REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8451

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 11 2016
9:57 a.m.

x - x

AMENDED DECISION

RINGPIS-LIBAN, *J.*:

For this Court's resolution are the following:

1. petitioner's **Motion for Reconsideration**, filed on June 3, 2016, with respondent's **Comment**, filed on June 16, 2016; and

2. respondent's **Motion for Partial Reconsideration**, filed through registered mail on June 1, 2016 and received by this Court on June 9, 2016, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration Re: Decision dated May 13, 2016)**, filed on July 7, 2016.

Both parties move for the reconsideration of the Court's Decision[1] dated May 13, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱10,264,279.90**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for taxable year 2010.
>
> **SO ORDERED.**"[2]

Petitioner's Motion for Reconsideration

Petitioner alleges that the primary reason for the partial denial of its claim for refund is the disallowance of input taxes related to its purchases of goods or services, annual amortization, and input taxes related to the declared zero-rated sales without the supporting documents, the foreign currency remittances, and the bills of lading in the total amount of ₱3,714,249.39[3]. The disallowance was allegedly due to the fact that the said amount, except for the amortization and input taxes related to the declared zero-rated sales, is supported by VAT invoices or official receipts (OR) that are non-compliant with the substantiation requirements.

In its Motion, petitioner moves that the input VAT attributable to the following purchases of goods or services, annual amortization, and input taxes related to the declared zero-rated sales in the aggregate amount of ₱1,802,937.02 be included in computing the amount to be refunded, to wit:

		Exhibit Nos.	Input VAT
A	VAT amount countersigned but the authority of the countersignor cannot be ascertained	Exhibits CC-14, CC-20, CC-24, CC-25 and CC-27	₱ 13,480.72
B	VAT amount countersigned but the countersignor is different from	Exhibits EE-4, EE-5, EE-85, EE-87,	532,055.53

[1] Docket, vol. 3, pp. 1187-1213.
[2] Docket, vol. 3, p. 1212.
[3] Amount per claim ₱13,978,529.29 less Amount granted per assailed Decision ₱10,264,279.90.

	issuer of OR	EE-90, EE-99, EE-100, EE-102, EE-103, EE-104, EE-114, EE-115, EE-140, EE-149, EE-164, EE-166, EE-436, EE-437, EE-438 and FF-1	
	OR with marking "Collected in behalf of CEU Holdings"	Exhibits EE-10, EE-11, EE-17, EE-447 and EE-448;	320,162.40
C	OR with marking "Collected in behalf of Leoncio Lim"	Exhibits EE-450, EE-452 and EE-453;	192,096.60
D	Current Year amortization of input taxes on purchases of capital goods in previous years used outside PEZA zone and supported by VAT invoices	Exhibit V-25	309,685.76
E	Input VAT related to Disallowed Zero-Rated Sales		435,456.01
		TOTAL	**₱ 1,802,937.02**

Petitioner contends that Exhibits CC-14, CC-20, CC-24, CC-25, CC-27, EE-4, EE-5, EE-85, EE-87, EE-90, EE-99, EE-100, EE-102, EE-103, EE-104, EE-114, EE-115, EE-140, EE-149, EE-164, EE-166, EE-436, EE-437, EE-438, FF-1, EE-10, EE-11, EE-17, EE-447 and EE-448, EE-450, EE-452 and EE-453 comply with the complete VAT invoicing and accounting requirements pursuant to Section 113(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, and with Revenue Regulations (RR) No. 16-2005.

With regard to Exhibits CC-14, CC-20, CC-24, CC-25 and CC-27, Exhibits EE-4, EE-5, EE-85, EE-87, EE-90, EE-99, EE-100, EE-102, EE-103, EE-104, EE-114, EE-115, EE-140, EE-149, EE-164, EE-166, EE-436, EE-437, EE-438 and FF-1, petitioner contends that while it appears that the authority of the countersignor cannot be ascertained or that the countersignor is different from the issuer, it does not affect the correctness and completeness of the VAT invoices or ORs. It avers that what is required is for the tax amount to be printed separately. Moreover, petitioner contends that the countersignors were duly authorized by the issuer to make the necessary corrections as clarified in the Affidavits duly executed by the HR Manager/ Treasurer of the company concerned. Petitioner attaches to its Motion the Affidavits of the HR Manager/Treasurer of the company concerned attesting to the issuance and the authority of the countersignors.

On the VAT ORs with handwritten marking "Collected in behalf of CEU Holdings" and "Collected in behalf of Leoncio Lim", petitioner alleges that the markings are merely internal notes of Century Properties Management, Inc. (CPMI) which should not prejudice petitioner because on the face value of the VAT ORs, those were issued by the VAT registered seller CPMI. Petitioner maintains that the same still remains compliant with the complete VAT invoicing and accounting requirements, thus, petitioner is entitled to the refund of the related input tax indicated under Exhibits EE-10, EE-11, EE-17, EE-447, EE-448, EE-450, EE-452 and EE-453.

Moreover, petitioner asks the Court to reconsider the disallowed input tax of the annual amortization in the amount of ₱309,685.76 pertaining to the purchase of capital goods exceeding ₱1Million which was denied by the Court on the ground of failure to substantiate. It manifests that these were valid purchases and the input taxes have been properly amortized over sixty (60) months as noted in Annex 10 of the Independent Certified Public Accountant (ICPA) Report of Mr. Henry M. Tan dated January 18, 2013. Petitioner likewise attaches to the Motion the related invoices and official receipts pertaining to the acquisition. It manifests that these VAT invoices and ORs have been offered and duly marked in another case involving the same petitioner, but for another taxable year which is pending before the Second Division of this Court, docketed as CTA Case No. 8641, entitled Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue.

Petitioner calls for the reconsideration of the denied input tax related to Disallowed Zero-Rated Sales in the amount of ₱435,456.01 on the ground that the same are properly supported by invoices, bill of ladings, and foreign remittances. It explains that the zero-rated sales which are allegedly without supporting documents and without bills of lading are due to timing difference in reporting and that such amount pertains to invoices and bills of lading for September 2009. Petitioner alleges that these sales were recorded during the year 2009, but were only collected in the following year 2010. As to the zero-rated sales without foreign currency remittances, petitioner claims that there was no remittance as it overbilled Sumitomo. It contends that its zero-rated sales are correctly reported and properly supported.

On the other hand, respondent argues that petitioner is not entitled to the entirety of its claim for refund or tax credit because

On the VAT ORs with handwritten marking "Collected in behalf of CEU Holdings" and "Collected in behalf of Leoncio Lim", petitioner alleges that the markings are merely internal notes of Century Properties Management, Inc. (CPMI) which should not prejudice petitioner because on the face value of the VAT ORs, those were issued by the VAT registered seller CPMI. Petitioner maintains that the same still remains compliant with the complete VAT invoicing and accounting requirements, thus, petitioner is entitled to the refund of the related input tax indicated under Exhibits EE-10, EE-11, EE-17, EE-447, EE-448, EE-450, EE-452 and EE-453.

Moreover, petitioner asks the Court to reconsider the disallowed input tax of the annual amortization in the amount of ₱309,685.76 pertaining to the purchase of capital goods exceeding ₱1Million which was denied by the Court on the ground of failure to substantiate. It manifests that these were valid purchases and the input taxes have been properly amortized over sixty (60) months as noted in Annex 10 of the Independent Certified Public Accountant (ICPA) Report of Mr. Henry M. Tan dated January 18, 2013. Petitioner likewise attaches to the Motion the related invoices and official receipts pertaining to the acquisition. It manifests that these VAT invoices and ORs have been offered and duly marked in another case involving the same petitioner, but for another taxable year which is pending before the Second Division of this Court, docketed as CTA Case No. 8641, entitled Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue.

Petitioner calls for the reconsideration of the denied input tax related to Disallowed Zero-Rated Sales in the amount of ₱435,456.01 on the ground that the same are properly supported by invoices, bill of ladings, and foreign remittances. It explains that the zero-rated sales which are allegedly without supporting documents and without bills of lading are due to timing difference in reporting and that such amount pertains to invoices and bills of lading for September 2009. Petitioner alleges that these sales were recorded during the year 2009, but were only collected in the following year 2010. As to the zero-rated sales without foreign currency remittances, petitioner claims that there was no remittance as it overbilled Sumitomo. It contends that its zero-rated sales are correctly reported and properly supported.

On the other hand, respondent argues that petitioner is not entitled to the entirety of its claim for refund or tax credit because petitioner is VAT Zero-Rated on its local purchases, and that petitioner is not the proper party to claim a VAT refund.

Petitioner's Motion for Reconsideration lacks merit.

The amount of ₱1,057,795.25[4] representing input VAT on purchases of goods or services were disallowed because the supporting invoices or ORs have alterations or additions without countersignature or with counter-signature but the authority of the countersignor could not be ascertained. In other words, without the validation of the alterations or additions on the said invoices or ORs, the said documents failed to satisfy the requirements of the law. Consequently, these documents cannot be considered in favor of petitioner as there is doubt as to the veracity of the invoices and ORs.

In order to prove that the countersignors were duly authorized to make the necessary corrections in the VAT invoices, petitioner attaches to its Motion the affidavits duly executed by the HR Manager/Treasurer of the company concerned as well as the sales invoices not presented during trial. Likewise, petitioner attaches to its Motion the related invoices and ORs pertaining to the acquisition of capital goods exceeding ₱1Million, the corresponding input tax of which amounting to ₱309,685.76 was previously disallowed. However, these attached documents are of no consequence, since the said documents were not formally offered and admitted in evidence in this case.

Section 34 of Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is required because judges are mandated to anchor their findings of facts and judgment on evidence formally offered and duly admitted by the Court. The formal offer will also define the purpose or purposes for which they are being offered by the proponent. The same procedure would allow opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.[5]

[4] Petitioner's Motion for Reconsideration [₱13,480.72 + ₱532,055.53 + ₱320,162.40 + ₱192,096.60 = ₱1,057,795.25].

[5] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. 197515, July 2, 2014, citing *Heirs of Pedro Pasag vs. Spouses Parocha*, 550 Phils. 571 (2007).

Likewise, in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[6], the Supreme Court ruled:

> "... the Rules of Court, which is suppletory in quasi-judicial proceedings, particularly Sec. 34 of Rule 132, Revised Rules on Evidence, is clear that **no evidence which has not been formally offered shall be considered**. Thus, where the pertinent invoices or receipts purportedly evidencing the VAT paid by Atlas were not submitted, the courts *a quo* evidently could not determine the veracity of the input VAT Atlas has paid. Moreover, when Atlas likewise failed to submit pertinent export documents to prove actual export sales with due certification from accredited banks on the export proceeds in foreign currency with the corresponding conversion rate into Philippine currency, the courts *a quo* likewise could not determine the veracity of the export sales as indicated in Atlas' amended VAT return." (*Emphasis ours*)

Under Section 8 of RA No. 1125, the Court is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given to the pieces of evidence submitted by petitioner and attached to the instant Motion as the rules on documentary evidence require that these documents must be formally offered before this Court.[7]

Moreover, the Court cannot give credence to the rest of petitioner's arguments. It failed to present any evidence to establish the existence of a timing difference in the reporting of the zero-rated sales, and that these sales were recorded during the year 2009, but were only collected in the year 2010.

Time and again, "the Court recognizes, as it always has, that the burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a

---

[6] G.R. No. 159490, February 18, 2008.

[7] *Rafael Arsenio S. Dizon, in his capacity as the Judicial Administrator of the Estate of the deceased Jose P. Fernandez vs. Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 140944, April 30, 2008.

claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[8]

Respondent's Motion for Partial Reconsideration

Respondent maintains that petitioner is not entitled to the entirety of its claim for refund or tax credit because petitioner is VAT Zero-Rated on its local purchases and that petitioner is not the proper party to claim VAT refund. Respondent argues that petitioner, being an ECOZONE enterprise, is VAT Zero-Rated on its local purchases. Respondent cites Revenue Memorandum Circular (RMC) No. 42-2003. According to respondent, considering that petitioner is an ECOZONE enterprise, no output VAT may be passed to it as a VAT-exempt entity. This is further bolstered with the issuance of RMC No. 74-99 in line with the Cross Border Doctrine. Finally, the proper party to claim a refund of the VAT passed on is the supplier and not petitioner. Hence, petitioner's claim for refund should be denied.

Petitioner, in its Comment/Opposition, contends that respondent erroneously applied RMC 74-99 and RMC No. 42-2003. Petitioner alleges that its purchases and services which are attributable to its zero-rated sales were consumed and rendered outside the PEZA zone. It avers that in respondent's numerous rulings, it is settled that purchases of goods and services that were consumed and rendered outside the PEZA zone are not entitled to VAT zero-rating, and accordingly, are subject to 12% VAT under Section 108(A) of the NIRC of 1997, as amended. Petitioner contends that its claim for refund is anchored on Section 112(A) and (B) of the NIRC of 1997, as amended, being a VAT registered enterprise rather than on RMC No. 74-99 and RMC No. 42-2003.

Petitioner also manifests that in other cases pending with the Court involving a claim for refund with the same set of facts and circumstances and the same taxpayer but different taxable years, were already granted by the Court.

Respondent's Motion for Partial Reconsideration is partially granted.

[8] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

In the case of *Commissioner of internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.,*[9] (*Toshiba* case) the Supreme Court held that the Philippine VAT system adheres to the Cross Border Doctrine where no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.[10]

Section 8 of RA 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory;[11] thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier from the Customs Territory to a purchaser in the ECOZONE shall be treated as exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.[12]

Since an ECOZONE is regarded as a foreign territory, the sales of goods and services therefor by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. This is the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*[13], to wit:

> "Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent."

---

[9] G.R. No. 150154, August 9, 2005.
[10] VAT rate is now twelve percent (12%).
[11] Section 8 of RA 7916, as amended, reads in full:

> SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* - The ECOZONES 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.

[12] G.R. No. 150154, August 9, 2005.
[13] G.R. No. 149671, July 21, 2006.

Applying the Cross Border Doctrine to the sales to and from the ECOZONES, the BIR issued RMC No. 74-99, on October 15, 1999. Pertinent to the present petition is Section 3 thereof, which reads:

> "**SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.** -
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) **Sale of goods (i.e., merchandise)**. - This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) **Sale of service**. - This shall be treated subject to zero percent (0%) VAT under the ***cross border doctrine*** of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
>
> (a) **Sale of goods (i.e., merchandise)**. - This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) **Sale of Service**. - This shall be treated subject to zero percent (0%) VAT under the ***cross border doctrine*** of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the "Cross Border Doctrine" of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

In view of the foregoing, the sale of goods and services by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. Since no input VAT is paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to a refund or issuance of tax credit certificate from its domestic purchases of goods and services.[14]

In the *Toshiba* case, the Supreme Court held:

"Indubitably, **no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt**

[14] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, CTA EB Case No. 403, May 29, 2009.

entity. The VAT treatment of sales to it, however, varies depending on whether the supplier from the Customs Territory is VAT-registered or not.

Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (i.e., the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."[15] (*Emphasis ours*)

Records show that petitioner is a PEZA registered entity as evidenced by its PEZA Certificate of Registration No. 02-072.[16] Applying the Cross Border Doctrine, petitioner's local purchases of goods and services from VAT registered enterprises are subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to it; hence, petitioner is not entitled to refund or issuance of tax credit certificate from its domestic purchases of goods and services.

However, even if petitioner is PEZA-registered enterprise, and therefore not entitled to refund or issuance of tax credit certificate from its domestic purchases of goods and services, given the particular circumstances of the present case, petitioner is entitled to a credit/refund of a portion of its input VAT.

Petitioner alleges that its domestic purchases of goods and services which are attributable to its zero-rated sales were consumed and rendered outside the PEZA zone. It contends that these goods and services were used to construct housing facilities and roads that are located outside the PEZA zone as well as part of the supernatant piping located outside the PEZA zone. In order to prove this,

---

[15] G.R. No. 150154, August 9, 2005.
[16] Exhibit "B", docket, vol. 2, p. 645.

petitioner presented VAT invoices[17], VAT ORs[18], construction plans and blueprints of land areas[19] and survey plans[20] relating to its domestic purchases of goods and services.

Petitioner likewise presented Mr. Allen Roy T. Catacutan,[21] its Tax Assessment Chief, who testified that petitioner's excess and unutilized input VAT was incurred from the VAT passed on by petitioner's suppliers on petitioner's domestic purchases of goods and services which were consumed and rendered outside the Rio Tuba Export Processing Zone, to wit:

> "36. Q: What is the nature and source of this excess and unutilized input VAT, if any?
>
> A: **The excess and unutilized input VAT was incurred from the VAT passed on by Petitioner's suppliers on Petitioner's domestic purchases of taxable goods and services which were consumed and rendered outside the Rio Tuba Export Processing Zone.**
>
> 37. Q: Why are you saying that the excess and unutilized input VAT was incurred from Petitioner's domestic purchases of taxable goods and services were consumed and rendered outside the Rio Tuba Export Processing Zone?
>
> A: **The domestic purchases of taxable goods and services by Petitioner were consumed by it outside the Rio Tuba Export Processing Zone. For example, the goods and services used to construct housing facilities and roads that are located outside the PEZA zone provide shelter and access to employees of Petitioner whose plant is located in a far flung area, where public transport is scarce.** These constructions and facilities are necessary in the production of export products under its PEZA registered activities.

---

17 Exhibits "CC-1" to "CC-87", and "DD-1" to "DD-2".
18 Exhibits "EE-1" to "EE-458" and "EEE-1" to "EEE-45".
19 Exhibits "ZZZ-1" to "ZZZ-5", "D4" to "D4-6" and "E4" to "E4-3".
20 Exhibits "M4-1" to "M4-2", "N4-1" to "N4-4" and "O4-1" to "O4-2".
21 Exhibit "T", Judicial Affidavit of Allen Roy T. Catacutan, docket, vol. 2, pp. 733-744.

38. Q: You said earlier that Petitioner is registered with PEZA. You also said that its suppliers passed on VAT to it? Why did the suppliers pass on VAT to the Petitioner despite its registration as a PEZA entity?

A: **Since the goods and services will be consumed outside PEZA, the suppliers of these goods and services subjected their sale to Petitioner to VAT.**"[22] (*Emphasis ours*)

Petitioner also presented Mr. John S. Barrientos,[23] the QS/CSR Manager of SMCC Philippines, Inc. (SMCC), one of its local suppliers which added VAT on its billings to petitioner for its construction of a supernatant piping located outside the PEZA zone. He testified as follows:

"10. Q: What is your basis in saying that the Non PEZA Area of the supernatant piping project is 5,345 meters?

A: SMCC secured a building permit from the Local Government of Bataraza for the area of 5,345 meters. The local government unit only gives permits to constructions that are located outside the PEZA Zone because local governments do not have jurisdiction to issue building permits for constructions inside the PEZA Zone.

11. Q: How were you able to confirm that 5,345 meters of supernatant piping is located outside the PEZA Zone?

A: SMCC is required by PEZA to make a determination of the exact location of the buildings/constructions. SMCC made this determination by surveying the location of the project.

---

[22] Exhibit "T", Judicial Affidavit of Allen Roy T. Catacutan, docket, vol. 2, pp. 738-739.
[23] Exhibit "C4", Judicial Affidavit of John S. Barrientos, docket, vol. 2, pp. 806-815.

12. Q: What document if any, do you have, to show the survey made by SMCC for PEZA?

A: SMCC prepared the Site Development Plans for the supernatant piping project.

xxx xxx xxx

15. Q: What do these Site Development Plans contain?

A: The Site Development Plans illustrate in detail how the supernatant piping will be constructed, what area of the construction is outside or inside the PEZA Zone, as well as the length of the construction that is inside the PEZA Zone.

xxx xxx xxx

17. Q. Why is SMCC required by PEZA to make a determination of the exact location of the projects?

A: PEZA mandates that the necessary permits must be secured from them before building/construction may commence. Hence, there is a need to delineate the boundaries of the project location.

18. Q: On SMCC's Billings to Petitioner in 2010, what did SMCC impose, if any, against Petitioner as regards the construction of the supernatant piping?

A: **SMCC imposed VAT on its billings to Petitioner on portions of supernatant piping that are located outside the PEZA Zone.**

19. Q: What proof, if any, do you have to prove that Petitioner paid VAT on some of the invoices that were issued by SMCC as regards the construction of supernatant piping?

A: I have with me the sales invoice and as well as the receipts issued by SMCC to Petitioner.

xxx xxx xxx

22. Q: What did Petitioner do, if any, when SMCC imposed VAT on its services performed outside the PEZA Zone?

A: Petitioner paid the invoices inclusive of VAT.

23. Q: Why?

A: **Petitioner paid VAT on its payments to SMCC for purchases of goods and services related to the construction of supernatant piping because these goods and services were consumed and performed by Petitioner outside the PEZA Zone.**"[24] (*Emphasis ours*)

Lastly, petitioner presented Engr. Zosimo Oliver P. Villa,[25] an independent Geodetic Engineer, who personally examined and surveyed the land where the Palawan Economic Zone and petitioner are located and determined that constructions made by petitioner's suppliers Everbuild Global Development Corporation, SMCC Philippines, Inc., and Rio Verde Water Corporation were consumed and performed outside the PEZA Zone, to wit:

"10. Q: What do you know if any, of the case at hand?

A: Petitioner asked me to conduct an ocular inspection and to prepare a plan in order to determine if the following constructions made by Everbuild Global Development Corporation, Rio Verde Water Corporation and SMCC that were paid for by the petitioner, are outside the Rio Tuba Economic Processing Zone (as specified in Presidential Proclamation Nos. 304 and 1352):

[24] Exhibit "C[4]", Judicial Affidavit of John S. Barrientos, docket, vol. 2, pp. 809-812.
[25] Exhibit "Q[4]", Amended Judicial Affidavit of Engr. Zosimo Oliver P. Villa, docket, vol. 2, pp. 847-857.

1) Bataraza Water Project (rendered in the town site);
2) Construction of laborer's row house (rendered in the town site)
3) Construction of concrete of townsite bus terminal
4) Supernatant Piping
5) Improvements made on the Airstrip of Rio Tuba Airport facility, such as airport lighting along runway

11. Q: How do you know which particular constructions or buildings involved in this case?

A: In order to know the particular constructions involved in this case, Petitioner provided me copies of the purchase orders, original receipts and invoices given by Everbuild Global Development Corporation, Rio Verde Water Corporation and SMCC.

xxx xxx xxx

23. Q: What are your findings, if any?

A: **I found that the following constructions are outside the PEZA Zone as may be seen in the blueprints**.

The area that has a yellow boundary and is marked as Exhibit 'D^4-1' pertains to the coordinates specified in Presidential Proclamation No. 304 while the area that has an pink boundary pertains to the coordinates specified in Presidential Proclamation No. 1352 and is marked as Exhibit 'D^4-2'. This is where the plant site of CBNC is located (Exhibit 'D^4')

a. **Bataraza Water Project (rendered in the town site) - is located in the town site which is outside the PEZA Zone** (marked as Exhibit 'E^4-1' of Exhibit 'E^4');

b. **Engineering works of laborers' row house (rendered in the town site) - is located in the town site which is outside the PEZA Zone**, marked as Exhibit 'E^4-2' of Exhibit 'E^4');

c. **Construction of concrete of townsite bus terminal (rendered in the town site)- is located in the town site which is outside the PEZA Zone**, marked as Exhibit 'E^4-3' of Exhibit 'E^4';

d. **Supernatant Piping - The supernatant piping connects the tailings dam located in the plant site and the pier site and runs through Macadam Road** is marked as Exhibit 'D^4-6'.

The tailings dam and the pier site are part of the PEZA Zone**, Macadam Road is not a part of the PEZA Zone.** The pier site is marked as Exhibit 'D^4-3' while the Macadam Road is marked as Exhibit 'D^4-4', both found on Exhibit 'D^4'.

e. **Improvements made on the Airstrip of Rio Tuba Airport facility, such as airport lighting along runway. The airstrip is located outside the PEZA zone** and marked as Exhibit 'D^4-5'of Exhibit 'D^4'."[26]

A perusal of the records shows that majority of petitioner's local purchases of goods and services which are attributable to its zero-rated sales were consumed and rendered outside the PEZA zone. In view of this, petitioner is entitled to the refund of input VAT relative to these domestic purchases of goods and services following the Destination Principle.

The Destination Principle provides that the destination of the goods determines its taxation or exemption from tax.[27] Based on the foregoing, purchases of goods and services that were consumed and rendered outside the PEZA zone are not entitled to VAT zero-rating, and accordingly, are subject to 12% VAT.

---

[26] Exhibit "Q^4", Amended Judicial Affidavit of Engr. Zosimo Oliver P. Villa, docket, vol. 2, pp. 849-854.

[27] Mamalateo, Victorino C., *Value Added Tax*, 2007 edition, pp. 13-14.

In this case, petitioner was able to prove that majority of its local purchases of goods and services were consumed and rendered outside the PEZA zone. Since these goods and services were subjected to 12% VAT, petitioner paid the input VAT for these purchases. Thus, petitioner is entitled to a claim for refund, or the issuance of a tax credit certificate for its unutilized input VAT on local purchases of goods and services consumed and rendered outside the PEZA zone. However, petitioner cannot claim a refund of the input VAT passed on by VAT registered enterprises on local purchases of goods and services consumed and rendered within the PEZA Zone.

Considering the foregoing, the Court finds it proper to fully disallow the whole amount of input VAT consumed and rendered within the PEZA zone; and those which cannot be determined as to where the related goods were consumed or services were rendered.

The table below shows the additional disallowances of input VAT amounting to ₱2,373,583.00 pertaining to those input VAT previously considered as valid input VAT in the assailed Decision:

Per ICPA's findings:	**ICPA Report[28] Reference**	**Document Exhibit Nos.**	**Amount**
Input VAT on purchases of goods supported by VAT invoice for goods used within PEZA zone	Exhibit No. XXX-48	GG-1	₱ 2,643.74
Input VAT on purchases of services supported by VAT OR for services rendered within the PEZA zone	Exhibit Nos. XXX-87 to XXX-93 and XXX-53 to XXX-62	LL-1 to 385 and FFF-1 to 162	2,446,997.82
Input VAT on purchases of services from Supernatant Piping supported by VAT OR where it cannot be determined whether such were rendered outside or within PEZA zone	Exhibit No. XXX-47	FF-1 to 2	444,507.24
TOTAL			**₱2,894,148.80**
Less: Previously disallowed per Decision dated May 13, 2016[29]			
Exhibit No.	*Supplier*	*Amount*	
Name of petitioner superimposed/stamped on VAT OR but without countersignature of issuer of OR			
FFF-129	Philippine Ports Authority	₱ 12.43	₱ 12.43
OR date changed without countersignature			
LL-225	Philippine Ports Authority		

[28] Exhibits XXX-1 to XXX-120.

[29] Docket, vol. 3, pp. 1206 to 1209.

		3.34	
LL-286	Philippine Ports Authority	13,194.00	13,197.34
OR dated outside period of claim			
GG-1	Regen Enterprises	2,643.74	
LL-16	Philippine Ports Authority	128.87	
LL-18	Philippine Ports Authority	217.43	
LL-19	Philippine Ports Authority	227.27	
LL-20	Philippine Ports Authority	394.55	
LL-21	Philippine Ports Authority	109.19	
LL-42	Philippine Ports Authority	12,424.35	
LL-43	Philippine Ports Authority	8,727.83	
LL-64	Philippine Ports Authority	33.30	
LL-65	Philippine Ports Authority	10.59	
LL-66	Philippine Ports Authority	1,043.62	
LL-67	Philippine Ports Authority	8,868.57	
LL-68	Philippine Ports Authority	34,490.62	
LL-69	Philippine Ports Authority	38,295.93	
LL-71	Philippine Ports Authority	4,860.00	
LL-72	Philippine Ports Authority	4,860.00	
LL-73	Philippine Ports Authority	333.72	
LL-74	Philippine Ports Authority	20.19	
LL-75	Philippine Ports Authority	27.63	
LL-76	Philippine Ports Authority	12.43	
LL-109	Philippine Ports Authority	12.43	
LL-110	Philippine Ports Authority	12.43	
LL-111	Philippine Ports Authority	12.43	
LL-112	Philippine Ports Authority	12.43	
LL-113	Philippine Ports Authority	12.43	
LL-114	Philippine Ports Authority	12.43	
LL-115	Philippine Ports Authority	39.35	
LL-116	Philippine Ports Authority	30.90	
LL-117	Philippine Ports Authority	2.40	
LL-118	Philippine Ports Authority	27.63	
LL-119	Philippine Ports Authority	3.73	
LL-120	Philippine Ports Authority	27.63	
LL-121	Philippine Ports Authority	43.49	
LL-122	Philippine Ports Authority	11.85	
LL-123	Philippine Ports Authority	62.13	
LL-124	Philippine Ports Authority	12.43	
LL-135	Philippine Ports Authority	51,958.59	
LL-138	Philippine Ports Authority	29,696.94	
LL-139	Philippine Ports Authority	51,952.54	
LL-140	Philippine Ports Authority	59,385.19	
LL-141	Philippine Ports Authority	4,395.70	
LL-205	Philippine Ports Authority	725.76	
LL-206	Philippine Ports Authority	33,735.06	
LL-207	Philippine Ports Authority	3,024.00	
LL-208	Philippine Ports Authority	4,860.00	
LL-209	Philippine Ports Authority	3,272.77	
LL-210	Philippine Ports Authority	6.68	
LL-211	Philippine Ports Authority	1,340.84	

LL-212	Philippine Ports Authority	6.68	
LL-213	Philippine Ports Authority	6.68	
LL-214	Philippine Ports Authority	4,860.00	
LL-215	Philippine Ports Authority	732.24	
LL-216	Philippine Ports Authority	727.92	
LL-217	Philippine Ports Authority	842.40	
LL-218	Philippine Ports Authority	731.16	
LL-219	Philippine Ports Authority	3.63	
LL-220	Philippine Ports Authority	12.43	
LL-221	Philippine Ports Authority	12.43	
LL-222	Philippine Ports Authority	32.10	
LL-223	Philippine Ports Authority	55.26	
LL-224	Philippine Ports Authority	2,667.60	
LL-228	Philippine Ports Authority	1,338.02	
LL-229	Philippine Ports Authority	3.34	
LL-230	Philippine Ports Authority	3,780.00	
LL-231	Philippine Ports Authority	2,613.60	
LL-245	Philippine Ports Authority	1,569.48	
LL-246	Philippine Ports Authority	6.68	
LL-247	Philippine Ports Authority	2,532.12	
LL-248	Philippine Ports Authority	2,255.59	
LL-249	Philippine Ports Authority	1,153.44	
LL-250	Philippine Ports Authority	6.68	
LL-251	Philippine Ports Authority	79.67	
LL-252	Philippine Ports Authority	1,192.23	
LL-253	Philippine Ports Authority	6.68	
LL-288	Philippine Ports Authority	4,907.48	
LL-289	Philippine Ports Authority	1,708.56	
LL-290	Philippine Ports Authority	6.68	
LL-291	Philippine Ports Authority	69.83	
LL-292	Philippine Ports Authority	69.83	
LL-293	Philippine Ports Authority	89.51	
LL-294	Philippine Ports Authority	246.95	
LL-295	Philippine Ports Authority	79.67	
LL-296	Philippine Ports Authority	59.99	
LL-297	Philippine Ports Authority	384.71	
LL-298	Philippine Ports Authority	394.55	
LL-299	Philippine Ports Authority	443.75	
LL-300	Philippine Ports Authority	59.99	
LL-301	Philippine Ports Authority	305.99	
LL-302	Philippine Ports Authority	443.75	
LL-304	Philippine Ports Authority	59.99	
LL-309	Philippine Ports Authority	1,260.60	
LL-310	Philippine Ports Authority	1,439.45	
LL-368	Philippine Ports Authority	9.90	
LL-369	Philippine Ports Authority	24.85	
LL-370	Philippine Ports Authority	12.43	
LL-371	Philippine Ports Authority	12.43	
LL-372	Philippine Ports Authority	12.43	401,751.40
VAT amount changed without countersignature			
LL-233	Philippine Ports Authority	3.34	

𝓃

FFF-9	Philippine Ports Authority	50,217.69	50,221.03
VAT amount countersigned but countersignor different from issuer of OR			
FF-1	SMCC Philippines Inc.		55,383.60
Total			**₱ 520,565.80**
Additional disallowances per the Court's reconsideration			**₱2,373,583.00**

Hence, the remaining valid input VAT shall be reduced to ₱8,326,152.91, as computed below:

Input VAT claim		₱13,978,529.29
Less: Disallowances		
Per the Court's Decision dated May 13, 2016[30]	₱3,278,793.38	
Additional disallowances per the Court's reconsideration	2,373,583.00	5,652,376.38
Valid input VAT		**₱8,326,152.91**

Consequently, petitioner's duly substantiated input VAT attributable to the declared valid zero-rated sales of ₱15,151,630,362.90 is reduced to ₱7,987,296.57:

Valid Zero-Rated Sales	₱15,151,630,362.90
Declared Zero-Rated Sales	÷ 15,794,429,332.83
Multiplied by Valid Input VAT	x 8,326,152.91
Input VAT Attributable to Valid Zero-Rated Sales	**₱ 7,987,296.57**

In view of the foregoing, the Court finds that the amount of ₱10,264,279.90 originally granted as input VAT refund in the assailed Decision should be reduced to ₱7,987,296.57.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit. Meanwhile, respondent's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated May 13, 2016 is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of **₱7,987,296.57**, representing petitioner's unutilized input

[30] Docket, vol. 3, p. 1211.

VAT attributable to its zero-rated sales for taxable year 2010.

SO ORDERED."

SO ORDERED.

Ma. Belen s—
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
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 Amended 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