REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE MINING SERVICE CORPORATION, Petitioner,	**CTA CASE NO. 9763**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **and** **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 29 2021 11:45 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on February 2, 2018, prays for the refund or issuance of a tax credit certificate in favor petitioner in the amount of ₱19,802,406.57, allegedly representing its unutilized and/or unapplied and excess input value-added tax (VAT) attributable to its zero-rated sales for the period covering July [1], 2016 to December 31, 2016.[1]

THE PARTIES

Petitioner Philippine Mining Service Corporation is a duly organized and existing corporation, registered with the Securities and

[1] Summary of the Case, Pre-Trial Order dated January 15, 2019, Docket – Vol. I, p. 388.

Exchange Commission on June 16, 1980, with the primary purpose of entering *"into a service contract with Dolomite Mining Corporation in accordance with law for financial, technical, management, and other forms of assistance relative to the exploration, development, exploitation or utilization of the dolomite mining claims of said corporation in the Province of Cebu, including the marketing of such dolomite and its products, and for this purpose to the extent permitted by law to import, purchase, install, construct and/or operate such mills, factories, building, machinery, equipment, structures and works of all kinds, facilities, tools, ships, vessels, lighters, submarine, docks, piers, warehouses, storage and shipping facilities, instruments and apparatus and other properties as may be necessary or convenient for carrying on the business of the corporation, and to pay or receive payment for the foregoing either on cash or in stock, bonds, debentures, or other securities."*[2]

It is further organized to, among other secondary and incidental purposes and powers, *"buy, process, refine, prepare for market, sell at wholesale, export, transport and otherwise deal in and with dolomite ore, limestone ore, and other minerals of whatever nature and their by-products."* Its customers include entities registered with the Philippine Economic Zone Authority (PEZA) and located within PEZA ecozones.[3]

Petitioner is located within the jurisdiction of Bureau of Internal Revenue (BIR) Revenue District Office Number 81, Cebu City – North, where it is registered as a VAT taxpayer, with Tax Identification No. (TIN) 000-136-814-000 and BIR Certificate of Registration No. OCN 2RC0001045342 issued on October 27, 1991.[4]

Respondent is the duly appointed Commissioner of Internal Revenue, with authority to, among others, decide, approve and grant claims for refund or tax credit of internal revenue taxes, and is holding office at the BIR National Office Bldg., Agham Road, Diliman, Quezon City.[5] gr

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[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, pp. 286 to 287.
[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. I, p. 287.

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 7, 2017, petitioner filed with the VAT Credit Audit Division of the BIR (BIR-VCAD) its *Application for Tax Credits/Refunds* (BIR Form No. 1914), requesting for the issuance of a tax credit certificate, covering the period from July 1, 2016 to December 31, 2016, in the aggregate amount of ₱49,711,611.60, in accordance with and pursuant to Section 112(A) of the 1997 Tax Code and Revenue Memorandum Circular (RMC) No. 54-2014.[6]

Petitioner submitted the documents provided in Annex "A" of RMC No. 54-2014, in support of its application for issuance of a tax credit certificate, including a sworn statement certifying the following: (a) amount of sales declared with breakdown as to amount of zero-rated, taxable, and exempt sales; (b) that the company did not file any and/or will not file any similar claim within the Board of Investments, Bureau of Customs, and BIR, and; (c) the ending inventory as of close of the period being claimed has been used directly/indirectly in the products exported; and an affidavit under oath attesting to the completeness of the documents submitted.[7]

On January 4, 2018, or before the lapse of the 120-day period, respondent partially granted petitioner's claim by issuing a tax credit certificate in the amount of ₱22,799,638.08. Petitioner received the tax credit certificate on January 12, 2018.[8] Respondent disallowed the amount of ₱26,911,973.52 from petitioner's claim, as determined below:[9]

AMOUNT OF CLAIM		**₱49,711,611.60**
Add:	Output Tax	12,031,653.41
Total		₱61,743,265.01
DEDUCTIONS		
Disallowed input tax		
	Out of period	₱ 34,160.69
	TIN not indicated	1,071.55
	No OR/No documents	356,789.83
	Deferred input tax	4,915,207.39
Total disallowed input tax		**₱ 5,307,229.46**
Allowable input tax		₱56,436,035.55
Less:	Output tax per return	12,031,653.41
Net Allowable input tax		**₱44,404,382.14**

[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[7] Par. 5.1, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[8] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 288.
[9] Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 288.

Less:	Other deductions	
	Additional output tax assessed per audit	₱ 273,459.03
Less:	Additional deductions per TARD	
	Additional disallowed input VAT pertaining to purchases of capital goods subject for deferment	985,053.33
	Ripened portion of deferred input VAT not reflected per 4th quarter VAT return	105,458.00
	Purchases from big-ticket supplier without proof of payment	28,140.00
	Additional output VAT assessment (interest; Related party transaction and retirement asset)	399,301.28
	Output VAT assessment (unaccounted miscellaneous VAT invoices)	10,925.85
	Allocated input VAT attributable to sales without approved application for zero-rating	**19,802,406.57**
Total other deductions and additional deduction per TARD		**₱21,604,744.06**
Total deduction from claim		**₱26,911,973.52**
Amount approved		**₱22,799,638.08**

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on February 2, 2018,[10] assailing only the disallowance in the amount of ₱19,802,406.57.[11] The case was initially raffled to this Court's First Division.

On April 16, 2018, respondent filed his *Answer*,[12] interposing the following special and affirmative defenses, to wit: (1) petitioner is not entitled to refund of its alleged unutilized input VAT; (2) submission of additional documentary evidence on appeal is not allowed when the administrative claim for refund is denied due to failure to substantiate the same; and (3) it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.

The pre-trial conference was initially set on June 21, 2018.[13] However, upon urgent motion of respondent,[14] the same was reset to, and held on, July 26, 2018.[15] *Petitioner's Pre-Trial Brief* was filed

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[10] Docket – Vol. I, pp. 10 to 35.
[11] Pars. 16 to 18, *Petition for Review*, Docket – Vol. I, pp. 14 to 15.
[12] Docket – Vol. I, pp. 106 to 113.
[13] *Notice of Pre-Trial Conference* dated April 25, 2018, Docket – Vol. I. pp. 115 to 116.
[14] Respondent's *Urgent Motion to Reset Pre-Trial Conference*, Docket – Vol. I. pp. 137 to 139; Order dated July 26, 2018, Docket – Vol. I, pp. 283 to 285.
[15] Minutes of the hearing held on, and Order dated, June 21, 2018, Docket – Vol. I. pp. 137 to 140; Order dated July 26, 2018, Docket – Vol. I, pp. 283 to 285.

on June 14, 2018,[16] while *Respondent's Pre-Trial Brief* was submitted on July 20, 2018.[17]

On August 15, 2018, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[18] In the Resolution dated September 3, 2018,[19] the Court approved the said JSFI and deemed the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated January 15, 2019 was issued.[20]

In the meantime, respondent transmitted the *BIR Records* of the instant case on September 10, 2018.[21] Thereafter, the instant case was transferred to this Court's Second Division, pursuant to the Order dated September 26, 2018.[22]

Petitioner filed an *Urgent Motion for Summary Judgment* on February 7, 2019.[23] Respondent filed an *Opposition (Re: Petitioner's Motion for Summary Judgment dated 24 August 2018)* on March 4, 2019.[24] Petitioner filed *its Motion to Admit Attached Reply to Opposition (Re: Petitioner's Motion for Summary Judgment)* on March 11, 2019.[25]

In the Resolution dated March 29, 2019,[26] the Court granted petitioner's *Motion to Admit Attached Reply to Opposition (Re: Petitioner's Motion for Summary Judgment),* and accordingly admitted petitioner's *Reply to Opposition (Re: Petitioner's Motion for Summary Judgment)*; but denied petitioner's *Urgent Motion for Summary Judgment*, for lack of merit.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimony of the following witnesses: (1) Mr. Ian John Guillena,[27] petitioner's

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[16] Docket – Vol. I, pp. 117 to 129.
[17] Docket – Vol. I, pp. 162 to 167.
[18] Docket – Vol. I, pp. 286 to 290.
[19] Docket – Vol. I, p. 331.
[20] Docket – Vol. I, pp. 388 to 393.
[21] Docket – Vol. I, pp. 379 to 381.
[22] Docket – Vol. I, p. 385.
[23] Docket – Vol. I, pp. 394 to 402.
[24] Docket – Vol. I, pp. 526 to 531.
[25] Docket – Vol. I, pp. 533 to 538.
[26] Docket – Vol. I, pp. 546 to 551.
[27] Exhibit "P-29", Docket – Vol. I, pp. 170 to 180; Minutes of the hearing held on, and Order dated, May 6, 2019, Docket – Vol. I, pp. 556 to 557.

Department Manager - Accounting; (2) Mr. Fidel Quimpo,[28] Senior Manager of the Administration Department of petitioner; and Ms. Katherine O. Constantino,[29] the Court-commissioned Independent Certified Public Accountant (ICPA).[30]

The *Report* of the said ICPA was submitted on June 4, 2019.[31]

Petitioner filed its *Formal Offer of Evidence* on July 4, 2019.[32] Respondent filed his *Comment (Re: Formal Offer of Evidence)* on July 11, 2019.[33]

In the Resolution dated October 15, 2019,[34] the Court admitted petitioner's evidence, *except* Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-10", "P-11", "P-12", "P-13", "P-14", "P-28", "P-45 (pages 36-37 of 37)", "P-54 (page 7 of 20)", "P-54 (page 19 of 20)", "P-55 (page 7 of 19)", "P-55 (page 19 of 19)", "P-56 (page 20 of 21)", "P-57 (pages 7-8 of 21)", "P-57 (pages 20-21 of 21)", "P-58 (page 8 of 21)", "P-58 (pages 20-21 of 21)", "P-61 (page 23 of 23)", "P-62 (page 34 of 46)", "P-62 (page 36 pf 46)", "P-64 (page 10 of 19)", "P-65 (page 43 of 51)", "P-65 (page 45-48 of 51)", "P-65 (page 51 of 51)", "P-66 (page 11 of 22)", "P-66 (page 19 of 22)", "P-78 (page 9 of 26)", "P-78 (page 12 of 26)", "P-79 (pages 22-23 of 23)", "P-80 (page 15 of 35)", "P-80 (page 17 of 35)", "P-80 (page 31 of 35)", "P-81 (page 15 of 35)", "P-81 (page 31 of 35)", "P-82 (page 12 of 32)", "P-86 (page 7 of 16)", "P-155 (pages 4-5 of 24)", "P-156 (page 3 of 23)", "P-156 (pages 6-7 of 23)", "P-156 (page 23 of 23)", "P-157 (pages 5-6 of 24)", "P-157 (page 24 of 24)", "P-158 (pages 18-19 of 25)", "P-161 (page 15 of 24)", "P-162 (page 1 of 52)", "P-162 (page 42 of 52)", "P-163 (page 11 of 36)", "P-165 (pages 11-12 of 33)", "P-169 (pages 11-12 of 19)", "P-170 (page 27 of 30)", "P-172 (pages 13-14 of 23)", "P-172 (page 19 of 23)", "P-172 (pages 21-22 of 23)", "P-173 (page 13 of 20)", "P-177 (page 13 of 23)". "P-178 (page 15 of 35)", "P-180 (page 24 of 36)", "P-180 (page 28 of 36)", "P-181 (page 20 of 21)", "P-182 (page 20 of 22)", "P-182 (page 22 of 22)", "P-185 *gr*

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[28] Exhibits "P-30" and "P-30-A", Docket – Vol. I, pp. 222 to 231; Minutes of the hearing held on and Order dated May 6, 2019, Docket – Vol. I, pp. 556 to 557.

[29] Exhibit "P-32-C", Docket – Vol. I, pp. 567 to 576; and Minutes of the hearing held on, and Order dated, June 26, 2019, Docket – Vol. I, pp. 577 to 578. Refer also to Exhibits "P-19769, and "P-19769-B", Docket – Vol. II, pp. 902 to 906, Minutes of the hearing held on, and Order dated, February 12, 2020, Docket – Vol. II, pp. 898 to 899.

[30] *Oath of Commission (For a CPA Firm)* dated May 6, 2019, and Minutes of the hearing held on, and Order dated, May 6, 2019, Docket – Vol. I, pp. 555 to 557.

[31] Docket – Vol. I, pp. 558 to 564.

[32] Docket – Vol. II, pp. 590 to 634.

[33] Docket – Vol. II, pp. 863 to 864.

[34] Docket – Vol. II, pp. 871 to 875.

(page 17 of 21)", "P-186 (page 17 of 21)", "P-188 (page 10 of 26)","P-188 (page 14 of 26)", "P-188 (page 17 of 26)", "P-188 (page 24 of 26)", "P-190 (pages 20-24 of 40)", "P-190 (pages 26-28), "P-190 (page 30 of 40)", "P-190 (pages 36-37 of 40)", "P-191 (page 16 of 19)", "P-192 (page 22 of 36)", "P-193 (page 21 of 37)", "P-194 (page 8 of 17)", "P-18364", 'P-18365", "P-18366", "P-18999 (pages 1-2 of 2)", "P-19046", "P-19125", "P-19126", "P-19536 (pages 1-3 of 3)", "P-19537 (pages 1-2 of 2)", "P-19538", "P-19539" (pages 1-2 of 2)", "P-19608", "P-19687", "P-19695", "P-19697", "P-19698", "P-19699", "P-19707" and "P-19745", for failure to present originals for comparison.

Petitioner then filed its *Motion for Partial Reconsideration (Of the Resolution dated 15 October 2019)* on October 25, 2019.[35] Respondent failed to file his comment thereon.[36] In the Resolution dated December 16, 2019,[37] the Court held in abeyance the resolution of the said *Motion for Partial Reconsideration*, and instead set a commissioner's hearing for the comparison of petitioner's exhibits,[38] and a hearing for the recall of ICPA, Ms. Katherine O. Constantino, for the purpose of identifying her affidavit dated October 24, 2019.[39]

Petitioner filed again a *Formal Offer of Evidence* on February 17, 2020.[40] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on February 19, 2020.[41] In the Resolution dated March 10, 2020,[42] the Court granted petitioner's *Motion for Partial Reconsideration*, and accordingly admitted Exhibits "P-2", "P-14", "P-19608", "P-19687", "P-19695", "P-19697", "P-19698", "P-19699", "P-19707", "P-19745", "P-19769", "P-19769-A", and "P-19769-B".

During trial, respondent likewise presented his documentary and testimonial evidence. He offered the lone testimony of Revenue Officer Jerome C. Manuncia.[43]

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[35] Docket – Vol. II, pp. 876 to 885.
[36] Records Verification dated November 27, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 890.
[37] Docket – Vol. II, pp. 892 to 894.
[38] Refer to *Commissioner's Report*, Docket – Vol. II, pp. 895 to 896.
[39] Minutes of the hearing held on and Order dated February 12, 2020, Docket – Vol. II, pp. 898 to 899; Exhibits "P-19769" and "P-19769-B", Docket – Vol. II, pp. 902 to 906.
[40] Docket – Vol. II, pp. 907 to 913.
[41] Docket – Vol. II, pp. 921 to 923.
[42] Docket – Vol. II, pp. 926 to 929.
[43] Exhibit "R-5", Docket – Vol. I, pp. 153 to 161; Minutes of the hearing held on and Order dated July 6, 2020, Docket – Vol. II, pp. 931 to 932.

Respondent posted his *Formal Offer of Evidence* on July 15, 2020.[44] Petitioner then posted its *Manifestation* on July 27, 2020,[45] stating that it has no comment or objection to respondent's *Formal Offer of Evidence*.

In the Resolution dated September 28, 2020,[46] the Court admitted all the exhibits formally offered by respondent.

Respondent's *Memorandum* was filed on November 11, 2020,[47] while petitioner's *Memorandum* was submitted on November 23, 2020.[48]

The instant case was submitted for decision on December 21, 2020.[49]

THE ISSUE RAISED BY THE PARTIES

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

> "Whether or not Petitioner PMSC is entitled to the issuance of a tax credit certificate in the amount of Php19,802,406.57 representing excess and unutilized input VAT attributable to its zero-rated sales."[50]

Petitioner's arguments:

Petitioner argues that it is a VAT-registered entity and is engaged in zero-rated sales; that as shown by its VAT Returns filed, the input taxes claimed were due or paid, are not transitional input taxes, were not applied against output taxes during, and in the succeeding quarters, and are attributable to zero-rated sales; and that the administrative claim for refund or issuance of a tax credit certificate was filed within two (2) years after the close of the taxable quarter when such sales were made.

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[44] Docket – Vol. II, pp. 933 to 937.
[45] Docket – Vol. II, pp. 939 to 941.
[46] Docket – Vol. II, pp. 945 to 946.
[47] Docket – Vol. II, pp. 947 to 953.
[48] Docket – Vol. II, pp. 955 to 994.
[49] Resolution dated December 21, 2020, Docket – Vol. II, p. 996.
[50] Issue, JSFI, Docket – Vol. I, p. 288.

Respondent's counter-arguments:

Respondent counters that since he rendered a decision, the jurisdiction of this Court shifts from a trial court to an appellate tribunal; that this Court should confine itself to whether the findings of respondent are consistent with law; that since a decision has been rendered in this case partially denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level; that this Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level; and that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE COURT'S RULING

The Court grants the instant *Petition for Review*.

This Court shall indeed act as an appellate tribunal.

To reiterate, respondent contends that since he rendered a decision, the jurisdiction of this Court shifts from a trial court to an appellate tribunal; that this Court should confine itself to whether the findings of respondent are consistent with law; and that this Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level.

While We partly agree with respondent, Our concurrence with his contentions does **not** sustain his defense. The denial in the amount of ₱19,802,406.57 was not proper.

Indeed, since respondent rendered a decision on the subject claim for refund, the Court, upon appeal thereof, shall exercise its appellate jurisdiction thereover.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[51] the Supreme Court said: *gr*

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[51] G.R. No. 207112, December 8, 2015.

"At this stage, a review of **the nature of a judicial claim before the CTA** is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[52] it was ruled –

> x x x **First, a judicial claim for refund or tax credit in the CTA is <u>by no means an original action</u> but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, <u>as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim</u>. In this case, <u>it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>.** Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.

A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **<u>When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim</u>. <u>It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim</u>. It is,** ℛ

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[52] G.R. No. 145526, March 16, 2007.

> **thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements of the High Court, it is now settled that when a judicial claim for refund or tax credit is an appeal of an unsuccessful administrative claim, the taxpayer has to convince this appellate court that respondent had no reason to deny its claim; and it is necessary for a petitioner to show this Court not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. As stated, **it is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.**

In other words, there are two (2) matters which must be shown by petitioner before this Court, upon appeal of an unsuccessful administrative claim, to wit: *first*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and *second*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. The *first matter* involves a review or determination whether respondent has basis in fact and/or in law to deny the administrative claim; while the *second matter* to be proved entails a determination of petitioner's compliance with the requisites established by law.

More significantly, while the *second matter* to be shown is in accord with the principle that cases filed in this Court are litigated *de novo*, the *first matter* is concerned with the proper exercise of this Court's appellate jurisdiction as conferred by law. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court which tried the case now elevated for judicial review.[53] *gc*

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[53] *Garcia, et al. vs. De Jesus, et al., etseq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

In the exercise of its appellate jurisdiction, this Court finds the disallowance in the amount of ₱19,802,406.57 not consistent with law.

The BIR should not have disallowed the amount of ₱19,802,406.57.

In this case, it is undisputed that petitioner's administrative refund claim originally involves the aggregate amount of ₱49,711,611.60;[54] that out of the said amount, only the amount of ₱22,799,638.08 was granted by respondent, and the BIR thus issued the corresponding tax credit certificate therefor;[55] and that part of the disallowed aggregate amount of ₱26,911,973.52 from petitioner's claim, is the subject of the instant claim in the amount of ₱19,802,406.57.[56] This latter amount explicitly represents the "[a]*llocated input VAT attributable to sales without approved application for zero-rating*".[57]

Respondent is in error for disallowing the said amount of ₱19,802,406.57. To stress, this finding of the BIR is not consistent with law.

Admittedly, Sections 4.106-6 and of Revenue Regulations (RR) No. 16-2005[58] respectively require that *"an approved application"* must be obtained before a particular transaction may be subject to the 0% VAT rate, to wit:

> "SEC. 4.106.6. *Meaning of the Term 'Effectively Zero-rated Sale of Goods and Properties'.* – xxx
>
> Except for Export Sale under Sec. 4.106-5(a) and Foreign Currency Denominated Sale under Sec. 4.106-5(b), **other cases of zero-rated sales shall require prior application with the appropriate BIR office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall**

[54] Refer to Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[55] Refer to Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 288.
[56] Refer to Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 288.
[57] *Id.*
[58] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

be considered exempt. The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating." *(Emphasis added)*

"SEC. 4.108.6. *Effectively Zero-rated Sale of Services* – xxx **The concerned taxpayer must seek prior approval or prior confirmation from the appropriate offices of the BIR so that a transaction is qualified for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt.** The foregoing rule notwithstanding, the Commissioner may prescribe such rules to effectively implement the processing of applications for effective zero-rating." *(Emphasis added)*

However, in *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)* ("*Seagate* case"),[59] the Supreme Court has settled that the scope of BIR regulations additionally requiring an approved prior application for effective zero rating are not within the statutory authority granted by the legislature, *viz.*:

"The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions. The scope of such regulations is not 'within the statutory authority x x x granted by the legislature.

First, **a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.**

Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated. An effectively zero-rated ✓

[59] G.R. No. 153866, February 11, 2005.

transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application. Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.

Second, grantia argumenti that such an application is required by law, there is still the presumption of regularity in the performance of official duty. **Respondent's registration carries with it the presumption that, in the absence of contradictory evidence, an application for effective zero rating was also filed and approval thereof given. Besides, it is also presumed that the law has been obeyed by both the administrative officials and the applicant.**

Third, even though such an application was not made, all the special *laws* we have tackled exempt respondent not only from internal revenue laws but also from the *regulations* issued pursuant thereto. **Leniency in the implementation of the VAT in ecozones is an imperative, precisely to spur economic growth in the country and attain global competitiveness as envisioned in those laws.**

A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer. The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. **Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero rating. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence -- a result not at all contemplated. Administrative convenience cannot thwart legislative mandate.**" *(Emphases added)* ✓

Based on the foregoing jurisprudential pronouncements, it is clear that no prior approved application is required for a transaction to be treated as subject to the 0% VAT rate. As an apparent reaction therefor by the Secretary of the Department of Finance, upon recommendation of the respondent, the aforequoted pertinent portions of RR No. 16-2005, requiring a prior approval for VAT zero-rating, was removed or deleted via the issuance of RR No. 4-2007[60].

Notwithstanding the deletion or removal of the said provisions, however, respondent or the BIR still applied the same.

Clearly, respondent's disallowance of the amount of ₱19,802,406.57, representing the "[a]*llocated input VAT attributable to sales without approved application for zero-rating"* has no basis in law and is in direct contravention of the ruling in the *Seagate* case. Such being the case, the said disallowance cannot be sustained by this Court. As a necessary corollary, the said amount should have been granted by respondent as a refundable amount of excess or unutilized input VAT of petitioner for the subject periods.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[61] provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax. –*
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that

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[60] SUBJECT: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

[61] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue 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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

<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;[62]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act 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;[63]

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

3. the taxpayer is a VAT-registered person;[64]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[65]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (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;[66] and

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

6. the input taxes are not transitional input taxes;[67]
7. the input taxes are due or paid;[68]
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,

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

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

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

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

the input taxes shall be proportionately allocated on the basis of sales volume;[69] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[70]

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

Counting two (2) years from the close of the 3rd and 4th quarters of 2016, the respective last day for the filing of the administrative claim for the said two (2) quarters are shown below:

Period (3rd and 4th quarters of 2016)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
July 1, 2016 to September 30, 2016	September 30, 2016	September 30, 2018
October 1, 2016 to December 31, 2016	December 31, 2016	December 31, 2018

Considering that petitioner's administrative claim for the said periods was filed on September 7, 2017,[71] the same was timely made.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under the aforequoted Section 112(C) of the NIRC of 1997, as amended.

In this case, from the filing of petitioner's administrative claim on September 7, 2017, respondent had 120 days or until January 5, 2018 to act on the said claim. Records show that on January 4, 2018, or before the lapse of the 120-day period, respondent, partially granted petitioner's claim by issuing a tax credit certificate,[72] which

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

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

[71] Par. 5, Admitted Facts, JSFI, Docket – Vol. I, p. 287.

[72] Exhibit "P-14", Docket – Vol. II, p. 790.

was then received by petitioner on January 12, 2018.[73] Thus, counting 30 days from January 12, 2018, petitioner had until February 11, 2018, within which to file its judicial claim. Evidently, petitioner seasonably filed the instant *Petition for Review* on February 2, 2018.[74]

Hence, petitioner has shown compliance with the said *first* and *second* requisites.

Petitioner is a VAT-registered person.

There is likewise no doubt that petitioner fulfilled the *third* requisite, since the parties admitted the fact that petitioner is registered with the BIR Revenue District Office Number 81, Cebu City – North, as a VAT taxpayer, with TIN 000-136-814-000.[75]

Fulfillment of the remaining requisites.

In the *Memorandum Report* dated December 22, 2017 duly approved by the Assistant Commissioner (ACIR) for the Assessment Service, Ms. Erlinda A. Simple,[76] the reason, *inter alia*, for the disallowance in the amount of ₱19,802,406.57 was stated, to wit:

> "6. As mentioned earlier, **the reported effectively zero-rated sales of P292,908,111.61 were supported by PEZA certifications and the corresponding zero-rated sales invoices.** However, the claimant failed to secure approved application for VAT zero-rating for its sales to ecozone entities, which is a requirement under Revenue Memorandum Circular No. 54-2014 particularly on Annex 'A' (*Checklist of Mandatory Requirements for Claims for VAT Credit/Refund*). In connection with the resolution from the Office of the Deputy Commissioner of Internal Revenue – Legal Group dated July 6, 2017 that Vestas Philippine Inc. (VSPI) is required to submit

[73] Par. 6, Admitted Facts, JSFI, Docket – Vol. I, p. 288.
[74] Docket – Vol. I, pp. 10 to 35.
[75] Refer to Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 287.
[76] Exhibit "R-3", BIR Records (Exhibit "R-5"), pp. 297 to 300.

an approved application for zero-rating for is sales to EDC Burgos Wind Power Corporation (EDC). xxx:

xxx xxx xxx

Since the case on hand involves claims for tax credit, and claims for tax credit/refund partake the nature of an exemption from tax, it must be construed strictly against the taxpayer and liberally interpreted in favor of the government.

As a result, hereof, the input VAT of **₱19,802,406.57** attributable to sales to ecozone without prior approved zero-rating was deducted from the herein claim (see Annex 'D' for details of the computation)." *(Emphasis added)*

The Annex "D"[77] referred to in the above-stated *Memorandum Report* dated December 22, 2017 reads:

"PHILIPPINE MINING SERVICE CORP.
000-136-814-000
xxx
Computation of I[n]put VAT attributable to sales to ecozone without prior approved zero-rating
For the Period July to December 2016

Sales to Ecozone without approved Application for Zero-Rated Sales	Php 292,908,111.61
Divide by Total Sales	818,229,161.71
Allocation Rate	35.79780%
Multiply by: Available Input VAT**	Php 55,317,384.22
Input VAT Attributable thereon	**Php 19,802,406.57**

***Computation of Available Input VAT*

Input Vat Claimed			Php49,711,611.60
Add (Less): Adjustments and Disallowance			
Add: Total output VAT per Return (p.231)		Php12,031,653.41	
Less: Disallowed Input VAT per VCAD's audit			
Violation of invoicing requirements	Php (392,022.07)		
Deferred Input VAT	(4,915,207.39)	(5,307,229.46)	
Less: Disallowed Input VAT per TARD's review			
Item 1	Php (985,053.33)		
Item 2	(105,458.00)		
Item 3	(28,140.00)	(1,118,651.33)	5,605,772.62
Available Input VAT			Php55,317,384.22

[77] BIR Records (Exhibit "R-5"), p. 290.

Based on the foregoing findings, insofar as the amount of input VAT of ₱19,802,406.57 is concerned, there is no other issue for it to be refunded, other than the lack of a prior approved application for VAT zero-rating of petitioner's sales. In fact, the foregoing *Memorandum Report* is explicit that petitioner's *"effectively zero-rated sales of P292,908,111.61 were supported by PEZA certifications and the corresponding zero-rated sales invoices."* Thus, with the foregoing findings and considering that petitioner has a VAT-registered status, as above established, the same are sufficient for the effective zero rating of the said sales of petitioner, pursuant the above-quoted ruling in the *Seagate* case.

To stress, as We have already ruled, respondent's requirement of a prior approved application for VAT zero-rating has no legal basis and is a direct contravention of the earlier quoted jurisprudential pronouncements in the *Seagate* case. Such being the case, petitioner's sales for the subject period amounting to ₱292,908,111.61 should be accorded VAT zero-rating.

In any event, the said amount of ₱292,908,111.61 was likewise established by petitioner before this Court as sales to PEZA-registered entities,[78] broken down as follows:

Period	**Sale to PEZA**
3rd quarter of 2016	₱ 147,506,383.95
4th quarter of 2016	145,401,727.66
Total	**₱ 292,908,111.61**

In addition, to prove compliance with the VAT invoicing requirements under Sections 113, 237, and 238, of the NIRC of 1997, as amended, and Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, petitioner submitted various shipping invoices[79] and sales journal voucher with credit memo[80] in support of its zero-rated sales to PEZA-registered entities, which were duly examined by the Court-commissioned ICPA.

The ICPA summarized her findings as follows:[81]

[78] Exhibits "P-35" and "P-37".
[79] Exhibits "P-87" to "P-154"; "P-195" to "P-205" and "P-207" to "P-269".
[80] Exhibit "P-206".
[81] Exhibit "P-32", p. 15.

Description		3rd Quarter Zero rated sales	4th Quarter Zero rated sales	Total
I. Properly Supported				
Zero-rated sales/receipts from PEZA-registered entities properly supported by zero-rated shipping invoice	Annex 2C-3Q-a Annex 2C-4Q-a	₱147,506,383.95	₱145,950,274.67	₱293,456,658.62
II. Other Findings				
Zero-rated sales/receipts from PEZA-registered entities pertaining to adjustment supported by zero-rated shipping invoice and sales journal voucher	Annex 2C-4Q-b		(548,547.01)	(548,547.01)
	TOTAL	**₱147,506,383.95**	**₱145,401,727.66**	**₱292,908,111.61**

Parenthetically, as ascertained by the ICPA, the adjustment amounting to ₱548,547.01 refers to the price adjustment for a new contract[82] and from moisture penalty.[83]

Upon further verification of the documentary evidence presented, the Court adheres to the said findings of the ICPA. Thus, without an iota of doubt, the *fourth* requisite to successfully obtain a credit/refund of input VAT (*i.e.*, the taxpayer is engaged in zero-rated or effectively zero-rated sales) has been complied with in this case.

As a corollary, petitioner need not comply with the *fifth* requisite since the legal basis of its VAT zero-rating is Section 106(A)(2)(a)(5)[84] of the NIRC of 1997, as amended, in relation to

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[82] Exhibit "P-206".
[83] Exhibits "P-211", "P-248" and "P-268".
[84] "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – xxx

xxx xxx xxx

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

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

xxx xxx xxx

Sections 8[85] and 24[86] of RA No. 7916, as amended by RA No. 8748; and ***not*** Section 106(A)(2)(a)(1), (2) and (b), or Section 108(B)(1) and (2), of the said Code.

And as for the remaining requisites pertaining to input VAT being refunded (*i.e.*, the above-stated *sixth* to the *ninth* requisites), the same are already considered to have been fulfilled, even at the administrative level or before the BIR. Relative thereto, it must be noted that based on Annex "A" of the letter dated January 5, 2017 of ACIR Erlinda A. Simple,[87] petitioner has a *"Net Allowable Input Tax"* in the amount of ₱44,404,382.14 for the subject periods. The said amount was only reduced by certain items or *"deductions"*, thereby resulting in the approval of the refund claim and the issuance of a tax credit certificate only in the amount of ₱22,799,638.08,[88] computed as follows:

Net Allowable input tax		**₱44,404,382.14**
Less:	Other deductions	
	Additional output tax assessed per audit	₱ 273,459.03
Less:	Additional deductions per TARD	
	Additional disallowed input VAT pertaining to purchases of capital goods subject for deferment	985,053.33
	Ripened portion of deferred input VAT not reflected per 4th quarter VAT return	105,458.00
	Purchases from big-ticket supplier without proof of payment	28,140.00
	Additional output VAT assessment (interest; Related party transaction and retirement asset)	399,301.28
	Output VAT assessment (unaccounted miscellaneous VAT invoices)	10,925.85
	Allocated input VAT attributable to sales without approved application for zero-rating	**19,802,406.57**
Total other deductions and additional deduction per TARD		**₱21,604,744.06**
Amount approved		**₱22,799,638.08**

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(5) **Those considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and **other special laws**;" *(Emphases added)*

[85] "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory*. – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphases added)*

[86] "SECTION 24. *Exemption form National and Local Taxes*. – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE**. xxx." *(Emphases added)*

[87] Exhibit "R-4", BIR Records (Exhibit "R-5"), pp. 307 to 309, at p. 307; Refer also to Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 288.

[88] Refer to Par. 7, Admitted Facts, JSFI, Docket – Vol. I, p. 288.

The foregoing findings are the result of the BIR's examination of the supporting documents submitted by petitioner at the administrative level. It is likewise noteworthy that of all the disallowances or deductions made by the BIR, petitioner only questions, in the instant *Petition for Review*,[89] the specific disallowance or deduction in the amount of ₱19,802,406.57. Thus, as for the other disallowances or deductions in the aggregate amount of ₱1,802,337.49 (₱21,604,744.06 less ₱19,802,406.57), petitioner admits that the same were validly made by the BIR. As a corollary, the foregoing implies that there is no more lingering issue as to the refundability of ₱19,802,406.57, except that it did not involve a prior approved application for VAT zero-rating the sales of petitioner to its PEZA-registered clients. In other words, insofar as the said amount of ₱19,802,406.57 is concerned, there is no more any question: (1) whether the said amount represents transitional input taxes, (2) whether the said input VAT are due or paid, (3) whether the same is attributable to the sales to PEZA-registered entities, or (4) whether the same amount have been applied against output taxes during the subject period and/or in the succeeding period. Moreover, the BIR's finding regarding the amount of ₱19,802,406.57 further implies that had there been a prior approved application for VAT zero-rating, the same represents a refundable input VAT of petitioner.

At the risk of being repetitive, the BIR's requirement of a prior approved application for VAT zero-rating has no basis in law and is in direct contravention of the Supreme Court's ruling in the *Seagate* case. Thus, the amount of ₱19,802,406.57, which represents the "[a]*llocated input VAT attributable to sales without approved application for zero-rating*", must perforce be allowed as a refundable amount in favor of petitioner.

It is a well-settled doctrine that a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer. However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then this Court shall not hesitate to grant the same.[90]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.** Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE,**

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[89] Pars. 16 to 18, *Petition for Review,* Docket – Vol. I, pp. 14 to 15.
[90] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180043, July 14, 2009)

in favor of petitioner, the amount of **₱19,802,406.57**, representing part of petitioner's unutilized and/or unapplied and excess input VAT attributable to its zero-rated sales for the period covering the 3rd and 4th quarters of 2016.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
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