REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NOS. 9659**
-versus-	Members: **Castañeda, Jr.,** *Chairperson,* and, **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 10 2020 1:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case involves a *Petition for Review* filed on August 22, 2017 by petitioner Carmen Copper Corporation against respondent Commissioner of Internal Revenue, praying for the refund of its alleged unutilized input value-added tax (VAT) on purchases of goods and services, and importation of goods, all attributable to zero-rated sales for the 1st quarter of 2015, in the amount of ₱11,393,494.01.[1]

THE PARTIES

Petitioner Carmen Copper Corporation is a domestic corporation duly organized and existing under Philippine laws.[2] It is registered

[1] Statement of the Case, Pre-Trial Order dated April 23, 2018, Docket, p. 253.
[2] Exhibit "P-1", Docket, pp. 297 to 312.

with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, with Tax Identification Number 233-903-100-0000 and, with principal office address at unit 502-P & 503-P, 5/F, Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City.[3] It is also registered with the Board of Investments (BOI) as a new producer of copper concentrates under Certificate of Registration No. 2006-158 dated December 13, 2006.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law, with office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Petitioner filed, on March 24, 2017, an *Application for Tax Credits/Refunds* (BIR Form No. 1914) accompanied by supporting documents, with the BIR Large Taxpayers Service, for the period January 1, 2015 to March 31, 2015 in the amount of ₱60,174,235.61.[6]

On March 31, 2017, the *Letter of Authority* (LOA) No. AUDM03/011073/2017 (SN:eLOA201500034571)[7] was issued by OIC–Assistant Commissioner Teresita M. Angeles of the Large Taxpayers Service (LTS), authorizing revenue officers (RO)s Saidamen Marohombsar, Alexander Atienza, Leonila Manuel and group supervisor Ronaldo Camba of Revenue District Office (RDO) No. 121–Excise Large Taxpayer Division I, to examine petitioner's books of accounts for VAT Tax Credit Certificate (TCC)/Refund for the period covering January 1, 2015 to March 31, 2015.

Then, on August 16, 2017, petitioner received the letter dated June 8, 2017 from OIC–Assistant Commissioner Teresita M. Angeles

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[3] Exhibit "P-2", Docket, pp. 313 to 314.
[4] Exhibit "P-7", Docket, pp. 327 to 333.
[5] Par. 1, Admitted Fact, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 227.
[6] Exhibit "P-5", Docket, pp. 317 to 323.
[7] Exhibit "R-1", BIR Records, p. 368.

of the BIR LTS,[8] partially granting petitioner's claim in the reduced amount of ₱48,780,741.60, detailed down as follows:

PARTICULARS	BIR	BOC	TOTAL
Amount of Claim	₱1,806,799.81	₱58,367,435.80	₱60,174,235.61
Adjustments:			
1.) Disallowed Input Tax from Amortization of Deferred Input Tax on Capital Goods	156,974.18	2,422,814.95	2,579,789.13
2.) Disallowed Input Tax from Importation of Goods		7,612,332.65	7,612,332.65
3.) Disallowed Input Tax – Violation of Invoicing Requirements	1,201,372.05		1,201,372.05
4.) Discrepancy on Input Available for TCC/Refund, between:			
Per Claim For Refund			
Per VAT Analysis	0.18		0.18
Total	₱1,358,346.41	₱10,035,147.60	₱11,393,494.01
Net Allowable for TCC/Refund	**₱448,453.40**	**₱48,332,288.20**	**₱48,780,741.60**

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on August 22, 2017.[9] The instant case was initially raffled to this Court's First Division.

On November 24, 2017, respondent filed his *Answer,*[10] interposing the following defenses, to wit:

> "4.1 Petitioner filed a claim for refund in the total amount of ₱60,174,235.61. However, verification and validation of the documents submitted by petitioner to substantiate its claim disclosed the following input tax should be disallowed:
>
> 1.) **Disallowed input tax due to violation of invoice ng requirements– P1,201,372.05**
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> Verification of supporting invoices, official receipts and other documents on its domestic purchases of goods and services resulted to disallowance due to no-compliance with the invoicing requirements as provided for under Section 113 and 239 of the Tax Code. Jr

[8] Exhibit "P-6", Docket, pp. 324 to 326; Exhibit "R-3", BIR Records, p. 401.
[9] Docket, pp. 10 to 24.
[10] Docket, pp. 78 to 82.

Reason for Disallowance	Amount
Not in Taxpayers Name	P42,340.43
Not within the period	P111,357.11
Services No OR	P47,407.19
Goods No Invoice	P17,342.04
VAT Not Separately Billed	P58,970.82
Stub/POS	P286.29
Non VAT	P782,898.54
Not Clear	P1,559.85
With Erasure	P2,312.14
No BIR Permit	P126,965.70
No Support	P9,432.26
Duplicate Claim	P23.46
Excess Claim	P476.22
Total	**P1,201,372.05**

2.) **Disallowed input tax from importation of goods– P7,612,332.65**

Verification of bank debit charges to support payment of value-added tax on importation resulted to disallowance in the amount of P133,832.00 pursuant to Section 110(2)(b) of the Tax Code of 1997, as amended. Furthermore, it was observed that input tax on importation of major crusher parts, motors, and main shafts were included in the input credited for the first quarter, the corresponding input tax of P7,478,500.65 was disallowed in accordance with the same provision of the Tax Code.

3.) **Disallowed input tax from amortization of deferred input tax on capital goods– P2,579,789.13**

Review of the amortization of deferred input tax on capital goods resulted to disallowance in the amount of P2,579,789.13. Section 110(A)(2)(b) of the Tax Code states that the input tax on capital goods purchased or imported in the period of claim shall be spread evenly over the month of acquisition and fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceed P1,000,000.00. Details of which are as follows:

Reason for Disallowance	Amount
No Import Entry Revenue Declaration	P2,250,112.50
No proof of payment	P21,720.30
Input Tac not shown in the Invoice/VNSB	P60,964.28
No TIN	P92,008.12

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No ATP/BIR Permit	P54,225.00
No name of Taxpayer/TIN	P4,001.78
Double Claim	P96,757.15
Total	**P2,579,798.13**

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

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

4.3 Based on the foregoing, petitioner's claim for refund in the total amount of P11,393,494.01 has no bases in fact or in law. Thus, the instant petition should be denied for lack of merit."

The Pre-Trial Conference was set and held on March 1, 2018.[11] On the same date, *Respondent's Pre-Trial Brief* and *Petitioner's Pre-Trail Brief* were filed.[12]

On March 23, 2018, the parties filed their *Joint Stipulation of Facts & Issues* (JSFI).[13] In the Resolution dated April 5, 2018,[14] the Court approved the said JSFI, and deemed the pre-trial terminated. Thereafter, the Pre-Trial Order dated April 23, 2018 was issued.[15]

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, to wit: (1) Mr. Fernando A. Rimando,[16] its Chief Financial Officer; (2) Ms. Michelle E. Paray,[17] its authorized agent to

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[11] *Notice of Pre-Trial Conference* dated December 1, 2017, Docket, pp. 84 to 85; Order dated March 1, 2018, Docket, pp. 112 to 114.
[12] Docket, pp. 88 to 91, and 93 to 105, respectively.
[13] Docket, pp. 227 to 234.
[14] Docket, pp. 236 to 237.
[15] Docket, pp. 253 to 258.
[16] Exhibit "P-9", Docket, pp. 171 to 184; Minutes of the hearing held on, and Order dated, May 29, 2018, Docket, pp. 268 to 272.
[17] Exhibit "P-10", Docket, pp. 211 to 219; Order dated July 26, 2018, Docket, pp. 285 to 286.

transact with the BIR; and (3) Mr. Emmanuel Y. Mendoza,[18], the court-commissioned Independent Certified Public Accountant (ICPA).[19]

On August 28, 2018, petitioner filed its *Formal Offer of Evidence*,[20] while respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on August 29, 2018.[21] In the Resolution dated January 23, 2019,[22] the Court admitted petitioner's exhibits, except for Exhibits "P-18" to "P-41", inclusive of sub-markings, for not being found in the records of the case, as they are not accessible in the CD submitted.

In the meantime, the present case was transferred to this Court's Second Division.[23]

On February 14, 2019, petitioner filed its *Omnibus Motion for Partial Reconsideration (a) For partial reconsideration of the Court's Resolution dated January 23, 2019 (b) To defer February 18, 2018 Hearing*,[24] wherein it prayed, *inter alia*, for the partial reconsideration of this Court's Resolution dated January 23, 2019, and require the ICPA to submit a back up CD or a new USB storage device containing all the denied exhibits, and after due consideration, admit Exhibits "P-18" to "P-41", inclusive of sub-markings. Respondent, however, failed to file his comment to the said *Omnibus Motion*.[25] Thus, in the Resolution dated July 19, 2019,[26] the Court: (1) admitted Exhibits "P-18" to "P-21", "P-22-1" to "P-22-31", "P-22-33" to "P-22-119", "P-23" to "P-38", and "P-40" to "P-41"; (2) still denied Exhibits "P-22-32" and "P-39", for not being found in the records (no scanned copy was found in the USB submitted); and (3) noted that Exhibits "P-22-45", "P-22-113" to "P-22-114", "P-33-30", "P-33-47", "P-34-1", "P-34-3", "P-34-5" to "P-34-9", "P-35-26", "P-34-40", "P-34-50", "P-36-8", "P-36-16", "P-36-18", and "P-36-22", are either blurred, unreadable, or not properly scanned. *9z*

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[18] Exhibit "P-11", Docket, pp. 273 to 280; Order dated July 26, 2018, Docket, pp. 285 to 286.
[19] *Oath of Commission* dated April 12, 2018; Minutes of the hearing held on, and Order dated, April 12, 2018, Docket, pp. 245 to 247, and 249 to 250.
[20] Docket, pp. 287 to 296.
[21] Docket, pp. 338 to 340.
[22] Docket, pp. 346 to 347.
[23] Order dated October 2, 2018, Docket, p. 344.
[24] Docket, pp. 350 to 354.
[25] Records Verification dated March 25, 2019 issued by the Judicial Records Division of this Court, Docket, p. 362.
[26] Docket, pp. 395 to 397.

Respondent transmitted the BIR Records for this case on March 6, 2018.[27]

On August 13, 2019, petitioner filed its *Manifestation and Motion For Reconsideration Of the Court's Resolution dated July 19, 2019,*[28] praying for the admission of Exhibit "P-22-35" as Exhibit "P-22-32". In the Resolution dated October 9, 2019,[29] the Court granted the said *Motion For Reconsideration Of the Court's Resolution dated July 19, 2019.*

Respondent presented its documentary and testimonial evidence. He offered the testimony of Revenue Officer Leonila Manuel.[30] After the completion of her testimony, respondent orally offered Exhibits "R-1" to R-4", as his documentary evidence. There being no objection from petitioner's counsel, this Court admitted the same and deemed respondent to have rested his case.[31]

Respondent filed his *Memorandum* on May 15, 2019,[32] while the *Memorandum for Petitioner* was submitted on June 24, 2019.[33] The present case was deemed submitted for decision on October 9, 2019.[34]

THE ISSUE RAISED BY THE PARTIES

The sole issue stipulated by the parties for this Court's resolution is:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OR ISSUANCE OF TCC OF ITS ALLEGEDLY UNUTILIZED INPUT TAXES IN THE AMOUNT OF PHP11,393,494.01."[35] gr

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[27] *Compliance* dated March 6, 2019, Docket, p. 361.
[28] Docket, pp. to.
[29] Docket, pp. to.
[30] Exhibit "R-5", Docket, pp. 154 to 160; Minutes of the hearing held on, and Order dated, May 8, 2019, Docket, pp. 367 to 368.
[31] Minutes of the hearing held on, and Order dated, May 8, 2019, Docket, pp. 367 to 368.
[32] Docket, pp. 369 to 375.
[33] Docket, pp. 380 to 394.
[34] Resolution dated October 9, 2019, Docket, pp. 398 to 399.
[35] Stipulated Issue, JSFI, Docket, p. 228.

Petitioner's arguments:

Petitioner argues that substantive law supports its entitlement to the refund claimed for; that petitioner complied with the requisites for a valid claim for input tax refund; that it is VAT-registered and is engaged in zero-rated sales, which facts remain uncontested by respondent; that the input taxes were due or paid and were not transitional input taxes; that input taxes have not been applied against output taxes during and in the succeeding quarters; and that input taxes claimed are attributable to zero-rated or effectively zero-rated sales; that the acceptable foreign currency exchange proceeds from petitioner's export sales have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP); that the input taxes which cannot be directly and entirely attributable to any of the zero-rated sales or effectively zero-rated sales and taxable or exempt sales shall be proportionately allocated on the basis of sales volume; and that the claim is filed within two (2) years after the close of the quarter when such sales were made.

Respondent's counter-arguments:

Respondent contends that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and that petitioner is not entitled to refund in the amount of ₱11,393,494.01.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

Pertinent to the resolution of the present case are paragraphs (A) and (C) of Section 112 of the NIRC of 1997, as amended, which allows for refund/credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales, to wit:

> "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

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credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.

x x x

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

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

Pursuant to the above provision, our jurisprudence has laid down certain requisites which must be complied with by the taxpayer-claimant to successfully obtain a refund/credit of input VAT. The said requisites are classified into certain categories as follows, *viz*:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[36]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act

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

on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[37]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[38]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[39]
5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[40]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[41]
7. the input taxes are due or paid;[42]
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;[43] and,
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[44]

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

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

[39] *Ibid.*

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.*

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

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

In cases filed before this Court, which are litigated *de novo,* party-litigants must prove every minute aspect of their case.[45] Thus, it behooves petitioner to show compliance with each of the foregoing requisites.

Petitioner's administrative and judicial claims were filed within the prescriptive period.

Needless to state, the *first* and *second* requisites are crucial since they will ascertain the timeliness of petitioner's administrative and judicial claims. Failure to comply with one is jurisdictional and will determine whether it is still necessary to proceed with the other requisites for input VAT refund.

Again, Section 112(A) of the NIRC of 1997, as amended, requires that the application for tax refund/credit of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In the present case, petitioner's claims cover the 1st quarter of calendar year 2015, which closed on March 31, 2015. Counting two years from the said dates, petitioner had until March 31, 2017, within which to file its administrative claim for tax refund for the said quarter. By filing its administrative claim via *Application for Tax Credits/Refunds* (BIR Form No. 1914)[46] with supporting documents, with the BIR Large Taxpayers Service on **March 24, 2017**, petitioner for has seasonably complied within the period provided by law.

Moreover, Section 112(C) of the same Code provides for the period within which to file a judicial claim for refund of input VAT. Perforce, the provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for a refund or credit; and the period of

[45] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, 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.

[46] Exhibit "P-5", Docket, pp. 317 to 323.

30 days, which refers to the period for filing a judicial claim with this Court.[47]

It must also be noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit— or actually submitted— additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[48]

In the present case, as already noted, petitioner filed its administrative claim together with its supporting documents[49] on March 24, 2017, counting 120 days therefrom, respondent had until July 22, 2017 within which to act on the said claim. Thereafter, petitioner has 30 days from July 22, 2017 within which to elevate the matter to this Court. However, it was only on August 16, 2017, that petitioner received a letter[50] dated June 8, 2017 from OIC–Assistant Commissioner Teresita M. Angeles of the BIR LTS, partially granting petitioner's claim for refund. By filing the present *Petition for Review* on August 22, 2017, petitioner has seasonably filed its judicial claim, regardless of whether the reckoning date be on respondent's inaction on July 22, 2017[51] or his receipt of decision on August 16, 2017. Simply stated, the filing of the present *Petition* falls within 30 days from either the lapse of respondent's inaction or receipt of his decision.

Having determined that petitioner timely filed both its administrative and judicial claims for refund, this Court shall now proceed to determine petitioner's compliance with the remaining requisites.

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[47] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.
[48] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 182737, March 2, 2016.
[49] Supra note 45.
[50] Exhibit "P-6", Docket, pp. 324 to 326; Exhibit "R-3", BIR Records, p. 401.
[51] End of 30 days should be August 21, 2017, but the same was declared as Special Non-Working Holiday by virtue of Proclamation No. 50, s. 2016.

Petitioner is a VAT-registered entity.

With regard to the *third* requisite, petitioner proved that it is a duly-registered VAT taxpayer by submitting its BIR Certificate of Registration No. 8RC0000791446E[52] issued to petitioner's Head Office on December 20, 2016 by LTS –Excise LT Division 1, and Certificate of Registration No. 2RC0000217881[53] issued to its Branch Office on December 22, 2006 by RDO No. 83–Talisay, Cebu, Revenue Region No. 13.

Petitioner was able to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 1st Quarter of 2015.

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

Records of the case show that petitioner is registered with the Securities and Exchange Commission with Company Registration No. CS200414509[54]. Its amended Articles of Incorporation further shows that its primary purpose is *"to carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids*

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[52] Exhibit "P-2", Docket, pp. 313 to 314.
[53] Exhibit "P-3", Docket, p. 315.
[54] Exhibit "P-1", Docket, pp. 297 to 312.

and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purposes stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the mining laws ***and other relevant laws***.*"*[55]

More so, petitioner is likewise registered as a new producer of copper concentrate with BOI Certificate of Registration No. 2006-158.[56]

In the present case, petitioner claims that it is engaged in zero-rated sales of goods for the 1st quarter of calendar year of 2015. Its zero-rated sales were generated from exports to various customers abroad, and the consideration for which was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

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

[55] Exhibit "P-1", Docket, at p. 299.
[56] Exhibit "P-7", Docket, pp. 327 to 333.

Based on the foregoing, in order 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.

The sale was made by a VAT registered person.

As discussed earlier the *first* essential element was already settled that petitioner is a VAT-registered person.

There was sale and actual shipment of goods from the Philippines to a foreign country.

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

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

2. 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, in proving its zero-rated sales, petitioner must foremost comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

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

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

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

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

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

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

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

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

The implementing rules thereto, *i.e.*, Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, states:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and

> TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices (SIs) and official receipts (ORs) must also be duly registered with the BIR as mandated by Section 237, in relation to Section 238, of the NIRC of 1997, as amended, as follows, *viz.*:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*— All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial</u> <u>invoices</u>, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service x x x."
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Thus, in order for petitioner's export sales to qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, it is required to issue VAT SIs for each sale of goods, and the information contained therein must be in compliance with the applicable provisions previously cited, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In its 1st Quarterly VAT Return (BIR Form No. 2550-Q)[57] for calendar year 2015, petitioner reported total sales in the amount of ₱2,638,435,170.06, broken down as follows: *gr*

[57] Exhibit "P-4", Docket, p. 316.

Type of Sales	Amount
Vatable	₱ 850,424.56
Zero-rated	2,635,483,005.50
Exempt	2,101,740.00
Total	**₱2,638,435,170.06**

To support its zero-rated export sales[58] and to prove its compliance with the above-mentioned invoicing requirements, petitioner submitted the corresponding SIs, bills of lading, and Bureau of Customs (BOC) export declaration documents[59], which were all examined by the court-commissioned ICPA, Mr. Emmanuel Y. Mendoza, of Mendoza Querido & Co.

However, upon further examination of the said documents, this Court finds that the export sale of goods amounting to US$8,221,401.99 or ₱368,318,809.16[60] must be disallowed for not being supported with SIs and bills of lading. Consequently, out of the total declared zero-rated sales of ₱2,635,483,005.50 for the 1st quarter of calendar year 2015, only the amount of ₱2,267,164,196.34[61] has complied with the invoicing requirements under the NIRC and RR No. 16-05.

As such, petitioner have complied with the *second* essential element, but only in the amount of ₱2,267,164,196.34.

The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *third* essential element, petitioner presented a bank certification issued by BDO Unibank, Inc.–Trust and Investments Group, Pioneer, Pasig Branch.[62] This bank certification shows that the payment was made in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. But then, it is also equally important that the foreign currency inward remittance be traced back to the export sales to which it relates. Thus, for the purpose of checking petitioner's compliance with the *third* essential element, this Court shall only focus on the remaining export sales which are found to be compliant with the invoicing requirements in the amount of ₱2,267,164,196.34.

[58] Annex A-1 of ICPA Report (Exhibit "P-12").
[59] Exhibits "P-18-1" to "P-18-38".
[60] Exhibit "P-18-28" to "P-18-30".
[61] ₱2,635,483,005.50 less ₱368,318,809.16.
[62] Exhibit "P-17-3".

A perusal of the bank certification shows that the foreign remittances for the whole calendar year 2015 is broken down by date of remittance, the remitter, and the amount remitted. On that basis, the ICPA, in his ICPA Report dated May 22, 2018,[63] prepared a reconciliation matrix of these remittances per bank certification with its corresponding sales invoice for the 1st quarter of calendar year 2015.[64]

However, this Court finds that the export sales amounting to US$20,263,358.54 or ₱899,422,691.13, cannot be properly traced to the inward remittances per bank certification, as shown below:

Exhibit No.	Customer	Sales Invoice No.	Date of Sales Invoice	Amount Declared for the 1st Quarter *(in US$)*	Amounts Properly Traced to Bank Certification *(in US$)*	Date of Remittance	Amounts Cannot be Traced to Bank Certification *(in US$)*
"P-18-8"	MRI Trading AG	1810000004	25-Jan-2015	7,750,031.10	615,365.09	08-Jan-2015	774,254.85
					2,796,937.94	08-Jan-2015	
					1,813,896.22	23-Jan-2015	
					1,749,577.00	14-Jan-2015	
"P-18-11"	MRI Trading AG	1810000005	15-Feb-2015	7,790,623.65	1,779,711.93	23-Jan-2015	2,276,329.66
					1,406,687.42	23-Jan-2015	
					1,415,062.58	26-Jan-2015	
					912,832.06	03-Feb-2015	
"P-18-14"	MRI Trading AG	1810000006	18-Feb-2015	7,903,775.72	800,791.07	03-Feb-2015	6,846,157.60
					256,827.05	10-Feb-2015	
"P-18-17"	MRI Trading AG	1810000007	21-Feb-2015	8,188,011.70	2,570,743.16	18-Feb-2015	2,345,659.43
					2,214,380.30	18-Feb-2015	
					830,531.44	20-Feb-2015	
					226,697.37	27-Feb-2015	
"P-18-20"	MRI Trading AG	1810000008	18-Mar-2015	8,225,371.24	1,900,252.62	20-Feb-2015	4,478,976.95
					1,846,141.67	25-Feb-2015	
"P-18-21"	MRI Trading AG	1810000009	18-Mar-2015	7,948,452.58	1,520,857.34	02-Mar-2015	2,022,188.02
					1,815,516.27	04-Mar-2015	
					1,424,057.60	09-Mar-2015	
					1,007,687.17	11-Mar-2015	
					158,146.18	19-Mar-2015	
"P-18-24"	MRI Trading AG	1810000010	23-Mar-2015	7,853,682.48	1,118,095.80	19-Mar-2015	1,519,792.03
					2,261,085.76	19-Mar-2015	
					1,355,470.28	24-Mar-2015	
					1,599,238.61	30-Mar-2015	
	TOTAL				**35,396,589.93**		**20,263,358.54**

[63] Exhibits "P-12" and "P-12-a".
[64] Annex A-2 of ICPA Report (Exhibit "P-12").

Exhibit No.	Sales Invoice No.	Amount Cannot be Traced to the Bank Certification *(in US$)*	Peso Exchange Rate[65]	Amount in Peso
"P-18-8"	1810000004	774,254.85	44.17	34,198,836.72
"P-18-11"	1810000005	2,276,329.66	44.29	100,807,258.99
"P-18-14"	1810000006	6,846,157.60	44.25	302,908,243.01
"P-18-17"	1810000007	2,345,659.43	44.24	103,771,973.18
"P-18-20"	1810000008	4,478,976.95	44.55	199,538,423.12
"P-18-21"	1810000009	2,022,188.02	44.55	90,088,476.29
"P-18-24"	1810000010	1,519,792.03	44.82	68,109,479.82
TOTAL		**20,263,358.54**		**899,422,691.13**

Accordingly, out the export sales which were found to be compliant with the invoicing requirements under the NIRC and RR No. 16-05, in the total amount of ₱2,267,164,196.34, only the amount of ₱1,367,741,505.21 [66] can be properly traced to its corresponding foreign currency inward remittance. Consequently, out of petitioner's declared total zero-rated sales of ₱2,635,483,005.50 for the subject period, only the amount of ₱1,367,741,505.21 ultimately qualifies as zero-rated sales, in accordance with Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Having found that petitioner had VAT zero-rated sales in the total amount of ₱1,367,741,505.21 for the 1st quarter of calendar year 2015, the Court shall now proceed to determine whether petitioner complied with the remaining requisites pertaining to the refund of its input VAT.

The input VAT being claimed does not appear to be transitional input taxes.

As to the *sixth* requisite, petitioner declared in its Quarterly VAT Return for the 1st quarter of calendar year 2015, a total input VAT of ₱60,276,286.56 derived from its current domestic purchases, importation of goods and services, and input VAT on purchases of capital goods from previous quarters, as shown below: Je

[65] Annex A-1 of ICPA Report (Exhibit "P-12").
[66] ₱2,267,164,196.34 less ₱899,422,691.13.

Input Tax Due on Capital Goods exceeding ₱1M	
Deferred from previous quarter	₱ 240,283,465.53
Purchase of Capital Goods Exceeding P1M	4,921,826.00
Total	₱ 245,205,291.53
Less: Deferred for the succeeding period	223,626,480.99
Amortized input tax on capital goods exceeding ₱1M	**₱ 21,578,810.54**
Input Tax Due on Current Domestic Purchases of Goods other than Capital Goods	₱ 271,909.07
Input Tax Paid on:	
Importation of goods other than capital goods	₱ 37,147,478.00
Input tax on domestic purchases of services	1,115,448.74
Services Rendered by Non-Residents	162,640.21
Sub-total	₱ 38,425,566.95
Total input tax during the period	**₱ 60,276,286.56**

Out of the reported total input VAT of ₱60,276,286.56, petitioner claims refund of the excess input VAT in the amount of ₱11,393,494.01, determined as follows:

Total input tax during the period	₱ 60,276,286.56
Less: Output tax[67]	102,050.95
Excess input VAT	₱ 60,174,235.61
Less: Allowable input VAT for TCC/Refund per BIR Decision[68]	48,780,741.60
Excess input VAT claimed for TCC/Refund per Petition for Review	**₱ 11,393,494.01**

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

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

[67] Exhibit "P-4", Line 15B.
[68] Exhibit "P-6", Docket, p. 324.

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. For the reason that during the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[69]

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

The input taxes being claimed are paid.

With regard to the *seventh* requisite, this Court takes note of Revenue Memorandum Order (RMO) No. 9-00[70] dated February 2, 2000 which states that sales of goods, properties, or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject, however, to the following reportorial and documentary requirements, prescribed under Section 3 of the said RMO, which provides as follows:

> "SECTION 3. Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/ producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

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

[70] SUBJECT: Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.

> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, records show that petitioner was issued a Certification[71] by the BOI attesting to the fact that petitioner is a BOI-registered entity with 100% exports for the year 2015.

Under Section 3.4 of RMO 9-00, the said BOI Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner on the year 2015. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. It therefore follows that petitioner is not entitled to refund from the said domestic purchases.

In the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue,*[72] the Supreme Court affirmed the ruling of this Court *En Banc* in stating that petitioner's recourse is not against the government but against the seller who shifted to it the output VAT, thus:

> "x x x As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:
>
>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore,

[71] Exhibit "P-8", Docket, pp. 334 to 336.
[72] G.R. No. 190506, June 13, 2016.

> imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>
> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner."

In fact, to allow petitioner a refund of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enriched himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640).* The said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

For the said reason, this Court is constrained to only consider petitioner's input VAT arising from its importations and from services rendered by non-residents. As such, it is of fatal importance that petitioner provide supporting documents to prove the input taxes claimed from importation of goods and input taxes withheld from services rendered by non-residents during the 1st quarter of calendar year 2015 are actually paid in accordance with Section 110(A)(1)(a) and (2)(b) of the NIRC of 1997, as amended, which provides as follows:

"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: ƛ

(1) For sale; or

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

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

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

x x x

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

x x x

(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."

The above provisions are implemented by Sections 4.110-1(a) and 4.110-2(a) of RR No. 16-05, which further states that:

"SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the 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,
>
> x x x
>
> SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.*— The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
>
> (a) To the importer upon payment of VAT prior to the release of goods from customs custody;"

Furthermore, Section 4.110-8(a)(1) and (d) of RR No. 16-05 provides for the substantiation requirements of input tax credits from importation of goods and input taxes withheld from services rendered by non-residents, thus:

> "SECTION 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> x x x
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor." jr

Based on the verification conducted by the ICPA, petitioner's importation of goods is either classified as capital goods exceeding ₱1million or non-capital goods. In the ICPA Report, petitioner has a total amortization of input VAT arising from of capital goods exceeding ₱1million in the amount of ₱21,578,810.54, importation of non-capital goods in the amount of ₱37,147,478.00, and input VAT from services rendered by non-residents in the amount of ₱162,640.21.

With regard to the input VAT arising from importations of non-capital goods in the amount of ₱37,147,478.00, this Court finds petitioner as entitled thereto, considering that it is duly supported by Statements of Settlement of Duties and Taxes (SSDT) and Import Entry and Internal Revenue Declaration (IEIRD)[73] issued by the BOC.

On the other hand, as to the input VAT amortization amounting to ₱21,578,810.54, petitioner did not provide a break down to show how much of the said amount arose from importations and from domestic purchases of capital goods exceeding ₱1million.

Nevertheless, petitioner presented documents[74] which duly support the input VAT on importation of capital goods exceeding ₱1million with corresponding input VAT amortization of ₱2,368,589.95 (₱2,271,832.80+₱96,757.15).[75]

Meanwhile, petitioner did not submit the corresponding BIR Forms No. 1600 to support its input VAT from services rendered by non-resident amounting to ₱162,640.21. As such, the whole amount must be disallowed outright.

Henceforth, out of the total input VAT of ₱60,276,286.56 for the 1st quarter of TY 2015, only the amount of ₱39,516,067.95 pertains to valid input VAT, as computed below, to wit:

Input VAT on importation of goods other than capital goods	₱ 37,147,478.00
Input VAT amortization on importation of capital goods	2,368,589.95
Total valid input VAT	**₱39,516,067.95**

[73] Exhibits "P-21-1" to "P-21-245", "P-22-1" to "P-22-119", and "P-23-1" to "P-23-20".
[74] Exhibits "P-2-1" to "P-22-117"; "P-23-1" to "P-23-20".
[75] Annexes B-2 and B-3 of ICPA Report (Exhibit "P-12").

Since there are types of sales other than zero-rated or effectively zero-rated sales, the amount of ₱39,516,067.95 shall be proportionately allocated on the basis of sales volume.

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

In this case, for the subject period of the claim, there exist zero-rated sales, exempt sales and taxable sales subject to 12% VAT, as follows:

Zero-Rated Sales	₱ 2,635,483,005.50
Exempt Sales	2,101,740.00
VATable Sales	850,424.56
Total Sales	**₱2,638,435,170.06**

Since petitioner's input VAT cannot be directly or entirely attributed to any of the said transactions, this Court shall allocate the valid input VAT of ₱39,516,067.95 proportionately on the basis of the volume of petitioner's total sales, as shown below:

Total Zero-Rated Sales per VAT Returns	₱2,635,483,005.50
Divided by the Reported Total Sales per 1st Quarterly VAT Return	₱2,638,435,170.06
Multiplied by Total Valid Input VAT	₱ 39,516,067.95
Valid input VAT allocated to zero-rated sales	**₱39,471,853.13**

Total Exempt Sales per VAT Returns	₱ 2,101,740.00
Divided by the Reported Total Sales per 1st Quarterly VAT Return	₱2,638,435,170.06
Multiplied by Total Valid Input VAT	₱ 39,516,067.95
Valid input VAT allocated to exempt sales	**₱31,477.94**

Total Taxable Sales per VAT Returns	₱ 850,424.56
Divided by the Reported Total Sales per 1st Quarterly VAT Return	₱2,638,435,170.06
Multiplied by Total Valid Input VAT	₱ 39,516,067.95
Valid input VAT allocated to 12% VAT sales	**₱12,736.88**

[illegible]

Accordingly, for purposes of, and with regard to petitioner's compliance with, the *eighth* requisite, only the amount of **₱39,471,853.13** represents valid input VAT attributable to total reported zero-rated sales.

Determination of the final refundable amount.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, this Court shall now determine whether the same was applied against its output VAT liability during and in the succeeding quarters, as the *ninth* and last requisite for the successful claim of input VAT refund.

For the period under consideration, petitioner has output VAT liability in the amount of ₱102,050.95.[76] Considering that petitioner's valid input VAT allocated to 12% VAT sales in the amount of ₱12,736.88, is not enough to cover the said output VAT liability, the output VAT still due against petitioner is computed as follows:

Output VAT	₱102,050.95
Input VAT allocated to 12% VAT sales	12,736.88
Output VAT still due	**₱89,314.07**

Thereafter, the valid input VAT attributable to zero-rated sales in the amount of ₱39,471,853.13, shall then be utilized against the said remaining output VAT liability of petitioner in the amount of ₱89,314.07. Consequently, only the remaining input VAT of ₱39,382,539.06 can be attributed to the entire zero-rated sales reported by petitioner in the amount of ₱2,635,483,005.50, and only the input VAT of ₱20,438,429.37 is attributable to the valid zero-rated sales of ₱1,367,741,505.21, as computed below:

Input VAT allocated to zero-rated sales	**₱ 39,471,853.13**
Output VAT Still Due	89,314.07
Excess Input VAT allocated to reported zero-rated sales	**₱ 39,382,539.06**
Divide by declared zero-rated sales	₱2,635,483,005.50
Multiply by valid zero-rated sales	₱1,367,741,505.21
Excess input VAT attributable to valid zero-rated sales	**₱20,438,429.37**

[76] Exhibit "P-4", Line 15B, Docket, p. 316.

In addition, the above excess input VAT attributable to valid zero-rated sales in the amount of ₱20,438,429.37, was also not utilized against the output VAT in the succeeding quarters, since the same was not even carried over to the immediately succeeding period/quarter.[77]

All told, petitioner is deemed to have fulfilled the final requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

Nonetheless, considering that the records show that respondent had already authorized the issuance of VAT Credit/Refund in the total amount of ₱48,780,741.60 in favor of petitioner, which is above and beyond the amount found by this Court as petitioner's valid excess input VAT attributable to its zero-rated sales for the subject period of claim, this Court is constrained to deny the present *Petition for Review*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[77] Exhibit "P-41-1", Line 20A.

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice