REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE MINING SERVICE CORPORATION,	**CTA Case No. 10880**
Petitioner,	Members:
-*versus*-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	MAY 2 1 2025 9:40 a.m.

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DECISION

MANAHAN, *J.*:

THE CASE

In this *Petition for Review* filed by petitioner Philippine Mining Service Corporation, petitioner prays for the refund of its unutilized and/or unapplied and excess input value-added tax (VAT) attributable to zero-rated sales for the period covering from January 1, 2020 to June 30, 2020, in the amount of ₱12,894,197.86.[1]

THE PARTIES

Petitioner Philippine Mining Service Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with present office address at 5/F Mercedes-Benz Tower, Mindanao Avenue, Cebu Business Park, Cebu City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. (TIN) No. 000-136-814-000.[3]

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[1] Prayer, *Petition for Review*, Docket – Vol. 1, p. 22.
[2] Par. 4, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 197.
[3] Exhibit "P-2", Docket – Vol. 2, p. 608.

Respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credits and/or refunds of unutilized/excess input VAT, and is holding office at 5/F BIR National Office Bldg., Diliman, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On February 28, 2022, petitioner filed with the VAT Credit Audit Division of the Bureau of Internal Revenue (BIR) an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[5] involving the amount of ₱31,676,798.32, for the period January 1, 2020 to June 30, 2020, with attached *Taxpayer's Attestations*,[6], and *Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund*.[7]

Thereafter, on May 10, 2022, petitioner received the *VAT Refund Notice* dated April 20, 2022 from the BIR,[8] ***partially granting*** its request for refund of excess and unutilized input VAT for the covered period in the amount of **₱17,772,357.63**, computed as follows:[9]

Amount of Claim	**P 31,676,798.32**
Deductions from claim	
Input tax due to non-compliance with invoicing requirements, insufficient/invalid documentations and ITS verifications	(395,805.33)
Disallowed amortized input tax from prior year purchases of capital goods	(502,310.65)
Big-ticket disallowance	(14,625.36)
Input tax attributable to sales not valid for VAT zero-rating	(12,894,197.87)
Output VAT on undeclared sales	(1.48)
Output VAT on exempt sales	(97,500.00)
Total Deductions	(13,904,440.69)
Amount approved for VAT refund	**P 17,772,357.63**

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[4] Par. 5, Admitted Facts, JSFI, Docket – Vol. 1, p. 197.
[5] Exhibit "P-3", Docket – Vol. 2, p. 611; BIR Records (Exhibit "R-3"), p. 269.
[6] Exhibit "P-3-A", Docket – Vol. 2, pp. 612 to 614; BIR Records (Exhibit "R-3"), pp. 256 to 258.
[7] Exhibit "P-3-B", Docket – Vol. 2, p. 615; Exhibit "R-1", BIR Records (Exhibit "R-3"), p. 270.
[8] Exhibit "P-4", Docket – Vol. 2, pp. 617 to 632.
[9] Refer to Annex "A" of Exhibit "P-4", Docket – Vol. 2, p. 618. *am*

PROCEEDINGS BEFORE THIS COURT

On June 9, 2022, petitioner filed the present *Petition for Review*,[10] assailing only the disallowance in the amount of ₱12,894,197.86.[11]

Within the extended period granted by the Court,[12] respondent filed his *Answer* on September 12, 2022,[13] where he interposed the following special and affirmative defenses: (1) the instant claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; (2) it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; (3) tax refunds are subject to administrative routinary investigation; and (4) tax refunds are strictly construed against the taxpayer and in favor of the government.

On November 10, 2022, the *BIR Records* for this case, consisting of one (1) folder with four hundred nineteen (419) pages, were transmitted to this Court.[14]

The Pre-Trial Conference was set and held on November 24, 2022.[15] Prior thereto, *Respondent's Pre-Trial Brief* was filed on November 10, 2022,[16] while petitioner's *Pre-Trial Brief* was submitted on November 21, 2022.[17]

On January 10, 2023, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) *with Manifestation* explaining with sincerest apologies the belated filing thereof.[18] In the Resolution dated January 24, 2023,[19] the Court noted and approved the said JSFI and deemed the Pre-Trial terminated. Thereafter, the Pre-Trial Order dated March 30, 2023 was issued.[20]

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[10] Docket – Vol. 1, pp. 6 to 27.
[11] Par. 15, Statement of Material Facts, *Petition for Review*, Docket – Vol. 1, p. 10.
[12] *Motion for Extension of Time to File Answer*, Docket – Vol. 1, pp. 100 to 102; Resolution dated September 7, 2022, Docket – Vol. 1, p. 105.
[13] Docket – Vol. 1, pp. 106 to 117.
[14] *Compliance* dated November 9, 2022, Docket – Vol. 1, pp. 149 to 151.
[15] Notice of Pre-Trial Conference dated September 15, 2022, Docket – Vol. 1. pp. 120 to 122; Minutes of the hearing held on, and Order dated, November 24, 2022, Docket – Vol. 1, pp. 175 to 178.
[16] Docket – Vol. 1, pp. 143 to 146.
[17] Docket – Vol. 1, pp. 153 to 170.
[18] Docket – Vol. 1, pp. 196 to 198.
[19] Docket – Vol. 1, p. 201.
[20] Docket – Vol. 1, pp. 234 to 255.

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following witnesses: (1) Mr. Ian John M. Guillena,[21] Assistant Senior Manager-Administration of petitioner; (2) Mr. Jun Claude F. Hisoler,[22] Tax and Compliance Officer of petitioner; and (3) Atty. Walter L. Abela, Jr.,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

The *Report* of the said ICPA was submitted on May 15, 2023.[25]

On September 11, 2023, petitioner filed its *Formal Offer of Exhibits*,[26] to which respondent filed his *Comment (Re: Formal Offer of Evidence dated 11 September 2023)* on September 14, 2023.[27] In the Resolution dated November 20, 2023,[28] the Court admitted petitioner's evidence, *except* Exhibits "P-7.4.3", "P-7.5.3" to "P-7.5.4", "P-7.8.3" to "P-7.8.3.2", "P-7.11.11.8" to "P-7.11.11.18", "P-7.14.2" to "P-7.14.1743.2", and "P-7.27.8", for not being found in the records of the case.

For his part, respondent offered the testimony of Revenue Officer (RO) Junelle Aira C. Salamanca.[29]

On November 22, 2023, respondent posted his *Formal Offer of Evidence*,[30] to which petitioner posted its *Comment (to Respondent's Formal Offer of Evidence dated 23 November 2023)* on December 4, 2023.[31]

Thereafter, on December 5, 2023, petitioner filed its *Motion for Partial Reconsideration (Of the Resolution dated 20 November 2023)*

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[21] Exhibit "P-5", Docket – Vol. 1, pp. 71 to 79; Minutes of the hearing held on, and Order dated, March 30, 2023, Docket – Vol. 1, pp. 259 to 261.
[22] Exhibit "P-6", Docket – Vol. 1, pp. 85 to 98; Minutes of the hearing held on, and Order dated, March 30, 2023, Docket – Vol. 1, pp. 259 to 261.
[23] Exhibit "P-28", Docket – Vol. 1, pp. 456 to 465; and Minutes of the hearing held on, and Order dated, August 1, 2023, Docket – Vol. 1, pp. 467 to 469.
[24] *Oath of Commission (For a CPA Firm)* dated March 30, 2023, Docket – Vol. 1, pp. 257 to 258; Minutes of the hearing held on, and Order dated, March 30, 2023, Docket – Vol. 1, pp. 259 to 261.
[25] Docket – Vol. 1, pp. 264 to 443.
[26] Docket – Vol. 2, pp. 557 to 592.
[27] Docket – Vol. 2, pp. 645 to 647.
[28] Docket – Vol. 2, pp. 650 to 655.
[29] Exhibit "R-4", Docket – Vol. 1, pp. 137 to 142; Minutes of the hearing held on, and Order dated, November 21, 2023, Docket – Vol. 2, pp. 656 to 658.
[30] Docket – Vol. 2, pp. 659 to 661.
[31] Docket – Vol. 2, pp. 664 to 666.

and Motion for Leave to Amend Formal Offer of Exhibits with Manifestation.[32] Respondent then filed his *Comment and Opposition (Re: Petitioner's Motion for Partial Reconsideration to the Resolution dated 20 October 2023 and Motion for Leave to Amend Formal Offer of Exhibits with Manifestation)* on January 31, 2024.[33] In the Resolution dated April 19, 2024,[34] the Court, *inter alia*: (1) granted petitioner's *Motions*, (2) admitted petitioner's Exhibits "P-7.4.3", "P-7.9" to "P-7.9.2.16.3", and "P-7.12" to "P-7.12.1", and (3) admitted all of respondent's offered evidence.

With the filing of petitioner's *Memorandum* on May 6, 2024,[35] and respondent's *Manifestation* on May 9, 2024,[36] adopting his arguments in his *Answer* as his *Memorandum*, the present case was submitted for decision on May 24, 2024.[37]

Hence, this Decision.

THE STIPULATED ISSUE

The parties stipulated the following issue for this Court's resolution, to wit:

> "Whether Petitioner is entitled to a tax refund in the amount of **Php12,894,197.86**, representing its alleged unutilized and/or unapplied excess input VAT attributable to its zero-rated sales for the first and second quarters of taxable year 2020."[38]

Petitioner's arguments:

Petitioner argues that it fully substantiated its claim for refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales; and that respondent erred in denying its administrative claim for refund.

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[32] Docket – Vol. 2, pp. 667 to 674.
[33] Docket – Vol. 2, pp. 714 to 717.
[34] Docket – Vol. 2, pp. 722 to 725.
[35] Docket – Vol. 2, pp. 726 to 763.
[36] Docket – Vol. 2, pp. 765 to 767.
[37] Minute Resolution dated May 24, 2024, Docket – Vol. 2, p. 769.
[38] Issue, JSFI, Docket – Vol. 1, p. 197.

Respondent's counter-arguments:

Respondent contends that: (1) the instant claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; (2) that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim; (3) that tax refunds are subject to administrative routinary investigation; and (4) that tax refunds are strictly construed against the taxpayer and in favor of the government.

THE COURT'S RULING

The present *Petition for Review* has partial merit.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963,[39] otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law), provides:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided,*

[39] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> *further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> 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 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."

Pursuant to the above provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, as follows:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[40]

2. in case of full or partial denial of the refund claim, or the failure on the part of respondent to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30)

[40] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

days from receipt of the decision or after the expiration of the said ninety (90)-day period;[41]

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

3. the taxpayer is a VAT-registered person;[42]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[43]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b) and Sections 108(B)(1) and (2),[44] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[45]

<u>As regards the taxpayer's input VAT being refunded:</u>

6. the input taxes are not transitional input taxes;[46]

7. the input taxes are due or paid;[47]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[48] and

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[41] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

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

[43] *Id.*

[44] Under RA No. 10963, Section 106(A)(2)(a)(2) was renumbered to Section 106(A)(2)(a)(3) while Section 106(A)(2)(b) was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

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

[46] *Id.*

[47] *Id.*

[48] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[49]

In this connection, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[50]

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or tax credit of input VAT before the BIR, within two (2) years from the close of the quarter when the zero-rated or effectively zero-rated sales were made, as stated in the afore-quoted Section 112(A) of the NIRC of 1997, as amended.

The present claim covers 1st and 2nd quarters of taxable year 2020. Counting two (2) years from the close of the said quarters, the table below shows the pertinent dates relative to the present administrative claim:

2020	Close of the Taxable Quarter	Last day to File Administrative Claim	Date of Filing of Claim
1st quarter	March 31, 2020	March 31, 2022	February 28, 2022
2nd quarter	June 30, 2020	June 30, 2022	

Considering that petitioner filed its *Application for Tax Credits/Refunds* (BIR Form No. 1914) on February 28, 2022,[51] petitioner timely filed its administrative claim.

With respect to the *second* requisite, the judicial claim must be filed within thirty (30) days from receipt of respondent's decision, or from the expiration of the ninety (90) day period within which respondent must decide on the administrative claim, as provided

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

[50] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[51] Exhibits "P-3", "P-3-A" and "P-3-B", Docket – Vol. 2, pp. 611 to 615.

under Section 112(C) of the NIRC of 1997, as amended by the TRAIN law.

As mentioned earlier, petitioner's administrative claim was filed on February 28, 2022. Thus, respondent had ninety (90) days therefrom, or until May 29, 2022, within which to act on petitioner's claim.

Records show that before the lapse of the ninety (90)-day period, respondent issued *VAT Refund Notice* on April 20, 2022,[52] partially granting petitioner's refund claim, which was then received by petitioner on May 10, 2022.[53] Counting thirty (30) days therefrom, petitioner had until June 9, 2022 within which to file its judicial claim. Thus, petitioner timely filed the present *Petition for Review* on June 9, 2022.[54]

Petitioner is a VAT-registered entity.

With regard to the *third* requisite, petitioner is registered as a VAT taxpayer with the BIR Revenue District Office No. 81 under TIN No. 000-136-814-000, as indicated in its BIR Certificate of Registration.[55]

Petitioner had zero-rated or effectively zero-rated sales for the 1st and 2nd quarters of 2020.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer should be engaged in zero-rated or effectively zero-rated sales. For zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds should be duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.

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[52] Exhibit "P-4", Docket – Vol. 2, pp. 617 to 632.
[53] *Id.*
[54] Docket – Vol. 1, pp. 6 to 27.
[55] Exhibit "P-2", Docket – Vol. 2, p. 608. cm

To recall, petitioner's total administrative claim for input VAT refund for the 1st and 2nd quarters of 2020 was granted only to the extent of ₱17,772,357.63, computed as follows:[56]

VAT Refund Claimed	₱ 31,676,798.32
Deductions from Claim	13,904,440.69
Net Approved VAT Refund	**₱ 17,772,357.63**

The deductions from petitioner's claim amounting to ₱13,904,440.69 pertain to the following items, to wit:[57]

Amount of Claim		₱ 31,676,798.32
Deductions from claim		
Input Tax (IT) due to non-compliance with invoicing requirements pursuant to and 113(A) of the NIRC of 1997, as amended, insufficient/invalid documentations and ITS verifications	₱	(395,805.33)
Disallowed amortized input tax from prior year purchases of capital goods		(502,310.65)
Big-ticket disallowance		(14,625.36)
Input tax attributable to sales not valid for VAT zero-rating		(12,894,197.87)
Output VAT on undeclared sales		(1.48)
Output VAT on exempt sales		(97,500.00)
Total Deductions		₱ (13,904,440.69)
Amount Recommended for VAT Refund		**₱17,772,357.63**

Out of the total disallowances of ₱13,904,440.69, only the amount of ₱12,894,197.86 is being assailed by petitioner in the present *Petition*. Thus, what is left to be resolved by the Court is whether or not said disallowance is correct.

In its Amended Quarterly VAT Returns for the period covering the 1st and 2nd quarters of 2020, or from January 1, 2020 to June 30, 2020, petitioner reported total sales of ₱685,595,724.91, which consist of VATable sales amounting to ₱161,407,543.10, zero-rated sales amounting to ₱523,375,681.81, and exempt sales amounting to ₱812,500.00, as shown below:

	1st Quarter[58]	**2nd Quarter**[59]	**Total**
Vatable sales	₱ 88,209,648.33	₱ 73,197,894.77	₱ 161,407,543.10
Zero-rated sales	342,472,998.06	180,902,683.75	523,375,681.81
Exempt sales	-	812,500.00	812,500.00
Total sales	**₱430,682,646.39**	**₱254,913,078.52**	**₱685,595,724.91**

[56] Exhibit "P-4", Docket – Vol. 2, pp. 617 to 632.
[57] Refer to Annex "A" of Exhibit "P-4", Docket – Vol. 2, p. 618.
[58] Exhibit "P-7.23", USB (Exhibt "P-28.4").
[59] Exhibit "P-7.24", USB (Exhibt "P-28.4").

Per the ICPA's *Report*, the breakdown of petitioner's zero-rated sales of ₱523,375,681.81 is as follows:[60]

Zero-rated Sales	Type of Zero-rated Sales	Amount
Coral Bay Nickel Corporation[61]	Indirect Export	₱ 2,483,812.50
Philippine Sinter Corporation[62]	Indirect Export	121,069,615.77
Pioneer Float Glass Manufacturing, Inc.[63]	Indirect Export	5,881,812.65
Taganito HPAL Nickel Corporation[64]	Indirect Export	78,775,217.50
Unichamp Mineral Philippines, Inc.[65]	Indirect Export	21,476,137.50
Visayas Slaked Lime Corporation[66]	Indirect Export	65,557,659.96
	Sub-total	***P 295,244,255.88***
JFE Shoji Corporation[67]	Direct Export	55,084,858.24
JFE Shoji Trade Corporation[68]	Direct Export	91,102,402.85
Soneko Marketing Pvt. Ltd.[69]	Direct Export	8,752,293.00
Sunjin C and S Co., Ltd.[70]	Direct Export	26,711,067.58
Vale Nouvelle Caledonie Sas[71]	Direct Export	46,480,804.25
	Sub-total	***P 228,131,425.92***
Total		**P 523,375,681.80**

Based on the breakdown, petitioner's sources of zero-rated sales are: (i) sale to Philippine Economic Zone Authority (PEZA)-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended (for the indirect exports); and (ii) actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended (for the direct exports).

From the above zero-rated sales of petitioner, respondent disallowed the amount of ₱176,353,594.67 for failure to qualify as such:[72]

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[60] Exhibit "P-7.11", USB (Exhibit "P-28.4"); *ICPA Report* (Exhibit "P-28.2"), Docket – Vol. 1, p. 272.
[61] Exhibit "P-7.11.1", USB (Exhibit "P-28.4").
[62] Exhibit "P-7.11.2", USB (Exhibit "P-28.4").
[63] Exhibit "P-7.11.3", USB (Exhibit "P-28.4").
[64] Exhibit "P-7.11.4", USB (Exhibit "P-28.4").
[65] Exhibit "P-7.11.5", USB (Exhibit "P-28.4").
[66] Exhibit "P-7.11.6", USB (Exhibit "P-28.4").
[67] Exhibit "P-7.11.7", USB (Exhibit "P-28.4").
[68] Exhibit "P-7.11.8", USB (Exhibit "P-28.4").
[69] Exhibit "P-7.11.9", USB (Exhibit "P-28.4").
[70] Exhibit "P-7.11.10", USB (Exhibit "P-28.4").
[71] Exhibit "P-7.11.11", USB (Exhibit "P-28.4").
[72] Annex "A.1", Exhibit "P-4", Docket – Vol. 2, p. 624.

	Zero-rated	VATable	Exempt	Sales Not Qualified for VAT Zero-rate	Total
Gross sales per VAT Returns	₱ 523,375,681.81	₱ 161,407,543.10	₱ 812,500.00	₱ -	₱ 685,595,724.91
Adjustments:					
Undeclared Sales		12.36			12.36
Indirect zero-rated sales with insufficient documentation	- 5,171,544.39			5,171,544.39	-
Direct zero-rated sales with insufficient documentation	- 163,669,722.03			163,669,722.03	-
VATable sales declared as exempt	-	812,500.00	- 812,500.00		-
[1] Zero-rated sales with no proof of delivery of goods during the period of claim	- 7,512,328.25			7,512,328.25	-
Adjusted sales	**₱347,022,087.14**	**₱162,220,055.46**	**₱ -**	**₱176,353,594.67**	**₱685,595,737.27**

The ICPA noted that the amount of ₱163,669,722.03, classified by the BIR as *"Direct zero-rated sales with insufficient documentation,"* and the amount of ₱5,171,544.39, classified by the BIR as *"Indirect zero-rated sales with insufficient documentation,"* were incorrectly labelled as the former amount actually pertain to "Indirect zero-rated sales" made to PEZA-registered customers, and the latter amount should be properly tagged as "Direct zero-rated sales", as they were sales to non-resident foreign corporations (NRFCs).[73]

The following is the breakdown of petitioner's disallowed zero-rated sales as reported by the ICPA:[74]

Indirect Export Sales:	
Philippine Sinter Corporation	₱ 130,219,805.59
Pioneer Float Glass Manufacturing, Inc.	12,379,444.38
Unichamp Mineral Philippines, Inc.	10,122,637.50
Visayas Slaked Lime Corporation	10,947,834.56
Taganito HPAL Nickel Corporation	7,512,328.25
Subtotal	**₱171,182,050.28**
Direct Export Sales:	
JFE Shoji Trade Corporation	₱ 4,442,646.50
VALE Nouvelle-Caledonie SAS	728,897.89
Subtotal	**₱ 5,171,544.39**
Total	**₱176,353,594.67**

[73] Paragraph 2(a) to (d), *Results of the Procedures Performed*, Exhibit "P-7", Docket – Vol. 1, pp. 272 to 276.
[74] Paragraph 2, *Results of the Procedures Performed*, Exhibit "P-7", Docket – Vol. 1, p. 272, and Exhibit "P-7.2", USB marked as Exhibit "P-28.4". [initials]

i.) Sale to PEZA registered entities under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended (for the indirect exports).

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

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '**export sales**' means:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

As corollary thereto, Section 4.106-5(a)(5) of RR No. 16-2005, as amended by RR No. 04-07, which implements the foregoing provision, provides the following:

> "SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export sales.* – *'Export Sales'* shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing

> certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws,* even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*;** (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227*; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not." *(Emphasis and italics added)*

Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995,"* respectively read, as follows:

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

Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone, are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[75] to wit:

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[75] GR. No. 150154, August 9, 2005.

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx xxx xxx
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%)[76] VAT." (*Emphases added*)

Thus, for an export sale to be qualified for VAT zero-rating, the following essential elements must be present:

1. The sale was made by a VAT registered person; and,
2. There was sale of goods to an entity which is entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987 (OIC), and other special laws.

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

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

1. The sales invoice as proof of sale of goods; and,
2. Proof of entitlement to zero-rating under the OIC or other special laws.

For its sales to PEZA-registered entities, petitioner submitted the following: (1) BIR Application Forms for VAT Zero Rate;[77] (2)

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[76] Now at 12% VAT rate.
[77] Exhibits "P-7.18" to "P-7.18-5", USB marked as Exhibit "P-28.4". *[initials]*

PEZA certification of VAT zero-rating for the year 2020 and Certificates of Registration for petitioner's customers;[78] (3) shipping invoices and debit and credit memoranda;[79] and (4) Applications for Permit to Bring Goods from the Customs Territory Into the Zone (PEZA Form No. 8105).[80]

In addition, petitioner presented the letter dated April 19, 2023, signed by PEZA Director General Tereso O. Panga,[81] confirming the issuance of VAT zero-rating certifications to the companies listed below. As such, petitioner was able to show that the following clients are qualified enterprises for purposes of VAT zero-rating:

	Enterprise Name	**Zone Location**	**VAT Cert. No.**	**VAT cert. Date**
1	Philippine Sinter Corporation	Phividec Industrial Estate – Economic Zone	2020 – 0667	27 December 2019
2	Unichamp Mineral Philippines Inc. Graymont (Philippines) Inc. formerly: Unichamp Mineral Philippines, Inc.	Rio Tuba Export Processing Zone	2020 – 0734 2020 – 0734 Update No. 0202 (updated due to change of name)	6 January 2020 22 December 2020
3	Coral Bay Nickel Corporation	Rio Tuba Export Processing Zone	2020 – 0470	13 December 2019
4	Pioneer Float Glass Manufacturing, Inc.	Asahi – SEZ	2020 – 1018	16 January 2020
5	Taganito HPAL Nickel Corporation	Taganito – SEZ	2020 – 0166	25 November 2019
6	Visayas Slaked Lime Corporation	Taganito – SEZ	2020 – 1153	20 January 2020

Moreover, an examination of other submitted documents shows that all of petitioner's sales of dolomite ore, limestone ore, and other minerals to PEZA-registered enterprises in the year 2020, in the total amount of ₱171,182,050.28, were duly supported by VAT shipping invoices.[82]

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[78] Exhibits "P-7.17" to "P-7.17-6", USB marked as Exhibit "P-28.4".
[79] Exhibits "P-7.11" to "P-7.11.11.7", USB marked as Exhibit "P-28.4".
[80] Exhibits "P-7.27" to "P-7.27-37", USB marked as Exhibit "P-28.4".
[81] Exhibit "P-7.17", USB (Exhibt "P-28.4").
[82] Exhibits "P-7.11.2.1" to "P-7.11.6.18", USB marked as Exhibit "P-28.4".

For its sales to Philippine Sinter Corporation (PSC), respondent disallowed the total amount of ₱130,219,805.59 for alleged lack of proof of delivery.[83] Notably, per the ICPA's Report, the total zero-rated sales to PSC declared in petitioner's Quarterly VAT Returns for the 1st and 2nd quarters of 2020 only amounted to ₱121,069,615.77.[84] The difference of ₱9,150,189.82 is disallowed by respondent for being supported by multiple invoices. However, the ICPA found that the ₱9,150,189.82 already forms part of the ₱130,219,805.59.[85]

On this matter, petitioner avers that it "issued sales invoices at the loading point and records the volume of the mineral ore. However, due to various environmental factors and conditions attendant in shipping [the] goods and materials by sea, the volume of goods and materials change[d] upon their arrival at their intended destination. xxx Due to the reduction in volume, the initial invoices bearing the volume and weight at loading point is reversed and cancelled. A replacement or updated final invoice is thereafter issued which reflects the actual volume and weight of the goods and materials upon their arrival at the destination point."[86]

The ICPA examined the credit memoranda amounting to ₱9,150,189.82 issued by petitioner to PSC to offset the original invoices:

Exhibit No.	**CM Date**	**CM No.**	**Issued to**	**Amount**
"P-7.9.1.2"	31 January 2020	2583	PSC	₱ 2,646,546.00
"P-7.9.1.4"	2 February 2020	2604	PSC	1,911,847.22
"P-7.9.1.6"	30 April 2020	2663	PSC	2,654,964.00
"P-7.9.1.8"	31 May 2020	2685	PSC	1,936,832.60
			TOTAL	**P 9,150,189.82**

The Court finds the foregoing to be in order. Further, considering that petitioner did not declare the amount of ₱9,150,189.82 in its VAT Returns, as the same has already been offset upon issuance of a corresponding credit memo, the disallowance cannot be sustained.

With regard to the amount of ₱121,069,615.77 which was declared in the Quarterly VAT Returns, petitioner submitted the duly

[83] Paragraph 31, *Petition for Review*, Docket – Vol. 1, pp. 15 to16.
[84] Exhibit "P-7.11", USB marked as Exhibit "P-28.4".
[85] Paragraph 2(b), Results of the Procedures Performed, Exhibit "P-7", Docket – Vol. 1, p. 275.
[86] Paragraphs 39 and 40, *Petition for Review*, Docket – Vol. 1, p. 17.

approved Applications for Permit to Bring Goods from the Customs Territory Into the Zone (PEZA Form No. 8105), showing that the goods indicated in the following invoices were actually delivered into the economic zone, to wit:[87]

Invoice No.	Invoice Date	Customer		Amount
1049	8 January 2020	PHILIPPINE SINTER CORPORATION	₱	2,551,475.36
1055	21 January 2020	PHILIPPINE SINTER CORPORATION		2,510,690.00
1056	21 January 2020	PHILIPPINE SINTER CORPORATION		2,496,368.00
1058	27 January 2020	PHILIPPINE SINTER CORPORATION		2,510,240.53
2040	7 January 2020	PHILIPPINE SINTER CORPORATION		1,983,749.53
2043	9 January 2020	PHILIPPINE SINTER CORPORATION		1,996,528.92
2052	21 January 2020	PHILIPPINE SINTER CORPORATION		1,990,885.60
2057	24 January 2020	PHILIPPINE SINTER CORPORATION		1,995,435.75
2060	28 January 2020	PHILIPPINE SINTER CORPORATION		2,008,410.93
2061	31 January 2020	PHILIPPINE SINTER CORPORATION		1,980,355.94
2062	3 February 2020	PHILIPPINE SINTER CORPORATION		1,856,628.36
1063	6 February 2020	PHILIPPINE SINTER CORPORATION		2,535,978.86
2064	7 February 2020	PHILIPPINE SINTER CORPORATION		1,911,836.13
1065	11 February 2020	PHILIPPINE SINTER CORPORATION		2,500,066.02
2096	17 March 2020	PHILIPPINE SINTER CORPORATION		2,024,373.78
2097	21 March 2020	PHILIPPINE SINTER CORPORATION		1,943,502.28
2100	23 March 2020	PHILIPPINE SINTER CORPORATION		2,009,653.56
2101	24 March 2020	PHILIPPINE SINTER CORPORATION		2,022,558.72
2104	26 March 2020	PHILIPPINE SINTER CORPORATION		1,876,902.46
2105	27 March 2020	PHILIPPINE SINTER CORPORATION		2,006,000.04
1088	6 April 2020	PHILIPPINE SINTER CORPORATION		2,567,365.47
1089	6 April 2020	PHILIPPINE SINTER CORPORATION		2,554,281.72
2110	6 April 2020	PHILIPPINE SINTER CORPORATION		1,867,550.98
2111	6 April 2020	PHILIPPINE SINTER CORPORATION		1,991,882.32
2112	11 April 2020	PHILIPPINE SINTER CORPORATION		1,867,421.36
1090	14 April 2020	PHILIPPINE SINTER CORPORATION		2,540,251.40
1091	14 April 2020	PHILIPPINE SINTER CORPORATION		2,548,149.76
2114	14 April 2020	PHILIPPINE SINTER CORPORATION		1,870,198.98
1092	21 April 2020	PHILIPPINE SINTER CORPORATION		2,519,402.46
1093	22 April 2020	PHILIPPINE SINTER CORPORATION		2,568,351.24
2117	22 April 2020	PHILIPPINE SINTER CORPORATION		2,001,154.02
1097	30 April 2020	PHILIPPINE SINTER CORPORATION		2,552,221.89
2122	4 May 2020	PHILIPPINE SINTER CORPORATION		1,987,059.52
2123	4 May 2020	PHILIPPINE SINTER CORPORATION		1,972,029.66
1101	18 May 2020	PHILIPPINE SINTER CORPORATION		2,494,164.75
2127	18 May 2020	PHILIPPINE SINTER CORPORATION		2,012,322.33
2129	23 May 2020	PHILIPPINE SINTER CORPORATION		1,970,590.70
		TOTAL		**₱80,596,039.33**

[87] Exhibits "P-7.27" to "P-27.7" and "P-27.9" to "P-27.37", USB marked as Exhibit "P-28.4".

Thus, of the ₱130,219,805.59 disallowed zero-rated sales to PSC, only the amount of ₱40,473,576.44 should remain, *viz.*:

Total disallowed zero-rated sales to PSC	₱ 130,219,805.59
Less: Zero-rated sales to PSC with credit memoranda	(9,150,189.82)
Zero-rated sales supported by PEZA permits and clearances	(80,596,039.33)
Disallowed zero-rated sales to PSC	**₱40,473,576.44**

Similarly, for petitioner's zero-rated sales to Pioneer Float Glass Manufacturing, Inc. (Pioneer Float), respondent disallowed the amount of ₱12,379,444.38, for having multiple invoices,[88] when petitioner only declared an aggregate amount of ₱5,881,812.65 in its VAT Returns for the 1st and 2nd quarters of 2020.[89] The difference of ₱6,497,631.73 is supported by the following credit memoranda, to wit:

Exhibit No.	CM Date	CM No.	Issued to	Amount
"P-7.9.2.1"	28 February 2020	2605	Pioneer Float Glass Mfg. Inc.	₱ 3,872,636.00
"P-7.9.2.9"	5 May 2020	2659	Pioneer Float Glass Mfg. Inc.	1,271,730.00
"P-7.9.2.15"	22 June 2020	2703	Pioneer Float Glass Mfg. Inc.	1,353,265.73
			TOTAL	**₱ 6,497,631.73**

As explained by petitioner, the multiple invoices pertain to the initial and final invoices issued due to the changes in the volume and weight of the goods sold. An examination of the invoices submitted by petitioner reveals that the subject zero-rated sales are duly substantiated. Thus, respondent's disallowance has no basis and should be cancelled.

As regards the amount of ₱5,881,812.65 declared in the Quarterly VAT Returns which was disallowed by respondent due to insufficiency of documents, verification disclosed that petitioner failed to submit the purported Mate's Receipt or any bill of lading and/or delivery receipt to corroborate the delivery of goods inside the economic zone. As such, respondent's disallowance pertaining thereto shall be sustained.

For petitioner's zero-rated sales to Unichamp Mineral Philippines Inc. and Visayas Slaked Lime Corporation, respondent disallowed the

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[88] Paragraph 2(b), Results of the Procedures Performed, Exhibit "P-7", Docket – Vol. 1, p. 275.
[89] Exhibit "P-7.11", USB marked as Exhibit "P-28.4".

amounts of ₱10,122,637.50 and ₱10,947,834.56, respectively, for having inconsistencies in the bills of lading.[90]

Likewise, petitioner's zero-rated sales to Taganito HPAL Nickel Corporation (Taganito HPAL) amounting to ₱7,512,328.25 were disallowed by respondent because the bills of lading were undated and/or dated outside the period of claim.[91]

However, petitioner did not submit the bills of lading pertaining to the foregoing zero-rated sales. Without the subject documents, the Court cannot ascertain whether the bills of lading are in order. Contrary to petitioner and the ICPA's argument that "minor inconsistencies to the secondary supporting documents such as bill of lading should not warrant disallowance of zero-rated sales",[92] the Court finds that the bills of lading are necessary to show compliance with the condition set forth in the PEZA certification.

Correspondingly, the Court is constrained to uphold the disallowance of petitioner's zero-rated sales to the following:

Unichamp Corp.	₱ 10,122,637.50
Visayas Slaked Limestone Corp. (VSLC)	10,947,834.56
Taganito HPAL Nickel Corp.	7,512,328.25
Total	**P 28,582,800.31**

ii.) Actual export sale of goods under Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended (for the direct exports).

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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[90] Annex A.1.2, Exhibit "P-4", Docket – Vol. 2, pp. 626 to 632, and Paragraph 2(b), Results of the Procedures Performed, Exhibit "P-7", Docket – Vol. 1, p. 275.

[91] Annex A.1, Exhibit "P-4", Docket – Vol. 2, p. 624.

[92] Paragraph 2(c), Results of the Procedures Performed, Exhibit "P-7", Docket – Vol. 1, p. 275, and Paragraphs 43 to 47, *Petition for Review*, Docket – Vol. 1, pp. 18 to 19.

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

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

Thus, for an export sale to qualify as zero-rated, the following essential elements must be present:

1. The sale was made by a VAT registered person;
2. There was sale and actual shipment of goods from the Philippines to a foreign country; and,
3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As pointed out earlier, petitioner is a VAT-registered entity.[93] Thus, there is no question that petitioner fulfilled the *first* essential element.

In relation to the *second* essential element, the VAT-registered taxpayer claiming VAT zero-rated direct export sales must still present, among others, the following documents:

1. The sales invoice as proof of sale of goods; and,
2. The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first type of document, the sales invoices must comply with the pertinent invoicing requirements, containing all the required information under Sections 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A) and (B) of RR No. 16-2005, as amended. Further, the sales invoices and official receipts must also be duly registered with the BIR as prescribed under Sections 237 and 238, respectively, of the NIRC of 1997, as amended.

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[93] Vol. I, Exhibit "P-2", p. 43.

Here, respondent's denial of VAT zero-rating to petitioner's direct export sales for the period January to June 2020, pertaining to its sales to JFE Shoji Trade Corporation (JSTC) in the amount of ₱4,442,646.50, was due to petitioner's failure to provide sufficient documentation on commissions earned by JSTC which was deducted from the total amounts payable to petitioner on its sale of goods.[94] On the other hand, respondent's disallowance of petitioner's zero-rated sales to Vale Nouvelle Caledonie SAS (Vale Nouvelle), in the amount of ₱728,897.89, was due to lack of sufficient documentation, such as valid proof of inward remittances.[95]

For its zero-rated sales to JSTC, petitioner clarified its sales commission arrangement with JSTC. Allegedly: (1) JSTC is an intermediary between petitioner and other NRFCs not engaged in business in the Philippines that wish to procure mineral ore; (2) pursuant to the service agreement, JSTC buys the mineral ore from petitioner who would, in turn, directly deliver the goods to the customers of JSTC which are NRFCs doing business outside the Philippines; (3) petitioner issues sales invoices for the full amount of the goods sold to JSTC; (4) JSTC then remits the proceeds of the sale less the commission earned from the arrangement; and (5) this is much more efficient than JSTC remitting the full amount of the purchase price to petitioner and petitioner having to remit back to JSTC the commissions the latter end.[96]

In support thereof, petitioner submitted its service agreement with JSTC, which provides as follows:[97]

"Article 3: COMMISSION PAYMENTS

3.1 PMSC shall pay JFE Shoji commission income for the above services, based on the final quantity shipped to CSC and DSC, at the rate of US$0.50/MT for both Limestone and Dolomite within 5 working days after completion of remittance of full FOB price from JFE Shoji.

Article 4: SUMMARY OF PAYMENTS AND RECEIPTS

4.1 Illustrated hereunder is the summary of payments and receipts of PMSC.

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[94] Q & A45, Exhibit "P-6", Docket – Vol. 1, p.95.
[95] Exhibit "R-3", Par. II. Sales and Other Income, BIR Records, p. 391.
[96] Q & A46, Exhibit "P-6", Docket – Vol. 1, pp. 95-96.
[97] Exhibit "P-7.25", USB marked as Exhibit "P-28.4". *om*

	CSC/DSC	CSC/DSC
	Limestone (Lump/Fine)	**Dolomite (Lump/Fine)**
Contract Number	09C1P-0501	09C1P-0603
FOB Payment from CSC/DSC	US$6.30/MT	US$7.40/MT
Commissions to JFE Shoji	US$0.50/MT	US$0.50/MT"

It must be noted that the disallowed amount of ₱4,442,646.50 consists of the difference between the invoice amount *vis-à-vis* the remittance received by petitioner from JSTC,[98] which represents the commissions paid to JSTC. Considering the above explicit provision in the service agreement on the payment of commissions to JSTC, respondent's disallowance of petitioner's zero-rated sales amounting to ₱4,442,646.50 was therefore erroneous.

As regards direct export sales to Vale Nouvelle in the amount of ₱728,897.89, which respondent disallowed due to lack of sufficient documentation such as valid proof of inward remittances,[99] petitioner explains that Vale Nouvelle remitted payments for its purchases only after the filing of an application for tax refund.[100]

However, despite petitioner's claim that Vale Nouvelle only paid after it had filed an application for tax refund, there was actually no certificate of inward remittances presented before the Court. Thus, the disallowed zero-rated sales to Vale Nouvelle amounting to ₱728,897.89 is maintained.

In sum, petitioner's disallowed zero-rated sales should be adjusted to the amount of **₱75,667,087.29**, computed as follows:

Indirect Export Sales:	
With insufficient documentation	
Philippine Sinter Corporation	₱ 40,473,576.44
Pioneer Float Glass Manufacturing, Inc.	5,881,812.65
Unichamp Mineral Philippines, Inc.	10,122,637.50
Visayas Slaked Lime Corporation	10,947,834.56
	67,425,861.15
Zero-rated sales with no proof of delivery of goods during the period of claim	
Taganito HPAL Nickel Corporation	7,512,328.25

[98] Exhibit "P-7.2.6", USB marked as Exhibit "P-28.4".
[99] Exhibit "R-3", Par. II. Sales and Other Income, BIR Records, p. 391.
[100] Q & A48, Exhibit "P-6", Docket – Vol. 1, p. 96. *on*

Subtotal	**P 74,938,189.40**
Direct Export Sales:	
With insufficient documentation	
VALE Nouvelle-Caledonie SAS	₱ 728,897.89
Subtotal	**P 728,897.89**
Total Sales Not Qualified for VAT Zero-rate	**P 75,667,087.29**

The input taxes being claimed for refund

Anent the *sixth* to the *ninth* requisites, the Court will no longer discuss petitioner's compliance therewith considering that petitioner adheres to the findings of respondent on the disallowed input taxes. To reiterate, only the amount of ₱12,894,197.86 pertaining to valid input tax attributable to sales allegedly not valid for VAT zero-rating is being assailed by petitioner in the present *Petition*, as determined below:[101]

	Zero-rated	**VATable**	**Exempt**	**Sales Not Qualified for VAT Zero-rate**	**Total**
Gross sales per VAT Returns	₱ 523,375,681.81	₱ 161,407,543.10	₱ 812,500.00	₱ -	₱ 685,595,724.91
Adjustments:					
Undeclared Sales		12.36			12.36
Indirect zero-rated sales with insufficient documentation	- 5,171,544.39			5,171,544.39	-
Direct zero-rated sales with insufficient documentation	- 163,669,722.03			163,669,722.03	-
VATable sales declared as exempt	-	812,500.00	- 812,500.00		-
[1] Zero-rated sales with no proof of delivery of goods during the period of claim	- 7,512,328.25			7,512,328.25	-
Adjusted sales	₱ 347,022,087.14	₱ 162,220,055.46	₱ -	₱ 176,353,594.67	₱ 685,595,737.27
Ratio	50.62%	23.66%	0.00%	25.72%	100%
[2] Available input VAT allocated based in sales ratio	**P25,377,305.44**	**P11,861,458.84**	**-**	**P12,894,197.87**	**P50,132,962.15**

[101] Annex "A.1", Exhibit "P-4", Docket – Vol. 2, p. 624.

It must be noted that respondent's computation of the input taxes subject to allocation amounting to ₱50,132,962.15 is already net of the disallowances of certain input taxes found upon respondent's review of the claim:[102]

VAT Claimed per Application	₱ 31,676,798.32
Output Tax Applied	19,368,905.17
Gross Input Tax	₱ 51,045,703.49
Adjustments and disallowances:	
Violation of invoicing requirements	₱ 395,805.33
Disallowed amortized IT on PY CG	502,310.65
Big-ticket disallowance	14,625.36
Net available input VAT	**₱50,132,962.15**

Computation of refundable unutilized or excess input taxes.

With the reduction of the total amount of disallowed zero-rated sales from ₱176,353,594.67 to ₱75,667,087.29, the valid input tax allocated thereto and the net refundable amount are likewise adjusted accordingly:

	Zero-rated	**VATable**	**Exempt**	**Sales Not Qualified for VAT Zero-rate**	**Total**
Gross sales per VAT Returns	₱ 523,375,681.81	₱ 161,407,543.10	₱ 812,500.00		₱ 685,595,724.91
Adjustments:					
Undeclared Sales		12.36			12.36
Indirect zero-rated sales with insufficient documentation	(67,425,861.15)			67,425,861.15	-
Direct zero-rated sales with insufficient documentation	(728,897.89)			728,897.89	-
VATable sales declared as exempt		812,500.00	(812,500.00)		-
Zero-rated sales with no proof of delivery of goods during the period of claim	(7,512,328.25)			7,512,328.25	-
Adjusted sales	**P447,708,594.52**	**P162,220,055.46**	-	**P75,667,087.29**	**P685,595,737.27**
Ratio	65.30%	23.66%	0.00%	11.04%	100%
Available input VAT allocated based in sales ratio	**P32,737,890.28**	**P 11,862,051.44**	**P -**	**P5,533,020.43**	**P 50,132,962.15**

[102] *Ibid.*

Deduct:					-
Output tax per QVR		₱ (19,368,905.17)			₱ (19,368,905.17)
Output tax on VATable sales adjustment		(1.48)			(1.48)
Output tax on VATable sales declared as exempt		(97,500.00)			(97,500.00)
Input tax allocated to disallowed zero-rated sales				(5,533,020.43)	(5,533,020.43)
Input VAT Balance	**₱32,737,890.28**	**P (7,604,355.21)**	-	-	**P 25,133,535.07**
Taxable sales offset	(7,604,355.21)	7,604,355.21			-
NET REFUNDABLE AMOUNT	**₱25,133,535.07**	**P -**	**P -**	**P -**	**₱25,133,535.07**

Based on the foregoing, petitioner is entitled to a total input VAT refund amounting to ₱25,133,535.07. However, since respondent has already granted the amount of ₱17,772,357.63 per *VAT Refund Notice* dated April 30, 2022,[103] and that the valid input tax allocated to the adjusted disallowed zero-rated sales amounts to ₱5,533,020.43, instead of the amount of ₱12,894,197.87 found by respondent, only the remaining balance of ₱7,361,177.44 should be granted in this case.

ACCORDINGLY, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is **ORDERED** to refund petitioner the additional amount of **₱7,361,177.44**, representing petitioner's unutilized and/or unapplied and excess input VAT attributable to zero-rated sales for the period covering the 1st and 2nd quarters of taxable year 2020, or from January 1, 2020 to June 30, 2020.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MARIAN IVY F. REYES-FAJARDO
Associate Justice

[103] Exhibit "P-4", Docket – Vol. 2, p. 617.

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
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