added Tax on Sale of Goods or Properties. —

2022. However, in view of the declaration of Alert Level 3 in the National Capital Region, the processing of VAT refund claim shall be extended until April 13, 2022 (30 days from March 14, 2022).

71 Supra at note 1.

72 Exhibit "P-6", Division Docket, Volume I, pp. 422-424.

(A) Rate and Base of Tax. — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. — The term 'export sales' means:

...

(6) **The sale** of goods, supplies, equipment and **fuel to persons engaged in international shipping** or international air transport operations: **Provided, That the** goods, supplies, equipment and **fuel shall be used for international shipping** or air transport **operations.** [73]

...

The above provision is implemented by Section 4.106-5 of RR No. 16-2005,[74] as amended by RR No. 13-2018,[75] which provides that:

...

SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. — "Export Sales" shall mean:

...

(5) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air

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[73] Emphasis supplied.

[74] Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 16-05, 01 September 2005.

[75] Regulations Implementing the VAT Provisions under the RA No. 10963, Further Amending RR No. 16-2005, as Amended, Revenue Regulations No. 13-18, 15 March 2018.

transport operations: *Provided*, That the goods, supplies, equipment, and fuel **shall be used exclusively** for international shipping or air transport operations.

The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport **operations is limited to goods, supplies, equipment and fuel that shall be used in the transport of goods and passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines** unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad: *Provided, further*, that if any portion of such fuel, goods, supplies or equipment is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods, supplies, and equipment shall be subject to 12% VAT.[76]

...

Based on the foregoing, to qualify for VAT zero-rating, petitioner's sales of bunker fuel oils to foreign vessels must comply with the following:

1. Petitioner sold the fuel to persons engaged in international shipping operations; and

2. The buyer used the fuel exclusively for international shipping, which means the transport of goods and/or passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines.

In this connection, petitioner's Fourth Amended VAT Return[77] shows that petitioner had sales for the 3rd quarter of CY 2020, as follows:

Description	Amount
Vatable Sales / Receipt	₱431,593,209.66
Zero-Rated Sales / Receipt	420,794,369.87
Total	₱852,387,579.53

[76] Emphasis supplied.
[77] Supra at note 15.

According to petitioner, its sales of bunker fuel oils amounting to ₱420,794,369.87 met the criteria for zero-rating, as follows: (1) it sold the fuels to vessels registered under foreign countries; (2) the fuel sold was loaded to the international vessel; and (3) the international vessel directly proceeded to a foreign port without docking or stopping at any port in the Philippines.

The first order of business is for the Court to determine whether petitioner's zero-rated sales exists. Based on case records, petitioner's zero-rated sales for the 3rd quarter of CY 2020 amounting to ₱420,794,369.87 is supported with Sales Invoices,[78] Bunker Delivery Receipts (**BDRs**),[79] and Bunkering Permits[80] issued by the Bureau of Customs (**BOC**).

Second, to determine whether petitioner's zero-rated sales for the 3rd quarter of CY 2020 were indeed sold to foreign vessels, the Court verified petitioner's zero-rated sales against MARINA's *Certification*[81] dated 28 December 2020 (**MARINA Certification**), whereby the latter certified that "verification of this Authority's records showed that the foreign vessels in the attached list are not appearing in the Philippine Registry of Domestic Ships, and the same have not been granted any Special Permit to temporarily trade/operate domestically".

In addition to the MARINA Certification, petitioner also presented the IMO Report[82] extracted from IMO's website to prove the foreign registration of the foreign vessels. The IMO Report allegedly shows the ships' IMO reference number, ship name, flag administration, and ship status which are used to identify a foreign vessel and determine the foreign flag.[83] However, the Court cannot give credence to the information extracted by petitioner from the IMO website (https://gisis.imo.org/Public/SHIPS/Default.aspx) because the Court is unable to confirm the existence and accuracy of the details provided by petitioner. Nevertheless, the Court finds that the MARINA Certification is sufficient to prove this particular point.

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78 See Summary in Annex C-2, ICPA Report, supra at note 35. See also the Sales Invoices, Exhibits "P-157" to "P-218", USB attached to the ICPA Report, supra at note 36.

79 See Summary in Annex D, ICPA Report, supra at note 35. See also the Bunker Delivery Receipts, Exhibits "P-219" to "P-275", USB attached to the ICPA Report, supra at note 36.

80 See Summary in Annex E, ICPA Report, supra at note 35. See also the BOC Bunkering Permits, Exhibits "P-286" to "P-335", USB attached to the ICPA Report, supra at note 36.

81 Exhibit "P-578", USB attached to the ICPA Report, supra at note 36.

82 Supra at note 37.

83 Par. 46, petitioner's Memorandum, supra at note 59.

Lastly, to determine whether the foreign vessels proceeded directly to a foreign port from a port in the Philippines, or vice versa, without docking or stopping at any other port in the Philippines, the Court verified petitioner's zero-rated sales for the 3rd quarter of CY 2020 against the BOC Certifications dated 15 June 2023,[84] 24 May 2023,[85] 14 April 2023,[86] 30 March 2023,[87] and 19 June 2023[88] (**BOC Certifications**) whereby it certified that the listed vessels "departed for their respective Next Foreign Port of Destination after bunkering operations" from a port in the Philippines.

The Court's verification shows the following:

No.	Name of Customer	Name of Receiving Vessel	Amount of Sales (in USD)	Amount of Sales (in PHP)	Vessel Registry per MARINA Certification	Next Port of Call per BOC Certifications
1	PRINCESS CRUISE LINES LIMITED	M/V Golden Princess	434,000.00	21,603,218.00	United Kingdom (GB)	Singapore
2	PRINCESS CRUISE LINES LIMITED	M/V Diamond Princess	178,500.00	8,885,194.50	United Kingdom (GB)	Singapore
3	HOLLAND AMERICA LINE N.V.	M/V Nieuw Amsterdam	310,000.00	15,430,870.00	Netherlands (NL)	Singapore
4	PRINCESS CRUISE LINES LIMITED	M/V Ruby Princess	186,000.00	9,258,522.00	Bermuda (BS)	Singapore
5	PRINCESS CRUISE LINES LIMITED	M/V Royal Princess	158,100.00	7,869,743.70	Bermuda (BS)	Singapore
6	PRINCESS CRUISE LINES LIMITED	M/V Sapphire Princess	414,000.00	20,607,678.00	United Kingdom (GB)	Singapore
7	CARNIVAL CORPORATION / CARNIVAL P.L.C.	M/V Pacific Dawn	310,000.00	15,332,290.00	United Kingdom (GB)	Singapore
8	HOLLAND AMERICA LINE N.V.	M/V Zuiderdam	249,900.00	12,359,804.10	Netherlands (NL)	Singapore
9	HOLLAND AMERICA LINE N.V.	M/V Noordam	221,777.58	11,039,422.60	Netherlands (NL)	Singapore
10	CARNIVAL CORPORATION / CARNIVAL P.L.C.	M/V Carnival Conquest	153,000.00	7,564,932.00	Panama (PA)	Singapore

84 Exhibits "P-580", USB attached to the ICPA Report, supra at note 36.
85 Exhibits "P-580-1", id.
86 Exhibits "P-580-2", id.
87 Exhibits "P-580-3", id.
88 Exhibits "P-580-4", id.

No.	Name of Customer	Name of Receiving Vessel	Amount of Sales (in USD)	Amount of Sales (in PHP)	Vessel Registry per MARINA Certification	Next Port of Call per BOC Certifications
11	CARNIVAL CORPORATION / CARNIVAL P.L.C.	M/V Carnival Dream	306,000.00	15,129,864.00	Panama (PA)	Singapore
12	CARNIVAL CORPORATION / CARNIVAL P.L.C.	M/V Carnival Panorama	276,000.00	13,646,544.00	Panama (PA)	Singapore
13	COSTA CROCIERE S.P.A	M/V Costa Venezia	460,000.00	22,793,000.00	Italy (IT)	Hong Kong
14	COSTA CROCIERE S.P.A	M/V Costa Serena	497,836.23	24,596,096.78	Italy (IT)	Singapore
15	BREAKWAY FOUR LTD.	M/V Norwegian Joy	255,000.00	12,633,720.00	Bahamas (BS)	Japan
16	SOUTHERN DRAGON CHEMICAL S.A.	M/V Southern Robin	264,850.00	13,035,122.45	Liberia (LR)	Vietnam
17	**FIRENZE SEAS S.A.**	**M/V Minoan Sky**	**73,050.00**	**3,595,301.85**	**Liberia (LR)**	**Not included in the BOC Certifications**
18	**SEIN SHIPPING CO., LTD.**	**M/V Sein Sun**	**221,327.39**	**10,943,311.47**	**Korea (KR)**	**Port of Destination not Indicated**[89]
19	**HONGKONG EVER OCEAN SHIPPING COMPANY LIMITED**	**M/V Liaoyu Reefer 1**	**301,648.82**	**14,928,600.10**	**Panama (PA)**	**Port of Destination not Indicated** [90]
20	CARNIVAL CORPORATION / CARNIVAL P.L.C.	M/V Carnival Splendor	270,900.00	13,304,982.60	Panama (PA)	Singapore
21	TIGER SHIP NO. 2 LIMITED	M/V Tiger Summer	26,200.00	1,286,524.80	Hong Kong (HK)	Indonesia
22	SPARROW MARITIME LIMITED	M/V Kiran Caribbean	49,200.00	2,416,408.80	Malta (MT)	China
23	SPECTRUM OF THE SEAS INC.	M/V Spectrum of the Seas	257,355.00	12,639,733.47	Bahamas (BS)	Malaysia
24	ASAHI TANKER CO., LTD. / SOLAR SHIPPING & TRADING S.A	M/V Sunny Orion	86,940.00	4,264,841.70	Panama (PA)	South Korea

89 Petitioner presented the BOC Certification dated 19 June 2023 (Exhibit "P-580-4") which certified that M/V Sein Sun berthed and underwent bunkering activities at its Sub-Port in General Santos City, Philippines. However, the said Certification did not indicate the relevant period and the port of destination.

90 Petitioner presented the BOC Certification dated 19 June 2023 (Exhibit "P-580-4") which certified that M/V Liaoyu Reefer 1 berthed and underwent bunkering activities at its Sub-Port in General Santos City, Philippines. However, the said Certification did not indicate the relevant period and the port of destination.

No.	Name of Customer	Name of Receiving Vessel	Amount of Sales (in USD)	Amount of Sales (in PHP)	Vessel Registry per MARINA Certification	Next Port of Call per BOC Certifications
25	SUN LANES SHIPPING S.A.	M/V CNC Jupiter	54,000.00	2,648,970.00	Malta (MT)	Did not ply domestic waters[91]
26	PRINCESS CRUISE LINES LIMITED	M/V Ruby Princess	361,000.00	17,678,170.00	Bermuda (BS)	Singapore
27	**GLENDA INTENATIONAL SHIPPING DESIGNATED ACITVITY COMPANY**	**M/V Glenda Melody**	**51,500.00**	**2,517,835.00**	**Liberia (LR)**	**Manila[92]**
28	GRAND BLUE SHIPPING PTE. LTD	M/V Weco Laura	48,700.00	2,380,943.00	Singapore (SG)	Did not ply domestic waters[93]
29	**MONJASA PTE LTD**	**M/V Chemtrans Polaris**	**750.00**	**36,440.25**	**Not in the list**	**Not included in the BOC Certifications**
30	KUMIAI NAVIGATION PTE. LTD.	M/V Azul Libero	120,250.00	5,888,642.50	Singapore (SG)	Singapore
31	OCEAN TIANYONG SHIPPING LIMITED	M/V Daisy Ocean	113,000.00	5,487,393.00	Hong Kong (HK)	China
32	BLACK SHIP LINE S.A.	M/V Orient Hope	48,800.00	2,369,776.80	United Kingdom (GB)	China
33	HARTMAN SHIPPING 1 B.V	M/V Pacific Dawn	90,095.00	4,418,078.61	United Kingdom (GB)	Singapore
34	TRIO HAPINESS S.A.	M/V Wawasan Ruby	146,112.57	7,087,044.00	Panama (PA)	Singapore
35	ADVANCE CHINOOK LTD.	M/V Chinook	314,572.50	15,266,203.43	Netherlands (NL)	Singapore
36	**DOMI DEVELOPMENT S.A.**	**M/V Bourbon**	**20,400.00**	**991,868.40**	**Liberia (LR)**	**Outside of Claim Period[94]**
37	BRIGHT PESCADORES S.A. PANAMA	M/V Noble SW	20,400.00	991,746.00	Panama (PA)	China
38	SUN LANES SHIPPING S.A.	M/V Sinar Sangir	57,600.00	2,800,224.00	Panama (PA)	China
39	CHEMBULK HONGKONG LLC	M/V Chembulk Hongkong	215,500.00	10,448,086.50	Marshall Is (MH)	Korea
40	CONNECTOR 1 AS	M/V Connector	262,800.00	12,739,492.80	Panama (PA)	China

[91] While the BOC Certification dated 14 April 2023 (Exhibit "P-580-2") did not indicate the port of destination, it certified that M/V CNC Jupiter "did not ply domestic waters, based on available records".

[92] Per BOC Certification (undated), Exhibit "P-580-5".

[93] While the BOC Certification dated 14 April 2023 (Exhibit "P-580-2") did not indicate the port of destination, it certified that M/V Weco Laura "did not ply domestic waters, based on available records".

[94] The BOC Certification dated 30 March 2023 (Exhibit "P-580-3") shows that M/V Bourbon departed Manila Port for Quangyen, Vietnam on 16 March 2021, a date outside of the claim period of 3rd Quarter of CY 2020.

No.	Name of Customer	Name of Receiving Vessel	Amount of Sales (in USD)	Amount of Sales (in PHP)	Vessel Registry per MARINA Certification	Next Port of Call per BOC Certifications
41	GOLDEN IOANARI INC.	M/V Golden Iaonari	33,665.10	1,635,686.21	Marshall Is (MH)	India
42	ALKIONI SHIPPING INC.	M/V Marinicki	30,300.00	1,471,943.70	Malta (MT)	Singapore
43	TRUMP PESCADORES S.A. PANAMA	M/V Trump SW	68,040.00	3,296,810.16	Panama (PA)	Vietnam
44	EASTERN ORIENT HOLDING LIMITED	M/V Au Taurus	48,200.00	2,333,362.00	Panama (PA)	Indonesia
45	REMEZZO MARITIME CORP.	M/V Tony Smith	95,819.05	4,634,479.89	Marshall Is (MH)	China
46	**DOMI DEVELOPMENT S.A.**	**M/V Bourbon**	**9,500.00**	**460,265.50**	**Liberia (LR)**	**Outside of Claim Period**[95]
47	**RIVER MARITIME INC.**	**M/V Beks Ceyda**	**72,300.00**	**3,509,803.50**	**Marshall Is (MH)**	**Not included in the BOC Certifications**
48	**RIVER MARITIME INC.**	**M/V Beks Ceyda**	**96,400.00**	**4,672,026.00**	**Marshall Is (MH)**	**Not included in the BOC Certifications**
49	TATESHINA MARINE S.A	M/V Lilac Harmony	62,855.86	3,046,749.44	Liberia (LR)	Did not ply domestic waters[96]
50	**NAT BERMUDA HOLDINGS LTD.**	**M/V Nordic Skier**	**140,650.00**	**6,816,602.25**	**Cayman Is (KY)**	**Not included in the BOC Certifications**
TOTAL			**8,544,795.10**	**420,794,369.86**		

Considering that some of petitioner's sales to foreign vessels failed to comply with the requirement that the fuel sold was used exclusively for international shipping (*i.e.*, the transport of goods and/or passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines), a recomputation of the qualified zero-rated sales is in order:

3rd Quarter CY 2020	**Amount of Sales**	
Zero-Rated Sales per VAT returns		**₱420,794,369.87**
Less: Sales Not Entitled to Zero-Rating		
17. FIRENZE SEAS S.A. (M/V Minoan Sky)	₱ 3,595,301.85	
18. SEIN SHIPPING CO., LTD. (M/V Sein Sun)	10,943,311.47	

95 The BOC Certification dated 30 March 2023 (Exhibit "P-580-3") shows that M/V Bourbon departed Manila Port for Quangyen, Vietnam on 16 March 2021, a date outside of the claim period of 3rd Quarter of CY 2020.

96 While the BOC Certification dated 14 April 2023 (Exhibit "P-580-2") did not indicate the port of destination, it certified that M/V Lilac Harmony "did not ply domestic waters, based on available records".

3rd Quarter CY 2020	Amount of Sales	
19. HONGKONG EVER OCEAN SHIPPING COMPANY LIMITED (M/V Liaoyu Reefer 1)	14,928,600.10	
27. GLENDA INTENATIONAL SHIPPING DESIGNATED ACITVITY COMPANY (M/V Glenda Melody)	2,517,835.00	
29. MONJASA PTE LTD (M/V Chemtrans Polaris)	36,440.25	
36. DOMI DEVELOPMENT S.A. (M/V Bourbon)	991,868.40	
46. DOMI DEVELOPMENT S.A. (M/V Bourbon)	460,265.50	
47. RIVER MARITIME INC. (M/V Beks Ceyda)	3,509,803.50	
48. RIVER MARITIME INC. (M/V Beks Ceyda)	4,672,026.00	
50. NAT BERMUDA HOLDINGS LTD. (M/V Nordic Skier)	6,816,602.25	**48,472,054.32**
Sales Entitled to Zero-Rating		**₱372,322,315.55**

After verifying petitioner's zero-rated sales, the Court will proceed to determine whether petitioner's input tax complied with the requirements for VAT refund.

4TH REQUISITE: THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the 4th requisite, the following conditions must concur:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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;

c. **3rd condition**: the input taxes are not transitional input taxes; and,

d. **4th condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

The 1st **condition** requires that the input taxes are due or paid. In its Fourth Amended VAT Return,[97] petitioner declared input tax arising from its Current Purchases amounting to ₱78,620,475.51, comprised of:

Input Tax Source	Amount
Domestic Purchases of Goods Other than Capital Goods	₱2,447,621.54
Importation of Goods Other than Capital Goods	67,077,661.26
Domestic Purchase of Services	9,095,192.71
Total Available Input Tax	₱78,620,475.51

It is of crucial importance that petitioner provides documents to support its declaration that the input tax claimed during the subject period was actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended,[98] which provides:

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

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97 Supra at note 15.
98 Prior to the changes brought about by Republic Act No. 11976 or "Ease of Paying Taxes Act".

> ... *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or free.[99]
>
> ...

The above provision is implemented by Sections 4.110-1 to 4.110-2 of RR No. 16-2005, as amended by RR No. 13-2018,[100] which provide as follows:

> ...
>
> SEC. 4.110-1. ***Credits For Input Tax.*** — *'Input tax'* means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.
> It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.
>
> **Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:**
>
> a. Purchase or importation of goods
>   1. For sale; or
>   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
>   3. For use as supplies in the course of business; or
>   4. For use as raw materials supplied in the sale of services; or
>   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.
>
> b. Purchase of real properties for which a VAT has actually been paid;
> c. Purchase of services in which a VAT has actually been paid;
> d. Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;
> e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
> f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

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99 Emphasis supplied and italics in the original text.

100 Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

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

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

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

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

c. To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.[101]

...

Meanwhile, Sections 4.110-8(a) and (d) and 4.114-2(b) of RR No. 16-2005, as amended by RR No. 04-2007,[102] provide for the substantiation requirements of input tax credits, as follows:

...

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

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

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

2. For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

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

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101 Emphasis supplied and italics in the original text.

102 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

> 4. For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.
>
> ...

The documents also need to comply with the invoicing requirements provided under Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, as amended.

Based on ICPA Villaruz's findings, input tax amounting to ₱562,149.76 arising from petitioner's importation, and domestic purchases of goods (other than capital goods) and services shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements, *viz*:[103]

Supplier	Invoice/ OR No.	Amount of Input Tax (in PHP)	Reason for disallowance
Chevron Singapore PTE LTD	BC Form No. 38-A 1888873553	835,853.77	The supporting SAD and SDT were dated 11 November 2020 which was beyond the covered period of the claim
SGS (SUBIC BAY) INC.	OR # 2272313	780.00	Supported by photocopy documents
TOYOTA QUEZON AVENUE, INC.	OR # 1000000000055492	2,675.49	
DHL WORLWIDE EXPRESS CORP	B.I# MNLR001966533/B.I.# MNLR001975259	146.58	No supporting document
HERMA SHIPPING AND TRANSPORT CORPORATION	S.I# 23233	435,931.71	
MASTER SEAL CORPORATION	3818	642.85	
MICROGENESIS BUSINESS SYSTEMS	2968	4,950.00	
PIONEER INSURANCE & SURETY CORPORATION		40.96	

103 Part III.2.1 Computation of Adjusted Input Taxes For the period covered, ICPA Report, supra at note 35. See also Annexes "H-1", "H-2", and "H-2.1" to the ICPA Report, id.

TOWER CLUB, INC.	SOA# C0081-B for Sept.2020	744.64	
WILHELMSEN-SMITH BELL SHIPPING INC.	FDA#191151	600.00	
WILHELMSEN-SMITH BELL SHIPPING INC.	FDA# 191133	600.00	
WILHELMSEN-SMITH BELL SHIPPING INC.	FDA# 200016	600.00	
FLAGSHIP PETROLEUM CARRIERS INC.	OR # 1005	105,600.00	Difference between the amount claimed in the CTA Petition and supporting official receipts
FLAGSHIP PETROLEUM CARRIERS INC.	OR # 1006	8,837.50	
Variance		0.03	
Total Disallowance per ICPA		**₱ 1,398,003.53**	

Upon further verification, the Court finds that additional input tax on domestic purchases of goods and services in the total amount of ₱1,290,151.71 shall likewise be disallowed for the following reasons:

Exhibit No.	Supplier	Invoice/ OR No.	Amount of Input Tax (in PHP)	Reason for disallowance
P-473	CHEVRON PHILIPPINES INC.	SI974310123	126,471.76	Input tax on domestic purchases of goods supported by VAT SIs but without the notation "THIS INVOICE SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP/PTU."
P-474	CHEVRON PHILIPPINES INC.	SI974311154	150,601.22	
P-475	CHEVRON PHILIPPINES INC.	SI974312596	57,151.50	
P-476	CHEVRON PHILIPPINES INC.	SI974312858	74,982.11	
P-477	CHEVRON PHILIPPINES INC.	SI974313779	109,587.08	
P-478	CHEVRON PHILIPPINES INC.	SI974316044	51,875.85	
P-479	CHEVRON PHILIPPINES INC.	SI974316191	92,924.91	
P-482	CHEVRON PHILIPPINES INC.	SI974319241	120,651.90	
P-483	CHEVRON PHILIPPINES INC.	SI974321265	57,436.44	
P-484	CHEVRON PHILIPPINES INC.	SI974322061	126,364.35	
P-485	CHEVRON PHILIPPINES INC.	SI974327990	73,411.89	
P-486	CHEVRON PHILIPPINES INC.	SI974330889	70,025.85	
P-487	CHEVRON PHILIPPINES INC.	SI974331350	80,945.60	

Exhibit No.	Supplier	Invoice/ OR No.	Amount of Input Tax (in PHP)	Reason for disallowance
P-471	CHEVRON PHILIPPINES INC.	SI633113197	3,956.45	Input tax on domestic purchases of goods supported by VAT SIs but (1) without the notation "THIS INVOICE SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP/PTU.", and (2) did not indicate petitioner's TIN.
P-480	CHEVRON PHILIPPINES INC.	SI633113821	3,930.74	
P-488	CHEVRON PHILIPPINES INC.	SI0633114124	4,437.34	
P-539	INTERTEK TESTING SVCS PHILS INC.	OR247878	28,177.74	Input tax on domestic purchases of services supported by VAT ORs, but the nature of the services was not indicated therein.
P-540	INTERTEK TESTING SVCS PHILS INC.	OR247877	57,218.98	
Total Disallowance per Court verification			**₱ 1,290,151.71**	

Hence, for purposes of compliance with the 1st condition, out of the total reported input tax of ₱78,620,475.51, only the amount of ₱75,932,320.27 represents petitioner's valid input tax due or paid for the 3rd quarter of CY 2020, as computed below:

Input tax *per* VAT Return		₱78,620,475.51
Less: Disallowances		
Per ICPA findings	₱ 1,398,003.53	
Per Court's further verification	1,290,151.71	2,688,155.24
Total Substantiated or Valid Input Tax		**₱75,932,320.27**

As for the 2nd **condition**, since petitioner had both zero-rated and VATable sales in the period of claim and the corresponding input tax cannot be directly and entirely attributed to any of these sales, the input tax shall be proportionately allocated on the basis of sales volume.

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[104] *(***Chevron***)*, the Supreme Court made a definitive declaration that a VAT-registered taxpayer has two (2) options with respect to its input tax attributable to zero-rated sales, it may: (1) charge the same against output tax from

104 G.R. No. 215159, 05 July 2022; Citation omitted, emphasis in the original text and supplied.

VATable sales, and claim for refund or issuance of a TCC any unutilized or "excess" input tax; or (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

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

Citing the same doctrine, the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[105] (**DKS**), reiterated that this Court cannot deduct or charge validated and substantiated input tax to determine the refundable amount of input tax.

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input tax attributable to zero-rated sales against output tax. In this respect, the Court cannot impose its own methods for calculating the refund, such as compelling the crediting of input tax against output tax as a condition precedent to the refund or issuance of a TCC.

In this case, when petitioner filed its administrative claim with respondent, it chose the second option and applied for the refund of the entire ₱38,812,219.05 input tax allocated to its zero-rated sales as

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105 G.R. Nos. 226548 & 227691, 226682-83, 15 February 2023.

declared in its Third Amended VAT Return[106] (its latest return prior to the filing of its administrative claim on 12 January 2022).

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the taxpayer-claimant is requesting a refund of unutilized or unused input tax from zero-rated sales (as opposed to the "excess" creditable input tax from the output tax), this amount is inherently immediately refundable, given that there is no related output tax to offset it against.

Therefore, the Court's proper step in determining the refundable excess and unutilized input tax attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input tax allocable to zero-rated sales, assuming the input tax cannot be directly attributed to zero-rated activities:

Valid Zero-Rated Sales	₱372,322,315.55
Divided by Total Declared Sales	852,387,581.73
Multiplied by: Valid Input Tax not directly attributable to any activity	75,932,320.27
Valid Input Tax Attributable to Zero-Rated Sales	**₱33,167,185.81**

Next, petitioner complied with the 3rd **condition** as its input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons.

Lastly, the 4th **condition** requires that the input taxes have not been applied against output taxes during and in the succeeding quarters. As previously mentioned, petitioner applied for the refund of the entire ₱38,812,219.05 input tax allocated to its zero-rated sales as declared in its Third Amended VAT Return[107] (its latest return prior to the filing of its administrative claim on 12 January 2022).

However, case records show that after filing of its administrative claim, petitioner filed a Fourth Amended Return,[108] wherein it reduced the amount declared in Line 23D (VAT Refund/TCC claimed) from

106 Supra at note 10.
107 Id.
108 Supra at note 15.

₱38,812,219.05 to ₱26,829,290.09. Therefore, while petitioner was able to establish ₱33,167,185.81 of Valid Input Tax Attributable to Zero-Rated Sales, the Court can only grant ₱26,829,290.09 because only such amount was not applied against output taxes during and in the succeeding quarters.

Claims for the tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[109]

WHEREFORE, premises considered, the instant Petition for Review filed on 10 June 2022 by petitioner Petrotrade Philippines, Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱26,829,290.09** representing petitioner's unutilized excess input Value-Added Tax for the 3rd quarter of CY 2020 which is attributable to its zero-rated sales for the same period.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

LANEE S. CUI-DAVID
Associate Justice

[109] *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, supra at note 104.

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 1st Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 1st Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA ROWENA MODESTO-SAN PEDRO
Acting Presiding Justice