REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Second Division*

**MD DAVAO AGRI-VENTURES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10625**

Members:

**RINGPIS-LIBAN,** *Chairperson*
**MODESTO-SAN PEDRO,** *and*
**FERRER-FLORES,** *JJ.*

Promulgated: JUL 29 2025

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2:30 p.m.

# DECISION

***RINGPIS-LIBAN, J.:***

## The Case

The *Petition for Review* prays that the Court:

1) Reverse and set aside the *VAT Refund Notice* dated August 4, 2021 issued by the respondent Commissioner of Internal Revenue, through Assistant Commissioner Maria Luisa I. Belen, denying in full petitioner's value-added tax ("VAT") refund application for being contrary to law for its utter lack of merit; and

2) Grant petitioner's claim for VAT refund in the amount of Php2,087,683.57.[1]

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[1] Statement of the Case, Pre-Trial Order dated October 10, 2022, Docket – Vol. 6, p. 3108.

## The Facts

Petitioner MD Davao Agri-ventures, Inc. is a corporation duly organized and existing under and by virtue of the Republic of the Philippines, and principal office address at Brgy. Tagpore, Panabo City, Davao del Norte.[2]

Respondent is the public officer duly authorized to decide cases involving claims for tax refund pursuant to Section 112(C) of the National Internal Revenue Code ("NIRC") of the Philippines.[3]

On May 11, 2021, petitioner filed before the Bureau of Internal Revenue ("BIR") – VAT Credit Audit Division ("VCAD") an *Application for Tax Credits/Refunds* (BIR Form No. 1914),[4] for its unutilized input VAT in the total amount of Php2,276,660.35, covering the periods from January 1, 2019 to December 31, 2019.

Thereafter, the *Tax Verification Notice* No. TVN201800143112 dated May 11, 2021,[5] informing petitioner that Revenue Officers Kristine M. Albano and Mary Ann B. Estacio, are authorized to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund, covering the taxable period from January 1, 2019 to December 31, 2019.

Subsequently, the VCAD issued the *Memorandum* dated July 15, 2021, addressed to Ms. Maria Luisa I. Belen, Assistant Commissioner – Assessment Service,[6] recommending the refund in the reduced amount of Php2,166,227.97.

Disagreeing with the findings of the VCAD, Head Revenue Executive Assistant Rosana P. San Vicente recommended thru the *Memorandum* dated August 4, 2021,[7] the denial in full of petitioner's claim for refund.

On September 6, 2021, petitioner received the *VAT Refund Notice* dated August 4, 2021, issued by Assistant Commissioner Belen,[8] denying petitioner's

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2 Exhibits "P-11" to "P-12", BIR Records (Exhibit "R-6"), pp. 287 to 295; Exhibit "P-2", Docket – Vol. 7, pp. 3330 to 3338.
3 Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 6, p. 3097.
4 Exhibit "P-15", BIR Records (Exhibit R-6"), p. 297.
5 Exhibit "R-1", BIR Records (Exhibit "R-6"), p. 300.
6 Exhibit "R-3", BIR Records (Exhibit "R-6"), pp. 356 to 361.
7 Exhibit "R-4", BIR Records (Exhibit "R-6"), pp. 373 to 375.
8 Exhibit "P-1", Docket – Vol. 7, pp. 3327 to 3329; Exhibit "R-5", BIR Records (Exhibit "R-6"), pp. 377 to 381.

administrative claim in the amount of Php2,276,660.35, covering the period January 1, 2019 to December 31, 2019.

On October 22, 2021, the *Petition for Review* was filed.[9]

In the Resolution dated December 4, 2021,[10] petitioner was ordered to submit a compliant/correct *Petition for Review* within five (5) days from notice. On March 8, 2022, petitioner filed its *Compliance Manifestation with attached Amended Petition for Review,*[11] together with the *Judicial Affidavit of Sharon D. Sido*[12] and *Judicial Affidavit of Joseph P. Basquina,*[13] both dated March 8, 2022.

Petitioner then filed a *Manifestation with Motion to Admit* on March 11, 2022,[14] praying for the admission of the attached original *Secretary's Certificate*[15] of petitioner to replace the incorrect *Secretary's Certificate* attached to the Court's copy of its *Amended Petition for Review.* In the Resolution dated March 24, 2022,[16] the Court: (1) noted petitioner's *Compliance Manifestation;* (2) admitted petitioner's *Amended Petition for Review, Judicial Affidavit of Sharon D. Sido and Judicial Affidavit of Joseph P. Basquina;* (3) granted petitioner's *Manifestation with Motion to Admit*; and (4) admitted the attached *Secretary's Certificate.*

Thereafter, petitioner filed a *Manifestation and Motion* on April 7, 2022,[17] praying that the *Judicial Affidavit of Marlon D. Dumail*[18] attached to the *Amended Petition for Review* be likewise admitted.

In the Resolution dated April 19, 2022,[19] the Court granted petitioner's *Manifestation and Motion,* and admitted the *Judicial Affidavit of Marlon D. Dumail,* as part of the records of the case.

Within the period granted by the Court,[20] respondent filed his *Answer* on June 10, 2022,[21] interposing the following special and affirmative defenses, to wit: (1) that the petition must be dismissed for failure of petitioner to substantiate

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9 Docket – Vol. I, pp. 10 to 43.
10 Docket – Vol. 6, pp. 2731 to 2732.
11 Docket – Vol. III, pp. 1343 to 1381.
12 Docket – Vol. III, pp. 1382 to 1394.
13 Docket – Vol. III, pp. 1568 to 1578.
14 Docket – Vol. III, pp. 1336 to 1338.
15 Docket – Vol. III, pp. 1340 to 1342.
16 Docket – Vol. 6, pp. 2734 to 2735.
17 Docket – Vol. 6, pp. 2737 to 2740.
18 Docket – Vol. V, pp. 2703 to 2711.
19 Docket – Vol. 6, pp. 2769 to 2770.
20 *Motion for Extension of Time to File Answer* dated May 6, 2022, Docket – Vol. 6, pp. 2772 to 2775, and Resolution dated May 25, 2022, Docket – Vol. 6, p. 2779.
21 Docket – Vol. 6, pp. 2780 to 2789.

its administrative claim for refund; and (2) that the claim for tax refund must be denied due to petitioner's failure to comply with the requirements pursuant to Section 238 of the Tax Code, as amended.

Petitioner then filed its *Reply* on June 23, 2022.[22]

Respondent transmitted to this Court the *BIR Records* of this case, consisting of one (1) folder, with 381 pages, on June 30, 2022.[23]

The Pre-Trial Conference was set and held on September 1, 2022.[24] Prior thereto, the *Pre-Trial Brief for Petitioner*,[25] and *Respondent's Pre-Trial Brief*,[26] were both filed on August 26, 2022.

On October 3, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[27] which was admitted and approved by the Court in its Resolution dated October 5, 2022,[28] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on October 10, 2022.[29]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Sharon D. Sido,[30] petitioner's Accounting Manager; (2) Mr. Joseph P. Basquina,[31] petitioner's Senior Accounting Staff; (3) Mr. Marlon D. Dumail,[32] petitioner's Information and Communication Technology (ICT) Department

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22 Docket – Vol. 6, pp. 2793 to 2800.
23 Respondent's *Compliance* dated June 30, 2022, Docket – Vol. 6, pp. 2802 to 2804.
24 Notice of Pre-Trial Conference dated June 16, 2022, Docket – Vol. 6, pp. 2791 to 2792; and Minutes of the hearing held on, and Order dated, September 1, 2022, Docket – Vol. 6, pp. 3073 to 3075.
25 Docket – Vol. 6, pp. 2820 to 2845.
26 Docket – Vol. 6, pp. 3066 to 3069.
27 Docket – Vol. 6, pp. 3097 to 3104.
28 Docket – Vol. 6, p. 3107.
29 Docket – Vol. 6, pp. 3108 to 3115.
30 *Amended Judicial Affidavit of Sharon D. Sido* dated August 23, 2022, Docket – Vol. 6, pp. 2878 to 2892; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket – Vol. 6, pp. 3279 to 3281.
31 *Judicial Affidavit of Joseph P. Basquina* dated March 8, 2022, Docket – Vol. III, pp. 1568 to 1578; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. 6, pp. 3275 and 3278, respectively.
32 *Amended Judicial Affidavit of Marlon D. Dumail* dated August 23, 2022, Docket – Vol. 6, pp. 2851 to 2860; Minutes of the hearing held on, and Order dated, February 9, 2023, Docket – Vol. 6, pp. 3279 to 3281.

Manager; and (4) Mr. Peter Raymond T. Santos,[33] the Court-commissioned Independent Certified Public Accountant ("ICPA").[34]

The *Report* of the ICPA was submitted on December 29, 2022.[35]

On March 15, 2023, petitioner filed its *Formal Offer of Evidence*,[36] to which respondent filed his *Comment (to Petitioner's Formal Offer of Evidence)* on March 27, 2023.[37] Petitioner filed its *Reply (Re: Respondent's Comment to Petitioner's Formal Offer of Evidence)* on April 4, 2023.[38] In the Resolution dated May 22, 2023,[39] the Court admitted petitioner's offered exhibits, *except* Exhibit "P-14", for failure of the exhibit offered and identified to correspond with the document marked.

Thereafter, upon petitioner's *Motion for Reconsideration [Of the Resolution dated 22 May 2023] with Motion to Admit the Attached Exhibit,* filed on June 15, 2023,[40] and respondent having failed to file a comment,[41] the Court, in the Resolution dated November 6, 2023,[42] set the case for a Commissioner's Hearing for the comparison and marking of Exhibits "P-14" and "P-18" on November 21, 2023. Petitioner then filed its *Supplemental Formal Offer of Evidence* on November 28, 2023.[43] In the Resolution dated February 2, 2024,[44] the Court granted petitioner's *Motion for Reconsideration [Of the Resolution dated 22 May 2023] with Motion to Admit the Attached Exhibit,* and admitted Exhibit "P-14".

For his part, respondent presented the testimony of Revenue Officer Eufemia Mylene N. Mabingnay.[45]

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33 *Judicial Affidavit of Peter Raymond T. Santos* dated December 29, 2022, Docket – Vol. 6, pp. 3201 to 3215; Minutes of the hearing held on, and Order dated, February 23, 2023, Docket – Vol. 6, pp. 3286 and 3289 to 3290, respectively.

34 *Oath of Commission* dated October 18, 2022, Docket – Vol. 6, p. 3117; and Minutes of the hearing held on, and Order dated, October 18, 2022, Docket – Vol. 6, pp. 3116 and 3119 to 3120, respectively.

35 Exhibit "P-52", Docket – Vol. 6, pp. 3170 to 3200, and 3231 to 3261.

36 Docket – Vol. 7, pp. 3300 to 3325.

37 Docket – Vol. 7, pp. 3377 to 3379.

38 Docket – Vol. 7, pp. 3381 to 3385.

39 Docket – Vol. 7, pp. 3388 to 3390.

40 Docket – Vol. 7, pp. 3393 to 3397.

41 Records Verification dated September 22, 2023 issued by this Court's Judicial Records Division, Docket – Vol. 7, p. 3409.

42 Docket – Vol. 7, pp. 3413 to 3415.

43 Docket – Vol. 7, pp. 3419 to 3422.

44 Docket – Vol. 7, pp. 3445 to 3446.

45 *Judicial Affidavit of Revenue Officer Eufemia Mylene N. Mabingnay,* Docket – Vol. 6, pp. 2811 to 2816; Minutes of the hearing held on, and Order dated, May 28, 2024, Docket – Vol. 7, pp. 3454, and 3456 to 3457, respectively.

On June 7, 2024, respondent filed his *Formal Offer of Evidence*,[46] to which petitioner submitted its *Comment (to Respondent's Formal Offer of Evidence)* on June 20, 2024.[47] In the Resolution dated August 2, 2024,[48] the Court admitted all of respondent's offered exhibits.

Petitioner filed its *Memorandum* on September 9, 2024;[49] while respondent submitted a *Manifestation* on September 12, 2024,[50] stating that he is adopting the arguments he raised in his *Answer* as his *Memorandum*.

The present case was considered submitted for decision on September 24, 2024.[51]

## The Issue

The parties submit the following issue for this Court's resolution:

> "... whether the Petitioner is entitled to refund of excess and unutilized input VAT for taxable year 2019 in the amount of Two Million Eighty-Seven Thousand Six Hundred Eighty-Three and 57/100 (Php2,087,683.57)."[52]

***Petitioner's arguments:***

Petitioner argues that it complied with all the requisites of a valid refund; that petitioner submitted all the required documents to support its application for VAT refund; that petitioner issued valid invoices for its zero-rated transactions pursuant to a valid Permit to Use Computerized Accounting System ("PTUCAS") and in compliance with Sections 237 and 238 of the Tax Code; the modification of the header of the system generated sales invoice from "charge sales invoice" to "commercial invoice" does not constitute a system enhancement that resulted in the change in the system's release and/or version number, hence, the automatic revocation of petitioner's PTUCAS has no basis in law; and that petitioner was able to substantiate its entitlement to a tax refund in the amount of Php2,087,683.57.

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46 Docket – Vol. 7, pp. 3458 to 3461.
47 Docket – Vol. 7, pp. 3463 to 3467.
48 Docket – Vol. 7, pp. 3471 to 3472.
49 Docket – Vol. 7, pp. 3474 to 3511.
50 Docket – Vol. 7, pp. 3513 to 3515.
51 Minute Resolution dated September 24, 2024, Docket – Vol. 7, p. 3518.
52 Issue to be Resolved, JSFI, Docket – Vol. 6, p. 3098.

***Respondent's counter-arguments:***

Respondent, in his *Answer*, contends that the present *Petition for Review* must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and that the claim for tax refund must be denied due to petitioner's failure to comply with the requirements pursuant to Section 238 of the Tax Code, as amended.

## Discussion/Ruling

The present *Petition for Review* must be denied.

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

Section 112 of the NIRC of 1997, as last amended by Republic Act ("RA") No. 10963,[53] provides, in part, 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 or properties or services, and the amount of

[53] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
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> xxx xxx xxx
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> (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.
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> 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 with 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."

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

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

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[54]

[54] *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.

2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said ninety (90)-day period;[55]

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

3. the taxpayer is a VAT-registered person;[56]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[57]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[58] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations;[59]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[60]

7. the input taxes are due or paid;[61]

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[55] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[56] *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*.

[57] *Id.*

[58] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

[59] *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*.

[60] *Id.*

[61] *Id.*

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[62] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[63]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[64] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[65] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[66] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[67]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[68]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[69] Thus, it behooves petitioner to show compliance with each of the

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

63 *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.

64 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

65 *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

66 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

67 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

68 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

69 *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine*

foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

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

The *first* requisite provided in Section 112(A) of the NIRC of 1997, as amended, commands the taxpayer to file an administrative claim for input VAT refund within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st to 4th quarters of taxable year 2019. Counting two (2) years from the close of the subject taxable quarters, petitioner had until the following respective dates to file its administrative claim, *viz*:

| Period Covered (2019) | Close of Taxable Quarter | Last Day to File Administrative Claim |
|---|---|---|
| 1st Quarter | March 31, 2019 | March 31, 2021 |
| 2nd Quarter | June 30, 2019 | June 30, 2021 |
| 3rd Quarter | September 30, 2019 | September 30, 2021 |
| 4th Quarter | December 31, 2019 | December 31, 2021 |

However, in view of the COVID-19 pandemic and pursuant to Section 4(tt) of RA No. 11494[70] signed into law on September 11, 2020, the statutory deadlines and timeliness for the filling and submission of any document were extended, to wit:

> "(tt) Moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under CQ[71];"

*National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

70 AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, otherwise known as *"Bayanihan to Recover as One Act"*.

71 Community Quarantine.

To implement the same, Revenue Regulations ("RR") No. 27-2020[72] dated October 6, 2020 was issued, where Section 5 thereof provides, in part, that "[i]f the deadline for the filing of the VAT refund claim falls within the ECQ or MECQ period, [the] filing of the claim shall be extended for thirty (30) days after the lifting of the ECQ or MECQ. This applies to the affected areas of the processing offices or to the registered business address of the taxpayer-claimant where the restrictions are strictly enforced."

In relation thereto, Revenue Memorandum Circular ("RMC") No. 39-2021[73] dated March 18, 2021 provides that "xxx following the temporary closure of VCAD until March 28, 2021, in compliance with the existing health protocols for the mitigation of the COVID-19 pandemic, the filing of VAT Refund, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021."

Thereafter, RMC No. 45-2021[74] was issued on April 5, 2021, which provides that the extended deadline for filing of VAT refund applications with the VCAD which falls due on April 12, 2021 per RMC No. 39-2021 is thirty (30) days from the lifting of the ECQ.

The National Capital Region ("NCR"), among others, was then placed under Modified Enhanced Community Quarantine ("MECQ") from April 12, 2021 to April 30, 2021, and from May 1, 2021 to May 14, 2021, pursuant to the Inter-Agency Task Force for the Management of Emerging Infectious Diseases ("IATF") Resolution Nos. 109-A dated April 10, 2021, and 113-A dated April 29, 2021, respectively.

Thereafter, the NCR, among others, was then placed under General Community Quarantine ("GCQ"), starting May 15, 2021 until May 31, 2021, pursuant to IATF Resolution No. 115-A dated May 13, 2021.

Hence, petitioner's administrative claim for refund for the subject period was timely filed on May 11, 2021.[75] Notably, the administrative claim for refund

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[72] SUBJECT: Regulations Suspending the Filing and Ninety (90) - Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

[73] SUBJECT: EXTENSION OF THE DEADLINE FOR THE FILING OF APPLICATIONS AND SUSPENSION OF THE NINETY (90)-DAY PROCESSING OF VALUE-ADDED TAX (VAT) REFUND CLAIMS PURSUANT TO SECTION 112 OF THE TAX CODE OF 1997, AS AMENDED BY THE R.A. NO. 10963 (TRAIN LAW) WITH THE VAT CREDIT AUDIT DIVISION (VCAD).

[74] SUBJECT: Extension of the Deadline for the Filing of Position Papers, Replies, Protests, Documents and Other Similar Letters and Correspondences in Relation to Ongoing BIR Audit Investigations, and Filing of VAT Refund with VAT Credit Audit Division (VCAD).

[75] Exhibits "P-15", BIR Records (Exhibit "R-6"), p. 297.

relative to the 1st quarter of taxable year 2019 was filed within the extended deadline.

The *second* requisite stated in Section 112(C) of the NIRC of 1997, as amended, grants the BIR a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund. In turn, the taxpayer may appeal to the Court within thirty (30) days from receipt of the decision denying its claim or after the lapse of the said ninety (90)-day period.

As already noted, the administrative claim was filed by petitioner on May 11, 2021. Accordingly, respondent had ninety (90) days therefrom, or until August 9, 2021, within which to decide on petitioner's claim for refund.

The letter from the BIR denying petitioner's administrative claim was issued on August 4, 2021, which is within the ninety (90)-day period to decide, but was received by petitioner only on September 6, 2021.[76] Thus, the present case is that of inaction and Petitioner had thirty (30) days from August 9, 2021, or until September 08, 2021, to file an appeal before this Court.

Relative to the filing of the present *Petition*, the Supreme Court issued the following administrative circulars ordering the physical closure of courts and extending the filing of pleadings motions for appellate collegiate courts in the NCR due to the surge of Covid-19 cases, *viz.*:

| ***Circular No.*** | ***Date Issued*** | ***Content*** |
|---|---|---|
| Office of the court Administrator Circular No. 119-2021 | September 7, 2021 | RE: Court Operations Beginning 8 September 2021<br>"In view of the continued surge of confirmed COVID-19 cases in different variants, and considering that the proposed granular or localized lockdown will be pilot-tested in the National Capital Region (NCR) which is on Alert Level 4 (except the City of Manila), upon instructions of Chief Justice Alexander G. Gesmundo, **ALL COURTS** in the NCR, except the Supreme Court, shall remain **PHYSICALLY CLOSED** to court users until 30 September 2021, notwithstanding the NCR will be under General Community Quarantine (GCQ) beginning 8 September 2021.<br><br>xxx xxx xxx<br><br>The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court, unless |

[76] Exhibit "P-1", Docket – Vol. 7, pp. 3327 to 3329.

| | | |
|---|---|---|
| | | otherwise expressly ordered by the relevant court which shall consider the physical closure of the courts and the granular lockdowns." |
| Administrative Circular No. 75-2021 | Oct. 1, 2021 | RE: Court Operations Beginning 4 October 2021<br>"Notwithstanding any modification of the alert level guidelines in the National Capital Region (NCR), all appellate collegiate courts within the NCR, except the Supreme Court, shall, beginning 4 October 2021 until further notice, remain **PHYSICALLY CLOSED** to court users **EXCEPT** for urgent matters where in-court hearings may be deemed necessary, at the sound discretion of the Presiding Justice or the Chairpersons of the different divisions<br><br>xxx xxx xxx<br><br>The time for filing and service of pleadings and motions during this period shall **REMAIN SUSPENDED** until further notice." |
| Administrative Circular No. 83-2021 | Oct. 18, 2021 | RE: Court Operations Beginning October 20, 2021 until October 29, 2021<br><br>"Considering that the National Capital Region (NCR) has been placed under Alert Level 3 of the IATF's COVID-19 Alert Levels System, **all appellate collegiate courts within the NCR**, beginning October 20, 2021 until October 29, 2021, may conduct in-court proceedings on urgent matters and on other matters as may be determined by the presiding justice or the chairpersons of the different divisions, but in-court attendance shall be limited to lawyers, parties, and witnesses required to participate in-court. All others who are not required to be in-court but wish to observe the proceedings may do so through videoconferencing, subject to existing guidelines.<br><br>The suspension of the time for filing and service of pleadings and motions, regardless of the alert level or community quarantine, is **LIFTED**. Pursuant to Administrative Circular No. 72-2021, the period for filing and service shall resume seven (7) calendar days from October 20, 2021. xxx" |

Based on the foregoing circulars, all appellate collegiate courts are physically closed from September 7, 2021 and shall be reopened only on October 20, 2021. Thus, the filing of pleadings and motions resumed seven (7) calendar days thereafter, or on October 27, 2021. Correspondingly, the filing of the present *Petition for Review* on October 22, 2021[77] was also timely made.

[77] Docket – Vol. I, pp. 10 to 43.

Given the foregoing, petitioner complied with the above-stated *first* and *second* requisites.

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

Petitioner fulfilled the *third* requisite considering that it is a VAT-registered taxpayer with Taxpayer Identification Number 005-211-266-000, as shown in its *BIR Certificate of Registration* No. OCN 2RC0001113651.[78]

***Petitioner failed to establish that it was engaged in zero-rated sales during the taxable year 2019.***

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)(a)(1), (2) and (b); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner claims that during its years of operations, it focused on growing Cavendish bananas under the brand name "FRESCANA" which were heavily exported to the Japanese market.[79] Thus, petitioner believes that it is engaged in zero-rated export sales covered by Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended,[80] which reads as follows:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — xxx
>
> (1) 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:

[78] Exhibit "P-5", Docket – Vol. 7, p. 3344.
[79] Par. 11, Statement of Facts and Antecedent Proceedings, petitioner's *Memorandum*, Docket – Vol. 7, p. 3477
[80] Par. 73.3, Discussion, petitioner's *Memorandum*, Docket – Vol. 7, p. 3489.

> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Based on the foregoing provision, for an export sale to qualify as VAT zero-rated, the following essential elements must be present:

1. The sale was made by a VAT registered person;
2. There was sale and actual shipment of goods from the Philippines to foreign country; and
3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *first* essential element, it has been settled that petitioner is a VAT-registered entity, as already found earlier in determining the *third* requisite.

Parenthetically, it is noted that petitioner is also registered with the Bureau of Customs having been issued with *Certificate of Registration* dated January 9, 2018.[81] It is likewise registered with the Board of Investments as an export producer of cavendish banana as evidenced by *Certificate of Registration* No. 2019-267 dated December 2, 2019.[82]

Relative to the *second* essential element, it is incumbent upon the VAT-registered person to have, at the minimum, the following supporting documents:

1. **VAT sales invoice** as proof of sale of goods; and
2. Bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first type of document, the said sales invoices ("Sis") must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of Revenue Regulations ("RR") No. 16-2005, quoted hereunder for easy reference, to wit:

**<u>Section 113(A) and (B) of the NIRC of 1997, as amended</u>:**

[81] Exhibit "P-3", Docket – Vol. 7, p. 3339.
[82] Exhibit "P-4", Docket – Vol. 7, pp. 3340 to 3343.

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

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

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

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

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

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

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

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

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

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

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."

**<u>Section 4.113-1(A) and (B) of RR No. 16-2005</u>:**

"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:

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

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

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

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

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the SIs and official receipts supporting the export sales must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, *viz.*:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100.00) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Accordingly, only export sales supported by the above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Records show that petitioner filed its Amended *Quarterly Value-Added Tax Returns* (BIR Form No. 2550-Q) for the 1st to 4th quarters of taxable year 2019 on the following dates through the BIR's Electronic Filing and Payment System (eFPS):

| **Period (Taxable Year 2019)** | **Date of Filing** | **Reference No.** |
|---|---|---|
| 1st Quarter (January 1 to March 31)[83] | July 23, 2020 | 102000036958630 |
| 2nd Quarter (April 1 to June 30)[84] | July 22, 2020 | 102000036948248 |

[83] Exhibit "P-16", BIR Records (Exhibit "R-6"), pp. 257 to 259.
[84] Exhibit "P-16-1", BIR Records (Exhibit "R-6"), pp. 255 to 256.

| | | |
|---|---|---|
| 3rd Quarter (July 1 to September 30)[85] | July 24, 2020 | 102000036984536 |
| 4th Quarter (October 1 to December 31)[86] | July 23, 2020 | 102000036953062 |

Per its Amended *Quarterly Value-Added Tax Returns* (BIR Form No. 2550-Q) for the taxable year 2019, petitioner declared total sales in the amount of Php112,567,888.96, which includes zero-rated sales in the amount of Php110,478,085.98, as shown below:

| Taxable Year 2019 | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter | TOTAL |
|---|---|---|---|---|---|
| VATable Sales | Php 488,325.67 | Php 420,619.33 | Php 264,987.08 | Php 915,891.00 | Php 2,089,823.08 |
| Zero-rated Sales | 23,500,297.32 | 34,625,598.59 | 24,247,186.97 | 28,106,003.10 | 110,479,085.98 |
| **Total Sales** | **Php23,988,622.99** | **Php35,046,217.92** | **Php24,512,174.05** | **Php29,021,894.10** | **Php112,568,909.06** |

As already noted, in the *VAT Refund Notice* dated August 4, 2021,[87] respondent denied in full petitioner's claim for refund amounting to Php2,276,660.35, for taxable year 2019, due to the following reasons:

> "Please be informed that upon processing of the aforementioned claim under Tax Verification Notice No. TVN201800143112 dated May 11, 2021, the following observations were noted:
>
> 1. Deductions from claim:
>
> | | | |
> |---|---|---|
> | Violation of invoicing requirements pursuant to Sec. 113 in relation to Sec. 110 of the NIRC of 1997, as amended (Annex 'A.1') | Php | 9,312.76 |
> | Disallowed input tax on big-ticket purchases (Annex 'A.2') | | 346,584.50 |
> | Overclaimed input tax (Annex 'A.1') | | 179,664.02 |
> | **Total** | **Php** | **535,561.28** |
>
> 2. Facts of the case disclosed that your Company was issued Permit to Use (PTU) Computerized Accounting System (CAS) No. **1810_0112_PTU_CAS_000348 approved on** October 10, 2018. The said permit covers complete CAS, computerized books of accounts and the use/printing of system-generated accounting records, which include among others the issuance of **CHARGE INVOICES with serial range from 0000001 to**

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85 Exhibit "P-16-2", BIR Records (Exhibit "R-6"), pp. 253 to 254.

86 Exhibit "P-16-3", BIR Records (Exhibit "R-6"), p. 252.

87 Exhibit "P-1", Docket – Vol. 7, pp. 3327 to 3329; Exhibit "R-5", BIR Records (Exhibit "R-6"), pp. 377 to 381.

> **9999999**. Issuance of the abovementioned CAS Permit was likewise verified and affirmed by the Assistant Commissioner, Client Support Service. However, scrutiny and analysis of pertinent documents revealed that **your Company, for its sale of goods for the taxable year 2019, issued Commercial Invoices**, instead of Charge Invoices notwithstanding that the said CAS Permit approved the issuance of the latter and not otherwise.
>
> Section V(P) of RMO No. 29-2002 in relation to RMO No. 21-2000 stipulates that **a taxpayer shall apply for a new permit to use CAS in case of any system enhancement that shall result in change in systems release** and/or version number. **In case a taxpayer is found using an enhanced system without the approval of the BIR, the permit originally issued shall be deemed automatically revoked from the time the enhanced system is adopted**. Conversely, **your Company was not able to show documents to prove whether an enhancement and/or modification on the said CAS Permit was requested from and approved by the concerned RDO relative to the foregoing concern.**
>
> Section 238 of the NIRC of 1997, as amended, requires that all persons who are engaged in business shall secure from the BIR an authority to print receipts or sales or commercial invoices before a printer can print the same. **Without this proof, the invoices or receipts would have no probative value for the purpose of refund.**
>
> Clearly in the instant case, the Commercial Invoices not covered by the BIR approved CAS Permit have no probative value. Hence, your Company was not able comply with one of the requisites in establishing VAT zero-rated sales, which is the issuance of a valid Sales Invoices for its alleged zero-rated sale of goods. In this regard, your Company was not able to prove its zero-rated sales amounting to Php110,479,085.98."

In construing the term "system enhancement", petitioner invokes Section II.AA of Revenue Memorandum Order (RMO) No. 29-2002[88] and advances that renaming of the header of the invoice – from "Charge Invoice" to "Commercial

[88] Par. 89, Discussion, petitioner's *Memorandum*, Docket – Vol. 7, p. 3497.

Invoice" – is not considered a change or modification in the system software or architecture components of the CAS so as to constitute system enhancement.[89]

To bolster its position, petitioner presented Mr. Marlon D. Dumail, the Manager of its ICT Department, who testified through his *Amended Judicial Affidavit*, as follows:[90]

"Q11: You mentioned that your department prepared a document entitled 'Computerized Accounting System (CAS) No Enhancement Narrative Report'. If shown a copy of this Report, will you be able to identify the same?

A11: Yes.

Q12: I am showing you a copy of the Computerized Accounting System (CAS) No Enhancement Narrative Report. What is the relationship of this document to the one you are referring to?

A12: That is the same Report that I am referring to.

xxx xxx xxx

Q14: You mentioned in the Report that changing the header of Petitioner's system-generated sales invoices does not constitute a system enhancement on Petitioner's CAS, what do you mean by this?

A14: System enhancement is defined in Section II.AA of RMO No. 29-2002 as 'any change or modification in the system software or architecture components of a computerized application system that will add value or further improve the system.'

In the case of Petitioner's CAS, changing the header name of the system-generated sales invoices does not add value nor improve the Petitioner's CAS.

To elaborate, all data entry changes in the financial system are covered by the audit trail log. This audit trail log is illustrated at the Annex C of the Report. On the other hand, the change in the header of the sales invoices from 'Charge Sales Invoice' to 'Commercial Invoice' is 'coded' in the programming 'stored procedure programmability' and used at program runtime. This 'stored procedure programmability' can be seen at Annex D of the Report. The 'stored procedure programmability' only defines the display or presentation of the 'table' of contents on the user's interface, which includes the form headers and print layout. Hence, changes in the header of the system-generated sales invoices will not affect the contents of the underlying modules and sub modules

89 Par. 92, Discussion, petitioner's *Memorandum*, Docket – Vol. 7, p. 3497.
90 *Amended Judicial Affidavit of Marlon D. Dumail*, Docket – Vol. 6, pp. 2856 to 2858.

within the accounting system. Further, this will not also affect the integral recognition and computation of all financial transactions.

Put simply, changing the header of the system-generated sales invoice from 'Charge Sales Invoice' to 'Commercial Invoice' is simply a nominal or formal change which adds no value nor improvement in the system.

Q15: Aside from not being a system enhancement as defined under Section II.AA of RMO No. 29-2002, what other issues, if any, were covered and clarified by your Report?

A15: The amendment of the header is a modification that does not result in change in the systems release and/or version number of Petitioner's CAS. As illustrated in Annex B of our Report, despite said modification, Petitioner's CAS remains to be SAP Business One, version 9.2 (9.20.170) PL:07 (32-bit), released on 06 October 2017.

Q16: What else can you say about said modification, if any?

A16: The modification in the heading of the system-generated sales invoice does not affect its financial aspect.

In fact, a side-by-side comparison of the Charge Sales Invoice as submitted for approval by Petitioner during its CAS application and the Commercial Invoice later issued to its clients would show that both are the same on all material respects. No improvements or substantial modifications on the contents of the invoice were made."

We agree with petitioner.

Section II(AA) of RMO No. 29-2002,[91] defines "system enhancement" as any change or modification in the system software or architecture components of a computerized application system that will add value or further improve the system.

Relative thereto, Section V(P) of the same RMO states that the taxpayer shall apply for a new permit to use CAS in case of any system enhancement that shall result in change in systems release and/or version number. In case a taxpayer is found using an enhanced system without the approval of the BIR, the permit originally issued shall be deemed automatically revoked from the time the enhanced system is adopted.

[91] SUBJECT: Revised Procedures in the Processing and Approval of Application for Permit to Adopt Computerized Accounting System (CAS) or Components Thereof Amending RMO 21-2000.

In this case, the PTUCAS No. 1810_0112_PTU_CAS_000348 issued on October 10, 2018 [92] to petitioner indicates the following approved software/system description:

> "Main Software/Core System
> Software Name : SAP Business One
> Version Number : Version 9.2 PL 07
> Release No. and/or Date : 2017"

Clearly, the above version and release number remain to be used by petitioner despite the change in the header name of its invoice as presented in its *Computerized Accounting System (CAS) No Enhancement Narrative Report.*[93]

Considering the explanation of petitioner's witness, coupled with the documentary evidence presented, petitioner was able to show that the change in the header name of its invoice from "Charge Invoice" to "Commercial Invoice" do not constitute system enhancement that will require a new PTUCAS from the BIR.

However, to this Court's mind, whether petitioner had a "system enhancement" is of no moment.

At the outset, the Court notes that petitioner is only claiming the amount of Php2,087,683.57, which is different from the amount stated in its administrative claim for refund previously filed with respondent in the amount of Php2,276,660.35.[94] Thus, petitioner is already amenable to respondent's disallowance of its input VAT in the total amount of Php188,976.78,[95] which corresponds to the disallowance of its overclaimed input taxes and for violation of invoicing requirements thus:

| | |
|---|---|
| Overclaimed input tax (Annex "A.1") | Php 179,664.02 |
| Violation of invoicing requirements (Annex "A.1") | 9,312.76 |
| **Total** | **Php 188,976.78** |

Likewise, an examination of the documents submitted to the Court shows that petitioner indeed issued *Commercial Invoices*[96] to support its zero-rated sales. The Court finds the *Commercial Invoices* presented by petitioner insufficient to

[92] Exhibit 'P-9", Docket – Vol. 7, pp. 3352 to 3358.
[93] Exhibit "P-45", Docket – Vol. 7, pp. 3365 to 3375.
[94] Exhibit "P-15", BIR Records (Exhibit "R-6"), p. 297.
[95] Amended ICPA Report (Exhibit "P-52"), Docket – Vol. 6, p. 3232; Refer also to Exhibit "P-1", Docket – Vol. 7, p. 3327.
[96] Exhibits "P-29-13-1" to "P-29-15-11", USB (Exhibit "P-53").

support its VAT zero-rating sales transactions since these are only supplementary documents vis-à-vis charge sales invoice which is a principal document, as respectively defined in RR No. 18-2012,[97] which implements the aforequoted Section 237 of the NIRC of 1997, as amended, to wit:

> "2. **PRINCIPAL RECEIPTS/INVOICES** – for purposes of this regulations, it is written account evidencing the sale of goods and/or services issued to customers in an ordinary course of business which necessary includes the following:
>
> **2.1 VAT SALES INVOICE** – for purposes of Value Added Tax (VAT) pursuant to Section 106 of the NIRC, as amended, **it is a written account evidencing the sale of goods and/or properties issued to customers in an ordinary course of business, whether cash sales or on account (credit) which shall be the basis of the output tax liability of the seller** and the input tax claim of the buyer. **Cash Sales Invoices and Charge Sales Invoices fall under this definition**.
>
> xxx xxx xxx
>
> 3. **SUPPLEMENTARY RECEIPTS/INVOICES** — for purposes of these Regulations, these are also known as **COMMERCIAL INVOICES**. It is a written account evidencing that a transaction has been made between the seller and the buyer of goods and/or services, forming part of the books of accounts of a business taxpayer **for recording, monitoring and control purposes**.
>
> **It is a document evidencing delivery, agreement to sell or transfer of goods and services** which includes but are not limited to delivery receipts, order slips, debit and/or credit memo, purchase order, job order, provisional/temporary receipt, acknowledgement receipt, collection receipt, cash receipt, bill of lading, billing statement, statement of account, and any other documents, by whatever name it is known or called, whether prepared manually (handwritten information) or pre-printed/pre-numbered loose-leaf (information typed using excel program or typewriter) or computerized as long as it is

[97] SUBJECT: Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof.

used in the ordinary course of business being issued to customers or otherwise.

**Supplementary receipts/invoices, for purposes of Value-Added Tax, are not valid proof to support the claim of Input Taxes by buyers of goods and/or services**." *(Emphases and underscoring added)*

Relative thereto, RMC No. 2-2014[98] provides as follows:

"Revenue Regulations No. 18-2012, Revenue Memorandum Order (RMO) No. 12-2013 in relation to Sections 106, 108, 113 and other pertinent provisions of the National Internal Revenue Code (NIRC), as amended, mandate that:

1. **Sales Invoice (Cash or Charge)** shall be issued as *Principal* evidence in the *sale of goods and/ or properties;*

2. **Official Receipt** shall be issued as *Principal* evidence in the *sale of services and/ or lease of properties,* and

3. **Commercial Receipts/Invoices** such as delivery receipts, order slips, purchase orders, provisional receipts, acknowledgment receipts, collection receipts, credit/debit memo, job orders and other similar documents that form part of the accounting records of the taxpayer and/or issued to their customers evidencing delivery, agreement to sell or transfer of goods and services, shall be *Supplementary* evidence only.

xxx.

In view thereof, this Circular is hereby issued to reiterate that the provisions set forth in **RR No. 18-2012** and RMO No. 12-2013, in the issuance of Principal and/or Supplementary Receipts/Invoices in the ordinary course of business and the consequent examination of evidence of receipt of payment, shall be **strictly observed**." *(Emphases and underscoring added)*

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[98] SUBJECT: Clarification on the Issuance of Official Receipt as Required by Government Auditors as Evidence of Receipt of Payment for Disbursements Where the Payee/Recipient is a Dealer, Supplier or Any Business Establishment Required by the Bureau of Internal Revenue to Issue Such.

Prescinding from above, a **commercial invoice** has the following characteristics:

(1) It is a document evidencing delivery, agreement to sell or transfer of goods and services;

(2) It is for recording, monitoring and control purposes of the taxpayer; and

(3) It is not valid proof to support the claim of input tax.

In contrast, a **charge sales** invoice falls under the category of a "VAT SALES INVOICE", since it is a written account evidencing the sale of goods and/or properties issued to customers in an ordinary course of business, which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer.

Correspondingly, it is clear that only SIs (whether cash or charge) shall be issued and considered as principal evidence for sale of goods and/or properties which shall be the basis of the output tax liability of the seller (whether 12% or 0%). Thus, for the purpose of VAT zero rating, the commercial invoices issued by petitioner do not suffice since these are mere supplementary documents. In other words, the said commercial invoices, being merely considered as supplementary receipts/invoices, cannot be treated as equivalent to "VAT SALES INVOICE" or as proof of zero-rated sales.

Moreover, the Court noted that the *Commercial Invoices*[99] issued by petitioner ranges from Nos. 310000001 to 310000218, which are beyond the approved range of serial numbers for Charge Invoice under petitioner's PTUCAS,[100] which merely ranges from 0000001 to 9999999.

Thus, petitioner failed to show compliance with the aforementioned *second* essential element and *fourth* requisite. In other words, it has fallen short in establishing that its sales of goods qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the 1st to 4th quarters of taxable year 2019, the present *Petition for Review* must necessarily fail. Hence, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

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99 Exhibits "P-29-13-1" to "P-29-15-11", USB (Exhibit "P-53").
100 Exhibit 'P-9", Docket – Vol. 7, at p. 3356.

As final note, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[101] 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.[102] Thus, 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.[103] Strict adherence to the conditions prescribed by law is required of the taxpayer.[104]

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

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**WE CONCUR:**

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*

*(On Leave)*
**CORAZON G. FERRER-FLORES**
Associate Justice

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[101] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[102] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

[103] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, supra, *citing J.R.A. Philippines, Inc. vs. CIR*, supra.

[104] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

## 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.

**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*
*Chairperson*

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
*Presiding Justice*