REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ACTUATE BUILDERS, INC. Petitioner,	**CTA CASE NO. 9129**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 0 3 2019 2:30 pm

x---x

DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a Petition for Review filed by petitioner Actuate Builders, Inc. on August 27, 2015, which involves a claim for refund/tax credit of excess and unutilized input Value-Added Tax (VAT) in the amount of ₱2,857,766.93 for the first quarter of the calendar year (CY) 2013.

STATEMENT OF THE FACTS

The Parties

Petitioner is a domestic corporation duly registered with and authorized by the Securities and Exchange Commission.[1] It is registered with the Bureau of Internal Revenue as a VAT-registered

[1] Certificate of Incorporation CS201015526 and Amended Articles of Incorporation, Exhibit "P-1", docket, pp. 342-368; Par. 1.b, I. Stipulation of Fact, Joint Stipulation of Facts and Issues (JSFI), docket, p. 216.

entity.[2] It is engaged in general construction business, including the construction, renovation, repair, fit-out, improvement of buildings, houses, condominium project/units, office facilities, and establishments, resorts or structures, whether for business, commercial, industrial or residential purposes, using any building materials and construction techniques.[3]

On the other hand, respondent is vested with the power to decide tax cases, including applications for refunds and/or tax credits. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of the Court may be served.[4]

The Relevant Facts

Petitioner is a construction company, it provides construction works to its various Philippine Economic Zone Authority (PEZA) registered clients.[5] Accordingly, petitioner alleges that it generated VAT zero-rated sales for such services, paid for in US dollars inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.[6] As a result, for the first quarter of CY 2013, petitioner generated ₱50,789.826.58 in VAT zero-rated sales.[7]

In the course of its operations for the same period, petitioner avers that it incurred and paid input VAT arising from its domestic purchases of goods and services, which is directly attributable to its zero-rated sales. Petitioner claims that it paid input VAT in the total amount of ₱2,857,766.93, in excess of the output tax due.[8]

On March 31, 2015, petitioner filed with the BIR Revenue District Office (RDO) No. 50 an administrative claim for refund or issuance of

---

[2] BIR Certificate of Registration No. OCN 3RC0000836103, with Tax Identification No. (TIN) 007-883-702-000, Exhibit "P-2", docket, p. 489.
[3] Certificate of Incorporation CS201015526 and Amended Articles of Incorporation, Exhibit "P-1", docket, pp. 342-368.
[4] Par. 1.c, I. Stipulation of Fact, JSFI, docket, p. 216.
[5] Exhibits "P-185" to "P-187", "P-188", ICPA Report, pp. 4, 6; Par. 8, IV. Facts, Petition for review, docket, p. 12.
[6] Par. 9, IV. Facts, Petition for Review, docket, p. 12.
[7] Exhibit "P-3", docket, p. 372.
[8] Exhibit "P-3", docket, p. 372.

tax credit certificate of its excess input VAT amounting to ₱2,857,766.93 for the first quarter of CY 2013.[9]

On August 27, 2015, After the lapse of the 120-day period from the filing of the application for refund with no action from the respondent and to preserve its claim for refund, petitioner filed the instant petition.[10]

In his Answer,[11] which was filed thru registered mail on November 26, 2015 and received by the Court on December 10, 2015, respondent raised the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses which are discussed hereunder;

5. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative investigation/examination by the BIR.

6. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

7. Petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱2,857,766.93 representing alleged excess and unutilized input VAT paid for the first quarter of 2013 were not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

8. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

9. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western***

[9] Exhibit "P-7", docket, pp. 399-410.
[10] Docket, pp. 10-19.
[11] Docket, pp. 80-81.

***Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

A Notice of Pre-Trial Conference[12] was issued by the Court, setting the case for pre-trial conference on March 31, 2016. Accordingly, respondent's Pre-Trial Brief[13] was filed thru registered mail on March 11, 2016 and received by the Court on March 23, 2016 while the petitioner's Pre-Trial Brief[14] was filed on March 23, 2016.

The Pre-trial conference ensued.[15] Thereafter, the parties submitted their Joint Stipulation of Facts and Issue[16] on April 20, 2016. Consequently, the Court issued a Pre-Trial Order[17] on June 2, 2016 and the pre-trial was deemed terminated.

Upon petitioner's motion,[18] on June 2, 2016, the Court commissioned Ms. Myra Celeste O. Dabalos as the Independent Certified Public Accountant (ICPA) to render a report on the case.[19] On July 11, 2016, the ICPA issued a report.[20]

During the trial, petitioner presented the testimonies of the following witnesses, by way of Judicial Affidavits in lieu of direct examination: Ms. Ma. Corazon C. Ramos[21] and ICPA Myra Celeste O. Dabalos.[22]

In the hearing[23] on September 1, 2016, respondent's counsel manifested that he is waiving the presentation of respondent's evidence. gz

[12] Docket, pp. 84-85.
[13] Docket, pp. 86-88.
[14] Docket, pp. 91-98.
[15] Minutes of the Hearing, March 31, 2016, docket, p. 198.
[16] Docket, pp. 216-223.
[17] Docket, pp. 242-247.
[18] Docket, pp. 203-205.
[19] Minutes of the Hearing, June 2, 2016, docket, pp. 233-235.
[20] Exhibit "P-11", ICPA Report.
[21] Exhibit "P-10", Judicial Affidavit of Ms. Ma. Corazon C. Ramos dated March 22, 2016, docket, pp. 415-425; Minutes of the Hearing, July 26, 2016, presentation of petitioner's witness, Ms. Ma. Corazon C. Ramos, docket, pp. 280-282.
[22] Exhibit "P-18", Judicial Affidavit of ICPA Myra Celeste O. Dabalos dated August 26, 2016, docket, pp. 289-295; Minutes of the Hearing, September 1, 2016, presentation of petitioner's witness, ICPA Myra Celeste O. Dabalos, docket, pp. 298-300.
[23] Minutes of the Hearing, September 1, 2016, docket, pp. 298-300.

On September 26, 2016, petitioner filed its Formal Offer of Exhibits with Motion for Commissioner's Hearing.[24] On February 17, 2017, the Court granted petitioner's Motion for Commissioner's Hearing and set the hearing on March 14, 2017.[25]

In its Resolution dated September 15, 2017, the Court resolved petitioner's FOE,[26] admitting Exhibits "P-1", "P-3", "P-7", "P-7-a", "P-8", "P-10", "P-182", "P-11", "P-12","P-13","P-14 (inclusive of submarkings)", "P-15 (inclusive of submarkings)", "P-16 (inclusive of submarkings)", "P-17 (inclusive of submarkings)", "P-18 (inclusive of submarkings)", "P-19 (inclusive of submarkings)", "P-20", "P-21", "P-22", "P-23 (inclusive of submarkings)", "P-24", "P-25", "P-26 (inclusive of submarkings)", "P-27", "P-28", "P-29 (inclusive of submarkings)", "P-30", "P-31", "P-32", "P-33" to "P-156", "P-157", "P-158", "P-159", "P-161", "P-162", "P-163", "P-164", "P-165", "P-166", "P-167", "P-168", "P-169", "P-170", "P-171", "P-172", "P-173", "P-174", "P-175", "P-176", "P-177", "P-178", "P-179", "P-180", "P-181", "P-182", "P-183", "P-184", "P-185", "P-186", "P-186", "P-188", "P-189", "P-201" to "P-209", "P-211", "P-213" to "P-289", "P-298" to "P-502", "P-522" to "P-805", "P-808", "P-810" to "P-1099", "P-1101" to "P-1201", "P-1203" to "P-1228", "P-1230" to "P-1256", "P-1258" to "P-1297", "P-1299" to "P-1306", "P-1308" to "P-1341", "P-1343" to "P-1370", "P-1372" to "P-1430", "P-1432" to "P-1443", "P-1445" to "P-1528", "P-1531" to "P-1541", "P-1543" to "P-1569", "P-1571" to "P-1644", "P-1646" to "P-1681"and "P-1683" to "P-1695".

On the other hand, in the same resolution, the Court denied the admission of Exhibits "P-2", "P-2-a", "P-4", "P-5", "P-6", "P-160", "P-210", "P-212", "P-290" to "P-297", "P-503" to "P-521", "P-806" to "P-807", "P-809", "P-1100", "P-1202", "P-1229", "P-1257", "P-1298", "P-1307", "P-1342", "P-1371", "P-1431", "P-1444", "P-1529" to "P-1530", "P-1542", "P-1570", "P-1645" and "P-1682".

On October 18, 2017, petitioner filed a Motion (Re: for Partial Reconsideration),[27] praying that the Court reconsider the denied exhibits and allow the partial reopening of proceedings in the respect of the disallowed Exhibits "P-2", "P-2-a", and "P-6" to compare documents to their originals at a commissioner's hearing for the purpose. In its Resolution dated January 18, 2018, the Court granted petitioner's motion to reopen proceedings and set a Commissioner's

---

[24] Docket, pp. 322-340.
[25] Resolution dated February 17, 2017, docket, pp. 436-437.
[26] Docket, pp. 444-447.
[27] Docket, pp. 448-451.

Hearing on February 27, 2018, while the motion for partial reconsideration was held in abeyance.[28]

On April 12, 2018, petitioner filed a Motion for Leave (Re: To Substitute Marked Exhibits),[29] and prayed that it be allowed to substitute the documents attached to the motion and marked as Exhibits "P-2", "P-2-a" and "P-6" in place of the provisionally marked documents bearing the same markings attached to the its FOE.

On August 8, 2018, the Court issued a Resolution[30] granting petitioner's motion for leave to substitute the marked exhibits while the motion for partial reconsideration was partially granted, admitting Exhibits "P-2", "P-2-a", "P-6" and "P-160". However, the Court still denied the admission of Exhibits "P-4" and "P-5".

Consequently, this case was deemed submitted for decision on October 15, 2018,[31] considering the Memorandum[32] for petitioner was filed on September 17, 2018 while respondent filed his Memorandum[33] on September 21, 2018 through registered mail and received by the Court on October 2, 2018.

THE ISSUE

Based on the parties' stipulation, the sole issue for the Court's determination is:

> Whether the petitioner is entitled to a refund or tax credit for its input VAT payments for the 1st Quarter of CY 2013 in the amount of ₱2,857,766.93.[34]

---

[28] Docket, pp. 475-477.
[29] Docket, pp. 484-486.
[30] Docket, pp. 494-499.
[31] Resolution dated October 15, 2018, docket, p. 517.
[32] Docket, pp. 500-511.
[33] Docket, pp. 513-516.
[34] II. Stipulation of Issue, JSFI, docket, p. 217.

Petitioner's Arguments[35]

Petitioner argues it has complied with the complete documentation in support of its claim for refund. Citing *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*,[36] petitioner enumerated the requirements for entitlement to a refund or tax credit of unutilized input VAT under Section 112(A) of the NIRC of 1997:

(a) the taxpayer is VAT-registered;

(b) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(c) the input taxes are due or paid;

(d) the input taxes are not transitional input taxes;

(e) the input taxes have not been applied against output taxes during and in the succeeding quarters;

(f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(g) 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 the rules and regulations of the Bangko Sentral ng Pilipinas;

(h) 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; and

(i) the claim is filed within two years after the close of the taxable quarter when such sales were made.

Petitioner contends that considering the evidence it presented, it complied with the above requirements and filed the claim within the

[35] Memorandum, docket, pp. 500-511.
[36] G.R. No. 188260, November 13, 2013.

periods provided under Section 112(A) and (C) of the NIRC of 1997. Hence, petitioner prays that the Court grant its claim for refund or direct the issuance of tax credit certificate for its excess and unutilized input VAT for the first quarter of CY 2013.

Respondent's Counter-Arguments[37]

On the other hand, respondent maintains that the claim for refund or issuance of tax credit certificate should be denied. He contends that since the claim for refund/tax credit of petitioner is by nature a tax exemption, and is construed *strictissimi juris* against petitioner, who is claiming the exemption without the clearest grant of the law, the fact that petitioner failed to fully substantiate by proper documents its claim, the same must necessarily fail.

Respondent further argues that the exhibits of the petitioner should not be given probative value for being hearsay evidence. He submits that any probative weight given to petitioner's witness, Ms. Ma. Corazon C. Ramos, should have been limited only to those facts which she has personal knowledge. He claims that in the Returns, Summary of Sales and PEZA Registration, the signatories thereto were not presented to testify on such relevant and material matters. Hence, any attempt on the part of the petitioner to pass as absolute truth the contents of such documents should be considered as hearsay evidence.

THE COURT'S RULING

Jurisdiction over the Petition for Review on the claim for refund/tax credit

The Court shall first determine whether it has jurisdiction over the Petition for Review in relation to the claim for refund filed by the petitioner with the respondent. Jc

[37] Docket, pp. 513-516.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[38]

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282 and 9503, provides that the Court of Tax Appeals (CTA) has exclusive appellate jurisdiction to review by appeal the decisions or inaction by the CIR on claims for refund, *viz.*:

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
>   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 or other laws administered by the Bureau of Internal Revenue;
>
>   2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

In relation thereto, Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the period when to file an administrative claim for refund with the BIR and judicial claim for refund with the CTA, to wit:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –

---

[38] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

(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:. . .x

xxx xxx xxx

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

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." (*Emphasis supplied*)

Pursuant to the aforequoted provision, a VAT registered taxpayer whose sale is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

In the instant case, the claim for refund/tax credit covers the first quarter of CY 2013, which ended on March 31, 2013. Counting two years therefrom, petitioner had until March 31, 2015 within which to file its administrative claim for refund/tax credit. Clearly, the administrative claim for refund was timely filed by petitioner on March 31, 2015.[39]

Section 112(C) further states that upon filing of the administrative claim for refund, the BIR has one hundred twenty (120) days from the date of submission of the complete supporting

[39] Exhibits "P-7" and "P-7-a", docket, pp. 399-409.

documents in support of the application to either grant or deny the claim. However, should the BIR deny fully or partially the claim, the taxpayer has thirty (30) days from the receipt of the decision denying the claim or in case of inaction by the BIR, from the expiration of the 120 days, to file an appeal with the Court.

In the case of *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*,[40] the Supreme Court summarized the rules on the 120+30 day period for claiming refund or credit of input VAT:

> "SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT
>
> The lessons of this case may be summed up as follows:
>
> xxx xxx xxx
>
> *B. 120+30 Day Period*
>
> a. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
>
> b. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
>
> c. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi and San Roque*)
>
> d. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque*)
>
> Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque*)"

Based on the aforequoted provisions and above Supreme Court rulings, it is undisputable that in order for the Court to acquire jurisdiction over an appeal on claims for refund, compliance with the 120-day plus 30-day period is mandatory.

---

[40] G.R. No. 191498, January 15, 2014.

As to the timeliness of petitioner's judicial appeal, from the filing of petitioner's administrative claim on March 31, 2015, respondent had one hundred twenty (120) days or until July 29, 2015 to act on the said claim. Since respondent failed to act on the said claim on or before July 29, 2015, petitioner had thirty (30) days or until August 28, 2015 within which to file its judicial claim before this Court. Evidently, petitioner's judicial appeal by way of a Petition for Review filed on August 27, 2015 is well within the period provided by law. Hence, the instant petition is timely filed.

Requisites of a claim for refund/tax Credit

The Court now determines whether petitioner is entitled to its claim for refund or issuance of tax credit certificates.

Pursuant to the afore-quoted Section 112(A) of the NIRC, in order to be entitled to a refund or issuance of a tax credit certificate for unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

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

For the second requisite, it has already been established that petitioner has filed its administrative and judicial appeal within the period prescribed by law. *gr*

Petitioner is a VAT-registered entity.

Petitioner is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer as evidenced by its BIR Certificate of Registration No. OCN 3RC0000836103, with Tax Identification No. (TIN) 007-883-702-000.[41] Hence, it is a VAT-registered entity.

Petitioner is engaged in zero-rated or effectively zero-rated sales.

Petitioner is registered with the Securities and Exchange Commission (SEC) with the primary purpose of engaging in general construction business, including the construction, renovation, repair, fit-out, improvement of buildings, houses, condominium projects/units, office facilities, and establishments, resorts or structures, whether for business, commercial, industrial or residential purposes, using any building materials and construction techniques now employed or to be developed.[42]

Petitioner maintains that it provided construction works to its various PEZA-registered clients, which are subject to zero percent (0%) VAT pursuant to Section 106(A)(2) of the NIRC of 1997, as amended.[43] The Court notes, however, that the construction works provided by petitioner are sale of services, and not of goods, hence, the pertinent provision of the same Code applicable to the instant case is Section 108(B)(3), instead of Section 106(A)(2).

Section 108(B)(3) of the NIRC of 1997, as amended provides:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx

[41] Exhibit "P-2", docket, p. 489.
[42] Certificate of Incorporation CS201015526 and Amended Articles of Incorporation, Exhibit "P-1", docket, pp. 342 and 344.
[43] Memorandum, docket, pp. 506-507.

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

Relative thereto, pertinent provision of Revenue Regulations (RR) No. 16-2005,[44] as amended, states:

> "SEC. 4.108-5. *Zero-Rated Sale of Services.* –
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.*-The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate: xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate."

The special law specific to this case is Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995". Section 8 of RA No. 7916, as amended, mandates that the PEZA shall manage and operate the ecozones as a separate customs territory, thus:

> "REPUBLIC ACT NO. 7916
> (as amended by Republic Act No. 8748)
>
> AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) AND FOR OTHER PURPOSES.
>
> xxx xxx xxx
>
> SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – <u>The ECOZONE shall be managed and operated by the PEZA as separate customs territory</u>. *gr*

[44] "Consolidated Value Tax Added Tax Regulations of 2005".

> 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." (*Underscoring supplied*)

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 to zero percent (0%) VAT.

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.[45]

Finally, Section 8 of Republic Act No. 7916 "mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that 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."[46]

From the foregoing, it is evident that the sales of services by a VAT-registered taxpayer, such as herein petitioner, to entities located in the ecozones are considered "export sales" subject to VAT at zero percent (0%) rate.

In its Quarterly VAT Return for the first quarter of CY 2013,[47] petitioner reported total sales of ₱51,045,936.18, which included zero-rated sales in the amount of ₱50,789,826.58, as detailed below:

---

[45] *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.
[46] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.
[47] Exhibit "P-3", docket, p. 372.

VAT Sales	₱ 256,109.60
Zero-Rated Sales	50,789,826.58
Total	**₱ 51,045,936.18**

As can be gleaned from petitioner's Summary List of Sales for the first quarter of 2013,[48] its reported zero-rated sales of ₱50,789,826.58 were made to Diversified Technology Solutions International Inc. (DTSII), RMH Teleservices Asia Pacific Inc. and Anthem Solutions Inc. (ASI). However, petitioner was able to prove the PEZA registration of and VAT zero-rating of the transactions with DTSII and ASI only, by presenting the following documents:

1. PEZA Certificate No. 2013-0571 with PEZA Certification No. 2013-0447[49] for DTSII; and

2. PEZA Certificate No. 2013-0457 with PEZA Certification No. 2013-0390[50] for ASI.

Accordingly, only the sales made to DTSII and ASI during the first quarter of CY 2013 shall qualify for VAT zero-rating pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

In line with this, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of RR No. 16-05, in relation to Sections 237 and 238 of the same Code, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, sale, barter or exchange of services, issue a VAT official receipt (OR), to wit:

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

[48] Exhibit "P-188", ICPA Report.
[49] Exhibit "P-185", ICPA Report.
[50] Exhibits "P-186" to "P-187", ICPA Report.

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

"Sec. 4.113-1. *Invoicing Requirements.* –

(A) A Vat-registered person shall issue: -

xxx xxx xxx

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

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their** invoice or **official receipts**. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoice/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; *gr*

> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That: xxx
>
> (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; xxx" (*Emphasis supplied)*
>
> "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." *(Emphasis supplied)*

In support of its zero-rated sales and to prove compliance with the VAT invoicing requirements provided by the above-quoted laws and regulations, petitioner submitted the corresponding ORs and invoices,[51] which were examined by the Court-commissioned ICPA, Ms. Myra Celeste O. Dabalos. Upon examination of the said documents, the ICPA accounted for a total of ₱50,725,691.53 zero-rated sales as summarized in its Summary of Official Receipts with Corresponding Invoices.[52]

A comparison of the zero-rated sales per VAT Return[53] as against the ICPA's verification reveals a difference of ₱64,135.05 (₱50,789,826.58 less ₱50,725,691.53), which may be broken down as follows: *gr*

---

[51] Exhibits "P-33" to "P-156", ICPA Report.
[52] Exhibit "P-157", ICPA Report, pp. 17-21.
[53] Exhibit "P-3", Line 17, docket, p. 372.

	Client	Exhibit No.	OR No.	Zero Rated Sales per SLS/Return	Zero Rated Sales per ICPA (OR/Inv)	Difference
a	DTSII	P-37 toP-40	0210	₱ 1,178,460.57	₱ 1,178,466.57	₱ (6.00)
b	DTSII	P-43 to P-44	0212	-	114,374.00	(114,374.00)
c	DTSII	P-118 to P-122	0229	635,446.00	474,481.95	160,964.05
d	DTSII	P-132 to P-133	0233	191,250.00	173,699.00	17,551.00
	Total			**₱2,004,156.57**	**₱1,941,021.52**	**₱64,135.05**

Out of the ₱64,135.05 difference, the amounts of ₱6.00 and ₱114,374.00 pertaining to items *a* and *b,* respectively, shall be disregarded as the same were not actually reported in petitioner's VAT return for the subject period. On the other hand, the amounts of ₱160,964.05 and ₱17,551.00 pertaining to items *c* and *d,* respectively, or a total of ₱178,515.05 shall be denied VAT zero-rating as the same were not covered by VAT zero-rated ORs.

Moreover, the reported zero-rated sales of ₱134,440.00, as detailed below, shall also be denied VAT-zero rating as these were made to entities without proof of PEZA registration:

Exhibit No.	Client	OR No.	Amount
P-47	RMH Teleservices Asia Pacific Inc	0214	₱ 68,664.00
P-49	RMH Teleservices Asia Pacific Inc	0215	45,776.00
P-105	Transcom Worldwide Philippines Inc	0225	20,000.00
	Total		**₱134,440.00**

In fine, out of the reported zero-rated sales of ₱50,789,826.58, only the amount of ₱50,476,871.53 represents petitioner's valid zero-rated sales, computed as follows:

Total Reported Zero-Rated Sales		₱ 50,789,826.58
Less: Adjustments/Disallowances		
Sales not covered by VAT zero-rated ORs	₱ 178,515.05	
Sales to clients without proof of PEZA registration	134,440.00	312,955.05
Total Valid Zero-Rated Sales		**₱50,476,871.53**

Jc

The input taxes incurred or paid were attributable to its zero-rated sales.

Having resolved that petitioner had VAT zero-rated sales for the first quarter of CY 2013 in the total amount of ₱50,476,871.53, the Court shall proceed to determine the amount of input VAT attributable thereto.

In its Quarterly VAT Return for the first quarter of CY 2013,[54] petitioner reported input taxes on its domestic purchases of goods other than capital goods and services in the total amount of ₱2,857,766.93, as broken down below, which is the subject of the instant claim for refund:

Input Tax on Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 2,615,319.64
Input Tax on Domestic Purchase of Services *(Line 21J)*	242,447.29
Total	**₱2,857,766.93**

To support its input VAT claim of ₱2,857,766.93, petitioner submitted various invoices, ORs and other documents,[55] which were examined by the ICPA. Based on the report of the ICPA,[56] the Court finds that the input VAT in the total amount of ₱1,622,138.80 should be disallowed for petitioner's failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05, as amended:

Exhibit Reference	Description	Input VAT Amount
P-162	Input tax claimed on domestic purchase of goods supported by a VAT Invoice not dated within the VAT-taxable quarter but within the VAT-taxable year (**Note A**)	₱ 15,700.21
P-163	Input tax claimed on domestic purchases of services supported by a VAT OR not dated within the VAT-taxable quarter but within the VAT-taxable year (**Note A**)	21,919.97

8r

[54] Exhibit "P-3", docket, p. 372.
[55] Exhibits "P-201" to "P-1695" except for the denied exhibits *(P-210, P-212, P-290 to P-297, P-503 to P-521, P-806 to P-807, P-809, P-1100, P-1202, P-1229, P-1257, P-1298, P-1307, P-1342, P-1371, P-1431, P-1444, P-1529 to P-1530, P-1542, P-1570, P-1645 and P-1682).*
[56] Exhibit "P-11", ICPA Report, pp. 7-9.

Exhibit Reference	Description	Input VAT Amount
P-165	Input tax claimed on purchases of goods and services that are supported by VAT invoices (for goods) or VAT ORs (for services) that are issued in the name of the Petitioner in the quarter when the input taxes are claimed but the VAT was not separately indicated in the invoice/OR	311,370.44
P-166	Input tax claimed on domestic purchase of goods supported by VAT documents other than a VAT Invoice (i.e., VAT OR etc.)	148,852.58
P-167	Input tax claimed on domestic purchase of goods supported by other Non-VAT document	6,846.43
P-168	Input tax claimed on domestic purchase of goods supported by a VAT Invoice but not an original copy	24,066.71
P-169	Input tax claimed on domestic purchases of goods supported by Non-VAT Registered TIN Sales invoices only	102,018.84
P-170	Input tax claimed on domestic purchase of goods supported by a VAT Invoice issued in the Petitioner's name without the Petitioner's TIN and/or address	143,243.55
P-171	Input tax claimed on domestic purchase of goods supported by a VAT invoice but not dated within the taxable year	638,376.84
P-172	Input tax claimed on domestic purchase of goods supported by VAT Invoice with incorrect TIN of Petitioner but supported by VAT OR with correct TIN and Address	1,285.71
P-174	Input tax claimed on domestic purchase of services supported by VAT documents other than a VAT OR (i.e., VAT invoice, 5tatement of Account, Billing Invoice, etc.)	4,393.20
P-175	Input tax claimed on domestic purchase of services supported by other Non-VAT document	33,038.48
P-176	Input tax claimed on domestic purchases of services supported by a VAT OR but not an original copy	49,827.28
P-177	Input tax claimed on domestic purchases of services supported by Non-VAT Registered TIN OR only	8,576.78
P-178	Input tax claimed on domestic purchases of services supported by VAT OR issued in the Petitioner's name but without the Petitioner's TIN and/or Address	1,869.19
P-179	Input tax claimed on domestic purchases of services supported by a VAT OR but without BIR's Authority to Print/Permit to Print	901.08
P-180	Input tax claimed on domestic purchase of services supported by VAT OR. However, the sentence "This is not a source of input tax." is printed in the VAT OR	19,537.78
P-181	Input tax claimed on domestic purchase of goods and services without supporting documents	90,313.73
Total		**₱1,622,138.80**

In addition to the above disallowances, the input VAT in the amount of ₱139,078.61 shall, likewise, be disallowed for the reasons stated hereunder:

Exhibit No.	Vendor Name	Input VAT Amount	Reason for Disallowance
P-203	Pacific Glass Corporation	₱ 520.50	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown

gc

Exhibit No.	Vendor Name	Input VAT Amount	Reason for Disallowance
P-641	MC Home Depot, Inc.	311.38	Purchase of good supported by VAT invoice but dated outside the period (first quarter) of claim
P-646	MC Home Depot, Inc.	1,026.40	Purchase of good supported by VAT invoice but without the TIN of petitioner
P-754	Ultra Petronne Interior Supply Corp.	1,607.14	Over-claimed input VAT (₱2,410.71-₱4,017.85)
P-994	CFAL Oasis Development Corp.	173.83	Purchase of good supported by VAT invoice but without the TIN and address of petitioner
P-1054	Space Creation, Inc.	342.86	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1057	Space Creation, Inc.	6,287.15	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1160	Space Creation, Inc.	578.57	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1360	Newton Hardware & Lumber	3,120.11	Purchase of good supported by VAT invoice wherein the input VAT amount was not separately shown and the date is altered without countersignature
P-1423	Perfectbuild Trade Corp.	1,997.15	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1422	Perfectbuild Trade Corp.	10,665.00	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1436	Free-Aire Industries	428.57	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1492	Multi Rich Home Decors Inc.	514.29	Purchase of good supported by VAT invoice wherein the amount of input VAT was not separately shown
P-1286	Cwc-Prime Industries, Corp.	8,919.46	Purchase of service supported by VAT OR wherein the input VAT amount was not separately shown
P-1399	Ivm Phils. Services & Contractor, Inc.	98,571.28	Purchase of service supported by VAT OR wherein the input VAT amount was not separately shown
P-1298	Officefab E-Services Philippines, Inc	157.78	Purchase of good supported by document which is denied admission by the Court
P-1307	Rac Arise Enterprise	3,857.14	Purchase of good supported by document which is denied admission by the Court
	Total	**₱ 139,078.61**	

In sum, out of the reported input VAT of ₱2,857,766.93, only the amount of ₱1,096,549.52 represents petitioner's valid input VAT for the first quarter of CY 2013, computed as follows:

Input VAT per Returns		₱ 2,857,766.93
Less: Disallowances		

ge

Per ICPA report	₱ 1,622,138.80	
Per Court's further verification	139,078.61	1,761,217.41
Total Valid Input VAT		**₱ 1,096,549.52**

Proceeding therefrom, a portion of petitioner's valid input VAT shall be applied against the output VAT liability for first quarter of CY 2013 in the amount of ₱30,733.15.[57] Consequently, only the remaining input VAT of ₱1,065,816.37 can be attributed to the declared zero-rated sales of ₱50,789,826.58 and only the input VAT of ₱1,059,249.06 is attributable to the valid zero-rated sales of ₱50,476,871.53, computed as follows:

Valid Input VAT	₱ 1,096,549.52
Less: Output VAT per return	30,733.15
Excess Input VAT	**₱ 1,065,816.37**
Divide by Declared Zero-Rated Sales	50,789,826.58
Multiply by Valid Zero-Rated Sales	50,476,871.53
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱ 1,059,249.06**

The input taxes claimed were not applied against any output VAT liability.

Although petitioner's claimed input VAT of ₱2,857,766.93 was carried-over in its succeeding Quarterly VAT Returns for the second quarter of CY 2013 up to the second quarter of CY 2015,[58] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Return for the second quarter of CY 2015.[59] Accordingly, the subject claim no longer formed part of the excess input VAT of ₱29,569,439.33[60] as of the end of the second quarter of CY 2015 that was to be carried over to the succeeding

[57] Line 19B of Exhibit "P-3", docket, p. 372.
[58] Exhibits "P-14 (inclusive of submarkings)" to "P-18 (inclusive of submarkings)", "P-20 (inclusive of submarkings)" to "P-26 (inclusive of submarkings)".
[59] Composition of VAT Refund/TCC claimed:

1st Qtr. of CY 2013 (Exh. P-3)	**₱2,857,766.93**
2nd Qtr. of CY 2013 (Exh. P-14)	5,022,379.58
3rd Qtr. of CY 2013 (Exh. P-17)	3,479,157.17
4th Qtr. of CY 2013 (Exh. P-18)	3,749,492.22
Total Amount of "VAT Refund/TCC claimed" per return (Exh. P-26a)	₱ 15,108,795.90

[60] Line 29 of Exhibit "P-26", ICPA Report.

quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability.

In view of the foregoing, petitioner is entitled to a refund/tax credit of its excess and unutilized input VAT attributable to zero-rated sales for the first quarter of CY 2013 in the amount of ₱1,059,249.06.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,059,249.06**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the first quarter of CY 2013.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice