REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

TRANS-ASIA RENEWABLE ENERGY CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9516

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JAN 0 3 2020
11:46 a.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

This case involves a *Petition for Review* filed by Trans-Asia Renewable Energy Corporation against the Commissioner of Internal Revenue on January 11, 2017, praying the refund or issuance of a tax credit certificate in the total amount of ₱335,759,253.00, representing its alleged excess unutilized input value-added tax (VAT) for the 3rd and 4th quarters of taxable year (TY) 2014 and the 1st and 2nd quarters of TY 2015.[1]

THE PARTIES

Petitioner Trans-Asia Renewable Energy Corporation is a corporation duly organized and existing under the laws of the Philippines with office address at Barangay Suclaran, Municipality of San Lorenzo, Province of Guimaras. Pursuant to petitioner's Amended Articles of Incorporation (AOI),

[1] *Docket*, Vol. 1, p. 567, Statement of the Case, Pre-Trial Order dated December 4, 2017.

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it was organized for the primary purpose of exercising the power "(t)*o develop and utilize renewable sources of energy and pursue new, clean and energy efficiency projects.*"[2]

Petitioner is registered with the Department of Energy (DOE) as a renewable energy (RE) developer of wind energy resources.[3] It is also registered with the Board of Investments (BOI) as a new RE developer of 54 megawatts San Lorenzo Wind Farm Project under Republic Act (RA) of 2008.[4]

On June 1, 2015, the Energy Regulatory Commission (ERC) issued a Certificate of Compliance (COC) with COC No. 15-06-MV-11V in favor of petitioner.[5] Thereafter, another COC was issued to petitioner on December 1, 2015.[6] Both COCs refer to the San Lorenzo Wind Farm Project.

Petitioner is also registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer with Taxpayer's Identification Number (TIN) 004-500-956-000 under Certificate of Registration No. OCN 2RC0000734094.[7]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of his office including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of excess and unutilized input VAT, pursuant to the pertinent provisions of the Tax Code and other tax laws, rules and regulations.[8]

STATEMENT OF FACTS

Petitioner filed its Original and Amended Quarterly VAT Returns for the 3rd and 4th Quarters of TY 2014 and the 1st and 2nd Quarters of TY 2015 (period of claim).[9]

On August 15, 2016, Petitioner filed with the BIR Revenue District Office (RDO) No. 74, the letter dated August 15, 2016, and the *Application for Tax Credits/Refunds*, applying for the refund or issuance of a tax credit certificate in the total amount of ₱335,759,253.00 representing its alleged excess unutilized input VAT for the period July 1, 2014 to June 30, 2015.[10]

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[2] *Id.*, Vol. 2, pp. 674 to 696, Exhibits "P-1" and "P-1-a".
[3] *Id.*, p. 697, Exhibit "P-2".
[4] *Id.*, pp. 698 to 705, Exhibit "P-3".
[5] *Id.*, p. 706, Exhibit "P-4".
[6] *Id.*, p. 707, Exhibit "P-5".
[7] *Id.*, p. 712, Exhibit "P-6".
[8] *Id.* at Note 1, p. 512, *Joint Stipulation of Facts and Issues* (JSFI).
[9] *Id.* at Note 2, pp. 881 to 916, Exhibits "P-23" to "P-30".
[10] *Id.*, pp. 924 to 933, Exhibits "P-33" to "P-34".

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Thereafter, Letters of Authority (LOA) dated October 26, 2016 and November 10, 2016 were issued by the BIR, authorizing the examination of Petitioner's books of accounts and other accounting records respectively pertaining to the said period.[11]

In the letter dated December 15, 2016,[12] Petitioner's administrative claim for refund covering the period from July to December 2014 was denied. The said letter was received by Petitioner on December 19, 2016.[13]

On January 11, 2017, the instant Petition for Review was filed. The case was initially raffled with the First Division of this Court.

Respondent filed his Answer on April 25, 2017,[14] interposing, *inter alia*, the following defenses, to wit:

> "3.1. The **mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit.** Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.
>
> 3.2. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.'** (Emphases supplied)
>
> 3.3. In the case entitled *San Roque Power Corp. vs. Commissioner of Internal Revenue*, the Honorable Supreme Court had the occasion to say:
>
>> 'In order to claim a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:
>>
>> 1. The taxpayer is VAT-registered;
>> 2. **The tax-payer is engaged in zero-rated or effectively zero-rated sales;**
>> 3. The input taxes are due or paid;

[11] *Id.*, pp. 935 to 936, Exhibits "P-36" to "P-37".
[12] *Id.*, pp. 937 to 938, Exhibit "P-38"; pp. 1016 to 1017, Exhibit "R-2", BIR Records.
[13] *Id.*, p. 938, Exhibit "P-38".
[14] *Id.* at Note 1, pp. 122 to 128.

4. The input taxes are not transitional input taxes;
5. The input taxes have not applied against output taxes during and in the succeeding quarters;
6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. For zero-rated sales under Section 106(A)(2) (1) and (2); 106(B), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and that 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; and
9. The claim is filed within 2 years after the close of the taxable quarter when such sales were made.' (Emphasis ours)

3.4. Likewise, for a judicial cla(i)m for refund of input VAT to prosper, the respondent must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two-year prescriptive period.

3.5 Evaluation of petitioner's claim revealed that no zero-rated sales have been declared in the VAT Returns of petitioner covering the period July to December 2014. Section 112(A) of the National Internal Revenue Code of 1997 (NIRC) provides:

'SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. – <u>Any VAT-registered person, whose sales are zero-rated or effectively zero-rated</u> 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 xxx' (Underscoring ours)

3.6 Since petitioner had no zero-rated sales declared in its VAT Return for the period July to December 2014, it cannot therefore claim any unutilized input taxes attributable to such zero-rated sales. To put emphasis, the existence of zero-rated sales or effectively zero-rated sales is indispensable in order to file a claim for refund under Section 112(A) of the NIRC.

3.7 Further, results of the audit evaluation of petitioner's claim also revealed that no copies of Official Receipts (ORs) were submitted to prove the existence of zero-rated sales.

3.8 In the case of *Silicon Philippines, Inc. vs. CIR*, the Honorable Supreme Court emphasized:

> **'Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented.'** (Emphasis ours)

3.9 In the case of *Luzon Hydro Corporation vs. CIR*, the Honorable Supreme Court emphasized:

> 'The petitioner did not competently establish its claim for refund or tax credit. We agree with the CTA En Banc that the **petitioner did not produce evidence showing that it had zero-rated sales for the four quarters of taxable year 2001. As the CTA En Banc precisely found, the petitioner did not reflect any zero-rated sales from its power generation in its four quarterly VAT returns, which indicated that it had not made any sale of electricity.** Had there been zero-rated sales, it would have reported them in the returns. **Indeed, it carried the burden not only that it was entitled under the substantive law to the allowance of its claim for refund or tax credit but also that it met all the requirements for evidentiary substantiation of its claim** before the administrative official concerned, or in the de novo

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> litigation before the CTA in Division.' (Emphases ours)

3.10 The decision of the Honorable Supreme Court in the case of *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, can be used well as a guide, viz:

> 'In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. **It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.** The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.' (Emphasis supplied)

3.11 Thus, for failure of petitioner to show that it has strictly complied with the conditions for the grant of the VAT refund/credit, petitioner is not entitled to the claimed tax refund/credit."

The pre-trial conference was initially set on August 10, 2017.[15] However, upon respondent's filing of an Urgent Motion to Reset Pre-Trial Conference (Set on 10 August 2017) on August 4, 2014,[16] the pre-trial conference was reset to, and held on, September 7, 2017.[17]

In the meantime, Petitioner's Pre-Trial Brief was filed on August 4, 2017;[18] while Respondent's Pre-Trial Brief was submitted on August 31, 2017.[19]

Respondent submitted the BIR Records of this case on September 5, 2017.[20]

On October 23, 2017, the parties filed their Joint Stipulation of Facts and Issues.[21] Consequently, the Pre-Trial Order dated December 4, 2017 was issued.[22]

[15] *Id.*, pp. 144 to 145, Resolution dated May 31, 2017.
[16] *Id.*, pp. 441 to 444.
[17] *Id.*, pp. 446, Orders dated August 8, 2017; pp. 473 to 477 and 479 to 481, Minutes of the hearing held on, and Resolution dated, September 7, 2017.
[18] *Id.*, pp. 146 to 176.
[19] *Id.*, pp. 462 to 465.
[20] *Id.*, pp. 469 to 470, Compliance dated August 31, 2017.
[21] *Id.*, pp. 512 to 521.

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The trial of the case then ensued.

During trial, Petitioner presented its documentary and testimonial evidence. Petitioner's witnesses are: (1) Mr. Danilo L. Panes,[23] Vice President of petitioner; (2) Ms. Sheila Mozenda M. Barce,[24] Finance Manager; and (3) Ms. Katherine O. Constantino,[25] the Court-commissioned Independent Certified Public Accountant (ICPA).[26]

On May 2, 2018, petitioner filed its Formal Offer of Evidence.[27] In the Resolution dated July 30, 2018,[28] the Court admitted all the exhibits offered by Petitioner.

On the other hand, Respondent likewise presented documentary and testimonial evidence. His witness lone witness was Revenue Officer Jun-Jun B. Andallo.[29]

Respondent filed his Formal Offer of Evidence on August 15, 2018.[30] In the Resolution dated October 9, 2018,[31] the Court admitted all the evidence offered by Respondent.

In an Order dated September 24, 2018,[32] the instant case was transferred to this Court's Third Division.

Respondent filed his Memorandum on November 13, 2018;[33] while Petitioner filed its Memorandum on January 3, 2019.[34]

The instant case was deemed submitted for decision on January 8, 2019.[35]

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[22] *Id.*, pp. 567 to 575.
[23] *Id.*, pp. 180 to 188, Exhibit "P-39"; pp. 584 to 587, Minutes of the hearing held on, and Order dated, January 23, 2018.
[24] *Id.*, pp. 238 to 257, Exhibit "P-40"; pp. 589 to 593, Minutes of the hearing held on, and Order dated, February 13, 2018.
[25] *Id.*, pp. 598 to 615, Exhibit "P-48"; pp. 617 to 620, Minutes of the hearing held on, and Order dated, March 13, 2018.
[26] *Id.*, pp. 532 to 535, Exhibit "P-47"; pp. 553 to 555, and 557 to 558, Minutes of the hearing held on, and Order dated, November 16, 2017; p. 556, *Oath of Commission*.
[27] *Id.* at Note 2, pp. 634 to 673.
[28] *Id.*, pp. 988 to 989.
[29] *Id.* at Note 1, pp. 453 to 457, Exhibit "R-5"; *id.* at Note 2, pp. 990 to 992, Minutes of the hearing held on, and Order dated, August 7, 2018.
[30] *Id.* at Note 2, pp. 994 to 997.
[31] *Id.*, pp. 1010 to 1011.
[32] *Id.*, p. 1008.
[33] *Id.*, pp. 1012 to 1020.
[34] *Id.*, pp. 1032 to 1072.
[35] *Id.*, p. 1074, Resolution dated January 8, 2019.

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THE ISSUE

The parties submitted the following issue[36] for this Court's resolution, to wit:

> "Whether or not Petitioner is entitled to the refund of or issuance of a tax credit certificate (TCC) for the amount of Php335,759,253.00 representing its excess and unutilized input VAT for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015 attributable to its zero-rated sales of power generated from renewable sources."

PETITIONER'S ARGUMENTS

In claiming that it is entitled to the refund being claimed, Petitioner argues that it is a VAT-registered entity; that it is engaged in the zero-rated sale of renewable energy; that Petitioner paid or incurred input taxes during the period of claim in the amount of ₱335,759,253.00 which are properly substantiated and attributable to Petitioner's zero-rated sales; that Petitioner's excess and unutilized input VAT for the period of claim was not utilized or applied against any output VAT liability; that Petitioner's administrative claim for refund was filed in accordance with Sections 110(B) and 112(A) of the Tax Code; and that Petitioner's judicial claim for refund was filed on time.

RESPONDENT'S ARGUMENTS

Respondent submits that Petitioner is not entitled to refund or issuance of a tax credit certificate; that the mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit; and that the burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

Furthermore, Respondent points out that since Petitioner had no zero-rated sales declared in its VAT Return for the period July to December 2014, it cannot claim any unutilized input taxes attributable to such zero-rated sales; and that the existence of zero-rated sales or effectively zero-rated sales is indispensable in order to file a claim for refund under Section 112(A) of the NIRC.

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[36] *Id.* at Note 1, p. 512, JSFI.

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Moreover, according to Respondent, results of the audit evaluation of Petitioner's claim revealed that no copies of official receipts were submitted to prove the existence of zero-rated sales.

In addition, Respondent avers that based on Section 15(g) of RA No. 9513, Petitioner is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power; that since there was no input VAT to be paid by RE Developers, it necessarily follows that Petitioner is not entitled to refund or issuance of a tax credit certificate from its purchases; and that since Petitioner is not liable to pay input VAT, it is not the proper party to claim for any input VAT refund on the subject purchases.

THE RULING OF THE COURT

The Petition for Review must be partially granted.

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

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337,[37] provides:

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

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

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and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.

xxx xxx xxx

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

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing provisions, certain requisites have been identified through jurisprudential pronouncements which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[38]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[39]

[38] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.
[39] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

3. the taxpayer is a VAT-registered person;[40]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[41]
5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[42]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[43]
7. the input taxes are due or paid;[44]
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;[45] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[46]

Petitioner's Administrative Claim was Timely Filed.

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

Counting two (2) years from the close of the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015, the respective last day for the filing of the administrative claim for the said four (4) quarters are shown below:

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

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Period (3rd and 4th quarters of TY 2014, and the 1st and 2nd quarters of TY 2015)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
July 1, 2014 to September 30, 2014	September 30, 2014	September 30, 2016
October 1, 2014 to December 31, 2014	December 31, 2014	December 31, 2016
January 1, 2014 to March 31, 2015	March 31, 2015	March 31, 2017
April 1, 2014 to June 30, 2015	June 30, 2015	June 30, 2017

Considering that Petitioner's administrative claim for the above-stated periods was filed on August 15, 2016,[47] the same was timely made.

The Judicial Claim was Likewise Timely Made.

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

In *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*,[48] the Supreme Court held:

> **"Whether respondent rules in favor of or against the taxpayer — or does not act at all on the administrative claim — within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.**
>
> xxx xxx xxx
>
> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, <u>whichever is sooner</u>.**
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by law,[49] **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.**" *(Emphases and underscoring supplied)*

[47] *Id.* at Note 2, pp. 924 to 933, Exhibits "P-33" to "P-34".
[48] G.R. No. 182737, March 2, 2016.
[49] In *CIR vs. San Roque Power Corporation, etseq.* (G.R. Nos. 187485, 196113 & 197156, February 12, 2013), the Supreme Court applied the equitable principle of estoppel and ruled that judicial claims filed from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 up to its reversal in *CIR vs. Aichi Forging Company of Asia, Inc.* (G.R. No. 184823) on October 6, 2010 need not wait for the lapse of the 120+30-day period.

Based on the foregoing doctrinal pronouncements, the 30-day period provided by law should be reckoned after the receipt of Respondent's decision/ruling or after the expiration of the 120-day period, **whichever is sooner**. In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30-day periods is outside the jurisdiction of this Court.

In this case, the determination of the 120+30-day periods is shown as follows:

Date of Filing of Administrative Claim	End of the 120 days for the BIR to decide the claim	End of the 30 days from expiration of the 120 days
August 15, 2016	December 13, 2016	January 12, 2017

As borne out by the records, Respondent issued the letter dated December 15, 2016,[50] denying Petitioner's administrative claim for refund covering the period from July to December 2014. The said letter was received by Petitioner on December 19, 2016.[51] The 30-day period to appeal to this Court, insofar as the said administrative claim is concerned, ends on January 18, 2017. The instant Petition for Review was filed on January 11, 2017, which is well within the 30-day period to appeal. Petitioner's judicial claim covering the period from July 31, 2014 to December 31, 2014 was timely filed.

In the same vein, insofar as the judicial claim covering the period from July 31, 2014 to December 31, 2014[52] is concerned, the same was likewise timely filed, since it was also made within the 30-day after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

Such being the case, the Court finds that petitioner complied with the above-stated second requisite.

Petitioner is a VAT-registered Person.

As for its compliance with the third requisite, petitioner has fulfilled the same by presenting its BIR Certificate of Registration No. OCN 2RC0000734094 dated January 01, 1996 with TIN 004-500-956-000.[53]

Petitioner was Able to Establish That It was Engaged in Zero-Rated or Effectively Zero-Rates Sales, but

[50] *Id.* at Note 2, pp. 937 to 938, Exhibit "P-38"; pp. 1016 to 1017, Exhibit "R-2", BIR Records.
[51] *Id.*, p. 938, Exhibit "P-38".
[52] This was simultaneously filed with judicial claim covering the period from July 31, 2014 to December 31, 2014
[53] *Id.* at Note 2, p. 712, Exhibit "P-6".

Only for the Whole Month of June 2015.

Petitioner avers that it has successfully proven that: (1) it is an RE Developer operating a wind farm and registered with the DOE; and (2) it generated sales from its power generation activities that are subject to zero percent (0%) VAT. To support its stance, it invokes Section 15(g) of the Renewable Energy Act of 2008; Section 13(G)(a), Rule 5, Implementing Rules and Regulations for the Renewable Energy Act of 2008 issued by the DOE; Section 108(B)(7) of the NIRC, as implemented by Sections 4.108-3 and 4.108-5(b)(7), Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-2007.

We partly agree with Petitioner.

Indeed, Section 15(g) of Renewable Energy Act of 2008[54], grants certain tax incentives to RE developers, such as petitioner. Said provision reads, in part, as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – **RE Developers of renewable energy facilities,** including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE**, in consultation with the BOI, **shall be entitled** to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value Added-Tax Rate. – **The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), <u>pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337</u>.**
>
> S
>
> xxx xxx xxx." *(Emphases and underscoring ours)*

[54] RA No. 9513.

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Relative thereto, Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, solar, **wind,** hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." *(Emphases ours)*

Based on the foregoing provisions, the sale of power generated from or through renewable sources of energy, such as wind, is subject to the VAT rate of zero percent (0%).

To implement the foregoing provision, Section 4.108-3(f) of RR No. 16-2005 provides as follows:

> "SEC. 4.108-3. <u>Definitions and Specific Rules on Selected Services.</u> –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[55] VAT on their gross receipts; *Provided*, That **sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, solar, **wind,** hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT.**

[55] Now 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

> ***'Generation companies'*** **refers to persons or entities authorized by the Energy Regulatory Commissioner (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA).** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.
>
> xxx xxx xxx." *(Emphases and underscoring ours)*

Thus, on the basis of the foregoing, while the sale of power through renewable sources of energy by a generation company is subject to the zero percent (0%) VAT, the latter must be so authorized by the ERC to operate facilities used in the generation of electricity, in accordance with the EPIRA (or RA No. 9136).

In turn, Section 6 of the EPIRA (or RA No. 9136) provides, in part, as follows:

> "SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.
>
> Upon the effectivity of this Act, **any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act**, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
>
> xxx xxx xxx." *(Emphases ours)*

Based on the foregoing provision, before a generation company operates, it must first secure a Certificate of Compliance (COC) with the ERC.

Anent the securing of a COC from the ERC, the following guiding principles must be observed, to wit:

> Section 1, Rule 5, of the Rules and Regulations To Implement RA No. 9136:

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"Section 1. **Guiding Principle.**

Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.

No Person may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC from the ERC to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC." *(Emphasis ours)*

Section 2(iii) of 2014 Revised Rules For the Issuance of Certificates of Compliance (COCs) For Generation Companies, Qualified End-Users and Entities With Self-Generation Facilities:

"Section 2. **Guiding Principle.**

xxx xxx xxx

iii. **A COC shall be secured from the ERC before the actual Commercial Operations of the Generation Facility/ies. For new Generation Facilities, the Generation Company may conduct Test and Commissioning for a maximum period of two (2) months even without a COC and the sale of the generated output during Commissioning shall not be considered as transactions made during Commercial Operations.** Beyond this period, however, the sale of generated output shall already be deemed as transactions made during Commercial Operations for which a COC shall be required. xxx." *(Emphases ours)*

On the basis thereof, it is clear that no person may engaged in the generation of electricity as a new generation company unless such person has received a COC from the ERC to operate facilities used in the generation of electricity. Moreover, the same COC must be secured from the ERC *before* the

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actual commercial operations of the concerned generation facility. The new generation company is allowed to conduct test and commissioning for a maximum period of two (2) months even without the required COC, and the sale of the generated output during the said commissioning shall not be considered as transactions made during commercial operations. However, beyond the said two-month period, the sale of generated output shall already be deemed as transactions made during commercial operations by the generation company for which a COC from the ERC is required.

To summarize, the essential elements for the grant of VAT zero-rating under Section 15(g) of the Renewable Energy Act of 2008 vis-à-vis the above-quoted provisions of laws and regulations, are as follows:

1) The seller is an RE Developer of renewable energy facilities;
2) It sells fuel or power generated from renewable sources of energy, such as wind;
3) The said seller is a *"generation company"*, *i.e.*, a person or entity authorized by the ERC to operate facilities used in the generation of electricity; and
4) Such authority is embodied in a COC issued by the ERC which must be secured before the actual commercial operations of the generation facility.

Petitioner is compliant with the **first and second essential elements**, in view of a showing that it is *"an RE Developer of Wind Energy Sources"*, as evidenced by the Certificate of Registration No. WESC 2009-10-009 dated October 23, 2009 issued by the DOE in its favor.[56] However, as regards the **third and fourth essential elements**, the same were only considered fulfilled on June 1, 2015, the date of issuance of COC No. 15-06-M-11V by the ERC to Petitioner.[57] Given this factual milieu, Petitioner's generated sales from its power generation activities which are subject to the zero percent (0%) VAT would only refer to its sales during the period of June 1, 2015 to June 30, 2015.

In its Quarterly VAT Return for the 2nd quarter of TY 2015[58], Petitioner reported zero-rated sales in the total amount of ₱148,007,419.15. Out of this amount, only ₱17,119,466.49[59] were duly supported by zero-rated VAT official receipts during the month of June 2015, to wit:

Exhibit	O.R. No.	O.R. Date	Name of Buyer/Customer	Zero-rated Sales
P-218	132	1 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	₱ 16,742.56
P-219	133	8 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	54,474.58
P-220	134	9 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	45,433.37
P-221	135	11 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	133,121.73

[56] *Id.*, at Note 2, p. 697, Exhibit "P-2".
[57] *Id.*, p. 706, Exhibit "P-4".
[58] *Id.*, pp. 911 to 916, Exhibit "P-30".
[59] Extracted Quarterly Summary List of Zero-rated Sales. Annex 1-b of the ICPA Report ("P-70").

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P-222	136	15 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	18,072.31
P-223	137	17 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	21,910.96
P-248	162	18 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	4,724.68
P-249	163	19 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	37,570.98
P-251	165	23 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	16,872.54
P-253	167	26 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	16,656,985.86
P-254	168	29 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	18,054.02
P-256	170	30 June 2015	PHILIPPINE ELECTRICITY MARKET CORPORATION	95,502.90
Total				**₱17,119,466.49**

Hence, as far as the **fourth requisite** is concerned, out of the reported zero-rated sales in its Quarterly VAT Returns for the 1st and 2nd quarters of TY 2015 in the total amount of ₱355,536,412.32 (₱207,528,993.17 + ₱148,007,419.15),[60] only the sales made during the month of June 2015 in the total amount of ₱17,119,466.49 qualify for VAT zero-rating.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[61] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[62]

Parenthetically, considering that Petitioner's zero-rated sales does not fall under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2) of the NIRC of 1997, as amended, it need not comply with the above-stated **fifth requisite**.

Having found that Petitioner had VAT zero-rated sales in the total amount of ₱17,119,466.49 for the month of June 2015, the Court shall proceed to determine whether Petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate.

The Input VAT Being Claimed does not Appear to be Transitional Input Taxes.

In its Quarterly VAT Returns for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015, Petitioner reported input taxes totaling ₱373,844,665.91 arising from its purchase of capital goods not exceeding ₱1 million, domestic purchase and importation of goods other than capital goods, and domestic purchase of services, broken down as follows:

[60] *Id.* at Note 2, pp. 901 to 905, and 911 to 916, Exhibits "P-28" and "P-30".
[61] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[62] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

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	3rd Quarter of TY 2014	4th Quarter of TY 2014	1st Quarter of 2015	2nd Quarter of TY 2015	Total
	(Exhibit "P-24")	*(Exhibit "P-26")*	*(Exhibit "P-28")*	*(Exhibit "P-30")*	
Purchase of Capital Goods not exceeding ₱1Million	-	-	₱ 9,951.21	₱ 6,503.57	₱ 16,454.78
Domestic Purchase of Goods Other than Capital Goods	₱ 53,961.07	₱ 30,028.44	13,117.46	11,439.16	108,546.13
Importation of Goods Other than Capital Goods	**323,260,847.00**	**37,203,545.00**	**331,961.00**	**4,214,319.00**	**365,010,672.00**
Domestic Purchase of Services	317,423.28	6,976,057.25	835,144.53	580,367.94	8,708,993.00
Total	**₱323,632,231.35**	**₱44,209,630.69**	**₱1,190,174.20**	**₱4,812,629.67**	**₱373,844,665.91**

The above input taxes do *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.* –
>
> (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.[63]

Since there is no showing that the above-stated input VAT are transitional input VAT, Petitioner has complied with the **sixth requisite** for the grant of an input VAT refund.

[63] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

The Input Taxes Being Claimed are Paid.

Out of the reported total input VAT of ₱373,844,665.91, Petitioner claims for refund the amount of ₱335,759,253.00, pertaining to input VAT arising from its importation of goods other than capital goods, broken down as follows:

Period Covered	Input VAT Claim
3rd Qtr of 2014	₱ 294,009,428.00
4th Qtr of 2014	37,203,545.00
1st Qtr of 2015	331,961.00
2nd Qtr of 2015	4,214,319.00
Total	**₱ 335,759,253.00**

Though Petitioner reported in its 3rd Quarterly VAT Returns for TY 2014 the input VAT on its importations of goods of ₱323,260,847.00, it opted not to refund but to carry over the input VAT it paid amounting to ₱29,251,419.00 (₱323,260,847.00 less ₱294,009,428.00) to the succeeding periods for application to future output VAT payable,[64] the details of which are as follows:

Supplier	VAT	Single Administrative Document (SAD) (Exhibit)	Statement of Settlement of Duties and Taxes (SSDT) (Exhibit)	Assessment Notice (Exhibit)
3RD QUARTER OF TY 2014				
KANEMATSU CORPORATION	₱ 3,201,993.00	P-274	P-277	P-698
ELECTROTECNICA ARTECHE HERMANOS SL	341,639.00	P-275	P-278	P-699
KANEMATSU CORPORATION	25,707,787.00	P-273	P-276	P-697
TOTAL	**₱29,251,419.00**			

In support of its claimed input VAT due on importations of goods, Petitioner submitted in evidence various Single Administrative Documents (SADs),[65] Statements of Settlement Of Duties and Taxes (SSDT),[66] and Assessment Notices[67] issued by the Bureau of Customs (BOC).

Based on the ICPA Report,[68] the amount of ₱347,219.00, which is not properly substantiated by documents, should be disallowed on the grounds stated as follows:

[64] Q&A11, Par. 7 of Exhibit P-48; Exhibit P-70, pp. 8, 26 (ICPA Report).
[65] Exhibits "P-280" to "P-344".
[66] Exhibits "P-345" to "P-409".
[67] Exhibits "P-410" to "P-474".
[68] Exhibit "P-70".

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Findings	Reference (Exhibit P-70)	3rd Quarter TY 2014	4th Quarter TY 2014	Total Disallowed Input VAT
1. Input tax on importation of goods other than capital goods in excess of amount per SAD and SSDT	Annex 9-A-b Annex 9-B-b	₱ 199,799.00	₱ 31,764.00	₱ 231,563.00
2. Input tax on importation of goods other than capital goods with no available SAD and SSDT at the time of verification	Annex 9-A-c Annex 9-B-c	102,712.00	12,944.00	115,656.00
Total		**₱ 302,511.00**	**₱ 44,708.00**	**₱ 347,219.00**

On the other hand, the Court finds that the remaining input VAT Petitioner paid in the amount of ₱335,412.034.00 is properly substantiated by documents, to wit:

Supplier	VAT	SAD (Exhibit)	SSDT (Exhibit)	Assessment Notice (Exhibit)	Bank Certification on Payment of Duties and Taxes (P-272)
3RD QUARTER OF TY 2014 *(Annex 9-A-a of the ICPA Report)*					
GAMESA EOLICA S.L.U.	₱ 21,335,014.00	P-280	P-345	P-410	BOC-070314-0092
GAMESA EOLICA S.L.U.	60,949,084.00	P-281	P-346	P-411	BOC-070314-0132
LS CABLE & SYSTEM LTD.	555,655.00	P-282	P-347	P-412	BOC-072814-0048
LS-VINA CABLE & SYSTEM	467,640.00	P-283	P-348	P-413	BOC-071014-0193
GAMESA EOLICA S.L.U.	9,178.00	P-284	P-349	P-414	BOC-071814-0191
GAMESA EOLICA S.L.U.	53,204.00	P-285	P-350	P-415	BOC-072114-0003
NKS GLOBAL LIMITED	205,428.00	P-286	P-351	P-416	BOC-072514-0218
NKS GLOBAL LIMITED	287,864.00	P-287	P-352	P-417	BOC-072514-0229
KANEMATSU CORPORATION	161,709.00	P-288	P-353	P-418	BOC-072114-0005
NKS GLOBAL LIMITED	33,271.00	P-289	P-354	P-419	BOC-072814-0006
NKS GLOBAL LIMITED	7,166.00	P-290	P-355	P-420	BOC-072814-0004
GAMESA EOLICA S.L.U.	25,491,025.00	P-291	P-356	P-421	BOC-080514-0113
GAMESA EOLICA S.L.U.	60,306,886.00	P-292	P-357	P-422	BOC-080714-0043
GAMESA EOLICA S.L.U.	33,243,096.00	P-293	P-358	P-423	BOC-080714-0044
GAMESA EOLICA S.L.U.	36,074.00	P-294	P-359	P-424	BOC-080414-0019
AVIAT NETWORK (S) PTE LTD	330,459.00	P-295	P-360	P-425	BOC-080814-0012
QINGDAO SPADE TRADING CO. LTD.	46,943.00	P-296	P-361	P-426	BOC-082814-0172
SHILIN ELECTRIC & ENGINEERING CORP.	929,071.00	P-297	P-362	P-427	BOC-081214-0004
GAMESA EOLICA S.L.U.	25,550,195.00	P-298	P-363	P-428	BOC-091214-0176
GAMESA EOLICA S.L.U.	847,749.00	P-299	P-364	P-429	BOC-091114-0236
GAMESA EOLICA S.L.U.	60,446,970.00	P-300	P-365	P-430	BOC-091214-0178
NINGBO HUATIAN IMPORT AND EXPORT CO. LTD.	78,050.00	P-301	P-366	P-431	BOC-091614-0198
COMANTUR SL	27,485.00	P-302	P-367	P-432	BOC-092214-0137
GAMESA EOLICA S.L.U.	907,441.00	P-303	P-368	P-433	BOC-091014-0147
SHANGHAI RUIHE ENTERPRISE GROUP CO. LTD.	239,671.00	P-304	P-369	P-434	BOC-091514-0111

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GAMESA EOLICA S.L.U.	854,165.00	P-305	P-370	P-435	BOC-092314-0015
AVIAT NETWORK S PTE. LTD.	41,631.00	P-306	P-371	P-436	BOC-081114-0169
ALSTOM GRID ENERGIAL LTDA	264,793.00	P-307	P-372	P-437	BOC-081314-0185
Subtotal	**293,706,917.00**				
4TH QUARTER OF TY 2014 *(Annex 9-B-a of the ICPA Report)*					
GAMESA EOLICA S.L.U.	28,047,977.00	P-308	P-373	P-438	BOC-103014-0080
INGETEAM SERVICE SA	82,473.00	P-309	P-374	P-439	BOC-101614-0026
GAMESA EOLICA S.L.U.	7,578.00	P-310	P-375	P-440	BOC-102214-0138
GAMESA EOLICA S.L.U.	513,894.00	P-311	P-376	P-441	BOC-103114-0076
GAMESA EOLICA S.L.U.	4,302,131.00	P-312	P-377	P-442	BOC-102714-0127
GAMESA EOLICA S.L.U.	11,845.00	P-313	P-378	P-443	BOC-111414-0008
GAMESA EOLICA S.L.U.	11,758.00	P-314	P-379	P-444	BOC-111414-0004
GAMESA EOLICA S.L.U.	6,094.00	P-315	P-380	P-445	BOC-112014-0229
GAMESA EOLICA S.L.U.	80,969.00	P-316	P-381	P-446	BOC-112514-0241
LS-VINA CABLE & SYSTEM	2,361,510.00	P-317	P-382	P-447	BOC-120414-0228
LS-VINA CABLE & SYSTEM	83,747.00	P-318	P-383	P-448	BOC-120114-0184
LS-VINA CABLE & SYSTEM	786,639.00	P-319	P-384	P-449	BOC-120314-0134
LS-VINA CABLE & SYSTEM	630,866.00	P-320	P-385	P-450	BOC-120314-0133
GAMESA EOLICA S.L.U.	108,011.00	P-321	P-386	P-451	BOC-120414-0036
GAMESA EOLICA S.L.U.	15,094.00	P-322	P-387	P-452	BOC-121214-0134
GAMESA EOLICA S.L.U.	78,305.00	P-323	P-388	P-453	BOC-121914-0134
NINGBO PACKAGE CO., LIMITED	29,946.00	P-324	P-389	P-454	BOC-101514-0034
Subtotal	**37,158,837.00**				
1st QUARTER OF TY 2015 *(Annex 9-C-a of the ICPA Report)*					
GAMESA EOLICA S.L.U.	7,180.00	P-325	P-390	P-455	BOC-020415-0246
GAMESA EOLICA S.L.U.	16,830.00	P-326	P-391	P-456	BOC-021015-0189
LS-VINA CABLE & SYSTEM	140,225.00	P-327	P-392	P-457	BOC-021715-0261
GAMESA EOLICA S.L.U.	3,849.00	P-328	P-393	P-458	BOC-030615-0082
GAMESA EOLICA S.L.U.	6,379.00	P-329	P-394	P-459	BOC-031015-0282
GAMESA EOLICA S.L.U.	148,230.00	P-330	P-395	P-460	BOC-031115-0199
GAMESA EOLICA S.L.U.	9,268.00	P-331	P-396	P-461	BOC-032315-0002
GAMESA EOLICA S.L.U.	139,945.00	P-332	P-397	P-462	BOC-040115-0145
Subtotal	**471,906.00**				
2nd QUARTER OF TY 2015 *(Annex 9-D-a of the ICPA Report)*					
GAMESA EOLICA S.L.U.	523,464.00	P-333	P-398	P-463	BOC-041015-0000
GAMESA WIND (TIANJIN) LTD. CO.	3,072,019.00	P-334	P-399	P-464	BOC-041615-0011
GAMESA EOLICA S.L.U.	82,773.00	P-335	P-400	P-465	BOC-042215-0259
GAMESA EOLICA S.L.U.	4,538.00	P-336	P-401	P-466	BOC-042915-0143
GAMESA EOLICA S.L.U.	269,554.00	P-337	P-402	P-467	BOC-042915-0136
GAMESA EOLICA S.L.U.	6,962.00	P-338	P-403	P-468	BOC-052015-0142
GAMESA EOLICA S.L.U.	17,284.00	P-339	P-404	P-469	BOC-051915-0240
GAMESA EOLICA S.L.U.	19,310.00	P-340	P-405	P-470	BOC-052515-0233
GAMESA EOLICA S.L.U.	4,915.00	P-341	P-406	P-471	BOC-052715-0129
GAMESA EOLICA S.L.U.	2,847.00	P-342	P-407	P-472	BOC-052715-0121
GAMESA EOLICA S.L.U.	29,728.00	P-343	P-408	P-473	BOC-060415-0152
GAMESA EOLICA S.L.U.	40,980.00	P-344	P-409	P-474	BOC-062415-0078
Subtotal	**4,074,374.00**				
TOTAL	**₱335,412,034.00**				

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By virtue of the foregoing SSDT issued by the BOC, and the Bank Certifications on Payment of Duties and Taxes, this Court finds that Petitioner complied with the **seventh requisite**, *i.e.*, the input VAT was paid, insofar as the said amount of ₱335,412,034.00 is concerned.

Since there are Both Zero-Rated or Effectively Zero-Rated Sales and Taxable Sales, the Said Amount of ₱335,412,034.00 Shall be Proportionately Allocated on the Basis of Sales Volume

To reiterate, the **eight requisite** 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.

In this case, for the subject periods of the claim, there exists a zero-rated or effectively zero-rated sales and taxable sales. Specifically, for the 1st quarter of TY 2015, Petitioner reported total sales in the amount of ₱207,534,322.34;[69] while for the 2nd quarter of TY 2015, Petitioner declared its sales in the total amount of ₱148,022,800.15.[70] In other words, Petitioner had sales for the said periods in the aggregate amount of ₱355,557,122.49.

Considering that this Court finds that only the amount of ₱17,119,466.49 represents Petitioner's valid zero-rated sales vis-à-vis the aggregate sales amount of ₱355,557,122.49, the said amounts shall be used as basis for the allocation of the valid input VAT in the amount of ₱335,412,034.00, determined as follows:

Valid Zero-Rated or Effectively Zero-Rated Sales	₱ 17,119,466.49
Divide by Aggregate Sales for the Subject Periods	÷ 355,557,122.49
Multiply by the Valid Input VAT	x 335,412,034.00
Substantiated Input VAT attributable to Valid Zero-Rated Sales	**₱ 16,149,514.98**

Thus, for purposes of the **eight requisite**, the input VAT attributable to the valid zero-rated or effectively zero-rated sales is only in the amount of ₱16,149,514.98.

[69] *Id.* at Note 2, pp. 901 to 905, Exhibit "P-28".
[70] *Id.* pp. 911 to 916, Exhibit "P-30".

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The Subject Input Taxes Have Not Been Applied Against Output Taxes During and in the Succeeding Quarters.

Lastly, although the input VAT claim of ₱335,759,253.00, which includes the substantiated input VAT of ₱335,412,034.00, was carried-over by Petitioner in its succeeding Quarterly VAT Returns,[71] the same remained unutilized until the same was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Returns for the 3rd quarter of TY 2016.[72]

Such being the case, the subject claim no longer formed part of the excess input VAT of ₱7,274,718.82[73] as of the end of the 3rd quarter of TY 2016 that was carried over to the succeeding 4th quarter of TY 2016[74]. Correspondingly, it eliminates the possibility that the present claim has been applied to Petitioner's future output VAT liability.

Thus, it cannot be disputed that Petitioner fulfilled the **ninth requisite** to successfully obtain a credit/refund of input VAT.

In sum, Petitioner is entitled to refund or issuance of tax credit certificate in the amount of ₱16,149,514.98.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **₱16,149,514.98**, representing the latter's unutilized excess input VAT it paid on its importations of goods for the 3rd and 4th quarters of TY 2014 and the 1st and 2nd quarters of TY 2015, attributable to its zero-rated sales for the month of June 2015.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[71] *Id.*, p. 940 to 973, Exhibits "P-42" to "P-46".
[72] *Id.*, p. 969, Exhibit "P-46", Line 23D.
[73] *Id.*, Line 29.
[74] *Id.*, pp. 917 to 921, Exhibit "P-31".

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WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

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