REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

NEW YORK BAY PHILIPPINES, INC., Petitioner,	**CTA Case No. 9896**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JAN 26 2022 10:02 a.m.

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review*[1] filed on July 27, 2018 by petitioner, New York Bay Philippines, Inc. against respondent, Commissioner of Internal Revenue, praying for a refund or issuance of a tax credit certificate (TCC) in the amount of ₱45,183,477.36, representing petitioner's excess and unutilized input value-added tax (VAT) on domestic purchases of goods and services attributable to zero-rated sales for the four quarters of calendar year (CY) 2016.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine Laws with principal place of business at Unit 2102, 21st Floor Antel Global Corporate Center, Julia Vargas Avenue, Pasig City.[2]

[1] Docket – Vol. 1, pp. 10 to 23.
[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JFSI), Docket – Vol. 1, p. 267.

Petitioner is registered with the Bureau of Internal Revenue (BIR), Revenue Region No. 7, Revenue District Office (RDO) No. 43 as a VAT taxpayer with Taxpayer Identification Number (TIN) 000-217-994-000.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of the said office including, among others, the power to decide, approve and grant claims for refund or tax credits of erroneously paid or overpaid taxes, as provided by law. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor, Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City.[4]

Petitioner filed its VAT returns for the first, second, third, and fourth quarters of CY 2016 on the following dates:

Period	VAT Return	Filing Date	Exhibit
1st Quarter	Original Quarterly VAT Return	April 25, 2016	P-3[5]
	Amended Quarterly VAT Return	May 20, 2016	P-3-a[6]
2nd Quarter	Original Quarterly VAT Return	July 25, 2016	P-4[7]
	Amended Quarterly VAT Return	July 26, 2016	P-4-a[8]
3rd Quarter	Original Quarterly VAT Return	October 25, 2016	P-5[9]
	Amended Quarterly VAT Return	January 26, 2017	P-5-a[10]
4th Quarter	Original Quarterly VAT Return	January 23, 2017	P-6[11]
	Amended Quarterly VAT Return	January 26, 2017	P-6-a[12]

On March 28, 2018, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[13] together with *Cover Letter,[14]* requesting for the refund of its excess and unutilized input VAT for the four quarters of CY 2016 in the amount of ₱45,183,477.36. Petitioner attached to its administrative claim for refund the complete supporting documents as required by law and pertinent regulations.[15]

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[3] Exhibit "P-2", Docket – Vol. 1, p. 149.
[4] Par. 2, Admitted Facts, JSFI, Docket – Vol. 1, p. 267.
[5] Docket – Vol. 2, pp. 516 to 517.
[6] Docket – Vol. 2, pp. 518 to 519.
[7] Docket – Vol. 2, pp. 520 to 521.
[8] Docket – Vol. 2, pp. 522 to 523.
[9] Docket – Vol. 2, pp. 524 to 525.
[10] Docket – Vol. 2, pp. 526 to 527.
[11] Docket – Vol. 2, pp. 528 to 529.
[12] Docket – Vol. 2, pp. 530 to 531.
[13] Exhibit "P-8", Docket – Vol. 1, p. 536.
[14] Exhibit "P-7", Docket – Vol. 1, pp. 532 to 534.
[15] Par. 3, Admitted Facts, JSFI, Docket – Vol. 1, p. 268; Exhibit "P-7-a", Docket – Vol. 2, p. 535.

On June 29, 2018, petitioner received a letter from the respondent denying petitioner's administrative claim for refund of its excess and unutilized input VAT for the four quarters of CY 2016 in the amount of ₱45,183,477.36 on the ground that petitioner allegedly failed to submit relevant vital documents in support of its claim, *viz.*:

> "Please be informed that after consideration of the factual basis of the said claim and the law applicable thereto, it was ascertained that <u>you failed to provide the "original copies" of the "Certificates of Non-Registration of Company", issued by the Securities and Exchange Commission, instead photocopies were attached to the docket.</u> Please note that the submission of the original copies is a mandatory requirement under Annex A.1 of the RMC No. 17-2018, also known as "Revised Checklist of Mandatory Requirements for claims for VAT Refund.
>
> Accordingly, failure on your part to submit the relevant vital documents in support of your claim upon filing of the application can result in non-acceptance or denial of the claim pursuant to IV(3) of RMC 17-2018.
>
> In view of the foregoing, we regret to inform you that the processing of the application of VAT refund of NEW YORK BAY PHILIPPINES, INC. covering the period January 1, 2016 to December 31, 2016 cannot be acted upon favorably for lack of factual basis."[16]

On July 27, 2018, petitioner filed the instant the instant *Petition for Review*.

Thereafter, on October 10, 2018, respondent filed his *Answer*,[17] interposing the following special and affirmative defenses, to wit:

1) That petitioner's claim for tax refund has no basis since its request was denied by the respondent due to petitioner's failure to submit documents required by Revenue Memorandum Circular (RMC) 17-2018; that petitioner did not comply with the invoicing and accounting compliance required by the National Internal Revenue Code (NIRC);

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[16] Par.4, Admitted Facts, JSFI, Docket – Vol. 1, p. 268.
[17] Docket, Vol. – 1, pp. 72 to 76.

2) That for the entitlement to refund under Section 110 (B) of the NIRC of the Philippines, the taxpayer availing of such benefit must comply with the following:

   a) The registration requirements of a value-added taxpayer under the pertinent provision of the 1997 NIRC, as amended, and its implementing revenue regulations;

   b) The invoicing and accounting requirements for VAT-registered person, as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the 1997 NIRC, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant;

   c) The submission of complete documents in support of the administrative claim for tax refund pursuant to Section 112(C), as amended. Otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of such claim;

   d) The alleged unutilized input taxes of the petitioner for the fourth quarter of 2016 were:

      i. Paid by the petitioner;
      ii. Attributable to its zero-rated or effectively zero-rated sales; and
      iii. Such input taxes should not have been applied against any output tax.

   e) Petitioner's claim for tax credit/refund allegedly representing unutilized input VAT must be filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112(A) of the 1997 NIRC, as amended.

3) That a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

4) That tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally construed in favor of the government. As tax refunds involve a return of revenue from the government, the claimant must show

indubitably the specific provision of law from which her right arises; it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.

5) Citing *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[18] "Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities from poor tax collections, forcing the government to continue borrowing to fund the budget deficits. **The Court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayers who do not comply with statutory requirements for tax refunds or credits.** The tax refund claims in the present cases are not a pittance. May other companies stand to gain if this Court were to rule otherwise. The dissenting opinions will turn on its head the well-settled doctrine that tax refunds are strictly construed against the taxpayer."

During the *Pre-Trial Conference* on February 19, 2019,[19] both parties' counsel agreed to file their Joint Stipulation of Facts and Issues (JSFI) within a period of period thirty (30) days, while respondent's counsel was given until March 21, 2019 within which to submit the Judicial Affidavit of respondent's intended witness, the Revenue Officer who conducted the audit examination of petitioner's claim for refund.

Thereafter, the parties filed their *Joint Stipulation of Facts and Issues* on March 21, 2019,[20] which was approved by the Court on March 26, 2019.[21] However on April 5, 2019,[22] respondent filed a Manifestation averring that he will no longer present his intended witness for the case. On April 11, 2019, the Court issued a *Pre-Trial Order.*[23]

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[18] G.R. No. 187485, February 12, 2013.
[19] Minutes of the hearing and Order dated February 19, 2019, Docket – Vol. 1, pp. 224, 226 to 228.
[20] Docket – Vol. 1, pp. 267 to 281.
[21] Docket – Vol. 1, p. 283.
[22] Manifestation dated April 5, 2019, Docket – Vol. 1, pp. 284 to 285.
[23] Docket - Vol. 1, pp. 287 to 295.

During trial, petitioner presented as witnesses: (1) Ma. Victoria Cruz[24], its accounting manager, and (2) Ma. Milagros F. Padernal[25], the duly-commissioned Independent Certified Public Accountant (ICPA).

On September 5, 2019, petitioner filed its *Formal Offer of Evidence.*[26] In the Resolution dated November 15, 2019,[27] the Court admitted most of petitioner's exhibits, except for exhibit ***"P-12"*** for failure of the exhibit formally offered to correspond with the document actually marked, and exhibits ***"P16" to "P-24"*** and ***"P-34"*** for failure to offer any documents.

Thereafter on January 24, 2020, petitioner filed an *Omnibus Motion 1. Motion for Reconsideration (Re: Resolution dated November 15, 2019) with Motion for Leave of Court to Recall Witness; and 2. Motion to Defer Filing Memorandum*[28] without respondent's comment despite due notice.[29] In the Resolution dated June 22, 2020,[30] the Court granted petitioner's *Motion for Leave of Court to Recall Witness and Motion to Defer Filing of Memorandum*; while, petitioner's *Motion for Reconsideration (Re: Resolution dated November 15, 2019)* was held in abeyance.

On October 27, 2020, the Court granted petitioner's *Motion for Reconsideration (Re: Resolution dated November 15, 2019)* admitting Exhibit "P-12" as petitioner's evidence.

Subsequently, with the filing of petitioner's *Memorandum* on November 26, 2020,[31] without respondent's memorandum despite notice,[32] the instant case was submitted for decision on January 15, 2021.[33]

Hence, this Decision.

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[24] Exhibit "P-13", Docket – Vol. 1, pp. 108 to 122.
[25] Exhibit "P-30", Docket – Vol. 1, pp. 252 to 255.
[26] Docket – Vol. 2, pp. 444 to 468.
[27] Docket – Vol. 2, pp. 589 to 590.
[28] Docket – Vol. 2, pp. 591 to 597.
[29] Records Verification Report dated March 3, 2020, Docket – Vol. 2, p. 604
[30] Docket – Vol. 2, pp. 606 to 608.
[31] Docket – Vol. 2, pp. 626 to 667.
[32] Records Verification Report dated January 4, 2021, Docket – Vol. 2, p. 669.
[33] Resolution dated January 15, 2021, Docket – Vol. 2, p. 671.

THE ISSUES

The parties have stipulated the following issues[34] for resolution, to wit:

(a) Whether or not there was basis for respondent to deny petitioner's administrative claim for refund on the ground that only photocopies of the SEC "Certificate of Non-Registration of Company" of petitioner's clients were attached to the docket of the case; and

(b) Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for the amount of ₱45,183,477.36, representing petitioner's excess and unutilized input VAT for the four quarters of CY 2016.

Petitioner's arguments:

Petitioner submits that respondent erred in denying its administrative claim on the ground that petitioner only submitted photocopies of the SEC "Certificate of Non-Registration" of petitioner's non-resident clients.

Respondent's reliance on RMC No. 17-2018 as basis for the denial of petitioner's claim is allegedly misplaced; that RMC No. 17-2018 is a mere administrative interpretation of the law which in no case is binding on the courts.

Petitioner further argues that RMC No. 17-2018 interprets Section 112 of the Tax Code; that petitioner has proven compliance with RMC No. 17-2018 by submitting all the necessary documentary requirements to prove that it is engaged in zero-rated sales.

Section IV(3), RMC NO. 17-2018 only states that the failure to submit relevant vital supporting documents is a ground for the non-acceptance of the application, but not the denial of the taxpayer's claim for refund; that said provision is clear and unambiguous that it is upon failure to present the books of accounts and accounting records relevant to the claim that the respondent may validly deny the taxpayer's the application for tax credit/refund.

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[34] JSFI, Docket – Vol. 1, pp. 268 to 269.

Allegedly, respondent has duly-accepted petitioner's application for tax credits/refunds on March 28, 2018, and thus has accepted the completeness and sufficiency of the supporting documents in accordance with Section IV, RMC No. 17-2018

Moreover, petitioner submits that it is entitled to a claim for refund of excess and unutilized input VAT for the four quarters of CY 2016 in the amount of ₱45,183,477.36 as it has allegedly complied with the requisites under Sections 108(B)(2) and 112(A) of the Tax Code.

Petitioner also argues that its sales of services to Trans-Fast Remittance LLC and Trans-Fast International FZ-LLC qualify as zero-rated sales of services under Section 108(B)(2) of the Tax Code; that payments for petitioner's services were made in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations; that its excess and unutilized input VAT for the four quarters of CY 2016 amounting to ₱45,183,477.36 are duly supported by VAT invoices and official receipts; that the same are attributable to its zero-rated sales; and that its input VAT were not applied against any output VAT liability during the succeeding taxable quarters.

Finally, petitioner claims that its administrative and judicial claim for refund of excess and unutilized input VAT for the quarters of CY 2016 were filed within the reglementary periods provided under Section 112(A) & (C) of the Tax Code.

Respondent's counter-arguments:

Respondent asserts that petitioner's allegation that it complied with the documentary requirements has no factual basis. According to respondent, petitioner did not submit the original copies of the Certificate of Non-Registration of Company issued by the SEC as required under RMC No. 17-2018. Respondent submits that there is no valid claim for refund filed before the BIR within the prescribed period.

Moreover, respondent contends that petitioner did not comply with the invoicing and accounting compliance required by the NIRC.

Lastly, respondent posits that a claimant has the burden of proof to establish the factual basis of his or he claim for tax credit or refund; that tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

Requisites for the refund of input VAT established by law.

Petitioner's refund claim for input vat in the instant Petition for Review pertains to the four quarters of calendar year (CY) 2016. The applicable provisions then, relative to an action for the refund or issuance of tax credit certificate for input taxes was Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[35] which reads 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 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: *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: xxx
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> xxx xxx xxx

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[35] 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.

> (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."

It must be noted that Section 112(C) was subsequently amended by Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion or TRAIN Law which took effect on January 1, 2018. The amendment pertains to the 120-day period, which was shortened to a period of 90 days from the date of submission of complete documents in support of the refund application for the Commissioner of Internal Revenue to act on a taxpayer's application for refund.[36]

However, the TRAIN Law is inapplicable to the instant case considering that it took effect only on January 1, 2018, while, as mentioned earlier, the instant *Petition* involves a refund claim of input

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[36] Republic Act No. 10963, "**Section 36**. Section 112 of the NIRC, as amended is hereby further amended to reads as follows:

"(A) x x x
(B) x x x
(C) Period within which Refund of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision within the Court of Tax Appeals: *Provided,* however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

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VAT incurred during CY 2016. Hence, the aforequoted provisions shall apply.

Pursuant to the foregoing provisions, and in line with the jurisprudential pronouncements of the Supreme Court, the following requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and these are categorized as follows:

<u>Prescriptive period for 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.[37]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of 120 days[38], 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;[39]

<u>Taxpayer's registration with the BIR:</u>

3. the taxpayer is VAT registered;[40]

<u>In relation to the taxpayer's output VAT, it must be shown:</u>

4. that the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]

5. that for zero-rated sales under Section 106(A)(2)(a)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable

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[37] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,,* G.R. No. 182364, August 3, 2010.
[38] The 120 day period was shortened to 90 days pursuant to Section 36 of RA 10963 starting January 1, 2018
[39] *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.
[40] *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.
[41] *Ibid.*

foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[42]

As regards the taxpayer's input VAT being refunded, it must be shown:

6. that input taxes are not transitional input taxes;[43]

7. that the input taxes are due or paid;[44]

8. that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[45] and

9. that the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

First and second requisites: Timeliness of administrative and judicial claims.

The *first requisite* pertains to the filing of the claim for tax credit or refund of input VAT before the BIR.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

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

In the instant case, petitioner's claim covers the four (4) quarters of CY 2016. Counting two (2) years from the close of each quarter, petitioner had until March 31, 2018, June 30, 2018, September 30, 2018, and December 31, 2018, respectively, within which to file its administrative claims for tax refund or issuance of tax credit certificate for its input VAT, to wit:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing of Administrative Claim	Administrative Claim Filed
1st Quarter (Jan. to Mar. 2016)	Mar. 31, 2016	Mar. 31, 2018	March 28, 2018
2nd Quarter (Apr. to Jun. 2016)	Jun. 30, 2016	Jun. 30, 2018	March 28, 2018
3rd Quarter Jul. to Sep. 2016	Sep. 30, 2016	Sep. 30, 2018	March 28, 2018
4th Quarter Oct. to Dec. 2016	Dec. 31, 2016	Dec. 31, 2018	March 28, 2018

Here, petitioner's administrative claim (*Application for Tax Credits/Refunds – BIR Form No. 1914*)[47] for the said quarters filed with the BIR on March 28, 2018 was timely filed.

The *second requisite* pertains to the timeliness of the judicial claim pursuant to Section 112 (C) of the NIRC of 1997, as amended. The legal provision speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days which refers to the period for filing a judicial claim with this Court.[48]

In this case, counting from the filing of petitioner's administrative claim on March 28, 2018, respondent had 120 days or until July 26, 2018 to act on the said claim. Within the said 120-day period, petitioner received a denial letter on June 29, 2018 from respondent denying its administrative claim for refund of its excess and unutilized input VAT for the four quarters of CY 2016 in the amount of ₱45,183,477.36.[49] Thus, petitioner had a period of thirty (30) days from June 29, 2018 or until July 29, 2018 to file its judicial claim.

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[47] Exhibit "P-7", Docket – Vol. 1, pp. 532 to 535 and Exhibit "P-8", Docket – Vol. 1, p. 536.
[48] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[49] Par. 4, Admitted Facts, JSFI, Docket – Vol. 1, p. 268.

It appearing that the instant *Petition for Review*[50] was filed on July 27, 2018, the judicial claim was likewise filed on time. Correspondingly, petitioner complied with the *first* and *second* requisites.

Third Requisite: Petitioner is VAT registered.

The *third requisite* pertains to the taxpayer's VAT registration. Notably, petitioner presented its Certificate of Registration issued by the BIR with TIN 000-217-994-000, indicating that it is liable for VAT.[51] Thus, the *third requisite* has also been complied with.

Fourth and fifth requisites: Petitioner partially proved that it was engaged in zero-rated or effectively zero-rated sales for the first to fourth quarters of CY 2016.

The *fourth and fifth requisites*, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

In its Amended Quarterly VAT Returns for the four quarters of CY 2016, petitioner declared total zero-rated sales/receipts in the total amount of ₱628,569,036.48, *to wit*:

Period	Exhibit	Zero-Rated sales
1st Quarter	Line 17, "P-3-a"	₱ 229,120,891.77
2nd Quarter	Line 17, "P-4-a"	168,286,494.02
3rd Quarter	Line 17, "P-5-a"	164,926,715.37
4th Quarter	Line 17, "P-6-a"	66,234,935.32
TOTAL		₱628,569,036.48

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[50] Docket – Vol.1, pp. 10 to 23.
[51] Exhibit "P-2", Docket – Vol. 1, p. 149.

Petitioner claims that for the four (4) quarters of CY 2016, it rendered services to non-resident foreign corporations not engaged in business in the Philippines, namely, Trans-Fast Remittance LLC and Trans-Fast International FZ-LLC; and that the services rendered were paid in acceptable foreign currencies and accounted for in accordance with the rules and regulations of the BSP.

Relative to the foregoing is Section 108(B) of the NIRC of 1997, as amended, which reads as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> The phrase 'sale or exchange of service' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx.
>
> xxx xxx xxx
>
> (B) Transactions Subject to Zero Percent (0%) Rate. — **The following services <u>performed in the Philippines</u> by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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);"** *(Emphases and underscoring supplied.)*

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Based on the foregoing provisions, a sale or supply of services will be subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended, provided the following essential elements are present, to wit:

> 1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[52]
>
> 2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[53]
>
> 3) The services fall under any of the categories under Section 108(B)(2),[54] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[55] and
>
> 4) The services must be performed in the Philippines[56] by a VAT-registered person.

Anent the <u>*first essential element*</u>, the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[57] is instructive, *to wit*:

> **"For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz:* (1)**

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[52] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao. Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 190102, July 11, 2012.

[53] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.

[54] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

[55] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra.

[56] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.

[57] G.R No. 234445, July 15, 2020.

> **that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines**.
>
> xxx xxx xxx
>
> **To recall, the CTA found that <u>the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients</u>.**
>
> **<u>The Court uphold these findings</u>**.
>
> xxx xxx xxx
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo's* findings. To the Court's mind, **the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**." (*Emphases and underscoring added*)

Based on the foregoing, to satisfy the first essential requirement, petitioner must submit for each of its foreign service-recipients/clients, at the very least, both: (1) SEC Certificate of Non-Registration of Corporation/Partnership **<u>and</u>** (2) proof of incorporation, association or registration showing the state/province/country where the entity was organized.

In this case, to show compliance with the *first* essential element, petitioner presented the following documents:

Service-recipient	Documents presented
Trans-Fast Remittance LLC	SEC Certification of Non-Registration of Company[58] and Articles of Incorporation[59]
Trans-Fast International FZ-LLC	SEC Certification of Non-Registration of Company[60] and Memorandum of Association and Articles of Incorporation[61]

Taken together, the foregoing documents sufficiently establish that Trans-Fast Remittance LLC and Trans-Fast International FZ-LLC are non-resident foreign corporations not engaged in business in the Philippines.

With respect to the *second essential element*, petitioner presented the Statement of Account dated January 22, 2019[62] and Credit Advices in US Dollars (USD),[63] both issued by BDO in favor of petitioner, to show that it received inward remittances. The Court finds that the foregoing documents are sufficient proof to establish the fact of payment "*in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP*". Hence, petitioner has complied with the second essential element.

As to the *third essential element*, the Court finds that petitioner entered into a *Service Agreement*[64] with Trans-Fast Remittance LLC. Pursuant thereto, the services to be rendered by petitioner to Trans-Fast Remittance LLC shows that the same is other than "*processing, manufacturing or repacking of goods*", to wit:

> "**WHEREAS**:
>
> xxx xxx xxx
>
> - TransFast desires to appoint Correspondent as its correspondent for the payment of remittances in connection with the Business (the "**Transactions**") in favor of beneficiaries in the Location (the "**Service**").

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[58] Exhibit "P-11", Docket – Vol. 2, p. 584.
[59] Exhibit "P-9", Docket – Vol. 2, pp. 537 to 566.
[60] Exhibit "P-12", Docket – Vol. 2, p. 623.
[61] Exhibit "P-10", Docket – Vol. 2, pp. 567 to 583.
[62] Exhibits "P-36-26" to "P-36-35", refer to the CD found in petitioner's Formal Offer of Evidence (FOE).
[63] Exhibits "P-36-1" to "P-36-25", refer to the CD found in petitioner's FOE.
[64] Exhibit "P-29-1 (5-26)" to "P-29-1 (26-26)", refer to the CD found in petitioner's FOE.

- Correspondent desires to be appointed as TransFast's correspondent for the execution of Transactions in favor of beneficiaries in the Location.

NOW THEREFORE, in consideration of the representations and covenants contained herein, the Parties agree as follows:

I. SUBJECT MATTER

1.1 TransFast hereby appoints Correspondent, on a non-exclusive basis, as its correspondent for the execution of Transactions in the Location. TransFast shall collect funds from remitters (hereinafter referred to as the "Remitter(s)" or the "Customer(s)" in the United States of America and/or the countries where TransFast conducts Business and shall execute Transactions for the transmission of such funds to beneficiaries (the "**Beneficiaries**") in the Location through Correspondent's facilities."

Meanwhile, insofar as Trans-Fast International FZ-LLC is concerned, the Court finds that no service agreement or any other contract was submitted to prove that services rendered by petitioner to Trans-Fast International FZ-LLC are not in the same category as "*processing, manufacturing or repacking of goods*".

With regard to the *fourth essential element*, We find that only the Service Agreement[65] with Trans-Fast Remittance LLC has a provision as to where the services are to be performed (i.e., in the Philippines) by petitioner, to wit:

"**WHEREAS**

- TransFast is a company licensed as a transmitter of money by the relevant authorities of the State of New York and other competent state and federal licensing and regulatory authorities in the United States, and engages in the business of transmission of money on behalf of third parties in the United States and abroad (the "**Business**"):

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[65] Exhibit "P-29-1 (5-26)" to "P-29-1 (26-26)", refer to the CD found in petitioner's FOE.

> - Correspondent (Petitioner) is an institution licensed by [Securities & Exchange Commission] and authorized under the laws of [Philippines] to engage in the Business to be conducted by the Parties pursuant to this Agreement, and registered as stipulated previously and desires to engage in the Business in connection with transactions to be executed **in favor of beneficiaries in [Philippines]** (the "**Location**")." (*Emphasis added*)

However, insofar as Trans-Fast International FZ-LLC is concerned, petitioner failed to establish compliance with the *fourth* essential element in the absence of proof showing that the subject services were rendered in the Philippines.

Thus, only petitioner's sales to Trans-Fast Remittance LLC qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

While the Court has determined petitioner's compliance with Section 108(B)(2), it is equally important to consider that the said foreign currency remittances referred to in Section 108(B)(2) must be duly supported by VAT zero-rated official receipts (ORs) as mandated in Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(2), B(1) and (2)(c) of RR No. 16-05, which states that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in the said provisions. Said provisions read as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — **A VAT-registered person shall issue:**
>
> xxx xxx xxx
>
> **(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); and

(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 xxx

SEC. 4.113-1. Invoicing Requirements. —

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

xxx xxx xxx

(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;

In the instant case, aside from the bank credit advices[66], petitioner also presented its Schedule of Zero-rated Sales for CY 2016[67] and the corresponding VAT zero-rated Official Receipts[68] in support of its total declared zero-rated sales of ₱628,569,036.48 for the four (4) quarters of CY 2016, detailed as follows:

Period	Exhibit	Zero-Rated sales
1st Quarter	Line 17, "P-3-a"	₱ 229,120,891.77
2nd Quarter	Line 17, "P-4-a"	168,286,494.02
3rd Quarter	Line 17, "P-5-a"	164,926,715.37
4th Quarter	Line 17, "P-6-a"	66,234,935.32
TOTAL		₱ 628,569,036.48

However, as discussed earlier, only services from Trans-Fast Remittance LLC qualify for VAT zero-rating. Upon verification of the submitted documents, only zero-rated sales amounting to ₱176,909,265.83, in relation to petitioner's sales to Trans-Fast Remittance LLC, are duly supported by bank credit advices of inward remittances and valid zero-rated ORs, detailed as follows:

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[66] Exhibits "P-36-1" to "P-36-25", refer to the CD found in petitioner's FOE.
[67] Exhibit "P-30", refer to the CD found in petitioner's FOE.
[68] Exhibits "P-35-1" to "P-35-25", refer to the CD found in petitioner's FOE.

Date	Exhibits		Name of Customer	Amount in USD	Conversion Rate	Amount in PHP
	Remittance	Official Receipt				
01/04/2016	"P-36-1"	"P-35-1"	Trans-fast remittance LLC	261,600.75	47.0067	12,296,987.98
01/21/2016	"P-36-2"	"P-35-2"	Trans-fast remittance LLC	267,207.75	47.2303	12,620,302.19
02/24/2016	"P-36-4"	"P-35-4"	Trans-fast remittance LLC	230,258.00	47.5111	10,939,810.86
03/29/2016	"P-36-6"	"P-35-6"	Trans-fast remittance LLC	218,772.25	47.6361	10,421,456.78
05/04/2016	"P-36-9"	"P-35-9"	Trans-fast remittance LLC	225,564.25	46.7240	10,539,264.02
05/24/2016	"P-36-10"	"P-35-10"	Trans-fast remittance LLC	225,037.25	46.2845	10,415,736.60
06/22/2016	"P-36-12"	"P-35-12"	Trans-fast remittance LLC	223,804.25	46.8023	10,474,553.65
07/21/2016	"P-36-14"	"P-35-14"	Trans-fast remittance LLC	322,272.25	46.4645	14,974,218.96
08/23/2016	"P-36-16"	"P-35-16"	Trans-fast remittance LLC	324,032.75	47.0581	15,248,365.55
09/20/2016	"P-36-18"	"P-35-18"	Trans-fast remittance LLC	343,497.00	46.6809	16,034,749.11
11/23/2016	"P-36-20"	"P-35-20"	Trans-fast remittance LLC	362,976.75	47.4294	17,215,769.47
11/17/2016	"P-36-22"	"P-35-22"	Trans-fast remittance LLC	738,973.75	48.3482	35,728,050.66
GRAND TOTAL				**3,743,997.00**		**176,909,265.83**

Therefore, out of the ₱628,569,036.48 zero-rated sales declared per VAT Returns for the four (4) quarters of CY 2016, only the amount of ₱176,909,265.83, as presented above, qualifies for VAT zero-rating under Section 108(B)(2), in relation to Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended.

On the other hand, the rest of petitioner's declared zero-rated sales to Trans-Fast International FZ-LLC in the amount of ₱451,659,770.65, as detailed below, shall be denied for VAT zero-rating in view of petitioner's failure to prove compliance with the *third* and *fourth* essential elements (*i.e., that the services it rendered thereto were not in the same category as "processing, manufacturing or repacking of goods", and that the services rendered were performed in the Philippines*).

Date	Exhibits		Name of Customer	Amount in USD	Conversion Rate	Amount in PHP
	Remittance	Official Receipt				
01/27/2016	"P-36-3"	"P-35-3"	Trans-fast international FZ LLC	1,070,644.00	47.2303	50,566,837.31
02/26/2016	"P-36-5"	"P-35-5"	Trans-fast international FZ LLC	703,622.00	47.5111	33,429,855.20
03/30/2016	"P-36-7"	"P-35-7"	Trans-fast	888,866.00	47.6361	42,342,109.66

			international FZ LLC			
04/29/2016	"P-36-8"	"P-35-8"	Trans-fast international FZ LLC	983,740.00	46.7240	45,964,267.76
05/25/2016	"P-36-11"	"P-35-11"	Trans-fast international FZ LLC	889,850.00	46.2845	41,186,262.33
06/24/2016	"P-36-13"	"P-35-13"	Trans-fast international FZ LLC	1,008,190.00	46.8023	47,185,610.84
07/26/2016	"P-36-15"	"P-35-15"	Trans-fast international FZ LLC	948,038.00	46.4645	44,050,111.65
09/01/2016	"P-36-17"	"P-35-17"	Trans-fast international FZ LLC	857,906.00	47.0581	40,371,426.34
09/10/2016	"P-36-19"	"P-35-19"	Trans-fast international FZ LLC	819,012.00	46.6809	38,232,217.27
11/24/2016	"P-36-21"	"P-35-21"	Trans-fast international FZ LLC	797,484.00	47.4294	37,824,187.63
11/22/2016	"P-36-23"	"P-35-23"	Trans-fast international FZ LLC	425,090.00	48.3482	20,552,336.34
12/09/2016	"P-36-24"	"P-35-24"	Trans-fast international FZ LLC	171,950.00	47.5111	8,169,533.65
12/15/2016	"P-36-25"	"P-35-25"	Trans-fast international FZ LLC	36,314.00	49.1550	1,785,014.67
GRAND TOTAL				**9,600,706.00**		**451,659,770.65**

Having found that petitioner had valid VAT zero-rated sales only in the total amount of **₱176,909,265.83** for the subject period of claim, We shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund/TCC.

Sixth requisite: The input taxes being claimed do not appear to be transitional input taxes.

The *sixth* requisite provides that the claimed input taxes do not appear to be transitional input taxes, pursuant to Section 111(A) of the NIRC of 1997, as amended, to wit:

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

> and supplies, whichever is higher, which shall be creditable against the output tax."

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

In this case, records show that petitioner is not a newly VAT-registered entity, thus, in the absence of any indication that the claimed input taxes are transitional input taxes, the Court holds that petitioner has complied with the *sixth* requisite.

Seventh Requisite: The input taxes being claimed were due or paid.

The *seventh* requisite in claiming VAT refund pertains to the requisite proof that the input taxes claimed during the four quarters of CY 2016 were actually due or paid in accordance with Section 110 (A) of the NIRC of 1997, as amended, which provides that:

> "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 output tax:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

nb

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[69] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. Nos. 158885 and 170680, April 2, 2009.

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

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

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

(b) Purchase of services on which a value-added tax has actually been paid.

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

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

xxx xxx xxx

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months of the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000.00): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided,* finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee, or licensee upon payment of the compensation, rental, royalty or fee."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, to wit:

"SECTION. 4.110-1. *Credits for Input Tax.* – 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale;

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

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

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction or depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

xxx xxx xxx

SECTION 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

xxx xxx xxx

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SECTION 4.110-3. *Claim for Input Tax on Depreciable Goods.* – Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million Pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) *If the estimated useful life of a capital good is five (5) years or more* – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) *If the estimated useful life of a capital good is less than five (5) years* – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided, however,* that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4-110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than P1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortization input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Further, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits on domestic purchases of goods, properties and services, as follows:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

xxx xxx xxx

(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

xxx xxx xxx

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code."

Based on the foregoing provisions, in order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods or properties) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[70] In addition, the invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[71]

Out of the reported input VAT on current domestic purchases of goods and services and amortization of input tax on capital goods exceeding ₱1 million amounting to ₱45,188,969.72, petitioner only claims for refund of the excess input VAT in the amount of ₱45,183,477.36, as determined as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Cap. Goods					
Exceeding 1M from Prev. Qtr.	₱342,228.82	₱323,149.26	₱ 304,069.68	₱284,990.12	₱1,254,437.88
Less: Input Tax on Cap. Goods Exceeding 1M Deferred to Succeeding Period	323,149.26	304,069.68	284,990.12	265,910.55	1,178,119.61
Amortization of Cap. Good Exceeding 1M	₱ 19,079.56	₱ 19,079.58	₱19,079.56	₱19,079.57	₱76,318.27
Current Transactions:					
Input Tax on Cap. Goods					
Not Exceeding 1 Million	323,180.16	159,077.68	126,591.67	69,642.86	678,492.37
Input Tax on Goods Other than Cap. Goods	21,197.16	19,242.58	25,763.61	23,627.50	89,830.85
Input Tax on Services	11,027,460.48	11,258,244.04	10,747,709.37	11,310,914.34	44,344,328.23
Total	₱11,390,917.36	₱11,455,643.88	₱10,919,144.21	₱11,423,264.27	₱45,188,969.72
Less: Output Tax	-	5,492.36	-	-	5,492.36
Total	₱ 11,390,917.36	₱ 11,450,151.52	₱10,919,144.21	₱11,423,264.27	₱45,183,477.36

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[70] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.

[71] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

In support of its input VAT claim, petitioner's presented evidence consisting of invoices, official receipts and other related documents which were examined by the ICPA.[72] The results of were summarized as follows:[73]

Exhibits	Particulars	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
"P-25" to "P-28"	Total Excess and Unutilized Input VAT Claim for Refund of or Issuance TCC per Schedule					₱45,183,477.36
	Less: Downward Adjustments					
"P-44"	Input Tax on Purchases of Capital Goods not exceeding 1Million - Not Supported	₱162,151.31	₱26,250.00	₱74,274.56	-	₱262,675.87
"P-50"	Input Tax on Purchases of Goods Other Than Capital Goods - Not Supported	1,422.79	1,405.80	4,359.58	6,933.30	14,121.47
"P-52"	Input Tax on Domestic Purchases of Services – Supported by Original VAT ORs not in Petitioner's name	2,339.03	-	-	-	2,339.03
"P-53"	Input Tax on Domestic Purchases of Services – Supported by Original VAT ORs without or invalid TIN of petitioner	3,472.50	4,463.89	5,343.64	26,295.00	39,575.03
"P-54"	Input Tax on Domestic Purchases of Services – Supported by Original VAT ORs with invalid TIN of the supplier	-	1,214.40	-	-	1,214.40
"P-55"	Input Tax on Domestic Purchases of Services – Supported by Original VAT ORs in Petitioner's name not dated or issued within the period of the claim	-	-	-	3,377.68	3,377.68
"P-56"	Input Tax on Domestic Purchases of Services - Supported by original VAT ORs issued as " Not Valid for Claiming Input Tax"	748.08	748.08	498.72	1,355.86	3,350.74
"P-57"	Input Tax on Domestic Purchases of Services - Not Supported	184,933.08	145,800.98	41,301.15	244,493.86	616,529.07
	Total Downward Adjustments	₱355,066.79	₱179,883.15	₱125,777.65	₱282,455.70	₱943,183.29
	Net Amount of Excess and Unutilized Input VAT Valid for Claim					**₱44,240,294.07**

[72] Exhibits "P-41" to "P-57", with sub-markings.
[73] ICPA Report, Exhibit "P-15", Docket – Vol. 1, p. 341.

Upon careful examination thereof, We adopt the findings of the ICPA that only the input VAT amounting to **₱44,240,294.07** are valid for the claim for refund. While, the amount of **₱943,183.29** should be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110,3, 4.110-8, and 4.113-1 of RR No. 16-2005, as amended.

In addition, upon further examination and verification by the Court, an additional input VAT amounting to **₱13,955.42** shall likewise be disallowed for the grounds stated hereunder:

Supplier	Exhibit	Input VAT	Reason for Disallowance
Accent Micro Technologies, Inc.	P-43-7	₱3,529.39	Invoice Not Readable
Cebuana Lhuillier Pera Padala	P-51-118	19.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-120	39.27	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-122	19.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-124	68.73	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-126	9.82	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-128	212.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-130	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-132	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-134	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-136	183.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-138	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-140	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-142	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-144	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-146	154.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-148	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-150	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-152	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-154	125.36	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-156	144.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-158	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-186	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	P-51-188	67.50	Official Receipt not in the name of the petitioner

Cebuana Lhuillier Pera Padala	**P-51-190**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-192**	125.36	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-194**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-196**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-198**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-200**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-202**	96.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-204**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-206**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-208**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-210**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-212**	115.71	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-214**	37.88	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-216**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-218**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-220**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-222**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-224**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-226**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-228**	115.71	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-257**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-259**	106.07	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-261**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-263**	86.79	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-265**	106.07	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-267**	125.36	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-269**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-271**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-273**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-275**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-277**	183.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-279**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-281**	106.07	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-283**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-285**	163.93	Official Receipt not in the name of the petitioner

Cebuana Lhuillier Pera Padala	**P-51-287**	96.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-289**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-291**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-319**	125.36	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-321**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-324**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-325**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-327**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-329**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-331**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-333**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-335**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-337**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-339**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-341**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-343**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-345**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-347**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-349**	183.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-351**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-353**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-355**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-357**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-359**	212.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-361**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-387**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-389**	115.71	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-391**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-393**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-395**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-398**	250.71	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-400**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-402**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-404**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-406**	86.79	Official Receipt not in the name of the petitioner

Cebuana Lhuillier Pera Padala	**P-51-408**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-410**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-412**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-414**	192.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-416**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-418**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-420**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-423**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-448**	86.79	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-450**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-452**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-454**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-456**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-458**	96.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-460**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-462**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-464**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-466**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-468**	86.79	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-470**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-472**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-474**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-476**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-478**	106.07	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-480**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-482**	86.79	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-484**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-486**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-518**	154.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-520**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-522**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-524**	135.00	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-526**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-528**	48.21	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-530**	38.57	Official Receipt not in the name of the petitioner

Cebuana Lhuillier Pera Padala	**P-51-532**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-534**	77.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-536**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-538**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-540**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-542**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-544**	96.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-547**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-549**	28.93	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-551**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-553**	125.36	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-555**	96.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-587**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-589**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-591**	202.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-593**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-595**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-597**	9.64	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-599**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-601**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-603**	212.14	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-605**	38.57	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-607**	19.29	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-609**	86.79	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-612**	67.50	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-613**	231.43	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-615**	241.07	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-617**	57.86	Official Receipt not in the name of the petitioner
Cebuana Lhuillier Pera Padala	**P-51-619**	86.79	Official Receipt not in the name of the petitioner
Total		**₱13,955.44**	

Thus, out of the total input VAT per petitioner's VAT Returns amounting to ₱45,188,969.72 for the four quarters of CY 2016, only the amount of **₱44,231,831.01**, as computed below, represents petitioner's substantiated input VAT for goods and services as well as amortization of input VAT exceeding ₱1 million for the same period, and to be considered for the purpose of petitioner's compliance with the remaining requisites:

Input VAT		
1st Quarter	₱11,390,917.36	
2nd Quarter	11,455,643.88	
3rd Quarter	10,919,144.21	
4th Quarter	11,423,264.27	₱45,188,969.72
Less: Disallowances		
Per ICPA Report	₱943,183.29	
Per Court's further verification	13,955.42	957,138.71
Valid Input VAT		**₱44,231,831.01**

Eight Requisite: The input taxes being claimed are attributable to petitioner's zero-rated sales.

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

For the subject period of claim, petitioner reported zero-rated sales and vatable sales in its Quarterly VAT Returns for the first to fourth quarters of CY 2016, in the following amounts:

Period	Exhibit	Vatable Sales	Zero-Rated sales
1Q 2016	Line 17, "P-3-a"[74]	-	₱ 229,120,891.77
2Q 2016	"P-4-a"[75]	₱45,769.65[76]	168,286,494.02
3Q 2016	Line 17, "P-5-a"[77]	-	164,926,715.37
4Q 2016	Line 17, "P-6-a"[78]	-	66,234,935.32
Total		₱45,769.65	₱628,569,036.48
TOTAL SALES		**₱628,614,806.13**	

[74] Docket – Vol. 2, pp. 518 to 519.
[75] Docket – Vol. 2, pp. 522 to 523.
[76] Line 15A, Docket – Vol. 2, p. 522.
[77] Docket – Vol. 2, pp. 526 to 527.
[78] Docket – Vol. 2, pp. 530 to 531.

Considering that petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of **₱44,231,831.01** shall be allocated proportionately on the basis of the volume of its total sales, in accordance with Section 112(A) of the NIRC of 1997, as amended, thus:

VATable receipts per Quarterly VAT Return	₱ 45,769.65
Divided by Total Sales/Receipts per VAT Return	628,614,806.13
Multiply by total valid Input VAT	44,231,831.01
Input VAT Attributable to Total VATable Sales	**₱ 3,220.53**

Valid Zero-Rated Sales/Receipts	₱ 176,909,265.82
Divided by Total Sales/Receipts per VAT Return	628,614,806.13
Multiply by total valid Input VAT	44,231,831.01
Input VAT Attributable to valid zero-rated sales	**₱ 12,448,037.61**

Consequently, only the remaining excess input VAT of **₱12,448,037.61** can be attributed to the substantiated zero-rated sales of ₱176,909,265.82.

Further, petitioner incurred output VAT liability in the amount of ₱5,492.36[79]. Considering that petitioner's valid input VAT allocated to *VATable sales* in the amount of ₱3,220.53 is not enough to cover the output VAT liability, the input VAT attributable to petitioner's valid zero-rated sales in the amount of ₱12,448,037.61 shall then be utilized against the remaining output VAT liability in the amount of ₱2,271.83. Consequently, only the remaining input VAT of **₱12,445,765.78** can be allocated to the entire valid zero-rated sales of petitioner, computed as follows:

Output VAT due	₱ 5,492.36
Input VAT Attributable to Total VATable Sales	3,220.53
Output VAT still due	₱ 2,271.83

Input VAT Attributable to valid zero-rated sales	₱ 12,448,037.61
Less: remaining balance of output VAT	2,272.83
Excess Input VAT attributable to valid zero-rated sales	**₱ 12,445,765.78**

[79] Line 15B, Exhibit "P-4-a", Docket, p. 522.

Thus, for purposes of the *eight* requisite, the excess input VAT attributable to petitioner's valid zero-rated sales is only in the amount of **₱12,445,765.78**.

Ninth requisite: Petitioner's claimed input taxes were not applied against any output taxes nor carried over to succeeding periods.

Having determined that petitioner had excess input VAT attributable to its zero-rated sales, We shall proceed to determine whether the same was not applied against its output VAT liability during and in the succeeding quarters.

In this case, petitioner's claimed input VAT for the four quarters of 2016 amounting to ₱45,183,477.36 was not carried over by petitioner in its succeeding Quarterly VAT Returns because it was deducted as "*VAT Refund/TCC claimed*"[80] in its Amended Quarterly VAT Return for the 4th quarter of 2016, preventing the carry-over or application of the claimed input VAT in the next taxable quarters.

Accordingly, the subject claim no longer formed part of the excess input VAT of ₱11,771,232.89[81] as of the first quarter of 2017. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarters of 2017.[82]

In fine, petitioner has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of **₱12,445,765.78**, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of 2016.

WHEREFORE, in light of the foregoing considerations the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱12,445,765.78** representing the

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[80] Exhibit "P-6-a", Line 23D, Docket – Vol. 1, p. 165.
[81] Exhibit "P-58-1 (2/2)", Line 29, refer to the CD found in petitioner's FOE.
[82] Exhibits "P-58-1" to "P-58-4", with sub-markings.

latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the CY 2016.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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