REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**SPECIAL THIRD DIVISION**

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| MAXIMA MACHINERIES, INC., Petitioner, | CTA CASE NO. 9358 |
| | Members: |
| -versus- | FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: MAR 1 1 2019 8:52 a.m. |

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## DECISION

**Fabon-Victorino, J.:**

This Petition for Review[1] filed by Maxima Machineries, Inc. on May 26, 2016, prays for the issuance of a tax credit certificate (TCC) in the amount of Thirteen Million Four Hundred Forty-Eight Thousand Seven Hundred Twenty-One Pesos and Seventy-Four Centavos (₱13,448,721.74), allegedly representing its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the period covering October 1, 2013 to December 31, 2013, or the third (3rd) quarter of fiscal year (FY) ending March 31, 2014.

## THE FACTS

Petitioner Maxima Machineries, Inc. is a domestic corporation, with principal business address at 871 Quezon Avenue, Barangay Sta. Cruz, Quezon City.[2] It is a VAT-

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[1] Docket, vol. 1, pp. 10-49.
[2] Exhibits "P-1" and "P-2".

registered taxpayer, with Taxpayer Identification No. (TIN) 006-618-023-000.[3]

Per its Amended Articles of Incorporation[4], petitioner's primary purpose is to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesaler, importers and exporters, except the manufacture of food, drugs and cosmetics.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner claims that for the period covering October 1 to December 31, 2013, it has accumulated unutilized input VAT arising from its zero-rated transactions in the total amount of ₱13,448,721.74.[5] The said zero-rated transactions allegedly originated from its sale of goods and services to export-oriented entities registered with the Philippine Economic Zone Authority (PEZA), such as the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), and the Board of Investments (BOI).[6] It also rendered services to Marubeni Corporation of Japan[7], a non-resident foreign corporation from which it received indent commission as payment.

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[3] Exhibit "P-3".
[4] Exhibit "P-2-A".
[5] Par. 3, Memorandum for the Petitioner, docket, vol. 3, p. 1208.
[6] Exhibits "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", and "P-11".
[7] Exhibit "P-12".

On April 23, 2014, petitioner filed with the BIR its Quarterly VAT Return for the 3rd quarter of FY ending March 31, 2014.[8]

On December 29, 2015, petitioner filed with the BIR Large Taxpayers Regular Audit Division I an Application for Tax Credits/Refunds, together with a transmittal letter of supporting documents dated December 28, 2015[9], requesting for issuance of a TCC for its alleged unutilized input VAT for the 3rd quarter of FY ending March 31, 2014 in the total amount of ₱13,448,721.74.[10]

On February 4, 2016, petitioner received Letter of Authority (LOA) No. eLA201200042234 dated January 14, 2016, authorizing Revenue Officers (ROs) Jan Andre Abellera and Ruby Ann Oradia and Group Supervisor Gilquin Tolentino of Revenue District Office (RDO) No. 116-Regular Large Taxpayers Audit Division I, to examine its books of accounts and other accounting records for VAT for the period covering October 1, 2013 to December 31, 2013.[11]

On May 26, 2016, petitioner filed the instant Petition for Review[12] on the ground of inaction on the part of respondent.

In his Answer[13] filed on June 24, 2016, respondent avers, among others, that petitioner must show that it has complied with Section 112 of the NIRC of 1997, as amended, particularly on the prescriptive periods and has submitted all the documentary and evidentiary requirements thereof. Further, the burden of proof is on petitioner to establish its right to refund and failure to sustain the burden is fatal to its cause.

Respondent also claims that petitioner failed to comply with the invoicing and accounting requirements mandated under Sections 113, 114 and 236 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 16-2005. Further, petitioner failed to submit all supporting and relevant documents required under Revenue

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[8] Exhibit "P-17".
[9] Exhibits "P-21" and "P-21-a".
[10] Exhibits "P-20" and "P-20-A".
[11] Exhibit "P-38".
[12] Docket, vol. 1, pp. 10-50.
[13] Docket, vol. 2, pp. 287-296.

Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of its application for refund, rendering its administrative action pro-forma, hence, deemed not filed and thereby depriving the Court of jurisdiction to entertain the present action.

Finally, like tax exemptions, claims for refund/TCC are construed strictly against the taxpayer, says respondent.[14]

After the pre-trial conference[15], a Pre-Trial Order was issued on March 16, 2017[16].

During the trial, petitioner presented Yusuke Yamada, Jenelyn Palayon-Tagao and Neil U. Sison, as its witnesses.

Petitioner's Chief Financial Officer (CFO) **Yusuke Yamada** testified[17] that he supervises petitioner's compliance with pertinent laws and government rules and regulations and oversees petitioner's payment of taxes, licenses and fees. He has direct control and supervision of petitioner's Finance Department, thus, has access to its corporate and financial documents, tax returns, BIR Certificate of Registration, permits, sales invoices, official receipts and other accounting record.

Petitioner's primary business purpose is to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares, and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesaler, importers and exporters, except the manufacture of food, drugs and cosmetics.[18]

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[14] *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue*, 280 SCRA 459; *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, 244 SCRA 332, both cited in *Benguet Corporation v. Commissioner of Internal Revenue*, CTA Case No. 5392, Oct. 30, 1998.
[15] Minutes of the Hearing, docket, vol. 2, p. 618.
[16] Docket, vol. 2, pp. 661-667.
[17] Exhibits "P-44" and "P-44-a".
[18] Exhibit "P-2-A".

During the period October 1, 2013 to December 31, 2013, petitioner sold machineries and/or spare parts and provided services to various customers/clients, including export-oriented entities registered with the PEZA[19], such as SBMA[20], CDC[21], BOI[22] and Cagayan Economic Zone Authority (CEZA)[23]. It likewise rendered services to Marubeni Corporation of Japan, a non-resident foreign corporation[24], as its agent to deal with the latter's local customer. By virtue of its contract with Marubeni, petitioner arranged the placing of the orders of the local customers to Marubeni Corporation. For acting as agent, petitioner received indent commission for all orders placed for Marubeni Corporation's supplier.

The witness further testified that petitioner's sales to all its customers/clients during the period October 1, 2013 to December 31, 2013, were all covered with VAT zero-rated invoices, which have been printed in accordance with the BIR-issued Authority to Print (ATP) rules.[25]

On April 23, 2014, petitioner filed its Quarterly VAT Return[26] for the period October 1, 2013 to December 31, 2013, showing VATable sales of ₱661,923,963.52, sale to the Government in the amount of ₱2,994,386.35, and output tax due for the quarter on VATable sales in the total amount of ₱79,430,875.62 and on sale to the Government in the amount of ₱359,326.36 which were totally netted out against the allowable input tax carried over from the previous quarter in the amount of ₱320,781,112.70 and deferred input tax on capital goods exceeding ₱1 Million from previous quarter in the total amount of ₱2,926,925.56, or the total amount of ₱323,708,038.26. Further, petitioner's VAT zero-rated sales for the same period totaled ₱323,992,010.42 and its domestic purchases of goods other than capital goods[27], importation of goods other that capital goods and domestic purchases of services totaled ₱1,051,858,077.51[28], on which it generated input taxes totaling ₱451,441,918.01.

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[19] Exhibit "P-4"
[20] Exhibits "P-6", "P-7", "P-8: and "P-10".
[21] Exhibit "P-11".
[22] Exhibit "P-5".
[23] Exhibit "P-9".
[24] Exhibit "P-12".
[25] Exhibits "P-13" to "P-16".
[26] Exhibit "P-17".
[27] Exhibit "P-18".
[28] Exhibit "P-19".

Allegedly, petitioner's excess input VAT directly attributable to its VAT zero-rated sales for the 3rd quarter of FY ending March 31, 2014 in the total amount of ₱13,448,721.74, comprised of the excess input tax credits in the amount of ₱12,152,302.51 that was allocated to VAT zero-rated sales, and the input tax in the amount of ₱1,296,419.23 that was directly attributable to VAT zero-rated sales during the 3rd quarter of FY ending March 31, 2014.

On December 29, 2015, petitioner filed with the BIR Large Taxpayers Service-Regular LT Audit Division an administrative claim[29] for issuance of a TCC in the total amount of ₱13,448,721.74, allegedly representing its excess input VAT which were directly attributable to its VAT zero-rated sales for the 3rd quarter of FY ending March 31, 2014, to recover the excess input VAT for the period October 1, 2013 to December 31, 2013. Petitioner attached to the said administrative claim a Transmittal Letter of Supporting Documents dated December 28, 2015[30], which he signed addressed to Nestor A. Valeroso, ACIR, Large Taxpayers Service and Cesar D. Escalada, Chief Regular LT Audit Division I.[31] Also attached was a Sworn Certification dated December 10, 2015[32] certifying that the documents submitted were complete for the purposes of processing petitioner's claim for issuance of a TCC.

Thereafter, the BIR prepared a checklist of requirements[33] for VAT credit/refund indicating that petitioner complied with the requirements relative to the administrative claim for the issuance of a TCC.

On January 14, 2016, the BIR issued a LOA[34] authorizing ROs Jan Andre Abellera, Ruby Ann Orandia and Group Supervisor Gilquin Tolentino of RDO No. 116-Regular LT Audit Division I, to examine petitioner's books of accounts and other accounting records for VAT for the period October 1, 2013 to December 31, 2013. Series of discussions between the BIR examiners and petitioner's representatives on supporting

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[29] Exhibit "P-20".
[30] Exhibit "P-21".
[31] Exhibit "P-21-a".
[32] Exhibit "P-22".
[33] Exhibit "P-23".
[34] Exhibit "P-38".

documents followed until respondent's 120-day period to process the claim expired without any action taken thereto.

On May 26, 2016, petitioner filed the instant Petition for Review.

Witness added that the Certifications from PEZA and SBMA came from different sources. Some were requested by petitioner's Sales and Accounting Departments; the others were provided by its customers. He further declared that he supervised the preparation and filing, after his approval, of petition's VAT Returns and all the attached supporting documents.

He further declared that petitioner has forty-three (43) local clients which are registered with either PEZA, SBMA, CDC, BOI or CEZA and one (1) foreign entity, Marubeni Corporation.

Witness, **Jenelyn Palayon-Tagao** declared[35] that as petitioner's Chief for Government Compliance of Finance Department, she checks petitioner's filing and payment of local and national internal revenue taxes. She also handles the inspection, investigation, examination by various government agencies, and monitors the schedules of all the due dates for submission of government requirements.

On April 23, 2014[36], she filed petitioner's Quarterly VAT Return for the period October 1, 2013 to December 31, 2013 indicating therein petitioner's total allowable input taxes carried over from the previous period in the amount of ₱320,781,112.70 while its deferred input tax on capital goods exceeding ₱1 Million from previous quarter amounted to ₱2,926,925.56. Also indicated in the said Quarterly VAT Return was petitioner's zero-rated sales of ₱323,992,010.42 and its domestic purchases of goods other than capital goods, importation of goods other than capital goods and domestic purchases of services for the same period in the total amount of ₱1,051,858,077.51, on which petitioner generated input taxes in the sum of ₱451,441,918.01.

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[35] Exhibits "P-45" and "P-45-a".
[36] Exhibit "P-17".

The witness further testified that the output taxes due on VATable sales of ₱79,430,875.62 and on sales to the Government of ₱359,326.36 were totally netted out against the allowable input tax carried over from previous quarter of ₱320,781,112.70 and deferred input tax on capital goods exceeding ₱1 Million from previous quarter of ₱2,926,925.56, or the sum of ₱323,708,038.26.

The amount of ₱13,448,721.74 pertaining to petitioner's excess input VAT was computed by deducting the amounts of ₱3,437,452.15, ₱511,238.50, ₱251,435.83 and ₱87,148,126.35, pertaining to the input tax on VATable sales of machineries from current purchases, input tax on zero-rated sale of machineries from current purchases, input tax directly identified and allocable to government taxes and input tax on current purchases of machineries not sold within the quarter, respectively, from the total input taxes of ₱127,929,095.22. Thus, the balance of ₱37,092,080.89, representing total input tax was allocated to VATable sales, VAT zero-rated sales and sales to the Government of machineries and spare parts.

In addition to the ₱12,152,302.51 of input taxes allocable to petitioner's zero-rated sales during the 3rd Quarter of FY ending March 31, 2014, input taxes on zero-rated sales of machineries which were imported in the current period and input tax in zero-rated sales of machineries which were imported in prior years but sold only during the said quarter, in the amounts of ₱511,238.50 and ₱785,180.73, respectively, were added to arrive at the amount of ₱13,448,721.74.

The said amount of ₱13,448,721.74 allocated and directly attributed to petitioner's VAT zero-rated sales for the period October 1, 2013 to December 31, 2013 had not been utilized and applied against any output tax in FY ending March 31, 2014 and subsequent quarters, prompting petitioner to file an Application for Tax Credits/Refunds[37] for the issuance of TCC for said amount of excess input VAT on December 29, 2015.

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[37] Exhibit "P-20".

She claimed that petitioner is entitled to the issuance of TCC in the amount of ₱13,448,721.74 since its sales to BOI-registered clients were zero-rated.

The last to take the witness stand for petitioner was the Independent Certified Public Accountant (ICPA) **Neil U. Sison.** He declared[38] that he audited and evaluated petitioner's documents and records in support of its claim for issuance of TCC in the amount of ₱13,448,721.74, representing its excess and unutilized input VAT on its domestic purchases of goods and services and importation of capital goods which are directly attributable to its VAT zero-rated sales for the period October 1, 2013 to December 31, 2013.

Per his examination and verification of petitioner's pertinent documents and as stated in his Final ICPA Report[39], petitioner is entitled to a tax refund/credit of its excess and unutilized input VAT but in the reduced amount of ₱7,535,269.85 while the amount of ₱5,745,957.25 should be disallowed pursuant to Section 106 (A) to (C) of the NIRC of 1997, as amended, governing sales to entities whose sales are zero-rated under special laws and rules. Petitioner made zero-rated sales in the amount of ₱323,992,010.42, on which the corresponding allocated input tax is ₱7,535,269.85.

After formal offer of exhibits on September 13, 2017[40] and November 7, 2017[41], petitioner rested per Resolutions dated October 19, 2017[42] and January 5, 2018[43].

Respondent, on the other hand, did not present any evidence in support of its defense.[44]

The case was submitted for decision on March 21, 2018[45], after the parties' submission of their respective memoranda.

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[38] Exhibits "P-47" and "P-47-a".
[39] Exhibit "P-46".
[40] Docket, vol. 2, pp. 794-822.
[41] Docket, vol. 3, pp. 1158-1179.
[42] Docket, vol. 3, pp. 1154-1157.
[43] Docket, vol. 3, pp. 1186-1190.
[44] Order dated January 23, 2018, docket, vol. 3, p. 1192.
[45] Resolution, docket, vol. 3, p. 1268.

## THE ISSUE

The following issue[46] was raised for the Court's resolution:

> Whether the petitioner is entitled to the issuance of tax credit certificates of its alleged excess and unutilized input value-added tax (VAT), which are allocable and directly attributable to its VAT zero-rated sales for the period from October 1, 2013 to December 31, 2013 in the amount of ₱13,448,721.74."

## THE RULING OF THE COURT

Sections 112(A) and (C) of the NIRC of 1997, as amended, pertinently provides:

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

[46]JSFI, docket, vol. 2, p. 625.

> transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the 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.
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> 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.

Thus, the following requisites must be satisfied to be entitled to refund/TCC of input tax due or paid attributable to zero-rated or effectively zero-rated sales:

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

**Petitioner is a VAT-registered taxpayer.**

It was established that petitioner is a registered VAT taxpayer, with TIN 006-618-023-000, per its BIR Certificate of Registration No. OCN 8RC0000019980.[47]

**Petitioner's administrative and judicial claims were seasonably filed.**

Per Section 112(A) of the NIRC of 1997, as amended, petitioner had two (2) years to file a claim for refund/TCC of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the relevant sales were made. Evidence shows that petitioner likewise met this requisite.

The present claim covers the 3rd quarter of FY ending March 31, 2014, which closed on December 31, 2013. Counting two years therefrom, petitioner had until December 31, 2015 within which to file its administrative claim for refund or tax credit. Evidently, petitioner's administrative claim[48] was timely filed on December 29, 2015.

As to the timeliness of petitioner's judicial claim for refund, Section 112(C) of the NIRC of 1997, as amended speaks of two periods for that purpose, namely: (1) the period of 120 days for respondent to act on the administrative claim for refund/TCC; and (2) the 30-day period from notice of respondent's adverse ruling or the lapse of the 120 period without any action from respondent, within which to file a judicial claim with the Court of Tax Appeals.[49]

In the landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[50], the Supreme Court held that the taxpayer can seek judicial review of its claim for refund/TCC in either of the following ways: (1) file

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[47] Exhibit "P-3".
[48] Exhibits "P-20", "P-21", and "P-22".
[49] *ROHM Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[50] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

the judicial claim within 30 days after the respondent denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if respondent does not act within that period.[51]

Accordingly, from the filing of petitioner's administrative claim together with the supporting documents on December 29, 2015, respondent had 120 days or until April 27, 2016 to act on the said claim. Since respondent failed to act on the claim on or before April 27, 2016, petitioner had 30 days or until May 27, 2016, within which to file its judicial claim before this Court. Evidently, the instant Petition for Review was also seasonably filed on May 26, 2016.

**Petitioner is engaged in zero-rated or effectively zero-rated sales during the 3rd Quarter of FY ending March 31, 2014**

As stated in its Amended Articles of Incorporation, petitioner's primary purpose is to buy, sell, barter, trade, lease out, manufacture, import, export or otherwise acquire, dispose of, and deal with any kind of goods, wares and merchandise such as spare parts or replacement parts and/or complete assemblies of agricultural, industrial or commercial machineries, automobiles, buses, trucks, tractors or other motor vehicles and/or related machineries and equipment of every kind and description and to carry on such business as manufacturers, wholesalers, importers and exporters, except the manufacture of food, drugs and cosmetics.[52]

Petitioner maintains that its sales of goods and services to entities registered with the PEZA, SBMA, CDA, CEZA, and BOI during the period covering October 1, 2013 to December 31, 2013 were subject to zero percent (0%) VAT, pursuant to Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended. Likewise, petitioner claims that the indent commissions earned from its sales of services during the same period to Marubeni Corporation Japan, a non-resident foreign corporation not engaged in business in the

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[51] *Supra,* Note 52.
[52] Exhibits "P-2" and "P-2-A".

Philippines, were also subject to VAT at zero percent (0%) rate, based on Section 108(B)(2) of the same Code.

Sections 106(A)(2)(a)(5) and (c) and 108(B)(2) and (3) of the NIRC of 1997, as amended, read as follows:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
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> (A) *Rate and Base of Tax.* – xxx
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> 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:
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> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> (c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."
>
> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the

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

xxx xxx xxx

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Relative thereto, Sections 4.106-5 and 4.108-5 of RR No. 16-2005, as amended, also provide:

SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties*. – xxx

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

(a) *Export sales*. – '*Export Sales*' shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2)sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones**; **(3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227;** (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and ***Provided, finally*, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**.

xxx xxx xxx

> (c) *'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'.* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* **sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate**. *(Emphasis supplied)*
>
> SEC. 4.108-5. *Zero-Rated Sale of Services.* –
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (2) **Services other than processing, manufacturing or re-packing** rendered to a person engaged in business **conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**; *(Emphasis supplied)*

Further, R.A. No. 7227, as amended by R.A. No. 9400, otherwise known as "Bases Conversion and Development Act of 1992", RA No. 7916, as amended, otherwise known as "The

Special Economic Zone Act of 1995", and R.A. No. 7922, otherwise known as "Cagayan Special Economic Zone Act of 1995", provide as follows:

REPUBLIC ACT NO. 9400

AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES

SECTION 1. Section 12 of Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, is hereby amended to read as follows:

SEC. 12. *Subic Special Economic Zone*. – xxx

xxx xxx xxx

(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. xxx

xxx xxx xxx

SEC. 2. Section 15 of the Republic Act No. 7227, as amended, is hereby amended to read as follows:

> SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* – Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.
>
> The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. xxx
>
> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. xxx
>
> xxx xxx xxx
>
> Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones."

REPUBLIC ACT NO. 7916
(as amended by Republic Act No. 8748)

AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) AND FOR OTHER PURPOSES.

xxx xxx xxx

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.

xxx xxx xxx

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"

REPUBLIC ACT NO. 7922

AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT IN THE MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* – This Act shall be known as the 'Cagayan Special Economic Zone Act of 1995'.

xxx xxx xxx

SEC. 3. *The Cagayan Special Economic Zone and Free Port.* – In accordance with the foregoing declared policy, there is hereby established a special economic zone and free port, to be known as the Cagayan Special Economic zone, hereinafter known as the Zone, which shall cover the entire area embraced by the Municipality of Santa Ana and the islands of Fuga, Barit, and Mabbag in the Municipality of Aparri, Province of Cagayan.

SEC. 4. *Governing Principles.* – The Cagayan Special Economic Zone shall be managed and operated under the following principles:

xxx xxx xxx

(b) Business establishments operating within the Zone shall be entitled to the existing fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority (EPZA), or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987;

(c) Any provision of existing law, rules or regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the Zone. xxx"

Moreover, in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[53], the Supreme Court elucidated on the VAT exemption of entities within ECOZONES, to wit:

This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which**

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[53] G.R. No. 150154, August 9, 2005.

**establishes the fiction that ECOZONES are foreign territory.**

xxx An ECOZONE or a Special Economic Zone has been described as —

> ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an 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.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

**The Philippine VAT system adheres to the Cross-Border Doctrine**, **according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT[54]. (*Emphasis supplied*)

Hence, an Ecozone is viewed as a foreign territory by legal fiction, thus, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the Ecozone are considered exports to a foreign country subject to 0% VAT.

Applying the foregoing laws, regulations and judicial disquisitions to the instant case, it is clear that petitioner's sales of goods and services to its customers, which are entities located inside the Ecozones and/or BOI-registered, whose products are 100% exported, are considered "export sales" and therefore, subject to 0% VAT rate.

To prove that its clients are registered with the PEZA, SBMA, CDA, CEZA, and BOI, petitioner presented various Certifications issued by such agencies, as well the letter of PEZA Director General Charito B. Plaza dated October 6, 2016,[55] addressed to petitioner's CFO, Yusuke Yamada, and the Certification issued on October 18, 2016 by the BOI Director, Incentive Service, Erlinda F. Arcellana,[56] confirming the issuance of VAT zero-rating certifications to certain clients of petitioner. Listed below are petitioner's clients with the corresponding proof of VAT zero-rating:

| **Name of Customer** | **Proof of VAT Zero-rating** | **Exhibit No.** | **Registration Date** | **Validity Period** |
|---|---|---|---|---|
| ADNAMA MINING RESOURCES | BOI Cert. No. 2013-098; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-9; P-5 | Jul 9, 2008 | May 20, 2013 to December 31, 2013 |
| ASIA INTERNATIONAL AUCTIONEERS INC | SBMA Cert. of Tax Exemption | P-46-K-10; P-6 | | May 24, 2013 to May 23, 2014 |
| ATLANTIC GULF AND PACIFIC COMPANY OF MANILA, INCORPORATED (AG&P) | PEZA Cert. No. 2013-0563; Confirmation Letter from PEZA | P-46-K-1; P-4 | Aug 6, 2008 | TY 2013 |
| BERONG NICKEL CORPORATION | BOI Cert. No. 2013-040; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-11; P-5 | May 28, 2007 | January 1, 2013 to December 31, 2013 |
| BIGLIFT PROPERTIES & DEVELOPMENT CORPORATION | SBMA Cert. of Tax Exemption | P-46-K-8 | | October 16, 2013 to October 15, 2014 |
| CAGDIANAO MINING CORP. | BOI Cert. No. 2013-037; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-13; P-5 | Sep 13, 1999 | January 1, 2013 to December 31, 2013 |

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[54] Now at 12% VAT rate.
[55] Exhibit "P-4".
[56] Exhibit "P-5".

| | | | | |
|---|---|---|---|---|
| CARMEN COPPER CORP. | BOI Certification; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-14; P-5 | Dec 13, 2006 | January 1, 2013 to December 31, 2013 |
| CEBU TOYO CORPORATION (CTC) | PEZA Certificate No. 2013-1630; Confirmation Letter from PEZA | P-46-K-2; P-4 | Feb 8, 1995 | TY 2013 |
| CORAL BAY NICKEL CORPORATION (CBNC) | PEZA Cert. No. 2013-0301; Confirmation Letter from PEZA | P-46-K-15; P-4 | Dec 27, 2002 | TY 2013 |
| C.T.P. CONSTRUCTION AND MINING CORPORATION | BOI Cert. No. 2013-086; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-16; P-5 | Apr 17, 2008 | January 1, 2013 to December 31, 2013 |
| FCF MINERAL CORP. | BOI Cert. No. 2013-027; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-17; P-5 | Nov 4, 2010 | January 1, 2013 to December 31, 2013 |
| HHJC-PHIL., INC. | SBMA Cert. of Tax Exemption | P-7 | | March 5, 2013 to March 4, 2014 |
| HINATUAN MINING CORPORATION | BOI Certification Letter issued on Oct 18, 2016 | P-5 | Oct 6, 1980 / May 27, 1991 | January 1, 2013 to December 31, 2013 |
| HONDA PARTS MANUFACTURING CORPORATION (HPMC) | Confirmation Letter from PEZA | P-4 | Jan 18, 1993 | TY 2013 |
| HOUSE TECHNOLOGY INDUSTRIES PTE., LTD. (HTIPL) | PEZA Cert. No. 2013-0059; Confirmation Letter from PEZA | P-46-K-18; P-4 | Jan 5, 1996 | TY 2013 |
| HYS-YACHT PHILS. LTD. CO. INC. | SBMA Cert. of Tax Exemption | P-46-K-19; P-8 | | July 15, 2013 to July 14, 2014 |
| INTEVALUE SERVICES INC. | CEZA Certification | P-46-K-20; P-9 | Aug 15, 2010 | September 9, 2013 to August 15, 2014 |
| JAE PHILIPPINES, INC. (JAEPI) | PEZA Cert. No. 2013-0114; Confirmation Letter from PEZA | P-46-K-4; P-4 | Nov 11, 1999 | TY 2013 |
| JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC | SBMA Cert. of Tax Exemption | P-46-K-21 | | Oct 3, 2012 to Oct 2, 2013 |
| JAMJLE PROPERTIES (SUBIC) AND DEVELOPMENT CORPORATION (formerly: JAMJLE EQUIPMENTS & GENERAL MERCHANDISE INC) | SBMA Cert. of Tax Exemption | P-46-K-23 | | Nov 27, 2013 to Nov 26, 2014 |
| MAJESTIC LANDSCAPE CORPORATION (MLC) | PEZA Cert. No. 2013-0047; Confirmation Letter from PEZA | P-46-K-22; P-4 | July 18, 2002 / Mar 8, 2012 | TY 2013 |
| MARCVENTURES MINING AND DEVELOPMENT CORPORATION | BOI Cert. No. 2013-106; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-3; P-5 | Jul 19, 2010 | September 20 to December 31, 2013; TY 2014 |
| PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR) | PEZA Cert. No. 2013-0334; Confirmation Letter from PEZA | P-46-K-5; P-4 | Sep 23, 1982 | TY 2013 |
| PHIL. BATTERIES INCORPORATED (PBI) | Confirmation Letter from PEZA | P-4 | Jun 7, 2006 | TY 2013 |
| PHILIPPINE MAKOTO CORPORATION (PMC) | Confirmation Letter from PEZA | P-4 | Oct 1, 1993 | TY 2013 |
| PHILIPPINE SINTER CORPORATION (PSC) | Confirmation Letter from PEZA | P-4 | Jan 31, 2011 | TY 2013 |
| PLATINUM GROUP METALS CORPORATION (PGMC) | BOI Cert. No. 2013-057; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-28; P-5 | Nov 16, 2007 | January 17, 2013 to December 31, 2013 |
| REDONDO QUARRY AND DEVELOPMENT CORPORATION | SBMA Cert. of Tax Exemption | P-46-K-32 | | Aug 24, 2012 to Aug 23, 2013 |
| RIO TUBA NICKEL MINING CORPORATION | BOI Cert. No. 2013-043; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-12; P-5 | Mar 1, 1974 / Aug 16, 2004 | January 1, 2013 to December 31, 2013 |

| | | | | |
|---|---|---|---|---|
| SCAD SERVICES (S) PTE., LTD. (PHIL. BRANCH) (SSPL) | PEZA Cert. No. 2013-0046; Confirmation Letters from PEZA | P-46-K-24; P-4 | Oct 4, 1995 | TY 2013 |
| ST. LUKE'S MEDICAL CENTER (GLOBAL CITY) INC. (SLMCGCI) | PEZA Cert. No. 2013-1014; Confirmation Letter from PEZA | P-46-K-25; P-4 | Sep 1, 2008 | until December 31, 2013 |
| SUBIC CONSOLIDATED PROJECTS INC | SBMA Cert. of Tax Exemption | P-46-K-26; P-10 | | January 4, 2013 to January 3, 2014 |
| TAGANITO HPAL NICKEL CORPORATION (THPAL) | PEZA Cert. No. 2013-1288; Confirmation Letter from PEZA | P-46-K-33; P-4 | Jan 7, 2010 | TY 2013 |
| TAGANITO MINING CORPORATION | BOI Cert. No. 2013-011; BOI Certification Letter issued on Oct 18, 2016 | P-46-K-27; P-5 | Jul 23, 1998 | January 1, 2013 to December 31, 2013 |
| TRANS ASIA CONSTRUCTION DEVELOPMENT CORP. | CDC Cert. of Registration and Tax Exemption | P-46-K-29; P-11 | | April 1, 2013 to March 31, 2016 |
| TRAVELLERS INTERNATIONAL HOTEL GROUP, INC (TIHGI) | PEZA Cert. No. 2013-0120/2013-1719; Confirmation Letter from PEZA | P-46-K-6; P-4 | Dec 16, 2008 | TY 2013 |
| UNICHAMP MINERAL PHILIPPINES INC. (UMPI) | PEZA Cert No. 2013-1619; Confirmation Letter from PEZA | P-46-K-7; P-4 | May 3, 2013 | TY 2013 |
| VISAYAS SLAKED LIME CORP (VSLC) | PEZA Cert. No. 2013-0908; Confirmation Letter from PEZA | P-46-K-30; P-4 | Aug 11, 2010 | TY 2013 |
| WU KONG SINGAPORE PTE. LTD. (PHIL. BRANCH) (WKSPL) | PEZA Cert. No. 2013-0055; Confirmation Letter from PEZA | P-46-K-31; P-4 | Feb 17, 1995 / Nov 9, 2011 | TY 2013 |

Thus, petitioner's sales to the afore-mentioned entities for the period covering the 3rd quarter of FY ending March 31, 2014 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices and official receipts (ORs), in accordance with Sections 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-05, which provide as follows:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (1) A **VAT invoice for every sale**, barter or exchange **of goods or properties**; and
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale**, barter **or exchange of services**.

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

SEC. 4.113-1. ***Invoicing Requirements***. –

(A) **A VAT-registered person shall issue:** –

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

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

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

> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> **(B) Information contained in VAT invoice or VAT official receipt**. - The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

With respect to petitioner's sale of services to Marubeni Corporation, a non-resident foreign corporation, petitioner should prove that its sales of services to the latter for the 3rd quarter of FY ending March 31, 2014 qualify as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

For the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must concur:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

✓

3. the recipient of such services is doing business outside the Philippines.[57]

To substantiate its claim that the indent commissions it received from its non-resident client, Marubeni Corporation Japan, should be considered as zero-rated sales, petitioner submitted the official receipts[58] it issued thereto. However, said sales were not supported by the corresponding foreign currency inward remittances. Further, petitioner failed to establish that such sales were other than processing, manufacturing or repacking of goods and that the recipient of such service was doing business outside the Philippines. Moreover, although petitioner presented the Authenticated Articles of Incorporation of Marubeni Corporation[59], the same, standing alone, was not sufficient proof that the latter is a non-resident foreign corporation doing business outside the Philippines.

As held by Court *En Banc* in *Deutsche Knowledge Services, Pte Ltd. v. Commissioner of Internal Revenue*[60], to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) **and** certificate/articles of foreign incorporation/association, and that there is no other indication that the recipient of the services is doing business in the Philippines.

While the soft copy[61] of the exhibits marked by the ICPA contained a document entitled "Certification of Non-Registration of Company"[62], the same cannot be given credence as it was not included in the exhibits formally offered and admitted by the Court[63]. Thus, petitioner's sales to Marubeni Corporation Japan failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

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[57] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007.
[58] Exhibits "P-Q-1" to "P-Q-4".
[59] Exhibit "P-12".
[60] CTA EB Nos. 1244 and 1345, March 30, 2017.
[61] Exhibit "P-48".
[62] "Exhibit P-46-K-34.4".
[63] See *Dizon v. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008.

In its Quarterly VAT Return for the 3rd quarter of FY ending March 31, 2014,[64] petitioner reported total sales of ₱988,910,360.29, which included zero-rated sales in the amount of ₱323,992,010.42, as detailed below:

| | |
|---|---|
| VAT Sales-Private | ₱ 661,923,963.52 |
| Sales to Government | 2,994,386.35 |
| Zero-Rated Sales | 323,992,010.42 |
| **Total** | **₱988,910,360.29** |

In support of its zero-rated sales and to prove compliance with the VAT invoicing requirements as provided by the afore-quoted laws and regulations, petitioner submitted its Schedule of Zero-Rated Sales[65] and the related invoices and official receipts[66], which were examined by the ICPA.

In his report, the ICPA found that petitioner's sales in the amount of ₱220,205,035.42 qualify for VAT zero-rating, while the remaining amount of ₱103,786,975.00 do not qualify as zero-rated sales for petitioner's failure to comply with the invoicing requirements as prescribed under the rules. The ICPA's findings are summarized as follows:[67]

| Exhibit Reference | Description | Amount |
|---|---|---|
| P-46-N | Charge sales invoices properly classified as zero-rated sales with permit on zero-rating expiring on December 31, 2013 printed in the invoice | ₱ 167,731,673.25 |
| P-46-O | Charge sales invoices properly classified as zero-rated sales with permit on zero-rating expiring on September 30, 2013 and prior (as printed on the invoice) but supported with updated Certificate of Zero-rating expiring December 31, 2013 or later | 12,884,051.33 |
| P-46-P | Zero-rated sales properly supported by invoice with stamp "zero-rated" | 33,440,979.93 |
| P-46-Q | Zero-rated transaction related to export sales supported by Bank Certificate of inward remittance on the Foreign Currency Denominated Sale | 6,148,330.91 |

[64] Exhibit "P-17".
[65] Exhibit "P-46-J-2".
[66] Exhibits "P-46-N-1" to "P-46-N-337", "P-46-O-1" to "P-46-O-198", "P-46-O-200" to "P-46-O-256", "P-46-P-1" to "P-46-P-127", "P-46-Q-1" to "P-46-Q-4", "P-46-R-1" to "P-46-R-102", "P-46-S-1" to "P-46-S-8", "P-46-T-1" to "P-46-T-44", "P-46-U-1" to "P-46-U-91", and "P-46-AM".
[67] Exhibit "P-46".

| | | |
|---|---|---|
| ***Total Valid Zero-Rated Sales*** | | ***₱ 220,205,035.42*** |
| | | |
| P-46-R | Zero-rated sales w/o certificates of zero-rating from customers | ₱ 18,983,664.04 |
| P-46-S | Zero-rated sales properly supported by official receipts, but not properly classified as zero-rated sales (w/o stamp "zero-rated sales") | 1,376,578.11 |
| P-46-T | Zero-rated sales properly supported by charge sales invoices dated outside the covered fiscal period | 7,062,857.59 |
| P-46-U | Zero-rated sales not properly supported by charge sales invoices or ORs (Bills and Debit/credit notes) | 5,071,981.14 |
| P-46-AM | Zero-rated sales with no supporting documents | 71,291,894.12 |
| ***Total Invalid Zero-Rated Sales*** | | ***₱ 103,786,975.00*** |
| **Total Zero-Rated Sales** | | **₱ 323,992,010.42** |

The Court sustains the above findings of the ICPA insofar as the denial of VAT zero-rating in the amount of ₱103,786,975.00 for petitioner's failure to comply with the invoicing requirements as prescribed under the afore-quoted law and regulations. Further, the Court finds that the reported zero-rated sales in the amount of ₱12,232,970.77 should also be denied VAT zero-rating for the following reasons:

| Exhibit No. | Customer Name | Amount |
|---|---|---|
| ***1. Sale of good supported by VAT invoice dated outside the period of claim*** | | |
| P-46-N-2 | Adnama Mining Resources Inc | ₱ 4,960.00 |
| ***2. Sale wherein the referenced exhibit is not found in the records of the case (soft copy of ICPA Exhibits)*** | | |
| P-46-N-36 | Carmen Copper Corp. | 1,446,264.40 |
| ***3. Sale wherein the supporting document was denied admission by this Court*** | | |
| P-46-O-199 | Biglift Properties and Dev't Corporation | 20,080.00 |
| ***4. Sales of goods supported by VAT invoices but with unreadable details (name of client, date or amount) and/or with handwritten insertions on the amount*** | | |
| P-46-O-28 | Platinum Group Metals Corp | 3,944.00 |
| P-46-P-1 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-2 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-3 | CTP Construction and Mining Corp | 3,320.00 |
| P-46-P-4 | CTP Construction and Mining Corp | 8,544.00 |
| P-46-P-5 | CTP Construction and Mining Corp | 9,720.00 |
| P-46-P-6 | CTP Construction and Mining Corp | 11,048.00 |
| P-46-P-7 | CTP Construction and Mining Corp | 11,968.00 |
| P-46-P-8 | CTP Construction and Mining Corp | 1,424.00 |
| P-46-P-9 | CTP Construction and Mining Corp | 3,320.00 |
| P-46-P-10 | CTP Construction and Mining Corp | 3,480.00 |
| P-46-P-11 | CTP Construction and Mining Corp | 3,480.00 |
| P-46-P-12 | CTP Construction and Mining Corp | 3,480.00 |
| P-46-P-13 | CTP Construction and Mining Corp | 3,736.00 |

| | | |
|---|---|---|
| P-46-P-14 | CTP Construction and Mining Corp | 7,816.00 |
| P-46-P-15 | CTP Construction and Mining Corp | 12,976.00 |
| P-46-P-16 | CTP Construction and Mining Corp | 14,772.80 |
| P-46-P-17 | CTP Construction and Mining Corp | 1,584.00 |
| P-46-P-18 | CTP Construction and Mining Corp | 1,608.00 |
| P-46-P-19 | CTP Construction and Mining Corp | 3,168.00 |
| P-46-P-20 | CTP Construction and Mining Corp | 6,336.00 |
| P-46-P-21 | CTP Construction and Mining Corp | 11,760.00 |
| P-46-P-22 | CTP Construction and Mining Corp | 26,080.00 |
| P-46-P-23 | CTP Construction and Mining Corp | 29,736.00 |
| P-46-P-24 | CTP Construction and Mining Corp | 37,088.00 |
| P-46-P-25 | CTP Construction and Mining Corp | 44,225.96 |
| P-46-P-26 | CTP Construction and Mining Corp | 63,656.00 |
| P-46-P-27 | CTP Construction and Mining Corp | 160,848.00 |
| P-46-P-28 | CTP Construction and Mining Corp | 166,696.00 |
| P-46-P-29 | CTP Construction and Mining Corp | 305,712.00 |
| P-46-P-30 | CTP Construction and Mining Corp | 1,608.00 |
| P-46-P-31 | CTP Construction and Mining Corp | 15,840.00 |
| P-46-P-32 | CTP Construction and Mining Corp | 6,571.20 |
| P-46-P-33 | CTP Construction and Mining Corp | 10,712.00 |
| P-46-P-34 | CTP Construction and Mining Corp | 13,248.00 |
| P-46-P-35 | CTP Construction and Mining Corp | 18,544.00 |
| P-46-P-36 | CTP Construction and Mining Corp | 59,945.60 |
| P-46-P-37 | CTP Construction and Mining Corp | 66,136.00 |
| P-46-P-38 | CTP Construction and Mining Corp | 1,424.00 |
| P-46-P-39 | CTP Construction and Mining Corp | 1,424.00 |
| P-46-P-40 | CTP Construction and Mining Corp | 1,888.00 |
| P-46-P-41 | CTP Construction and Mining Corp | 2,552.00 |
| P-46-P-42 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-43 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-44 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-45 | CTP Construction and Mining Corp | 2,816.00 |
| P-46-P-46 | CTP Construction and Mining Corp | 3,096.00 |
| P-46-P-47 | CTP Construction and Mining Corp | 3,712.00 |
| P-46-P-48 | CTP Construction and Mining Corp | 4,272.00 |
| P-46-P-49 | CTP Construction and Mining Corp | 4,272.00 |
| P-46-P-50 | CTP Construction and Mining Corp | 4,800.00 |
| P-46-P-51 | CTP Construction and Mining Corp | 153,032.50 |
| P-46-P-52 | CTP Construction and Mining Corp | 5,904.00 |
| P-46-P-53 | CTP Construction and Mining Corp | 6,496.00 |
| P-46-P-54 | CTP Construction and Mining Corp | 8,216.00 |
| P-46-P-55 | CTP Construction and Mining Corp | 14,016.00 |
| P-46-P-56 | CTP Construction and Mining Corp | 32,336.00 |
| P-46-P-57 | CTP Construction and Mining Corp | 34,688.00 |
| P-46-P-58 | CTP Construction and Mining Corp | 52,888.00 |
| P-46-P-60 | CTP Construction and Mining Corp | 607,272.00 |
| P-46-P-61 | CTP Construction and Mining Corp | 3,456.00 |
| P-46-P-62 | CTP Construction and Mining Corp | 37,592.00 |
| P-46-P-63 | CTP Construction and Mining Corp | 97,896.00 |
| P-46-P-68 | CTP Construction and Mining Corp | 21,312.00 |
| P-46-P-69 | CTP Construction and Mining Corp | 912.00 |
| P-46-P-70 | CTP Construction and Mining Corp | 4,120.00 |
| P-46-P-71 | CTP Construction and Mining Corp | 158,261.50 |
| P-46-P-73 | CTP Construction and Mining Corp | 25,330.00 |
| P-46-P-77 | CTP Construction and Mining Corp | 431,200.00 |

| | | |
|---|---|---|
| P-46-P-78 | CTP Construction and Mining Corp | 642,594.40 |
| P-46-P-79 | CTP Construction and Mining Corp | 46,624.00 |
| P-46-P-80 | CTP Construction and Mining Corp | 77,688.00 |
| P-46-P-81 | CTP Construction and Mining Corp | 167,512.00 |
| P-46-P-86 | CTP Construction and Mining Corp | 384.00 |
| P-46-P-87 | CTP Construction and Mining Corp | 1,344.00 |
| P-46-P-88 | CTP Construction and Mining Corp | 1,424.00 |
| P-46-P-89 | CTP Construction and Mining Corp | 1,520.00 |
| P-46-P-90 | CTP Construction and Mining Corp | 4,272.00 |
| P-46-P-91 | CTP Construction and Mining Corp | 5,184.00 |
| P-46-P-92 | CTP Construction and Mining Corp | 5,200.00 |
| P-46-P-93 | CTP Construction and Mining Corp | 5,904.00 |
| P-46-P-95 | CTP Construction and Mining Corp | 9,240.00 |
| P-46-P-96 | CTP Construction and Mining Corp | 9,376.00 |
| P-46-P-97 | CTP Construction and Mining Corp | 9,568.00 |
| P-46-P-98 | CTP Construction and Mining Corp | 10,536.00 |
| P-46-P-99 | CTP Construction and Mining Corp | 12,848.00 |
| P-46-P-100 | CTP Construction and Mining Corp | 16,920.00 |
| P-46-P-112 | CTP Construction and Mining Corp | 204,896.00 |
| P-46-P-115 | CTP Construction and Mining Corp | 177,793.50 |
| P-46-P-116 | CTP Construction and Mining Corp | 2,632.00 |
| P-46-P-120 | CTP Construction and Mining Corp | 224,696.00 |
| P-46-P-121 | CTP Construction and Mining Corp | 71,408.00 |
| P-46-P-123 | CTP Construction and Mining Corp | 2,256.00 |
| P-46-P-124 | CTP Construction and Mining Corp | 2,368.00 |
| P-46-P-126 | CTP Construction and Mining Corp | 2,592.00 |
| ***4. Sale of good supported by document other than VAT invoice*** | | |
| P-46-P-122 | CTP Construction and Mining Corp | 1,544.00 |
| ***5. Sale of good supported by VAT invoice but without the word "zero-rated" stamped/imprinted therein*** | | |
| P-46-P-125 | CTP Construction and Mining Corp | 2,536.00 |
| ***6. Sales of services to nonresident client not qualified for VAT zero-rating under 108(B)(2) of the NIRC of 1997, as amended*** | | |
| P-Q-1 | Marubeni Corporation | 2,672,215.14 |
| P-Q-2 | Marubeni Corporation | 616,759.29 |
| P-Q-3 | Marubeni Corporation | 1,881,383.33 |
| P-Q-4 | Marubeni Corporation | 977,973.15 |
| **Total** | | **₱12,232,970.77** |

Based on the foregoing, only the amount of ₱207,972,064.65 represents petitioner's valid zero-rated sales for the 3rd quarter of FY ending March 31, 2014, computed as follows:

| | | |
|---|---|---|
| Total Reported Zero-Rated Sales | | ₱ 323,992,010.42 |
| Less: Disallowances | | |
| Per ICPA Report | ₱103,786,975.00 | |
| Additional disallowances by this Court | ₱ 12,232,970.77 | 116,019,945.77 |
| **Valid Zero-Rated Sales** | | **₱207,972,064.65** |

✓

**Petitioner incurred input taxes which were attributable to its zero-rated sales**

For the 3rd quarter of FY ending March 31, 2014, petitioner declared input taxes in the sum of ₱127,929,095.22, out of which the amount of ₱13,448,721.74 is the subject of petitioner's claim, to wit:

| **Input tax as per Amended 3rd Quarterly VAT Return[68]:** | |
|---|---|
| Input Tax Deferred on Capital Goods exceeding ₱1M from Previous Quarter *(Line 20B)* | ₱ 2,926,925.56 |
| Less: Input Tax on Purchases of Capital Goods exceeding ₱1M deferred for the succeeding period *(Line 23A)* | 2,731,710.09 |
| Input tax Amortized for the period | ₱ 195,215.47 |
| Add: Current Input Taxes | |
| On Domestic Purchases of Goods Other than Capital Goods *(Line 21F)* | ₱ 2,143,274.65 |
| On Importation of Goods Other than Capital Goods *(Line 21H)* | 118,931,495.00 |
| On Domestic Purchase of Services *(Line 21J)* | 6,659,110.10 |
| Total Current Input Tax | ₱ 127,733,879.75 |
| **Total Input Taxes for the period** | **₱127,929,095.22** |

| **Input tax as per subject claim[69]:** | | |
|---|---|---|
| Total current input tax for the 3rd quarter of FY ENDING MARCH 31, 2014 | | ₱ 127,929,095.22 |
| Less: Input tax directly attributable to VATable sale of machineries from current purchases | | 3,437,452.15 |
| Input tax directly attributable to government sales from current purchases | | 251,435.83 |
| Input tax directly attributable on current purchases not sold within the quarter | | 87,148,126.35 |
| Current input tax available for allocation | | ₱ 37,092,080.89 |
| Multiply by percentage of zero-rated sales in relation to total sales, computed as follows: | | |
| VAT zero-rated sales/receipts for the 3rd quarter of FY ENDING MARCH 31, 2014 | ₱323,992,010.42 | |
| Divide by Total sales/receipts for the 3rd quarter of FY ENDING MARCH 31, 2014 | 988,910,360.29 | 32.76% |
| Total input tax allocable to zero-rated sales | | ₱ 12,152,302.51 |
| Add: Input taxes directly attributable to zero-rated sales of machineries from current purchases | | 511,238.50 |
| Input tax directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter | | 785,180.73 |
| **Total input taxes claimed for issuance of TCC** | | **₱13,448,721.74** |

[68] Exhibit "P-17".
[69] Exhibit "P-46".

In support of its total reported input taxes of ₱127,929,095.22, petitioner submitted various sales invoices, ORs and other import-related documents[70] and Management Information System and Technology Group (MISTG) Certification issued by the Bureau of Customs (BOC)[71], which were examined by the ICPA.

Summarized below are the input VAT for the period October 1, 2013 to December 31, 2013 in the total amount of ₱127,929,093.84:

| | Input VAT Amount | Exhibit No. |
|---|---|---|
| A. Input tax available for allocation | ₱ 36,790,446.86 | P-46-V to P-46-AV |
| B. Input tax directly attributable to VATable sale of machineries from current purchases | 3,437,452.15 | P-46-BS |
| C. Input tax directly attributable on current purchases not sold within the quarter | 87,148,126.35 | P-46-BT |
| D. Input taxes directly attributable to zero-rated sales of machineries from current purchases | 511,238.50 | P-46-BP to P-46-BR |
| E. Input tax directly attributable to government sales, which were closed to expense | 41,829.98 | |
| **Total input taxes for the period accounted by ICPA** | **₱127,929,093.84** | |

Out of the input tax available for allocation in the amount of ₱36,790,446.86, the Court finds that the amount of ₱8,563,027.28, should be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended, to wit:[72]

| ***a. On Domestic Purchase of Goods and Services*** | | |
|---|---|---|
| **Exhibit Reference** | **Description** | **Amount** |
| P-46-Z | Domestic purchase of goods and services with no supporting documents | ₱ 5,304,967.82 |
| P-46-AA | Domestic purchase of goods supported by documents other than VAT invoices | 401,224.56 |
| P-46-AB | Domestic purchase of services supported by documents other than VAT ORs | 782,150.26 |

[70] Exhibits "P-46-V-1" to "P-46-V-34", "P-46-W-1" to "P-46-W-35", "P-46-Y-1" to "P-46-Y-202", "P-46-AA-1" to "P-46-AA-48", "P-46-AB-1" to "P-46-AB-365", "P-46-AC-1" to "P-46-AC-213", "P-46-AD-1" to "P-46-AD-46", "P-46-AE-1" to "P-46-AE-27", "P-46-AF-1" to "P-46-AF-26", "P-46-AG-1" to "P-46-AG-51", "P-46-AH-1" to "P-46-AH-241", "P- 46-AI-1" to "P-46-AI-132", "p-46-AJ-1" to "P-46-AJ-199", "P-46-AK-1", "P-46-AL-1" to "P-46-AL-133", "P-46-AN-1" to "P-46-AN-62", "P-46-AP-1" to "P-46-AP-32", "P-46-AQ-1" to "P-46-AQ-88", "P-46-AR-1" to "P-46-AR-4", "P-46-AS-1" to "P-46-AS-11", "P-46-AT-1" to "P-46-AT-6", "P-46-AU-1" to "P-46-AU-25", "P-46-BP" to "P-46-BR", "P-46-BS-1" to "P-46-BS-6", and "P-46-BT-1" to "P-46-BT-39".

[71] Exhibit "P-46-BN".

[72] Exhibit "P-46".

| | | |
|---|---|---|
| P-46-AC | Domestic purchase of goods or services supported by unreadable documents | 56,745.97 |
| P-46-AD | Domestic purchase of goods supported by VAT invoice/ORs claimed outside the taxable quarter but within taxable year | 44,249.41 |
| P-46-AE | Domestic purchase of services supported by VAT invoice/ORs claimed outside the taxable quarter but within taxable year | 26,766.38 |
| P-46-AF | Domestic purchase of services supported by tape receipts but without permit number | 2,245.04 |
| P-46-AG | Domestic purchase of goods or services with missing/outdated ATP | 491,753.68 |
| P-46-AH | Domestic purchase of goods or services supported by VAT official receipts issued in the name of the petitioner wherein VAT amount was not separately disclosed | 478,831.50 |
| P-46-AI | Domestic purchase of goods supported by VAT invoices/VAT ORs but without/incorrect name, TIN and/or address of the petitioner | 198,554.41 |
| P-46-AJ | Domestic purchase of service supported by VAT invoices/VAT ORs but without/incorrect name, TIN and/or address of the petitioner | 648,008.76 |
| | ***Total input tax disallowed on local purchases*** | **₱ 8,435,497.79** |
| ***b. On Importations of Goods*** | | |
| **Exhibit Reference** | **Description** | **Amount** |
| P-46-AO | Importation of goods with no supporting document | ₱ 2,501.00 |
| | ***Total disallowed input tax on importations*** | ***₱ 2,501.00*** |
| ***c. On Deferred Input Tax on Domestic Purchase of Capital Goods exceeding One Million Pesos (₱1,000,000.00)*** | | |
| **Exhibit Reference** | **Description** | **Deferred Input Claimed in 3Q of FY ENDING MARCH 31, 2014** |
| P-46-AQ | Input tax deferred on purchase of capital goods exceeding 1 Million supported by sales invoices but did not comply with the invoicing requirements | ₱ 77,355.62 |
| P-46-AR | Deferred input tax from purchase of capital goods exceeding 1 Million supported by unreadable tape receipt/invoice | 110.73 |
| P-46-AS | Input tax on purchases of goods other than capital goods classified as input tax on purchase of capital goods exceeding 1 Million | 959.40 |
| P-46-AT | Input tax on purchases of service classified as input tax on purchase of capital goods exceeding 1 Million | 1,682.59 |
| P-46-AU | Deferred input tax from purchase of capital goods exceeding 1 Million supported by documents other than sales invoice | 12,631.38 |
| P-46-AV | Deferred input tax from purchase of capital goods exceeding 1 Million without supporting documents | 32,288.77 |
| | ***Total disallowed deferred input tax*** | ***₱ 125,028.49*** |
| **Total disallowances per ICPA** | | **₱ 8,563,027.28** |

In addition, input VAT in the amount of ₱33,305,836.80 should also be disallowed for the following reasons:

| **Exhibit No.** | **Name of Supplier** | **Input VAT Amount** | **Reason for disallowance** |
|---|---|---|---|
| **A. Input tax available for allocation** | | | |
| ***On Domestic Purchases of Goods and Services*** | | | |

| | | | |
|---|---|---|---|
| P-46-V-11 | Indola International Phils Inc | ₱ 10,178.57 | Supported by VAT invoice dated outside the period of claim |
| P-46-V-15 | Ladriano Enterprises | 300.00 | Over-claimed input VAT (claimed amount of ₱750.00 less invoice amount of ₱450.00) |
| P-46-V-23 | Nexus Technologies Inc | 33,658.93 | Input VAT on purchase of good and service supported by VAT invoice dated outside the period of claim |
| P-46-V-30 | Roadmax Marketing Corporation | 3,342.86 | Input VAT on purchase of good and service supported by VAT invoice dated outside the period of claim and with alteration on date |
| P-46-W-34 | Whiteknight Security Agency Corporation | 1,463.61 | Supported by VAT OR without the TIN of petitioner |
| P-46-X-1 | Minvets Inc. | 472.90 | Supported by document which was denied admission by the Court |
| ***On Importations of Goods*** | | | |
| P-46-AL-125 | Shinjeong Development Co | 2,029.00 | Supported by BOC receipt with unreadable details |
| P-46-AL-128 | Bomag Fayat Group | 1,118.00 | Supported by BOC receipt with unreadable details |
| P-46, docket, Vol. 2, p. 730; P-46-AL | | 91,000.00 | Unsupported difference between the total amount per summary in the ICPA Report and the total amount per schedule (₱18,476,263.00 less ₱18,385,263.00) |
| P-46-AN (P-46-AN-1 to P-46-AN-62) | various | 9,305,363.00 | Supported by importation documents (IEIRD, Assessment Notice, Bill of Lading) but without proof of VAT payment |
| ***On Deferred Input Tax on Purchase of Capital Goods exceeding 1M*** | | | |
| P-46-AP-7 | Creativemist Enterprises | 122.13 | Supported by invoice with unreadable details |
| **subtotal** | | **₱ 9,449,049.00** | |
| **B. Input tax directly attributable to VATable sale of machineries from current purchases** | | | |
| P-46-BS-3 | Komatsu Used Equipment Corp | ₱ 524,091.00 | Supported by importation documents (IEIRD, Assessment Notice, Bill of Lading) but without proof of VAT payment |
| P-46-BS-5 | Bangkok Komatsu Co Ltd | 481,784.00 | Supported by importation documents (IEIRD, Assessment Notice, Bill of Lading) but without proof of VAT payment |
| **subtotal** | | **₱ 1,005,875.00** | |
| **C. Input tax directly attributable on current purchases not sold within the quarter** | | | |
| P-46-BT-1 | Hyundai Corporation | ₱ 1,064,754.00 | Supported by importation documents (IEIRD, Assessment Notice, Bill of Lading) but without proof of VAT payment |
| P-46-BT-11 | Daewoo International Corp | 2,074,256.00 | |
| P-46-BT-12 | Daewoo International Corp | 621,624.00 | |
| P-46-BT-14 | Komatsu Ltd | 5,673,650.00 | |
| P-46-BT-15 | Komatsu Ltd | 656,694.00 | |
| P-46-BT-16 | Komatsu Ltd | 1,412,063.00 | |

| | | | |
|---|---|---|---|
| P-46-BT-17 | Komatsu Ltd | 1,503,061.00 | |
| P-46-BT-19 | Bangkok Komatsu Co Ltd | 481,784.00 | |
| P-46-BT-28 | Bangkok Komatsu Co Ltd | 1,952,717.00 | |
| P-46-BT-29 | Bangkok Komatsu Co Ltd | 2,752,638.00 | |
| P-46-BT-30 | Bangkok Komatsu Co Ltd | 646,577.00 | |
| | Bangkok Komatsu Co Ltd | 3,803,886.80 | No supporting documents |
| **subtotal** | | **₱22,643,704.80** | |
| **D. Input tax directly attributable to zero-rated sales of machineries from current purchases** | | | |
| P-46-BR | Daewoo Int'l Corporation | ₱ 207,208.00 | Supported by importation documents (IEIRD, Assessment Notice, Bill of Lading) but without proof of VAT payment |
| **subtotal** | | **₱ 207,208.00** | |
| **Total** | | **₱ 33,305,836.80** | |

In sum, out of the reported input VAT of ₱127,929,095.22, petitioner was able to substantiate only the amount of ₱86,018,399.78, computed as follows:

| | | Disallowances | | |
|---|---|---|---|---|
| | **Reported Input VAT** | **Per ICPA findings** | **Per Court's further verification** | **Substantiated Input VAT** |
| A. Input tax available for allocation | ₱ 36,790,446.86 | ₱ 8,563,027.28 | ₱ 9,449,049.00 | ₱ 18,778,370.58 |
| B. Input tax directly attributable to VATable sale of machineries from current purchases | 3,437,452.15 | | 1,005,875.00 | 2,431,577.15 |
| C. Input tax directly attributable on current purchases not sold within the quarter | 87,148,126.35 | | 22,643,704.80 | 64,504,421.55 |
| D. Input taxes directly attributable to zero-rated sales of machineries from current purchases | 511,238.50 | | 207,208.00 | 304,030.50 |
| Input VAT directly attributable to sales to government, which was closed to expense | 41,829.98 | | 41,829.98 | - |
| Discrepancy between per Returns vs per ICPA ₱127,929,095.22 less ₱127,929,093.84) | 1.38 | | 1.38 | - |
| **Total** | **₱127,929,095.22** | **₱8,563,027.28** | **₱33,347,668.16** | **₱86,018,399.78** |

Considering that petitioner is engaged in taxable sales subject to 0% and 12% rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱18,778,370.58 shall be proportionately allocated on the basis of the volume of its sales, thus:

| **VAT Sales (a)** | **Sales to Gov't (b)** | **Zero-Rated Sales (c)** | **Total Sales (d = a+b+c)** |
|---|---|---|---|
| ₱661,923,963.52 | ₱2,994,386.35 | ₱323,992,010.42 | ₱988,910,360.29 |
| | | | |
| **Substantiated Input VAT attributable to:** | | | |
| VAT Sales *(a/d x ₱18,778,370.58)* | | | ₱ 12,569,241.85 |
| Sales to Gov't *(b/d x ₱18,778,370.58)* | | | 56,860,.26 |
| Zero-Rated Sales *(c/d x ₱18,778,370.58)* | | | 6,152,268.48 |
| **Total** | | | **₱18,778,370.59**[73] |

However, in the subject claim for issuance of TCC, petitioner included the input VAT in the amount of ₱785,180.73 allegedly pertaining to "input tax directly attributable to zero-rated sales of machineries and spare parts which were imported in prior years but sold during the quarter". However, it failed to substantiate the same as Exhibits "P-BU-1" and "P-BU-2" purportedly supporting the same do not pertain to said input taxes. On the contrary, Exhibit "P-BU-1" actually refers to the schedule of "Input Tax on Zero-rated Sale of Machineries from Current Purchases-511,238.50", while Exhibit "P-BU-2" refers to the schedule of "Input Tax directly identified and allocable to Government Sales-251,435.83". Hence, the amount of ₱785,180.73 cannot be refunded.

In sum, petitioner had a total input VAT of ₱6,456,298.98 directly and indirectly attributable to its zero-rated sales, computed as follows:

| | |
|---|---|
| Input VAT allocable to zero-rated sales | ₱ 6,152,268.48 |
| Add: Input VAT directly attributable to zero-rated sales of machineries from current purchases | 304,030.50 |
| **Total input VAT attributable to zero-rated sales** | **₱6,456,298.98** |

**Petitioner has no excess input VAT available for refund**

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, the Court must determine

[73] With difference of ₱0.01 due to rounding off.

whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales to private entities in the amount of ₱15,000,819.00 from its output VAT liability of ₱79,430,875.62 from the said sales, petitioner still has a net output VAT payable of ₱64,430,056.62, as computed below:

| | |
|---|---|
| Output VAT Per Return | ₱ 79,430,875.62 |
| Less: Input VAT attributable to VATable sales to private entities (₱12,569,241.85 + ₱2,431,577.15) | 15,000,819.00 |
| **Net Output VAT Payable** | **₱64,430,056.62** |

Since petitioner's input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability of ₱64,430,056.62. However, the input VAT attributable to zero-rated sales of ₱6,456,298.98 is way lower than the net output VAT payable of ₱64,430,056.62. Consequently, petitioner still has net output VAT due of ₱57,973,757.64, computed as follows:

| | |
|---|---|
| Net Output VAT Payable | ₱ 64,430,056.62 |
| Less: Input VAT attributable to zero-rated sales | 6,456,298.98 |
| **Net Output VAT Still Due** | **₱57,973,757.64** |

Petitioner claims that there is enough input tax credit to cover any output tax liability for the 3rd quarter of FY ending March 31, 2014 and that the amount being claimed for refund was not utilized or applied to the current VAT liability. However, petitioner failed to fully substantiate the said claim notwithstanding that its Quarterly VAT Return for the 3rdquarter of FY ending March 31, 2014 reflected the amount of ₱320,781,112.70[74] as Input Tax Carried Over from Previous Period.

As ascertained by the ICPA, out of the reported input VAT of ₱787,884,159.13[75], during the 2ndquarter of FY March 31, 2013 up to the 2nd quarter of FY ending March 31, 2014,

[74] Exhibit "P-17", Line 20A.
[75] Exhibit "P-46", par. b, ICPA Report, docket, vol. 2, p. 734.

only the input VAT on importations in the amount of ₱639,560,932.43[76] were verified. Even assuming that the amount of ₱639,560,932.43 is valid input VAT attributable to VATable sales to private entities and zero-rated sales, the same is still not enough to cover petitioner's reported output VAT on VATable sales to private entities for the same period in the aggregate amount of ₱667,068,872.26[77]. The resulting net output VAT payable is still ₱27,507,939.83[78].

Therefore, the input tax carry-over of ₱320,781,112.70 cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended.[79]

Note that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the instant claim must be denied.

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[76] Exhibit "P-46", par. d, ICPA Report, docket, vol. 2, p. 736.

[77]

| | |
|---|---|
| 2nd Quarter of FY 2013 (Exhibit P-46-AW-1) | ₱ 84,819,335.25 |
| 3rd Quarter of FY 2013 (Exhibit P-46-AW-) | 125,260,567.74 |
| 4th Quarter of FY 2013 (Exhibit P-46-AW-3) | 256,342,295.31 |
| 1st Quarter of FY 2014 (Exhibit P-46-AW-4) | 111,853,742.35 |
| 2nd Quarter of FY 2014 (Exhibit P-46-AW-5) | 88,792,931.61 |
| **Total Output tax on VAT sales to private entities** | **₱667,068,872.26** |

[78] (₱667,068,872.26 less ₱639,560,932.43).

[79] SEC. 110. Tax Credits. -

(A) Creditable Input Tax. -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

xxx xxx xxx

(B) Excess Output or Input Tax. - If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

Finally, let it be stressed that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[80] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[81] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[82] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[83]

**WHEREFORE**, the instant Petition for Review filed by petitioner Maxima Machineries, Inc. on May 26, 2016, is hereby **DENIED** for lack of merit.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*I Concur:*

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[80] *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[81] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[82] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[83] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

## 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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

## CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice