REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	**CTA CASE NOS. 9207, 9277, & 9416**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 03 2021 1:16 p.m.

x---x

AMENDED DECISION

RINGPIS-LIBAN, J.:

Submitted before this Court are the following:

1. Petitioner's **Motion for Reconsideration (of the Decision dated July 24, 2020)** filed on September 8, 2020, with respondent's **Opposition (Re: Motion for Reconsideration)** filed on October 19, 2020; and,

2. Respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 24 June 2020)** filed on September 9, 2020, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration (re. Decision dated July 24, 2020) dated September 9, 2020]** filed on October 19, 2020.

On July 24, 2020, the Court promulgated a Decision for the present consolidated cases, partially granting petitioner's claim for refund of unutilized input value-added tax (VAT) for the 3rd and 4th quarters of taxable year (TY) 2013 and the 1st quarter of TY 2014, disposing of the case as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND**

petitioner the amount of **₱27,434,794.00**, representing the latter's unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st Quarter of TY 2014.

SO ORDERED."

In the above Decision, this Court primarily found that not all of petitioner's reported zero-rated sales or effectively zero-rates sales during the 3rd and 4th quarters of TY 2013 and the 1st quarter of TY 2014, qualify as such, and that not all of its input VAT being claimed for refund are due or paid. More so, the Court also ruled that since there are both zero-rated sales and taxable sales subject to 12% VAT, the claimed amount of ₱47,860,882.23 was proportionately allocated on the basis of sales volume. Hence, upon final determination of the refundable amount, the Court allowed the refund of the amount of ₱27,434,794.00.

Petitioner's Motion for Reconsideration

In its Motion, petitioner prays that the Court reconsiders the said Decision, raising the following grounds in support of its arguments, *viz*:

> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO COMPLY WITH ALL REQUISITES TO SUCCESSFULLY OBTAIN A CREDIT/REFUND OF INPUT VAT PURSUANT TO THE PROVISIONS OF SECTIONS 112(A) AND (C) OF THE NATIONAL INTERNAL REVENUE CODE ('NIRC') OF 1997, AS AMENDED.
>
> THE HONORABLE COURT ERRED IN RULING THAT THE ZERO-RATED SALES DECLARED DURING THE 1ST QUARTER OF TY 2014 IN THE TOTAL AMOUNT OF ₱4,681,519,998.33 IS NOT WITHIN THE PERIOD OF CLAIM.
>
> THE HONORABLE COURT ERRED IN DISALLOWING THE INPUT VAT IN THE AMOUNT OF ₱14,875,604.42 ATTRIBUTABLE TO PURCHASES OF GOODS AND SERVICES DULY SUPPORTED BY INVOICES AND OFFICIAL RECEIPTS BUT WITHOUT AUTHORITY TO PRINT PURSUANT TO REVENUE MEMORANDUM CIRCULAR NO. 52-2013.

THE HONORABLE COURT ERRED IN RULING THAT NOT ALL OF PETITIONER'S INPUT VAT BEING CLAIMED FOR REFUND ARE DUE OR PAID.

This Court finds petitioner's Motion for Reconsideration partially meritorious.

Petitioner's export sales should be supported by invoices dated within the period of claim.

In the assailed Decision, this Court denied petitioner's zero-rated sales that were declared in the 1st quarter of TY 2014, in the total amount of ₱4,681,519,998.33 ($104,438,010.16), on the ground that while they were supported by invoices, such were however dated outside the period of claim, *to wit*:

Customer	**Sales Invoice**	**Amount Declared in the 1st Quarter of TY 2014**	**Peso Equivalent**
Trafigura Pte. Ltd. *(CuCon Shipment 14)*	• No. 00025 • Date: **5-Apr-2014** • Exhibit P-2007-20	14,819,297.20	663,780,032.46
Trafigura Pte. Ltd. *(CuCon Shipment 15)*	• No. 00026 • Date: **7-May-2014** • Exhibit P-2007-21	15,300,333.57	687,391,966.17
Trafigura Pte. Ltd. *(CuCon Shipment 16)*	• No. 00027 • Date: **1-Jun-2014** • Exhibit P-2007-22	14,592,624.86	655,135,893.09
Trafigura Pte. Ltd. *(CuCon Shipment 17)*	• No. 00028 • Date: **6-Aug-2014** • Exhibit P-2007-23	28,841,830.48	1,291,871,734.13
Trafigura Pte. Ltd. *(CuCon Shipment 18)*	• No. 00029 • Date: **6-Aug-2014** • Exhibit P-2007-24	27,900,782.04	1,249,720,668.82
Perth Mint Australia *(Dore 8)*	• No. 00034 • Date: **02-Apr-14** • Exhibit P-2007-26	2,983,142.01	133,619,703.66
TOTAL		**104,438,010.16**	**4,681,519,998.33**

In its Motion, petitioner argues that the Court erred in using the date of issuance of the sales invoices as basis in determining the zero-rated export sale since the same is contrary to the numerous decisions issued by this Court. Petitioner asserts that the bill of lading should be regarded as the actual date of export sales in view of the peculiar nature of export sale of mineral products. In support thereto, petitioner cited the Court of Tax Appeals (CTA) cases of *Philex Mining Corporation v. Commissioner of Internal Revenue (CTA Case Nos. 7528 and 7564 dated February 9, 2010; and CTA Case No. 8228 dated May 31, 2012)* and

Phil. Gold Processing & Refining Corporation v. Commissioner of Internal Revenue (CTA EB Case No. 1670 dated July 9, 2018).

Unfortunately, this Court does not agree.

To reiterate, Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c), and (3) of the same Code and Section 4.113-1(A)(1), B(1), and (2)(c) of Revenue Regulations (RR) No. 16-05,[1] requires a VAT registered person claiming VAT zero-rated export sales to present at least three (3) types of documents, *to wit*:

1. the sales invoice as proof of sale of goods;
2. bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and,
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

While this Court acknowledges that the shipment date indicated in the Bills of Lading is considered as the date of sale of petitioner's exported products, the absence nonetheless of their corresponding sales invoices – dated within the period of claim – is fatal to petitioner's claim for refund. The Court cannot overemphasize the importance of proper substantiation of zero-rated sales being claimed by petitioner as expressly provided for by law.

Petitioner contends that it issued provisional invoices in relation to the supposed zero-rated sales and these were all dated within the 1st quarter of TY 2014. In the testimony of its witness, Ms. Josefina Mallari, petitioner's Finance Manager, she explained the procedure in issuing the provisional and final invoices, as follows:

"Q-57 You mentioned that petitioner issues provisional invoice and final invoice relative to its sale of export sales of minerals. Can you explain why petitioner issues provisional invoice and final invoice?

A57 Petitioner issues a provisional invoice upon shipment of the mineral products to its foreign buyer. The provisional invoice covers approximately ninety percent (90%) of the estimated value of the shipment. Petitioner makes a provisional pricing or valuation based on weight (dry and wet weight) and moisture as determined by it and also

[1] "SUBJECT: Consolidated Value-Added Tax Regulations of 2005", dated September 1, 2005.

based on its provisional assays showing copper, gold and silver content.

Subsequently, a final invoice is issued after petitioner and its foreign buyer have reached an agreement regarding the final settlement weights, assays and quotations and the final price of the shipment. The final price is based on the weight and moisture content upon arrival of the concentrates at the port of unloading and the metal price at the London Metal Exchange three (3) months after the arrival of the shipment at the port of destination.

The remaining unpaid balanced based on the final invoice is paid within three (3) days upon receipt of the same.

Q58 Does petitioner issue a provisional invoice and a final invoice for all its export sales?

A58 Yes.

Q59 Given that petitioner issues a provisional invoice and final invoice for all its export sales, when is the date of the sale transaction?

A59 The date of the sale transaction is at the time of the delivery of the shipment to the carrier appearing in the bill of lading."[2]

Regrettably, however, petitioner failed to present the alleged provisional invoices it issued as nowhere in the records can the said provisional invoices be found. Notably, the sales invoices[3] presented by petitioner, which were the same documents examined by the court-commissioned Independent Certified Public Accountant (ICPA), were merely described as "Sales Invoice" without stating whether they are provisional or final invoices.

Moreover, while it is true that in a number of cases involving *Philex Mining Corporation (PMC)*,[4] the Court accepted *PMC's* Final Invoices despite bearing dates much later than the dates of shipment indicated in the bills of lading and provisional invoices, thereby ruling that *PMC* sufficiently proved that there were actual export sales and actual shipment of goods from the Philippines to a foreign country; nonetheless, petitioner's reliance on the ruling

---

[2] Exhibit "P-50".

[3] Exhibits "P-2007-1" to "P-2007-26".

[4] Commissioner of Internal Revenue v. Philex Mining Corporation, CTA EB No. 1525 (CTA Case No. 8808), June 13, 2018; Commissioner of Internal Revenue v. Philex Mining Corporation, CTA EB No. 1493 (CTA Case No. 8819), August 24, 2017; Philex Mining Corporation v. CIR, CTA Case No. 8753 and 8762, February 17, 2016; Philex Mining Corporation v. CIR, CTA Case No. 8228 dated May 31, 2012.

made in the cases of *PMC* is not applicable herein since the facts the *PMC* cases are not in *all fours* in the present consolidated cases.

It bears stressing that *PMC* submitted before the Court its duly issued provisional invoices, aside from the final invoices, and the Court ruled that the final invoices issued by *PMC* were merely additional evidence to support its claimed zero-rated sales. Thus, the ruling of the Court in the said cases was premised on the fact that petitioner *PMC* export sales were duly supported by bills of lading and provisional invoices issued upon shipment of the mineral products. In contrast with the present consolidated cases, no provisional invoices were ever presented by petitioner. If there were in fact provisional invoices issued, as testified by Ms. Mallari, petitioner should have presented and formally offered the same before this Court.

Hence, the disallowance of petitioner's zero-rated sales which were declared in the 1st quarter of TY 2014 in the total amount of ₱4,681,519,998.33 ($104,438,010.16) on the same ground that such were supported by invoices but dated not within the period of claim shall be retained by this Court.

The disallowance of input VAT amounting to ₱14,875,604.42 pursuant to RMC No. 52-2013 was proper.

In the assailed Decision, the Court disallowed petitioner's input VAT on purchases of goods and services in the total amount of ₱14,875,604.42 on the ground that it was supported by invoices/official receipts without Authority to Print (ATP). The Court's ruling was in accordance with RMC No. 52-2013, which provides that *"In all principal and supplementary receipts/invoice which can still be used until October 31, 2013, the term "**valid until October 31, 2013 only**" shall be stamped prominently on the face of the receipts or invoices (original and duplicate copies). Otherwise, no deduction and input tax may be claimed using these receipts/invoices."*

In its Motion, petitioner argues that this Court erroneously relied on RMC No. 52-2013; that none of the provisions of the NIRC or RR No. 16-2005 requires that the phrase *"valid until October 31, 2013 only"* be stamped or printed on the face of the invoice or official receipt in order for a taxpayer to be able to validly claim an input VAT refund or tax credit certificate. To bolster its argument, petitioner cites the CTA case of *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue (CTA EB Case Nos. 1917 and 1919 [CTA Case No. 9079], dated February 5, 2020)*, wherein it was ruled that RMC No. 52-2013 cannot prevail over the clear and plain language of the NIRC.

More so, petitioner further cites the case of *Commissioner of Internal Revenue v. Silicon Philippines (formerly Intel Philippines Manufacturing, Inc.),*[5] wherein

[5] G.R. No. 169778, March 12, 2014.

the Supreme Court held that while an ATP must be obtained from the Bureau of Internal Revenue (BIR) prior to printing invoices or receipts in order that such invoices or receipts may be used as basis for filing a refund/credit of input VAT on zero-rated sales, the ATP need not be reflected or indicated in the invoices or receipts because there is no law or regulation that requires it.

Lastly, petitioner insists that even assuming that the submission of an ATP as provided under RMC No. 52-2013 is a valid requirement, it manifests that the input VAT in the aggregate amount of ₱8,369,177.57 is duly supported with ATP as found by the ICPA in Exhibit "P-65B-20".

This Court is not convinced.

First, petitioner's reliance on the ruling in the CTA case of *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue* is misplaced. Worth noting is that petitioner cited the following excerpt in its Motion, *viz*:

> "Moreover, it bears noting that in the aforementioned Section 113 of the Tax Code and Sections 4.113-1 (B) of RR No. 16-2005, which specify the mandatory information that must be contained in the VAT invoices and ORs, there is **<u>no</u>** requirement that the phrase '*<u>valid until October 31, 2013</u>*' must be stamped or imprinted on the face of the invoices or ORs to be able to claim deduction and input tax refund/credit.
>
> As discussed above, while administrative issuance such as RMC No. 52-2013, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes, it cannot prevail over the clear and plain language of the Tax Code.
>
> In view thereof, We find that the Court in Division erred in disallowing the input VAT for failure to stamped the term '*<u>valid until October 31, 2013</u>*' on the face of the invoices and receipts."

However, the above-quoted pronouncement was incompletely cited and, apparently, was taken out of context by petitioner. In the said ruling, the Court also held that:

> "The requirement of stamping the term '*<u>valid until October 31, 2013</u>*' ***on the face of the invoices and receipts was only introduced in RMC No. 52-2013 which was issued on August 13, 2013. Considering that the instant case involves the claim for refund or credit of unutilized input VAT for the taxable period April to June 2013, or the 2nd quarter of CY 2013, it is evident that the requirement under RMC No. 52-13*** was

> ***inexistent during the subject period of claim, and therefore could not have been complied with by Deutsche Knowledge.***
>
> The said circular cannot be applied retroactively so as to prejudice Deutsche Knowledge, given the well-entrenched principle that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication." *(Emphasis supplied)*

Based on the foregoing, the Court did not explicitly rule that the requirement under RMC No. 52-2013 was an invalid requirement, or was totally in contrast against the provisions of the NIRC of 1997, as amended. What the Court concluded is that RMC No. 52-2013 was not applicable because the said circular was inexistent during the subject period of claim by *Deutsche Knowledge Services Pte. Ltd.* Furthermore, the Court also ruled that RMC No. 52-2013 cannot be applied retroactively, but prospectively.

Thus, it is apt to restate that RMC No. 52-2013 clearly requires that the term "**valid until October 31, 2013 only**" shall be stamped prominently on the face of the receipts or invoices (original and duplicate copies) so that it can still be used until October 31, 2013. Otherwise, no deduction and input tax may be claimed using these receipts/invoices.

Second, petitioner's assertion that the input VAT in the total amount of ₱8,369,177.57 is supported with ATP as found by the ICPA has a paucity of merit. The Court's disallowance in the total amount of ₱14,875,604.42, which the amount of ₱8,369,177.57 was included, was proper. As held in the assailed Decision, the supporting documents of the said amount were invoices/official receipts with ATP dated between January 1, 2011 and January 17, 2013, thus, disallowed pursuant to RMC No. 52-2013.

Although petitioner presented new ATPs of the entities who issued the said invoices/official receipts,[6] these new ATPs have no significance to input taxes claimed by petitioner since the said new ATPs were for new invoices/official receipts with new serial numbers to be printed and issued and do not in any way validate the ones previously issued to petitioner.

As such, the disallowance of petitioner's input VAT in the total amount of ₱14,875,604.42 shall also be retained by this Court.

The following input taxes were inadvertently disallowed twice by the Court.

[6] Exhibits "P-2006-1" to "P -2006-76".

Again, in the assailed Decision, this Court disallowed the input VAT in the total amount of ₱6,391,154.73 under item "A" *(Input VAT on purchases of goods and services supported by invoices/official receipts without authority to print)*. Notably, the same amount was also part of the total disallowed input VAT under item "E" *(Input VAT on purchases of goods and services supported by invoices/official receipts with alteration without counter-signature or with counter-signature but without authority)*, to wit:

Exhibit	Registered Name	Document No.	Date	Input VAT
P-389	DIDIPIO COMMUNITY DEVT CORP	0097	26-Jul-13	₱ 6,600.02
P-389	DIDIPIO COMMUNITY DEVT CORP		26-Jul-13	9,000.03
P-390	DIDIPIO COMMUNITY DEVT CORP	0098	26-Jul-13	12,225.84
P-391	DIDIPIO COMMUNITY DEVT CORP	0099	29-Jul-13	209,678.57
P-391	DIDIPIO COMMUNITY DEVT CORP			43,665.95
P-391	DIDIPIO COMMUNITY DEVT CORP			122,596.66
P-391	DIDIPIO COMMUNITY DEVT CORP			126,096.00
P-391	DIDIPIO COMMUNITY DEVT CORP			3,150.00
P-391	DIDIPIO COMMUNITY DEVT CORP			10,404.48
P-391	DIDIPIO COMMUNITY DEVT CORP			9,774.24
P-391	DIDIPIO COMMUNITY DEVT CORP			4,200.00
P-391	DIDIPIO COMMUNITY DEVT CORP			120,671.38
P-391	DIDIPIO COMMUNITY DEVT CORP			363,778.09
P-392	DIDIPIO COMMUNITY DEVT	0101	16-Aug-13	36,806.40

	CORP			
P-392	DIDIPIO COMMUNITY DEVT CORP			10,979.76
P-392	DIDIPIO COMMUNITY DEVT CORP			43,252.92
P-393	DIDIPIO COMMUNITY DEVT CORP	0102	16-Aug-13	4,320.00
P-393	DIDIPIO COMMUNITY DEVT CORP			40,714.70
P-393	DIDIPIO COMMUNITY DEVT CORP			4,968.96
P-394	DIDIPIO COMMUNITY DEVT CORP	0103	16-Aug-13	2,707.20
P-394	DIDIPIO COMMUNITY DEVT CORP			231,423.37
P-394	DIDIPIO COMMUNITY DEVT CORP			191,675.98
P-394	DIDIPIO COMMUNITY DEVT CORP			86,045.59
P-394	DIDIPIO COMMUNITY DEVT CORP			404,762.01
P-395	DIDIPIO COMMUNITY DEVT CORP	0105	27-Aug-13	15,600.00
P-396	DIDIPIO COMMUNITY DEVT CORP	0104	22-Aug-13	9,500.16
P-396	DIDIPIO COMMUNITY DEVT CORP			7,975.26
P-396	DIDIPIO COMMUNITY DEVT CORP			116,997.04
P-396	DIDIPIO COMMUNITY DEVT CORP			7,446.66
P-396	DIDIPIO COMMUNITY DEVT CORP			583,030.53
P-397	DIDIPIO COMMUNITY DEVT CORP	0106	27-Aug-13	162,480.00

P-397	DIDIPIO COMMUNITY DEVT CORP			14,584.32
P-397	DIDIPIO COMMUNITY DEVT CORP			2,822.40
P-398	DIDIPIO COMMUNITY DEVT CORP	0107	30-Aug-13	21,151.50
P-398	DIDIPIO COMMUNITY DEVT CORP			7,784.72
P-398	DIDIPIO COMMUNITY DEVT CORP			7,148.58
P-398	DIDIPIO COMMUNITY DEVT CORP			764,093.50
P-398	DIDIPIO COMMUNITY DEVT CORP			18,086.40
P-398	DIDIPIO COMMUNITY DEVT CORP			205,731.93
P-398	DIDIPIO COMMUNITY DEVT CORP			8,082.13
P-399	DIDIPIO COMMUNITY DEVT CORP	0108	09-Sep-13	82,800.00
P-399	DIDIPIO COMMUNITY DEVT CORP			45,073.68
P-399	DIDIPIO COMMUNITY DEVT CORP			26,811.36
P-399	DIDIPIO COMMUNITY DEVT CORP			487,261.00
P-399	DIDIPIO COMMUNITY DEVT CORP			120,671.38
P-399	DIDIPIO COMMUNITY DEVT CORP			612,642.39
P-400	DIDIPIO COMMUNITY DEVT CORP	0’109	16-Sep-13	8,691.25
P-400	DIDIPIO COMMUNITY DEVT CORP			8,633.95
P-400	DIDIPIO			7,685.67

ᴎ

	COMMUNITY DEVT CORP			
P-400	DIDIPIO COMMUNITY DEVT CORP			8,799.90
P-400	DIDIPIO COMMUNITY DEVT CORP			44,816.33
P-400	DIDIPIO COMMUNITY DEVT CORP			79,591.84
P-400	DIDIPIO COMMUNITY DEVT CORP			8,216.10
P-400	DIDIPIO COMMUNITY DEVT CORP			797,446.62
TOTAL				**₱6,391,154.73**

Admittedly, for having inadvertently disallowed the above input VAT twice, the total valid input VAT shall accordingly be adjusted in by ₱6,391,154.73.

Second, the input VAT in the amount of ₱129,623.04 was disallowed under item "G" *(Input VAT on domestic purchase of services without supporting official receipts)*. As correctly pointed out by petitioner, the same was also deducted twice, to wit:

Exhibit	Registered Name	Document No.	Date	Input VAT
Input VAT on domestic purchase of services without supporting official receipts				
P-189	ANTRAK PHILIPPINES TRANSPORT			₱ 383.04
P-189	ANTRAK PHILIPPINES TRANSPORT			60,360.00
P-189	ANTRAK PHILIPPINES TRANSPORT			3,600.00
P-189	ANTRAK PHILIPPINES TRANSPORT	0000044	17-Oct-13	480.00
P-189	ANTRAK PHILIPPINES TRANSPORT			3,300.00
P-189	ANTRAK PHILIPPINES TRANSPORT			5,700.00
P-189	ANTRAK			390.00

	PHILIPPINES TRANSPORT			
P-189	ANTRAK PHILIPPINES TRANSPORT			22,200.00
P-189	ANTRAK PHILIPPINES TRANSPORT			32,820.00
P-189	ANTRAK PHILIPPINES TRANSPORT			390.00
			subtotal	129,623.04
P-189	ANTRAK PHILIPPINES TRANSPORT	0000044	17-Oct-13	383.04
P-189	ANTRAK PHILIPPINES TRANSPORT			60,360.00
P-189	ANTRAK PHILIPPINES TRANSPORT			3,600.00
P-189	ANTRAK PHILIPPINES TRANSPORT			480.00
P-189	ANTRAK PHILIPPINES TRANSPORT			3,300.00
P-189	ANTRAK PHILIPPINES TRANSPORT			5,700.00
P-189	ANTRAK PHILIPPINES TRANSPORT			390.00
P-189	ANTRAK PHILIPPINES TRANSPORT			22,200.00
P-189	ANTRAK PHILIPPINES TRANSPORT			32,820.00
P-189	ANTRAK PHILIPPINES TRANSPORT			390.00
			subtotal	129,623.04
TOTAL				**₱259,246.08**

Petitioner further claims that contrary to the Court's findings, the amount of ₱129,623.04 was duly supported with Official Receipt No. 0000044. Nonetheless, while the said amount is duly supported with official receipt, the same should still be denied on the ground that the amount of VAT was not separately indicated therein.

Accordingly, for having inadvertently disallowed the amount of ₱129,623.04 twice, the total valid input VAT shall be accordingly adjusted by ₱129,623.04.

Lastly, petitioner submits that there is duplication in the disallowance particularly in the following input VAT, as follows:

	Findings	Amount	Duplication
(1)	***CTA Finding***		
	E. Input VAT on purchases of goods and services supported by Invoices/Official Receipts with alteration without counter-signature or with counter-signature but without authority	₱30,411,196.48	
	ICPA Finding		
	n. With alterations without countersignature	1,746,783.60	
			₱1,746,783.60
(2)	***CTA Finding***		
	I. Over-claimed input VAT (Discrepancy between the amount of claim and the input VAT reflected per Official Receipt)	₱ 195,799.12	
	ICPA Finding		
	o. Amount claimed is higher than the amount per docs	286,887.28	
			195,799.12
	TOTAL		**₱1,942,582.72**

To recall, the Court's findings of additional disallowances in the total amount of ₱82,682,714.18 was based on the "Total No Exceptions Noted - ₱130,543,596.41" in the ICPA report with Exhibit Reference of "P-65B-1" to "P-65-B-6", "P-2001" to "P-2004" and "P-65-B-18". This Court, however, failed to notice that the disallowances of the ICPA under items "n" and "o" were still included in "P-65-B-5" and "P-65-B-6" schedules. Consequently, when the Court disallowed the amount of ₱1,942,582.72, there was indeed a duplication of disallowance both per ICPA findings as well as per this Court's determination.

Admittedly, for having inadvertently disallowed the amount of ₱1,942,582.72 twice, the total valid input VAT shall accordingly be adjusted by ₱1,942,582.72.

In sum, the total adjustment made to the disallowance on petitioner's input VAT claim amounts to ₱8,463,360.49, computed below as follows:

a. Disallowed input VAT under item "A" and item "E"	₱ 6,391,154.73
b. Disallowed input VAT under item "G"	129,623.04
c. Disallowed input VAT both per ICPA and this Court's findings	1,942,582.72
Total Adjustment	**₱8,463,360.49**

As such, petitioner's adjusted total valid input VAT claim for the 3rd and 4th quarters of TY 2013 and 1st quarter of TY 2014 amounts to ₱56,324,242.72, as determined below, to wit:

Valid input VAT per assailed Decision	₱ 47,860,882.23
Add: Adjustment per this Motion for Reconsideration	8,463,360.49
Adjusted total Valid Input VAT	**₱56,324,242.72**

Consequently, the allocation of petitioner's valid input VAT of ₱56,324,242.72 is computed as follows:

Total taxable sales per VAT Returns	₱ 2,708,923.84
Divided by the reported total sales per Quarterly VAT Returns	11,446,282,372.44
Multiplied by adjusted total valid input VAT	56,324,242.72
Valid Input VAT allocated to Total Sales subject to 12% VAT	**₱ 13,329.92**

Total zero-rated Sales per VAT Returns	₱11,443,573,448.60
Divided by the reported total sales per Quarterly VAT Returns	11,446,282,372.44
Multiplied by adjusted total valid input VAT	56,324,242.72
Valid Input VAT allocated to Total Zero-Rated Sales	**₱56,310,912.80**

Henceforth, for purposes of, and with regard to petitioner's compliance with the *eight* requisite, the amount of valid input VAT attributable to its zero-rated sales is now adjusted to ₱56,310,912.80.

Determination of the refundable amount.

In the assailed Decision, it was determined that petitioner has output VAT liability in the amount of ₱325,070.86. Since petitioner's valid input VAT allocated to sales subject to 12% VAT is only ₱13,329.92, petitioner still has output VAT due of ₱311,740.94, computed as follows:

Output VAT	₱ 325,070.86
Less: Valid input VAT allocated to sales subject to 12% VAT	13,329.92
Output VAT still due	**₱311,740.94**

Thereafter, the valid input VAT attributable to total reported zero-rated sales in the amount of ₱56,310,912.80 shall then be utilized against the remaining output VAT liability of ₱311,740.94. Accordingly, only the remaining input VAT of ₱55,999,171.86 can be attributed to the entire zero-rated sales reported by petitioner in the amount of ₱11,443,573,448.60, and only the input VAT of ₱32,319,333.57 is attributable to valid zero-rated sales of ₱6,604,538,160.70, computed as follows:

Valid Input VAT allocated to reported zero-rated sales	₱ 56,310,912.80
Output VAT still due	311,740.94
Valid input VAT allocated to total reported zero-rated sales	**₱ 55,999,171.86**
Divide by total declared zero-rated sales	11,443,573,448.60
Multiply by valid zero-rated sales	6,604,538,160.70
Excess input VAT attributable to valid zero-rated sales	**₱ 32,319,333.57**

Respondent's Motion for Partial Reconsideration

In his Motion, respondent alleges that the input tax on purchases should be directly attributable to its zero-rated sales. He asserts that there should be the connection between the purchases and the finished products which must be concrete and not imaginary or remote. Respondent points out that there is nothing in the assailed Decision which discussed the direct attributability of the purchases or input tax to the finished product whose sale is subjected to VAT at zero-rate.

This Court does not agree.

There is no requirement that the input taxes subject of the claim for refund be directly attributable to zero-rated sales under Section 112 of the NIRC of 1997, as amended. As a matter of fact, the provision allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, *to wit*:

> "**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: x x x Provided, further, That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**. Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." *(Emphasis supplied)*

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 24 June 2020) is **DENIED** for lack of merit. On the other hand, petitioner's Motion for Reconsideration (of the Decision dated July 24, 2020) is **PARTIALLY GRANTED**.

Accordingly, the dispositive portion of the Decision dated July 24, 2020, is hereby amended to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petitions for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** to petitioner the amount of **₱32,319,333.57**, representing the latter's unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st Quarter of TY 2014.
>
> **SO ORDERED**."

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice