REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9757

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, ***JJ.***

Promulgated:
JUL 06 2021 3:15 pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Pilipinas Kyohritsu Inc. (**petitioner/PKI**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 26 January 2018, Division Docket, Volume I, pp. 10-155, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(**RRCTA**). It seeks the refund of its alleged unutilized input value-added tax (**VAT**) on its domestic purchases of goods and services and importations of goods attributable to zero-rated sales for the period from 01 January 2016 to 31 March 2016 or the 4th quarter of fiscal year (**FY**) ending 31 March 2016 in the aggregate amount of ₱10,923,055.28.

PARTIES OF THE CASE

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (**SEC**) with Company Registration No. 157828.[4] It is engaged in the business of manufacturing and exporting parts and accessories, specifically wiring harness, weld cap and engineering design activity. Petitioner is duly registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 000-269-082-000, as evidenced by BIR Certificate of Registration No. OCN 8RC0000906901E.[5] It is also registered with the Board of Investments (**BOI**) as an export producer of automotive wiring harness and weld cap for automotive application with BOI Registration Nos. 2003-046[6], 2005-177[7], 2007-060[8], and 2015-080.[9]

Respondent, on the other hand, is the Commissioner of Internal Revenue (**respondent/CIR**), who was duly appointed and is empowered to perform the duties of his office, including the power to grant or deny tax refunds pursuant to Section 112(C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[10]

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(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 ICPA Exhibit "P-37-C", CD.

5 Exhibit "P-3", Division Docket, Volume II, pp. 716-717.

6 Registration as a new IT-enabled service exporter in the field of engineering design of automotive wiring harness; Exhibit "P-4", id., pp. 718-723.

7 Registration as a new export producer of weld cap for automotive application; Exhibit "P-5", id., pp. 724-729.

8 Registration as a new export producer of automotive wiring harness; Exhibit "P-6", id., pp. 730-735.

9 Registration as a new export producer of tie band products for automotive wiring harness; Exhibit "P-7", id., pp. 736-744.

10 Par. 2, Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 566.

FACTS OF THE CASE

For the 4th quarter of FY ending 31 March 2016, petitioner submitted the following:

Period	Monthly VAT Declaration/ Quarterly VAT Return	Date of filing
January 2016	Monthly VAT Declaration[11]	22 February 2016
February 2016	Monthly VAT Declaration[12]	23 March 2016
4th Quarter – FY 2016 (01 January 2016 to 31 March 2016)	Quarterly VAT Return[13]	18 April 2016
4th Quarter – FY 2016 (01 January 2016 to 31 March 2016)	Amended Quarterly VAT Return[14]	22 February 2017

On 29 August 2017, petitioner filed with the BIR Large Taxpayers Division its Application for Tax Credits/Refunds (BIR Form No. 1914)[15], covering the period from 01 January 2016 to 31 March 2016 (or the 4th quarter of FY ending 31 March 2016), in the aggregate amount of ₱10,923,055.28. Petitioner also submitted complete supporting documents along with its Letter-Request[16] for refund of unutilized input VAT for the said period (with attached copy of the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[17]).

On 10 January 2018, petitioner received a copy of the Letter dated 12 December 2017[18] (**Denial Letter**), denying the subject administrative claim on the following grounds: (1) there were no export sales for the period 01 January 2016 to 31 March 2016 because the total sales for the first three (3) quarters *per* quarterly VAT returns were already greater than the total sales *per* annual Income Tax Return (**ITR**) for FY ending 31 March 2016; (2) proceeds from export sales, which were offset or netted against amounts due to or from petitioner's related parties, were not duly accounted for in acceptable foreign currency in accordance with Bangko Sentral ng Pilipinas (**BSP**) rules and regulations; (3) there was no sufficient proof that the goods

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11 Exhibit "P-10", id., Volume II, pp. 749-750.
12 Exhibit "P-10-1", id., pp. 751-752.
13 Exhibit "P-10-2", id., pp. 753-754.
14 Exhibit "P-10-3", id., pp. 755-756.
15 Exhibit "P-9", id., p. 748.
16 Exhibit "P-8", id., pp. 745-747.
17 Id., p. 747; The supporting documents were compiled in thirty-three (33) folders and placed in two (2) boxes.
18 Exhibit "P-2", Division Docket, Volume II, pp. 711-715.

were exported and the services were rendered to non-resident foreign corporations (**NRFCs**) doing business outside the Philippines; (4) the total amount of input VAT arising from importations and local purchases in the 4th quarter of FY 2016 should only be ₱10,856,049.93; and, (5) the authenticity of the entries/information appearing on petitioner's supporting documents cannot be ascertained outright and respondent cannot merely rely upon the affidavit of petitioner's representative as to the general validity of the invoices and official receipts (**ORs**). Then Officer-In-Charge Assistant Commissioner Teresita M. Angeles (**OIC-Assistant Commissioner Angeles**) signed the Denial Letter for BIR Commissioner Caesar Dulay (**Commissioner Dulay**).

PROCEEDINGS BEFORE THE FIRST DIVISION

On 26 January 2018 and within thirty (30) days from receipt of the Denial Letter, petitioner filed the instant Petition for Review before the Court in Division to appeal the denial of its administrative claim.[19] The same was raffled to the First Division and docketed as CTA Case No. 9757.[20]

Respondent, after being granted an extension of time to file it,[21] filed his Answer[22] interposing special and affirmative defenses. In his Answer, respondent insisted that petitioner failed to substantiate its claim that it was to be entitled to the refund being prayed for. According to him, petitioner likewise failed to comply with the invoicing and accounting requirements laid down in Sections 113[23], 114[24] and 236[25] of the NIRC of 1997, as amended, and its implementing regulations under Revenue Regulations (**RR**) No. 16-2005.[26] Additionally, respondent countered that petitioner did not strictly comply since it failed to submit all supporting and relevant documents

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19 Supra at note 1.
20 The First Division is composed of Hon. Presiding Justice Roman G. Del Rosario, as Chairperson, Hon. Associate Justice Erlinda P. Uy and Hon. Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.
21 See Order dated 23 February 2018, Division Docket, Volume I, pp. 163-164.
22 Filed on 22 March 2018, id., pp. 165-178.
23 **Sec. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
24 **Sec. 114**. *Return and Payment of Value-added Tax.* —
25 **Sec. 236**. *Registration Requirements.* —
26 *Consolidated Value-Added Tax Regulations of 2005.*

provided under Revenue Memorandum Order (**RMO**) No. 53-98[27] and other existing rules and regulations to warrant the grant of the application for refund.

On 26 March 2018, the Court issued a Notice of Pre-Trial Conference[28], setting the Pre-Trial Conference on 31 May 2018. Accordingly, petitioner filed its Pre-Trial Brief[29] on 25 May 2018, while respondent filed his Pre-Trial Brief[30] on 25 July 2018.

On 25 May 2018, respondent transmitted to the First Division the present case's BIR Records consisting of 31 folders in three (3) bundles.[31] The First Division noted the same in the Minute Resolution dated 02 July 2018.[32]

On 28 May 2018, respondent filed his "Urgent Motion to Reset Pre-Trial Conference Scheduled on May 31, 2018".[33] In the Order dated 29 May 2018[34], the First Division granted the same and reset the Pre-Trial Conference to 26 July 2018.

At the re-scheduled Pre-Trial Conference on 26 July 2018, the First Division granted both parties 15 days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[35] On 10 August 2018, the parties submitted their JSFI[36] which was approved in the Resolution dated 03 September 2018.[37]

On 10 August 2018, simultaneous to the filing of the parties' JSFI, petitioner filed its "Motion for the Appointment of an Independent Certified Public Accountant".[38] In the Order dated 16 August 2018[39],

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27 *Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.*
28 Division Docket, Volume I, pp. 179-180.
29 Id., pp. 186-196.
30 Id., pp. 537-543.
31 See Compliance dated 18 May 2018, id., pp. 181-185.
32 Id., pp. 535-536.
33 Id., pp. 524-530.
34 Id., pp. 531-532.
35 See Order dated 26 July 2018, id., pp. 545-547.
36 Id., pp. 566-574.
37 Id., p. 598.
38 Id., pp. 548-551.
39 Id., Volume II, pp. 638-639.

the First Division appointed Neil U. Sison (**Sison**) as the Independent Certified Public Accountant (**ICPA**) and directed him to submit his report within 30 days or until 17 September 2018.[40]

On 05 September 2018, respondent filed his "Urgent Motion to Reset Hearing" asking the Court to reset the 11 September 2018 hearing.[41] In the Order dated 06 September 2018[42], the First Division granted the same and reset the hearing to 09 October 2018.

In the Order dated 25 September 2018[43], the First Division noted the ICPA's Report filed on 17 September 2018, as well as the accompanying transmittal letter (indicating the submission of soft copies of the said ICPA Report, working papers and exhibits). In the same Order, the First Division transferred the case to the Second Division.[44]

PROCEEDINGS BEFORE THE SECOND DIVISION

On 28 January 2019, the Second Division issued a Pre-Trial Order and terminated the pre-trial.[45]

In the trial that ensued thereafter, petitioner offered the testimonies of its witnesses, namely: (1) Edna Luisa Lopez (**Lopez**), the Manager of petitioner's Finance and Management Accounting Department; (2) Ria M. Tadeo (**Tadeo**), petitioner's Accounting Specialist II; (3) Evelyn Ocampo (**Ocampo**), the Assistant Manager of petitioner's Management Accounting Section; and, (4) Sison, the Court-commissioned ICPA.

On the witness stand, Tadeo, who testified by way of her Judicial Affidavit[46], declared essentially that: (1) as petitioner's Accounting Specialist II, she is responsible for the preparation, analysis and filing

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40 15 September 2018 is a Saturday.
41 Division Docket, Volume I, pp. 599-602.
42 Id., p. 603.
43 Id., Volume II, p. 640.
44 The case was transferred to the Second Division pursuant to CTA Administrative Circular No. 02-2018 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".
45 Division Docket, Volume II, pp. 646-653.
46 Exhibit "P-27", id., Volume I, pp. 414-501, with exhibits.

of monthly and quarterly VAT returns, including auditing and certifying purchase documents together with the compilation and preparation of all required documents for a VAT refund application; (2) petitioner filed an administrative claim for refund in the total amount of ₱10,923,055.28; and, (3) petitioner's unutilized input VAT for the 4^{th} quarter of FY ending 31 March 2016 was not applied against its output VAT and remained unutilized until the said total amount was deducted as "VAT Refund/TCC Claimed" from the total input VAT in its Amended Quarterly VAT Return for the 4^{th} quarter of FY ending 31 March 2016.

Ocampo, who also testified by way of her Judicial Affidavit[47], stated that: (1) as the Assistant Manager of petitioner's Management Accounting Section, she is responsible for counterchecking payment requests on import/export charges, fees and taxes on local and imported purchases of raw materials, goods, supplies and capital equipment, payment of duties and taxes, signing and reviewing check requests, purchase requisitions, check vouchers for brokers/forwarders, liquidations, etc.; (2) petitioner purchases raw materials from both local and international suppliers; (3) petitioner pays its foreign suppliers of raw materials through bank remittances; (4) for the foreign suppliers to whom petitioner also exports its finished products, offsetting is done and any remaining balance is paid through bank remittances; (5) petitioner has an offsetting arrangement with its non-resident foreign affiliates, namely, Sumitomo Wiring Systems, Ltd. (**SWS-Japan**) and Sumitomo Electric Wiring Systems, Inc. (**SEWS-USA**); and, (6) pursuant to the Terms of Payment agreed upon by petitioner and its non-resident foreign affiliates, the offsetting arrangement is done by counterbalancing the export sales and other charges for the account of the foreign customer/supplier with the value of the goods or supplies bought by petitioner from the same foreign customer/supplier from the previous month.

On cross examination, Ocampo stated that purchases from foreign suppliers and purchases from local suppliers during the 4^{th} quarter of FY ending 31 March 2016 are both substantial and more or less equally distributed. She also confirmed that purchases of raw materials from local and foreign suppliers formed part of the finished products.

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47 Exhibit "P-28", id., pp. 502-523, with exhibits.

Lopez, through her Judicial Affidavit[48], testified that: (1) as Manager of petitioner's Finance and Management Accounting Department, she is responsible for reviewing and recommending for approval all payment requests from all sections pertaining to purchases, importations, exportations and other government-related payments and other services and for the supervision of the filing of tax returns, applications for VAT refund and handling of BIR assessments, among others; (2) the BIR denied petitioner's claim for VAT refund for the following reasons: (**a**) petitioner's alleged ineligibility for income tax holiday, (**b**) the alleged unacceptability of the offsetting arrangement between petitioner and its foreign customers/suppliers, (**c**) the alleged lack of proof that the finished goods were exported to foreign customers because of the absence of the foreign customers' articles of foreign corporation or registration, (**d**) the alleged irregularities with the submitted invoicing and documentary requirements, (**e**) the alleged inconsistency of sales reports in quarterly and annual ITRs, and, (**f**) the alleged discrepancy in the amount applied for refund of input VAT paid for the months of January to March 2016; (3) petitioner secured a certification that SWS-Japan is a corporation duly registered and existing under the laws of Japan (marked as Exhibit "P-19"[49] and attached to her Judicial Affidavit) and proof that SEWS-USA is a corporation duly registered and existing under the laws of the State of Delaware, USA (marked as Exhibit "P-20"[50] and attached to her Judicial Affidavit); and, (4) petitioner submitted certified true copies of the required invoicing documents and it has secured certifications from its customers that the handwritten details on the invoices are true and correct, countersigned by authorized signatories.

On cross-examination, Lopez confirmed that the Certifications of Non-Registration of Company of SWS-Japan and SEWS-USA and the certifications from suppliers (attesting that the handwritten details on the invoices issued to petitioner were true and correct) were not submitted during the filing of the administrative claim before the BIR. On re-direct, Lopez explained that they did not submit such certifications because they were not included in the list of

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48 Exhibit "P-26", id., pp. 356-413, with exhibits.
49 Exhibit "P-19" attached to the Judicial Affidavit of Edna Luisa Lopez, id., pp. 406-412.
50 Exhibit "P-20" attached to the Judicial Affidavit of Edna Luisa Lopez, id., p. 413.

requirements or checklist as required by Revenue Memorandum Circular (**RMC**) No. 54-2014.[51]

As for ICPA Sison, he identified his ICPA Report dated 19 March 2018[52] and his Judicial Affidavit dated 01 February 2019[53] in relation thereto during the hearing held on 06 February 2019.[54]

On 26 February 2019, after completing the presentation of its testimonial evidence, petitioner filed its Formal Offer of Evidence[55] (**FOE**) consisting of Exhibits "P-1" to "P-37-BD", inclusive of sub-markings. On 27 February 2019, respondent filed his comment thereto.[56]

In the Resolution dated 02 April 2019[57], the Second Division admitted all of petitioner's exhibits except for Exhibits "P-10", "P-10-1" and "P-21"[58], for failure to identify; "P-37-X-51"[59], for being illegible; "P-37-AG-6" to "P-37-AG-15", "P-37-AG-17" to "P-37-AG-18", "P-37-AG-20" to "P-37-AG-105", and "P-37-AV-1" to "P-37-AV-2"[60], for not being found in the records.

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51 *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.*
52 Exhibit "P-30", Division Docket, Volume II, pp. 816-835.
53 Exhibit "P-31", id., pp. 657-665.
54 See TSN dated 06 February 2019.
55 Division Docket, Volume II, pp. 695-708.
56 Id., pp. 836-838.
57 Id., pp. 839-840.
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Exhibit No.	Description
"P-10"	Petitioner's Monthly VAT Declaration for January 2016.
"P-10-1"	Petitioner's Monthly VAT Declaration for February 2016.
"P-21"	Petitioner's sworn statement of non-filing of similar claims with BOI, DOF, BOC and BIR for the 4th quarter covering the period January to March 2016.

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Exhibit No.	Description
"P-37-X-51"	Certification Letter signed by the authorized employee of Luz Pharmacy.

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Exhibit No.	Description
"P-37-AG-6" to "P-37-AG-15"	Documents supporting valid input tax on purchases of capital goods not exceeding One Million, goods other than capital goods and services.
"P-37-AG-17" to "P-37-AG-18"	
"P-37-AG-20" to "P-37-AG-105"	

On 02 April 2019, respondent filed a "Motion to Reset Hearing"[61] set on 08 April 2019 for the initial presentation of his evidence. The Second Division granted the same and reset the hearing to 05 June 2019.[62]

Subsequently, on 17 April 2019, petitioner filed a "Motion for Reconsideration with Motion to Direct ICPA to Submit Exhibits of its ICPA Report"[63] (**MR on the FOE Resolution**), asking the Second Division to allow the continuance of the presentation of Tadeo to identify Exhibits "P-10", "P-10-1" and "P-21"[64] and the admission of said exhibits, and to direct ICPA Sison to produce and submit the exhibits which form part of his ICPA Report, namely, Exhibits "P-37-AG-6" to "P-37-AG-15", "P-37-AG-17" to "P-37-AG-18", "P-37-AG-20" to "P-37-AG-105" and "P-37-AV-1" to "P-37-AV-2"[65] as well as a clear copy of Exhibit "P-37-X-51".[66]

On 30 April 2019, the Second Division ordered respondent to comment on petitioner's MR on the FOE Resolution within 10 days from notice thereof.[67] In response thereto, respondent filed a "Motion for Additional Time to File Comment"[68] which the Court granted on 31 May 2019.[69] On even date and without waiting for the Court's Resolution on his motion, respondent filed his "Opposition"[70] to petitioner's MR on the FOE Resolution. Petitioner later filed a Reply[71] to respondent's Opposition, reiterating its prayer in the MR on the FOE Resolution.

In the Resolution dated 30 July 2019[72], the Second Division allowed the recall of Tadeo for the purpose of identifying her Judicial Affidavit as well as Exhibits "P-10", "P-10-1" and "P-21"[73] and directed

"P-37-AV-1" to "P-37-AV-2"	

61 Division Docket, Volume II, pp. 846-849.
62 See Order dated 08 April 2019, id., p. 852.
63 Id., pp. 853-857.
64 Supra at note 58.
65 Supra at note 60.
66 Supra at note 59.
67 See Resolution dated 30 April 2019, Division Docket, Volume II, p. 870.
68 Filed on 27 May 2019, id.. pp. 889-892.
69 See Resolution dated 31 May 2019, id., p. 899.
70 Id., pp. 893-897.
71 Id., pp. 900-904.
72 Id., pp. 906-910.
73 Supra at note 58.

ICPA Sison to submit a clear copy of the missing exhibits. In the same Resolution, the Court set the presentation of Tadeo on 28 August 2019.

On 13 August 2019, petitioner filed an "Urgent Motion to Reset Hearing"[74], asking the Second Division to reset the 28 August 2019 Hearing because Tadeo is unavailable on such date due to a conflict of schedule. The Court granted the same and reset the hearing to 23 September 2019.[75]

During the 23 September 2019 Hearing, petitioner presented Tadeo and the Second Division granted petitioner five (5) days or until 28 September 2019 to submit its Supplemental FOE.[76] Accordingly, petitioner filed its Supplemental FOE[77] on 27 September 2019, while respondent filed his Comment[78] thereto on 03 October 2019.

In the Resolution dated 18 November 2019[79], the Second Division granted petitioner's MR on the FOE Resolution, that is, it resolved to admit Exhibits "P-10", "P-10-1" and "P-21" and ICPA Exhibits "P-37-X-51", "P-37-AG-6" to "P-37-AG-15", "P-37-AG-17" to "P-37-AG-18", "P-37-AG-20" to "P-37-AG-105" and "P-37-AV-1" to "P-37-AV-2".[80] In the same Resolution, the Court likewise set the initial presentation of evidence for the respondent on 20 November 2019.

On 20 November 2019[81], respondent presented his lone witness, Revenue Officer Aurelio Agustin T. Zamora (**RO Zamora**), who testified by way of his Judicial Affidavit[82] that: (1) the mandatory audit or evaluation of petitioner's application for refund or tax credit (for alleged unutilized input VAT on local purchases of goods and services covering the period 01 January 2016 to 31 March 2016) was assigned to his group through Letter of Authority (**LOA**) No. AUDM 04/015072/2017 dated 04 October 2017[83]; (2) as explained in the

74 Division Docket, Volume II, pp. 911-913.
75 See Order dated 16 August 2019, id., p. 915.
76 See Order dated 23 September 2019, id., p. 932.
77 Id., pp. 922-926.
78 Id., pp. 927-930.
79 Id., pp. 934-936.
80 Supra at notes 58 to 60.
81 Minutes of the Hearing dated 20 November 2019, Division Docket, Volume II, p. 939.
82 Exhibit "R-5", id., pp. 875-883.
83 Exhibit "R-1", BIR Records, Folder 1, p. 877.

Memorandum Report dated 01 December 2017[84], petitioner is not entitled to refund because: (**a**) the reconciliation of inward remittances and offsetting AR/AP do not substantially comply with Sections 106(A)(2)(a)(1), 108(B)(2) and 112(A) of the NIRC of 1997, as amended, and its implementing regulations which specifically require that the proceeds from export sales be duly accounted for in acceptable foreign currency in accordance with BSP rules and regulations, (**b**) petitioner failed to prove that the goods were exported and the services were rendered to NRFCs doing business outside the Philippines, (**c**) there is a discrepancy in the amount applied for tax refund, and, (**d**) petitioner did not substantially comply with the required invoicing and documentary requirments; and, (**3**) based on such findings, his group recommended the denial of petitioner's administrative claim for input VAT refund for lack of legal and factual bases.

On 09 December 2019, respondent filed his FOE and Manifestation[85], consisting of Exhibits "R-1" to "R-4".[86] Petitioner filed its "Comment/Objections"[87], asking the Second Division to deny the admission of respondent's exhibits for the reason that copies thereof were not attached to the latter's FOE and that Exhibit "R-4" was not properly identified, authenticated and marked in evidence.

In the Resolution dated 24 January 2020[88], the Second Division admitted all of respondent's exhibits and gave the parties a period of 30 days within which to file their respective memoranda.

Thereafter, petitioner filed its Memorandum[89] on 27 February 2020. Respondent, after being granted an extension of time to file his Memorandum until 29 March 2020[90], filed a Manifestation[91] through registered mail on 30 June 2020, praying that his Answer dated

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84 Exhibit "R-2", id., pp. 919-930.

85 Division Docket, Volume II, pp. 942-946.

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Exhibit No.	Description
"R-1"	Letter of Authority No. AUDM 04/015072/2017 dated 4 October 2017.
"R-2"	Memorandum Report dated 1 December 2017.
"R-3"	Letter Denial dated 12 December 2017.
"R-4"	BIR Records.

87 Division Docket, Volume II, pp. 947-950.

88 Id., pp. 952-953.

89 Id., pp. 954-966.

90 See Order dated 02 March 2020, id., p. 971.

91 Received by the Court on 06 July 2020, id., pp. 972-975.

22 March 2018[92] be adopted as his Memorandum. Accordingly, on 13 July 2020, the Court considered the case submitted for decision.[93]

ISSUE

As the parties so stipulated[94], the main issue for this Court's determination is —

> WHETHER PETITIONER PILIPINAS KYOHRITSU INC. IS ENTITLED TO THE REFUND OF ITS UNUTILIZED INPUT VALUE-ADDED TAX (VAT) IN THE TOTAL AMOUNT OF ₱10,923,055.28 COVERING THE PERIOD FROM 01 JANUARY 2016 TO 31 MARCH 2016 (FOURTH QUARTER OF FISCAL YEAR ENDING 31 MARCH 2016).

RULING OF THE COURT

After a thorough review of the records of the case, this Court finds partial merit in the present Petition for Review.

Petitioner's claim for refund or tax credit finds legal basis in Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

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

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92 Supra at note 22.
93 See Resolution dated 13 July 2020, Division Docket, Volume II, p. 977.
94 JSFI, id., Volume I, p. 567.

> *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.
>
> ...
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> 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.
>
> ...

Pursuant to the above-quoted provisions, 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 the following categories, to wit:

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

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[95]

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, the judicial claim has been filed with this

[95] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; and *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007.

Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[96]

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

3. the taxpayer is a VAT-registered person;[97]

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

4. the taxpayer-claimant is engaged in zero-rated or effectively zero-rated sales;[98]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[99]

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

6. the input taxes are not transitional input taxes;[100]

7. the input taxes are due or paid;[101]

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;[102] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[103]

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

97 Supra at note 95.

98 Id.

99 Id.

100 Id.

101 Id.

102 Id.

103 Id.

Relative thereto, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[104] Thus, it behooves petitioner to show full compliance with each of the foregoing requisites.

I. PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE TIMELY FILED.

The *first* requisite pertains to the filing of the administrative claim for refund of unutilized input VAT before the BIR that must be within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The subject administrative claim covers the 4th quarter of FY ending 31 March 2016. Counting two (2) years from the close of the said quarter, the last day for the filing of petitioner's administrative claim in this case fell on 31 March 2018.

Petitioner filed its administrative claim for refund, together with the supporting documents, in the amount of ₱10,923,055.28 on 29 August 2017.[105] Clearly, petitioner's administrative claim was filed well within the two-year prescriptive period.

The *second* requisite relates to the prescriptive period for filing a judicial claim for the refund or tax credit of alleged excess or unutilized input VAT. Section 112(C) of the NIRC of 1997, as amended, states the said prescriptive period and it speaks of two (2) periods, namely: (1) the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and, (2) the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[106]

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104 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 201665, 30 August 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, 30 April 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, 16 March 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

105 Supra at note 15; BIR Records, p. 76.

106 *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, supra at note 96.

Significant to the reckoning of the 120-day period is the declaration of the Supreme Court that the application for VAT refund or tax credit must be accompanied by complete supporting documents with a statement under oath, attesting to the completeness of said supporting documents pursuant to RMC 54-2014.[107] The affidavit shall also state that these documents are sufficient to support the claim, and no other documents shall be accepted from the taxpayer in order for the CIR to render his decision. Below is the pertinent portion of the Supreme Court's ruling in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[108] (**Total**):

> ...
>
> ... As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
>> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a **statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>>
>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
>
> Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other

---

107 Supra at note 51.

108 G.R. No. 207112, 08 December 2015; Emphasis in the original text.

> document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim.
>
> ...

Applying the foregoing, the 120-day period shall be reckoned from 29 August 2017 on which date petitioner was already obliged to submit complete supporting documents.

The records show that petitioner submitted complete supporting documents upon the filing of its administrative claim on 29 August 2017 based on the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[109] and the Sworn Certification[110] executed by petitioner's Manager, Lopez.

Accordingly, respondent had 120 days from 29 August 2017, or until 27 December 2017, to decide on petitioner's claim. However, petitioner received a copy of the Denial Letter only on 10 January 2018. Considering the rule that inaction on the part of CIR is deemed a denial[111], petitioner's claim is deemed denied as early as 27 December 2017 or the expiration of the 120-day waiting period. Thus, petitioner had 30 days, or until 26 January 2018, to appeal such inaction to the Court. Evidently, petitioner's judicial claim for refund was timely filed on 26 January 2018.

The Court shall now proceed with its discussion of the other requisites.

II. PETITIONER IS A VAT-REGISTERED PERSON.

Petitioner likewise complied with the *third* requisite as it is undisputed that petitioner is duly registered with the BIR as a VAT taxpayer with TIN 000-269-082-000.[112]

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109 Supra at note 17; BIR Records, Folder 1, p. 758.

110 Exhibit "P-11", Division Docket, Volume II, p. 757; BIR Records, Folder 1, p. 759.

111 *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013.

112 JSFI, Division Docket, Volume I, p. 566.

III. PETITIONER HAD ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES DURING THE 4TH QUARTER OF FISCAL YEAR ENDING 31 MARCH 2016.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 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 must have been duly accounted for in accordance with the BSP rules and regulations.

In its Amended 4th Quarterly VAT return for FY 2016[113], petitioner reported total sales in the amount of ₱2,045,655,046.25, broken down as follows:

VATable Sales	₱629,556.19
Zero-Rated Sales	2,045,025,490.06
Total Sales	**₱2,045,655,046.25**

In support of its declared zero-rated sales for the 4th quarter of FY 2016, petitioner submitted various documents such as sales invoices, export documents (*i.e.*, bills of lading or airway bills and export declarations) and certificate of inward remittance.[114]

In his Report, ICPA Sison accounted petitioner's total zero-rated sales in the amount of ₱2,045,025,490.06, detailed as follows:[115]

Particulars	USD	PHP
Actual export sale of goods	$42,815,841.40	₱2,030,790,316.26
Actual export sale of services	399,599.42	9,453,246.78
Sale to PEZA-registered entities	100,884.00	4,781,927.02
Total Zero-Rated Sales	**$43,316,324.82**	**₱2,045,025,490.06**

113 Supra at note 14.
114 ICPA Exhibits "P-37-R", "P-37-R-1" to "P-37-R-6", "P-37-S", "P-37-S-1" to "P-37-S-10", "P-37-T", "P-37-T-1" to "P-37-T-274", "P-37-U", "P-37-U-1" to "P-37-U-2", "P-37-W", and "P-37-W-1", "P-37-BA", CD.
115 Supra at note 52.

Based on the above breakdown, petitioner has three (3) sources of zero-rated sales, namely:

(i) Actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended;
(ii) Actual export sale of services under Section 108(B)(2) of the NIRC of 1997, as amended; and,
(iii) Sale to Philippine Economic Zone Authority (**PEZA**)-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

i. Actual export sale of goods under Section 106(a)(2)(a)(1) of the NIRC of 1997, as amended (₱2,030,790,316.26)

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, states:

> ...
> **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties. —*
>
> (A) *Rate and Base of Tax. —* ...
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales. —* The term 'export sales' means:
>
> (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, in order for an export sale of goods to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following essential elements must be present:

1. The sale was made by a VAT-registered person;
2. There was a sale and actual shipment of goods from the Philippines to a 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 already been settled that petitioner is a VAT-registered person.

As for the *second* essential element, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, respectively provide:

> ...
>
> **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:
>
> ...
>
> (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;
>
> ...

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:

...

(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[.][116]

...

Based on the foregoing, any VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present the following documents, to wit:

1. 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.

[116] Emphasis supplied.

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz*:

> ...
> **SEC. 237**. *Issuance of Receipts or Sales or Commercial Invoices*. — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service...
> ...
>
> **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.
> ...

Thus, 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.

As *per* ICPA Sison's verification of the Schedule of Zero-Rated Export Sales of Goods[117], petitioner's sales amounting to ₱2,030,790,316.26 for the 4th quarter of FY 2016 arose from the export of goods to SWS-Japan and SEWS-USA which are properly supported with VAT zero-rated sales invoices, bills of lading or airway bills and export declarations.[118] Thus, petitioner satisfactorily complied with the *second* essential element.

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117 ICPA Exhibit "P-37-N-3", CD.
118 ICPA Exhibits "P-37-T-1" to "P-37-T-274", "P-37-U-1" to "P-37-U-2", and "P-37-W-1", id.

As for the *third* essential element (*i.e.*, the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP), petitioner presented the following documents: (1) Certificate of Inward Remittance CIR17-356899[119] issued by The Bank of Tokyo-Mitsubishi UFJ, Ltd. Manila Branch; (2) Reconciliation of Export Sales and Dollar Remittances[120] (**Reconciliation**); and, (3) Schedule of Offsetting of Receivables and Payables[121] (**Schedule of Offsetting**).

The said Certificate of Inward Remittance shows certain amounts of dollar remittances from SWS-Japan and SEWS-USA and such amounts can be traced to the sales amounts indicated in the supporting sales invoices using the Reconciliation, which enumerates the invoices comprising a particular amount of remittance for a specific date, and the Schedule of Offsetting, which reflects the details of the adjustments to the sales amounts (such as receivables, payables and other charges) to arrive at the net proceeds or amounts of dollar remittances. The foregoing documents thus confirm that the foreign currency remittances actually pertain to the payments for the zero-rated export sales of goods during the 4th quarter of FY 2016 ending 31 March 2016.

An examination of the Reconciliation and Schedule of Offsetting reveals that the monthly dollar remittances for export sales of goods *per* Certificate of Inward Remittance were either lower or higher than the unadjusted sales due to certain adjustments. Based on the Court's independent verification, the adjustments can be categorized as follows: (1) sales adjustments based on the date of delivery of exported goods and invoice price differences; (2) offsetting of receivables and payables between petitioner and its non-resident foreign affiliates; and, (3) deductions for importation of raw materials from petitioner's non-resident foreign affiliates. Below is the breakdown of the said adjustments:

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119 ICPA Exhibit "P-37-BA", id.
120 ICPA Exhibit "P-37-BD", id.
121 ICPA Exhibit "P-37-BC", id.

4th Quarter of FY ending 31 March 2016	**Unadjusted Sales (USD)**	**Sales Adjustments[122] (USD)**	**Adjusted Sales (USD)**	**Other Receivables Credited (USD)**	**Importation of Raw Materials (USD)**	**Other Charges Debited (USD)**	**Net Proceeds[123] (USD)**
	(a)	**(b)**	**(c)**	**(d)**	**(e)**	**(f)**	**(g) = (b) + (c) + (d) + (e) + (f)**
SWS-Japan							
January	$7,613,466.89	$(1,315,165.09)	$6,298,301.80	$33,776.03	$(5,800,241.26)	$(281,047.76)	$250,788.81
February	7,486,810.08	88,845.82	7,575,655.90	48,034.65	(3,357,729.41)	(348,524.95)	3,917,436.19
March	5,788,956.75	919,616.07	6,708,572.82	94,715.61	(4,293,907.60)	(345,277.70)	2,164,103.13
	----------------	----------------	----------------	----------------	----------------	----------------	----------------
Subtotal	**$20,889,233.72**	**$(306,703.20)**	**$20,582,530.52**	**$176,526.29**	**$(13,451,878.27)**	**$(974,850.41)**	**$6,332,328.13**
SEWS-USA							
January	$6,925,925.49	$(1,598,300.25)	$5,327,625.24	$24,167.22	$0.00	$(562,280.00)	$4,789,512.46
February	8,057,104.83	598,658.62	8,655,763.45	8,588.84	0.00	(550,914.00)	8,113,438.29
March	6,943,577.34	661,508.31	7,605,085.65	2,341.64	0.00	0.00	7,607,427.29
	----------------	----------------	----------------	----------------	----------------	----------------	----------------
Subtotal	**$21,926,607.66**	**$(338,133.32)**	**$21,588,474.34**	**$35,097.70**	**$0.00**	**$(1,113,194.00)**	**$20,510,378.04**
	----------------	----------------	----------------	----------------	----------------	----------------	----------------
Total	**$42,815,841.38[124]**	**$(644,836.52)**	**$42,171,004.86**	**$211,623.99**	**$(13,451,878.27)**	**$(2,088,044.41)**	**$26,842,706.17**
	==========	==========	==========	==========	==========	==========	==========

The total amount of unadjusted sales of US$42,815,841.40 when converted to Philippine peso corresponds to the reported zero-rated sales arising from export sales of goods amounting to ₱2,030,790,316.26.

As for the sales adjustments based on the date of delivery of exported goods and invoice price differences, the amounts can be traced to the supporting sales invoices, bills of lading or airway bills and credit/debit notes provided by petitioner.[125] As such, the proper basis for the zero-rated sales arising from export sales of goods should instead be the peso equivalent of the total amount of adjusted sales of US$42,171,004.86. *However*, with regard to the other adjustments for offsetting of receivables and payables and deductions for importation of raw materials from petitioner's non-resident foreign affiliates, petitioner failed to provide any supporting document for each of the additions for "other receivables credited" and the deductions for "importation of raw materials" and "other charges debited".

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122 Amounts comprising the adjustments were traced to the supporting sales invoices, bills of lading or airway bills and credit/debit notes, ICPA Exhibits "P-37-T-72" to "P-37-T-74", "P-37-T-77" to "P-37-T-78", "P-37-T-93", "P-37-T-167", "P-37-T-169" to "P-37-T-170", "P-37-T-172" to "P-37-T-174", "P-37-T-256", "P-37-T-266" to "P-37-T-267" and "P-37-T-271", id.

123 Amounts were traced to the remittances *per* Certificate of Inward Remittance, supra at note 119.

124 $0.02 discrepancy against the sum *per* Reconciliation of Export Sales and Dollar Remittances is due to rounding off difference.

125 Supra at note 119.

Aside from the fact that the offsetting of receivables and payables were unsubstantiated, it is worth mentioning that the BIR issued RMC 61-2016[126] which prohibited "offsetting arrangements" for taxation purposes, *viz*:

> ...
>
> **BACKGROUND:**
>
> It is a general principle of accounting that the offsetting of assets and liabilities in the balance sheet is improper. Hence, under no circumstance is offsetting to be considered appropriate in recording transactions that are subject to a wide range of "netting" arrangements or similar practices, including those with standard commercial provisions that allow parties to "net settle", such as trade receivables and payables.
>
> Questions have been raised about offsetting amounts recognized for transactions for which the net amount of those transactions, rather than the gross amount is reported for accounting/tax purposes. In the absence of definitive policies for reporting assets and liabilities arising from those transactions, various financial reporting practices have developed giving rise to accounting treatments that result in offsetting which adversely affect the complete measurement of an asset or a liability.
>
> **TAX CONSEQUENCE:**
>
> **The practice of offsetting due to/due from and/or payable/receivable transactions of taxpayers and consequently the accounting and recording of the same and its related transactions in the books of the parties is strictly prohibited for taxation purposes. Thus, at all times, the accrued receivables or payables arising from sale or lease of goods or properties or the performance of service, shall be recognized at gross for income and value-added tax or percentage tax purposes.**[127]
>
> ...

In view of the foregoing principle against offsetting or netting for tax purposes and given that petitioner failed to present evidence relative to the above-mentioned adjustments, We cannot simply

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126 Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving "Netting" or "Offsetting".

127 Emphasis supplied.

declare the full amount of adjusted sales as valid zero-rated export sales of goods.

In order to determine the reasonable amount of valid zero-rated sales for exported goods in this case, the proper approach would be to take the amount of adjusted sales covered in full by the amount of net proceeds on a monthly and *per* remittance basis. If the net proceeds *per* remittance is lower than the adjusted sales, only the peso equivalent of the net proceeds remitted (converted at the exchange rate used on the corresponding invoices) should be treated as valid zero-rated sales. Otherwise, the peso equivalent of the adjusted sales pertaining to the net proceeds remitted should be treated as valid zero-rated sales.

Accordingly, out of petitioner's ₱2,030,790,316.26[128] (equivalent to US$42,815,841.40[129]) reported zero-rated sales arising from export sales of goods to its non-resident foreign affiliates (*i.e.*, SWS-Japan and SEWS-USA), only ₱1,274,943,827.29 (the peso equivalent of US$26,840,364.53, which is the sum of the adjusted sales or net proceeds, whichever is lower, on a *per* remittance basis) could qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, computed as follows:

4th Quarter of FY ending 31 March 2016	Adjusted Sales (USD)	Net Proceeds (USD)	Valid Zero-Rated Sales (USD)	Date of Remittance	Exchange Rate	Valid Zero-Rated Sales (PHP)
	(a)	(b)	(c) = (a) or (b), whichever is lower		(d)	(e) = (c) * (d)
SWS-Japan						
January	$6,298,301.80	$250,788.81	$250,788.81	26 February 2016	47.0600	₱11,802,121.40
February	7,575,655.90	3,917,436.19	3,917,436.19	28 March 2016	47.6500	186,665,834.45
March	6,708,572.82	2,164,103.13	2,164,103.13	25 April 2016	47.5450	102,892,283.32
	------------------	------------------	------------------			------------------
Subtotal	**$20,582,530.52**	**$6,332,328.13**	**$6,332,328.13**			**₱301,360,239.17**
SEWS-USA						
January	$5,327,625.24	$4,789,512.46	$4,789,512.46	16 March 2016	47.0600	₱225,394,456.37
February	8,655,763.45	8,113,438.29	8,113,438.29	15 April 2016	47.6500	386,605,334.52
March	7,605,085.65	7,607,427.29	7,605,085.65	13 May 2016	47.5450	361,583,797.23
	------------------	------------------	------------------			------------------
Subtotal	**$21,588,474.34**	**$20,510,378.04**	**$20,508,036.40**			**₱973,583,588.12**
Total	**42,171,004.86**	**$26,842,706.17**	**$26,840,364.53**			**₱1,274,943,827.29**
	===========	===========	===========			===========

[128] ICPA Exhibits "P-37-T", "P-37-U" and "P-37-W", CD.
[129] Id.

Considering that the Certificate of Inward Remittance[130] attests to the fact of payment "in acceptable foreign currency ... and accounted for in accordance with the rules and regulations of the BSP", petitioner is considered to have complied with the above-stated *third* essential element for an export sale of goods to qualify as VAT zero-rated to the extent of ₱1,274,943,827.29, representing the customers' payments for petitioner's export sales of goods for the 4th quarter of FY 2016.

ii. Actual export sale of services under Section 108(B)(2) of the NIRC of 1997, as amended (₱9,453,246.78)

Based on the Schedule of Zero-Rated Export Sales of Services[131], the alleged export sales of services in the amount of ₱9,453,259.09 were made to SWS-Japan.

Section 108(B)(2) of the NIRC of 1997, as amended, states:

> ...
> **SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
> ...
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking of 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 outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in**

130 Supra at note 119.
131 ICPA Exhibit "P-37-N-1", id.

accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.][132]

...

Based on the foregoing, in order for a sale or supply of services to qualify as zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following essential elements must be present:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services are performed;[133]
2. The services fall under any of the categories under Section 108 (B)(2)[134], or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[135]
3. The service must be performed in the Philippines by a VAT-registered person;[136] and,
4. The payment was accounted for in accordance with the rules and regulations of the BSP.[137]

Relative to the *first* essential element, petitioner presented the Certification of Non-Registration of Company dated 26 May 2017[138] issued by the SEC to the effect that the records of the latter do not show the registration of SWS-Japan as either a corporation or a partnership. Such document, however, does not prove that SWS-Japan, petitioner's affiliate-customer, is an NRFC doing business outside the Philippines.

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132 Emphasis supplied.

133 *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 08 February 2017; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, 11 July 2012; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, 22 January 2007.

134 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, 29 June 2005.

135 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra at note 133.

136 Id.; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, supra at note 134.

137 Id.

138 Exhibit "P-37-AW-1", CD.

As consistently ruled by this Court in a number of cases[139], to be considered as an NRFC doing business outside the Philippines, such must be proven by presenting, for each corporation involved, at the very least, both the SEC Certification of Non-Registration of Company and the proof of incorporation or registration in a foreign country, and that there is no other indication which would disqualify said entity in being classified as an NRFC.

Nevertheless, as culled from the records, petitioner submitted a photocopy of a certification from the tax authorities of Japan, marked as Exhibit "P-19"[140], indicating that SWS-Japan is a resident of and subject to taxation in Japan. Exhibit "P-19" was attached to Lopez's Judicial Affidavit (which was marked as Exhibit "P-26" and admitted into evidence *per* the Court's Resolution dated 02 April 2019[141]), but it was not included in petitioner's FOE.

Although Exhibit "P-19" was not formally offered in evidence, this Court is inclined to consider the same in favor of petitioner given that the following conditions were satisfied, namely: (1) Lopez identified the certification in her Judicial Affidavit; and, (2) the same has been incorporated in the records of the case.[142]

With regard to the *second* and *third* essential elements, the Engineering Service Agreement[143] made by and between petitioner and SWS-Japan was offered in evidence and admitted by the Court. The said agreement contains, in part, the following statements:

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139 *NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9255, 04 April 2019; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9079, 09 January 2018; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 8065, 20 September 2017; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case Nos. 8623, 8656, 8661 and 8685, 04 August 2017; *Emerson Electric (Asia) Limited-ROHQ v. Commissioner of Internal Revenue*, CTA Case No. 8657, 21 December 2016; *Procter & Gamble Asia, Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 7820, 22 June 2016; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 7808, 16 December 2014 affirmed *in toto* by the CTA *En Banc* on 16 August 2016 in CTA EB No. 1290.

140 Supra at note 49.

141 Supra at note 57.

142 *Heirs of Serapio Mabborang, et al. v. Hermogenes Mabborang and Benjamin Mabborang*, G.R. No. 182805, 22 April 2015, citing *Heirs of Romana Saves, et al. v. Heirs of Escolastico Saves*, 646 Phil. 536 (2010).

143 Exhibit "P-37-BB".

> ...
> ARTICLE I. STATEMENT OF SERVICES
>
> (a) Services requested by SWS
> During the term of the agreement, PKI shall furnish SWS with its services for the input and maintenance of designing data of automotive wiring harnesses in the capacity of an independent contractor. ...
>
> ...
>
> ARTICLE 10. INDEMNIFICATION
>
> ...
>
> (b) PKI agrees that in the performance of the services hereunder it will comply with all applicable national, state, or local safety protection requirements, rules, regulations, and laws (public or private) of the Philippines, <u>while performing services anywhere in the Philippines</u>.[144]
>
> ...

Based on the aforesaid agreement, petitioner has rendered services to SWS-Japan for the input and maintenance of designing data of automotive wiring harnesses. Nonetheless, the agreement does not state whether the services were exclusively performed in the Philippines, or part of the services were performed in the place where SWS-Japan was located. Although the agreement includes a provision for indemnification, stating that petitioner will comply with Philippine laws "while performing services anywhere in the Philippines," it connotes that petitioner may render services outside the Philippines.

None of petitioner's witnesses testified on any matters concerning the sale or supply of services to SWS-Japan. As such, the Court cannot ascertain if the services performed by petitioner to SWS-Japan were done in the Philippines.

As regards the *fourth* essential element, petitioner presented a Certificate of Inward Remittance[145] purportedly showing the foreign currency remittances of SWS-Japan to petitioner.

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144 Underscoring supplied.
145 Supra at note 119.

Corollary thereto, the said foreign currency remittances must be duly supported by VAT zero-rated ORs, in accordance with the above stated Section 113(A)(2), (B)(1) and (2)(c)[146] of the NIRC of 1997, as amended, and Section 4.113-1 (A)(2), B(1) and (2)(c)[147] of RR No. 16-2005, which provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT OR, which must contain the information stated in the said provisions.

In this case, however, the foreign currency remittances were not supported by VAT zero-rated ORs. The supporting documents for petitioner's sale of services to SWS-Japan merely consisted of debit notes (with notation "This document is not valid for claiming input taxes") and approved engineering sheets.[148] As such, it cannot be verified whether the relevant foreign currency remittances actually pertain to the alleged zero-rated sales of services. Thus, petitioner likewise failed to comply with the *fourth* essential element that the services were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Considering the foregoing, petitioner fell short in establishing that its sales of services to SWS-Japan amounting to ₱9,453,246.78 qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

iii. Sale to PEZA-registered Entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended (₱4,781,927.02)

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

...
SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — ...
...

146 Supra at p. 21.
147 Supra at p. 22.
148 ICPA Exhibits "P-37-V-1" to "P-37-V-6", CD.

> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> ...
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws[.]
>
> ...

Relative thereto, Section 4.106-5(a)(5) of RR No. 16-2005[149], as amended by RR No. 04-2007[150], provides:

> ...
> **SEC. 4.106-5.** *Zero-Rated Sales of Goods or Properties.* — ...
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — '*Export Sales*' shall mean:
> ...
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further,* That *pursuant to EO 226 and other special laws,* even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones *pursuant to Republic Act (RA) Nos.*

149 Supra at note 26.

150 *Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.*

> *7916, as amended, 7903, 7922 and other similar export processing zones;* (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227;* (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.[151]
>
> ...

The special law applicable to this case is Republic Act (**RA**) No. 7916[152], as amended by RA 8748[153], otherwise known as "The Special Economic Zone Act of 1995." Sections 8 and 24 thereof read:

> ...
>
> SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* — **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.
>
> SEC. 24. *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** ...[154]
>
> ...

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

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151 Italics in the original text and emphasis supplied.

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

153 AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

154 Italics in the original text and emphasis supplied.

to zero percent (0%) VAT. This was explained by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[155], *viz*:

> ...
>
> This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> ... An ECOZONE or a Special Economic Zone has been described as —
>
> > ... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.
>
> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

155 G.R. No. 150154, 09 August 2005.

> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT [now, twelve percent (12%)].[156]
>
> ...

Based on the foregoing, in order for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present:

1. The sale was made by a VAT-registered person; and,
2. The sale of goods must be to an entity entitled to incentives under Executive Order (**EO**) No. 226, otherwise known as the Omnibus Investment Code of 1987 (**OIC**), and other special laws.

As determined earlier, petitioner is a VAT-registered person. Hence, the *first* essential element was already fulfilled.

Relative to the *second* essential element, petitioner presented a Certification dated 05 June 2017[157], which was issued by PEZA, confirming that its customers, International Wiring Systems (Phils.) Corporation (**IWSPC**) and Sumi Philippines Wiring Systems Corporation (**SPWSC**) are registered with PEZA.

Hence, petitioner's sales of goods to IWSPC and SPWSC for the 4th quarter of FY 2016 qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices in accordance with the above stated Sections 113(A)(1), (B)(1) and (2)(c)[158], 237 and 238[159], all of the NIRC of 1997, as amended, in relation to Section 4.113-1 (A)(1), (B)(1) and (2)(c)[160] of RR No. 16-2005.

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156 Citations omitted and emphasis supplied.
157 ICPA Exhibit "P-37-Q", CD.
158 Supra at p. 21.
159 Supra at p. 23.
160 Supra at p. 22.

Upon examination of the submitted sales invoices and related delivery receipts[161] in support of petitioner's sales of goods to IWSPC and SPWSC, the following zero-rated export sales of goods amounting to US$100,884.00 or ₱4,781,927.02 which were duly supported by VAT zero-rated sales invoices, complied with the *second* essential element:

ICPA Exhibit No.	Name of Client	Invoice No.	Date	Amount (USD)	Conversion Rate	Amount (PHP)
"P-37-R-1"	IWSPC	2140	08 January 2016	$11,025.00	47.06	₱518,836.50
"P-37-S-1"	SPWSC	2141	08 January 2016	4,599.00	47.06	216,428.94
"P-37-S-2"	SPWSC	2142	08 January 2016	9,870.00	47.06	464,482.20
"P-37-S-3"	IWSPC	2144	21 January 2016	63.00	47.06	2,964.78
"P-37-R-2"	IWSPC	2145	21 January 2016	11,235.00	47.06	528,719.10
"P-37-R-3"	IWSPC	2146	04 February 2016	63.00	47.65	3,001.95
"P-37-R-4"	IWSPC	2147	04 February 2016	10,605.00	47.65	505,328.25
"P-37-S-4"	SPWSC	2148	04 February 2016	3,969.00	47.65	189,122.85
"P-37-S-5"	SPWSC	2149	04 February 2016	8,505.00	47.65	405,263.25
"P-37-S-6"	IWSPC	2153	18 February 2016	63.00	47.65	3,001.95
"P-37-R-5"	IWSPC	2154	18 February 2016	7,665.00	47.65	365,237.25
"P-37-S-7"	IWSPC	2155	03 March 2016	63.00	47.5451	2,995.34
"P-37-R-6"	IWSPC	2156	03 March 2016	9,450.00	47.5450	449,300.25
"P-37-S-8"	SPWSC	2157	03 March 2016	2,394.00	47.5450	113,822.73
"P-37-S-9"	SPWSC	2158	03 March 2016	7,560.00	47.5450	359,440.20
"P-37-S-10"	IWSPC	2159	17 March 2016	13,755.00	47.5450	653,981.48
Total				**$100,884.00**		**₱4,781,927.02**

Hence, petitioner was able to prove that its sales of goods to PEZA-registered entities, in the amount of US$100,884.00 or ₱4,781,927.02, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

To recapitulate, out of the total reported zero-rated sales or receipts for the 4th quarter of FY ending 31 March 2016 amounting to ₱2,045,025,490.06, only the amount of ₱1,279,725,754.31 represents petitioner's valid zero-rated sales for the same period, broken down as follows:

Particulars	Zero-Rated Sales
Actual export sale of goods	₱ 1,274,943,827.29
Sale to PEZA-registered entities	4,781,927.02
Total Zero-Rated Sales	**₱1,279,725,754.31**

161 ICPA Exhibits "P-37-R-1" to "P-37-R-6" and "P-37-S-1" to "P-37-S-10", id.

After finding that petitioner had VAT zero-rated sales in the total amount of ₱1,279,725,754.31 for the subject period of claim, this Court shall now proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

IV. THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED DOES NOT APPEAR TO BE TRANSITIONAL INPUT TAXES.

In its Amended 4th Quarterly VAT Return for FY 2016[162], petitioner declared total input VAT of ₱10,998,602.01 from its domestic purchases and importations of goods and services, of which the amount of ₱10,923,055.28 is the subject of the present claim, as shown below:

	Total
Input VAT deferred on capital goods exceeding ₱1 million from carried over from previous quarter	₱8,893,556.67
Add: Input VAT on purchase of capital goods exceeding ₱1 million	616,872.00
Total	₱9,510,428.67
Less: Input VAT on purchase of capital goods exceeding ₱1 million deferred for the succeeding period	8,751,004.59
Amortized Input VAT	**₱759,424.08**
Current Input VAT:	
On purchase of capital goods not exceeding ₱1 million	₱130,650.00
On domestic purchase of goods other than capital goods	1,280,170.00
On importation of goods other than capital goods	956,324.62
On domestic purchase of services	7,872,033.31
Total	10,239,177.93
Total Input VAT for the period	**₱10,998,602.01**
Less: Output VAT	75,546.74
Input VAT claim	**₱10,923,055.27**[163]

The above input VAT does not appear to be transitional input taxes as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

...

SEC. 111. *Transitional Presumptive Input Tax Credits.* —

---

162 Supra at note 14.

163 The discrepancy of P0.01 from the amount of claim may be due to rounding off.

> (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 an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his 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.
>
> ...

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning 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.[164]

Since there is no showing that the claimed input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

V. ONLY A PORTION OF THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED ARE DUE OR PAID.

Regarding the *seventh* requisite in claiming VAT refund, it is of fatal importance that petitioner provide supporting documents to prove that the input VAT claimed during the subject period are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

> ...
>
> **SEC. 110.** *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

---

[164] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. No. 158885, 02 April 2009.

(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
(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.

(2) 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
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

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 if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *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[165] which provide as follows:

...

SEC. 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

165 Supra at note 26.

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; or
  (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 for 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;
(d) Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;
(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

...

SEC. 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:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(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.

...

SEC. 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 (₱1,000,000.00), 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 (₱1,000,000.00), 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 ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

...

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable 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.

...

Meanwhile, Section 4.110-8 of RR No. 16-2005[166] provides for the substantiation requirements of input tax credits, 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:
>
> (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
> (2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
> (3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
> (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.
>
> (b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
> (c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.
> (e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.
> ...

[166] Supra at note 26.

From the above, it is categorically mentioned that in order to be entitled to input tax credits, the same must be evidenced by a VAT invoice or OR issued in accordance with Section 113[167] of the NIRC of 1997, as amended.

Thus, to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005 above but more importantly, it must also show that these documents comply with the invoicing requirements of Sections 113(A) and (B)[168], 237 and 238[169] of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B)[170] of RR No. 16-2005.

In his report, ICPA Sison accounted for petitioner's input VAT, in the amount of ₱10,998,602.02, detailed as follows:

Particulars	Input VAT	ICPA Exhibit No.
A. Compliant with Invoicing Requirements		
Domestic purchases – services and non-capital goods	₱9,221,445.35	"P-37-AC" to "P-37-AG" and "P-37-AT"
Importations – non-capital goods	690,602.00	"P-37-AR"
Capital goods exceeding ₱1 million	684,179.32	"P-37-AS"
Subtotal	**₱10,596,226.67**	
B. Not Compliant with Invoicing Requirements		
Domestic purchases – services and non-capital goods:		
a. Excess amount of VAT claimed	₱22,635.75	"P-37-AF"
b. Out of period	1,913.64	"P-37-AH"
c. Unreadable supporting documents	12,733.13	"P-37-AI"
d. Improperly substantiated	4,221.43	"P-37-AJ"
e. No TIN of petitioner	7,238.49	"P-37-AK"
f. No name, TIN and address of petitioner	173.29	"P-37-AL"
g. No supporting documents	659.84	"P-37-AM"
h. Handwritten VAT information, no countersign	1,278.73	"P-37-AN"
i. Incorrect spelling of petitioner's name	368.87	"P-37-AO"
j. Supporting documents with erasures, no countersign	7,084.29	"P-37-AP"
k. Improperly classified as purchase of services	337.50	"P-37-AQ"
1. l. Incorrect spelling of supplier's name	2,763.00	"P-37-AU"
Importations – non-capital goods: Duties and taxes (not input VAT)	265,722.62	"P-37-AB"
Amortization of input VAT on capital goods exceeding ₱1 million: Purchases that do not qualify as capital goods	75,244.77	"P-37-Y"
Subtotal	**₱402,375.35**	
Total Input VAT accounted by the ICPA	**₱10,998,602.02**	

167 Supra at p. 21.
168 Id.
169 Supra at p. 23.
170 Supra at p. 22.

i. Input VAT from Domestic Purchases of Capital Goods not exceeding ₱1 Million and Purchases of Non-Capital Goods and Services

In support of its input VAT from domestic purchases of capital goods not exceeding ₱1 million and non-capital goods and services, petitioner submitted its suppliers' sales invoices for purchases of goods and ORs (for purchases of services) which were all examined by ICPA Sison.

A scrutiny of the ICPA's Report discloses that petitioner's input VAT on domestic purchases of capital goods not exceeding ₱1 million and non-capital goods and services amounted to ₱9,282,853.31, which was classified as 'compliant with invoicing requirements' and 'not compliant with invoicing requirements' in the amounts of ₱9,221,445.35 and ₱61,407.96, respectively.[171]

The above exceptions found by ICPA Sison in the aggregate amount of ₱61,407.96[172] were noted, and thus, shall be disallowed for refund purposes.

Thus, out of the input VAT on domestic purchases of services and non-capital goods amounting to ₱9,282,853.31, only the amount of ₱9,221,445.35[173] were duly substantiated.

ii. Input VAT from Importation of Non-Capital Goods

In support of its input VAT from importation of non-capital goods, petitioner submitted the Bureau of Customs (**BOC**) Statements of Settlement of Duties and Taxes (**SSDTs**), Import Entry and Internal Revenue Declarations (**IEIRDs**), supplier sales invoices, bills of lading

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171 Supra at note 52.

172 ICPA Exhibits "P-37-AF", "P-37-AH", "P-37-AI", "P-37-AJ", "P-37-AK", "P-37-AL", "P-37-AM", "P-37-AN", "P-37-AO", "P-37-AP", "P-37-AQ" and "P-37-AU", CD.

173 ICPA Exhibits "P-37-AC", "P-37-AD", "P-37-AE", "P-37-AF", "P-37-AG", "P-37-AT" and "P-37-AV", CD.

or airway bills and other related importation documents which were all examined by ICPA Sison.

An examination of the ICPA's Report shows that petitioner's input VAT on importation of non-capital goods amounted to ₱956,324.62, which was classified as 'compliant with invoicing requirements' and 'not compliant with invoicing requirements' in the amounts of ₱690,602.00 and ₱265,722.62, respectively.[174]

As found by ICPA Sison, the aggregate amount of ₱265,722.62[175] does not pertain to input VAT for these were actually duties and taxes as shown in the pertinent Withdrawal Permits. As such, We adopt ICPA Sison's recommendation to disallow the same for refund purposes.

Thus, out of the input VAT on importation of non-capital goods amounting to ₱956,324.62, only the amount of ₱690,602.00[176] were duly substantiated.

iii. Input VAT from Capital Goods exceeding ₱1 Million

In support of its input VAT from purchases of capital goods exceeding ₱1 million, petitioner submitted suppliers' sales invoices for local purchases and SSDTs for importations which were all examined by ICPA Sison.

A perusal of the ICPA's Report reveals that petitioner's amortization of input VAT on purchases of capital goods amounted to ₱759,424.09, which was classified as 'compliant with invoicing requirements' and 'not compliant with invoicing requirements' in the amounts of ₱684,179.32 and ₱75,244.77, respectively.[177]

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174 Supra at note 52.
175 ICPA Exhibits "P-37-AB", CD.
176 ICPA Exhibits "P-37-AR" and "P-37-AR-1" to "P-37-AR-5".
177 Supra at note 52.

As found by ICPA Sison, the aggregate amount of ₱75,244.77[178] pertains to input VAT on progress billings for supply and installation services which formed part of petitioner's application for refund. However, said purchases do not qualify as 'capital goods'; hence, the corresponding input VAT should not have been amortized but rather claimed outright on the date of purchase. As such, We likewise adopt ICPA Sison's recommendation to disallow the same for refund purposes.

Thus, only the amortization for the 4th quarter of FY 2016 in the total amount of ₱684,179.32[179] as determined below, may be claimed by petitioner as valid input VAT for the same taxable quarter pursuant to the previously stated Section 110(A)[180] of the NIRC of 1997, as amended, as implemented by Section 4.110-3[181] of RR No. 16-2005:

Supplier	SI/SSDT Date	Input VAT	Est. Useful Life (in mos.)	Monthly Amort.	Allowable Input VAT	Input VAT Deferred to Future Periods	ICPA Exhibit No.
Accent Micro Technologies, Inc.	21 October 2013	₱12,642.86	36	₱351.19	₱1,053.57	₱2,458.33	"P-37-AS-10"
	27 November 2013	6,321.43	36	175.60	526.79	1,580.36	"P-37-AS-14"
	20 December 2013	6,904.07	36	191.78	575.34	1,917.80	"P-37-AS-27"
	20 October 2014	11,183.14	36	310.64	931.93	5,591.57	"P-37-AS-55"
American Technologies, Inc.	04 September 2013	28,392.86	36	788.69	2,366.07	4,732.14	"P-37-AS-1"
Atlas Copco (Philippines) Inc.	16 December 2013	17,201.78	36	477.83	1,433.48	4,778.27	"P-37-AS-56"
Automated Technologies (ATI) Inc.	06 November 2013	31,143.52	36	865.10	2,595.29	7,785.88	"P-37-AS-15"
GLC Forklift, inc.	14 November 2015	80,357.14	12	6,696.43	20,089.29	46,875.00	"P-37-AS-48"
Honda Cars Batangas	24 October 2014	132,321.43	60	2,205.36	6,616.07	92,625.00	"P-37-AS-28"
Huotari & Sons Inc.	06 June 2013	98.41	36	2.73	8.20	16.40	"P-37-AS-2"
	06 June 2013	98.41	36	2.73	8.20	16.40	"P-37-AS-3"
	06 June 2013	246.03	36	6.83	20.50	41.00	"P-37-AS-4"
	06 June 2013	49.20	36	1.37	4.10	8.20	"P-37-AS-5"
	06 June 2013	49.20	36	1.37	4.10	8.20	"P-37-AS-6"
	27 September 2013	49.20	36	1.37	4.10	8.20	"P-37-AS-7"
Japan Automatic Machine Co., Ltd.	04 December 2013	349,011.00	60	5,816.85	17,450.55	191,956.05	"P-37-AS-25"
	05 December 2013	1,365,511.00	60	22,758.52	68,275.55	751,031.05	"P-37-AS-24"
	04 September 2015	1,043,313.00	60	17,388.55	52,165.65	921,593.15	"P-37-AS-47"
	11 November 2015	1,058,440.00	60	17,640.67	52,922.00	970,236.67	"P-37-AS-49"
	14 December 2015	795,685.00	60	13,261.42	39,784.25	742,639.33	"P-37-AS-52"
	16 December 2015	1,218,565.00	60	20,309.42	60,928.25	1,137,327.33	"P-37-AS-51"
	24 February 2016	616,872.00	60	10,281.20	20,562.40	596,309.60	"P-37-AS-54"
Meridian I.T. Corporation	30 August 2013	3,771.00	36	104.75	314.25	628.50	"P-37-AS-8"
	17 September 2013	3,564.00	36	99.00	297.00	594.00	"P-37-AS-9"
	09 October 2013	4,200.00	36	116.67	350.00	816.67	"P-37-AS-11"
	23 October 2013	7,128.00	36	198.00	594.00	1,386.00	"P-37-AS-12"
	23 October 2013	7,128.00	36	198.00	594.00	1,386.00	"P-37-AS-13"
	27 November 2013	16,714.29	36	464.29	1,392.86	4,178.57	"P-37-AS-16"
	27 November 2013	8,357.14	36	232.14	696.43	2,089.29	"P-37-AS-17"
	27 November 2013	4,178.57	36	116.07	348.21	1,044.64	"P-37-AS-18"
	10 December 2013	3,798.75	36	105.52	316.56	949.69	"P-37-AS-19"
	08 January 2014	8,485.50	36	235.71	707.13	2,357.08	"P-37-AS-57"

178 ICPA Exhibits "P-37-Y".

179 ICPA Exhibits "P-37-AS" and "P-37-AS-1" to "P-37-AS-62".

180 Supra at pp. 39-40.

181 Supra at p. 42.

Supplier	SI/SSDT Date	Input VAT	Est. Useful Life (in mos.)	Monthly Amort.	Allowable Input VAT	Input VAT Deferred to Future Periods	ICPA Exhibit No.
	25 February 2015	4,713.75	36	130.94	392.81	2,880.63	"P-37-AS-30"
	25 February 2015	173,410.50	36	4,816.96	14,450.88	105,973.08	"P-37-AS-31"
	18 March 2015	158,580.00	36	4,405.00	13,215.00	101,315.00	"P-37-AS-33"
	31 March 2015	158,580.00	36	4,405.00	13,215.00	101,315.00	"P-37-AS-34"
	31 March 2015	9,150.00	36	254.17	762.50	5,845.83	"P-37-AS-35"
	14 April 2015	190,296.00	36	5,286.00	15,858.00	126,864.00	"P-37-AS-37"
	22 April 2015	89,715.00	36	2,492.08	7,476.25	59,810.00	"P-37-AS-38"
	30 June 2015	5,482.50	36	152.29	456.88	3,959.58	"P-37-AS-40"
	02 September 2015	457,500.00	12	38,125.00	114,375.00	190,625.00	"P-37-AS-46"
	18 December 2015	7,842.75	36	217.85	653.56	6,971.33	"P-37-AS-50"
Nexus Technologies, Inc.	30 October 2013	1,607.14	36	44.64	133.93	401.78	"P-37-AS-20"
	07 November 2013	401.79	36	11.16	33.48	100.45	"P-37-AS-21"
	06 December 2013	2,008.93	36	55.80	167.41	558.04	"P-37-AS-58"
	14 August 2014	401.79	36	11.16	33.48	178.57	"P-37-AS-26"
	01 April 2015	119,119.05	12	9,926.59	29,779.76	0.00	"P-37-AS-62"
	01 June 2015	7,088.96	36	196.92	590.75	5,119.80	"P-37-AS-41"
	02 July 2015	2,677.08	12	223.09	669.27	669.27	"P-37-AS-44"
	27 July 2015	4,231.50	12	352.63	1,057.88	1,057.88	"P-37-AS-45"
	29 July 2015	4,191.29	12	349.27	1,047.82	1,047.82	"P-37-AS-43"
PC Chain Superstore - Franchisee	22 October 2013	214.29	36	5.95	17.86	53.57	"P-37-AS-22"
	04 January 2014	20.04	36	0.56	1.67	5.57	"P-37-AS-59"
	04 January 2014	214.29	36	5.95	17.86	59.52	"P-37-AS-60"
	04 January 2014	241.07	36	6.70	20.09	66.96	"P-37-AS-61"
ShinMaywa Industries, Ltd.	08 December 2015	376,706.00	60	6,278.43	18,835.30	351,592.27	"P-37-AS-53"
Sumitomo Wiring Systems, Ltd.	08 November 2013	7,801.00	36	216.69	650.08	1,950.25	"P-37-AS-23"
	20 October 2014	785,522.00	60	13,092.03	39,276.10	549,865.40	"P-37-AS-29"
	05 June 2015	223,848.00	60	3,730.80	11,192.40	186,540.00	"P-37-AS-39"
	22 July 2015	896,681.00	60	14,944.68	44,834.05	762,178.85	"P-37-AS-42"
Twin Tech Engineering	16 February 2015	6,428.57	60	107.14	321.43	4,928.57	"P-37-AS-32"
	17 March 2015	14,134.29	60	235.57	706.71	11,071.86	"P-37-AS-36"
Total		**₱10,550,589.51**		**₱231,486.85**	**₱684,179.33**[182]	**₱8,077,972.25**	

It must be noted that part of the total reported input taxes for the period in the amount of ₱10,998,602.01 is the amortized input VAT of ₱759,424.08, as shown earlier. The said amount of ₱759,424.08 is comprised of the amortization of input VAT deferred on purchase of capital goods exceeding ₱1 million from the previous period and current input VAT on purchase of capital goods exceeding ₱1 million for the 4th quarter of FY 2016. Considering that the allowable input VAT amortization from current purchases of capital goods exceeding ₱1 million and the input VAT deferred on purchases of capital goods exceeding ₱1 million from the previous period amounts to ₱684,179.33 only, the remaining amount of ₱75,244.77 (₱759,424.08 less ₱684,179.33) shall be disallowed for purposes of computing the amount of refundable input VAT.

In sum, for purposes of compliance with the *seventh* requisite, only the amount of ₱10,596,226.67 represents petitioner's valid input

[182] The discrepancy of ₱0.01 may be due to rounding off.

VAT due or paid for the 4th quarter of FY ending 31 March 2016, as computed below:

Input VAT due or paid on domestic purchases of capital goods not exceeding ₱1 million and non-capital goods and services	₱9,221,445.35
Input VAT paid on importations of non-capital goods	690,602.00
Input VAT due or paid on capital goods exceeding ₱1 million	684,179.32
Total Valid Input VAT	**₱10,596,226.67**

VI. SINCE THERE ARE BOTH ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND TAXABLE SALES, THE TOTAL AMOUNT OF VALID INPUT VALUE-ADDED TAX (VAT) OF (₱10,596,226.67) SHALL BE PROPORTIONATELY ALLOCATED ON THE BASIS OF SALES VOLUME.

The *eighth* requisite for the grant of an input VAT refund is to the effect 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.

As previously mentioned, ICPA Sison accounted petitioner's zero-rated or effectively zero-rated sales amounting to ₱2,045,025,490.06.[183] Further, petitioner had taxable sales amounting of ₱629,556.19.[184] Hence, petitioner's total sales for the 4th quarter of FY 2016 amounted to ₱2,045,655,046.25.[185]

Since petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of

[183] Exhibit "P-10-3" (Line 17), supra at note 14.
[184] Exhibit "P-10-3" (Line 15A), id.
[185] Exhibit "P-10-3" (Line 19A), id.

₱10,596,226.67 shall be allocated proportionately on the basis of the volume of its sales, as shown below:

Total VATable Sales for the period	₱629,556.19
Divided by the Total Sales for the period	2,045,655,046.25
Multiplied by Total Valid Input VAT	10,596,226.67
Valid Input VAT Allocated to VATable Sales	**₱3,261.02**

Total Zero-Rate Sales for the period	₱2,045,025,490.06
Divided by the Total Sales for the period	2,045,655,046.25
Multiplied by Total Valid Input VAT	10,596,226.67
Valid Input VAT Allocated to Zero-Rated Sales	**₱10,592,965.65**

Thus, with regard to petitioner's compliance with the *eighth* requisite, only the amount of ₱10,592,965.65 represents valid input VAT attributable to its zero-rated sales.

VII. DETERMINATION OF THE REFUNDABLE AMOUNT.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, We now determine whether the same was not applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

For the 4th quarter of FY 2016, petitioner had an output VAT liability in the total amount of ₱75,546.74.[186] Since petitioner's valid input VAT allocated to sales subject to 12% VAT in the amount of ₱3,261.02 is not enough to cover the said output VAT liability, petitioner still has an output VAT due of ₱72,285.72, as computed below:

Output VAT per Amended Quarterly VAT Return	₱75,546.74
Less: Valid Input VAT allocated to VATable sales	3,261.02
Output VAT Still Due	**₱72,285.72**

186 Exhibit "P-10-3" (Line 15B), id.

Upon applying the valid input VAT allocated to the total zero-rated sales in the amount of ₱10,592,965.65 against the said remaining output VAT liability of ₱72,285.72, the unutilized input VAT allocated to the total zero-rated sales amounted to ₱10,520,679.93. However, out of the said unutilized input VAT allocated to the total zero-rated sales in the amount of ₱10,520,679.93, only the remaining input VAT of ₱6,583,578.11 is attributable to its valid zero-rated sales of ₱1,279,725,754.31, as determined below:

Valid Input VAT Allocated to the Total Zero-Rated Sales	₱10,592,965.65
Less: Output VAT still due	72,285.72
Unutilized Input VAT Allocated to the Total Zero-Rated Sales	**₱10,520,679.93**
Divided by the Total Zero-Rated Sales	2,045,025,490.06
Multiplied by the Valid Zero-Rated Sales	1,279,725,754.31
Unutilized Input VAT Attributable to Valid Zero-Rated Sales	**₱6,583,578.11**

Evidently, the said amount of ₱6,583,578.11 is included in the amount of the subject refund claim, *i.e.*, the amount of ₱10,923,055.28.

It is noteworthy that petitioner deducted the claimed input VAT of ₱10,923,055.28[187] as "VAT Refund/TCC claimed" in its Amended 4th Quarterly VAT Return of FY ending 31 March 2016. Accordingly, the subject claim no longer forms part of the excess input VAT of ₱13,746,385.08[188] as of the end of the 4th quarter of FY ending 31 March 2016 to be carried over or applied to the succeeding quarters of the next FY. Thus, petitioner has fulfilled the said *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

WHEREFORE, the instant Petition for Review filed on 26 January 2018 by petitioner Pilipinas Kyohritsu Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **SIX MILLION FIVE HUNDRED EIGHTY THREE THOUSAND FIVE HUNDRED SEVENTY EIGHT PESOS and ELEVEN CENTAVOS** (₱6,583,578.11), representing the unutilized input value-added tax (VAT) attributable to zero-rated sales or receipts for the period

187 Exhibit "P-10-3" (Line 23D), id.

188 Exhibit "P-10-3" (Line 29), id.

covering the 4th quarter of fiscal year ending 31 March 2016, or from 01 January 2016 to 31 March 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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