REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

# SECOND DIVISION

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| **AIR DRILLING ASSOCIATES PTE LTD.,** Petitioner, | **CTA CASE NO. 10609** |
| | Members: |
| - versus - | **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JUL 03 2025 4:00p.m. |

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# DECISION

***FERRER-FLORES, J.*:**

The **Petition for Review** filed through registered mail on October 8, 2021, and received by this Court on October 20, 2021, prays for the refund or issuance of a tax credit certificate in the amount of **₱718,630.38**, allegedly representing petitioner's creditable input value-added tax (VAT) paid attributable to its zero-rated sales for the period January 1, 2019 to March 31, 2019 for taxable year (TY) 2019.[1]

## THE PARTIES

Petitioner **Air Drilling Associates Pte. Ltd.** is a foreign company organized and existing under the laws of the Republic of Singapore, and was duly licensed by the Philippine Securities and Exchange Commission to establish a branch office in the Philippines to pursue geothermal aerated drilling services and related opportunities therein.[2] It is VAT-registered with

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1 Summary of the Case, Pre-Trial Order dated June 22, 2022, Docket, p. 140.
2 Exhibits "P-2" and "P-2-A", Docket, pp. 226 to 277.

the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 251-156-024-00000.[3]

Respondent is the duly appointed **Commissioner of the BIR** vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia,* the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[4]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

On May 6, 2021, petitioner filed with the BIR the letter dated May 5, 2021,[5] requesting for the refund of the amount of ₱718,630.38, allegedly representing the unutilized input VAT credits arising from its local purchases of goods and services, purchases of services rendered by non-residents and importation of non-capital goods attributable to its zero-rated sale of service to the Energy Development Corporation (EDC), for the first quarter of TY 2019, or the period from January 1, 2019 to March 31, 2019.

Subsequently, the letter dated July 8, 2021 was issued by the BIR, through Regional Director Maridur V. Rosario,[6] denying petitioner's administrative claim, for lack of legal and factual basis.

## PROCEEDINGS BEFORE THIS COURT

Petitioner filed through registered mail the present *Petition of Review* on October 8, 2021.[7]

Respondent filed his *Answer (with Special and Affirmative Defenses)* on March 1, 2022.[8]

On February 17, 2022, respondent transmitted to this Court the *BIR Records* for this case consisting of 569 pages in one folder.[9]

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3 Exhibit "P-1", Docket, p. 225.
4 Par. 1, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 127.
5 Exhibits "P-12" and "R-1", BIR Records, pp. 440 to 448.
6 Exhibit "P-13", Docket, pp. 479 to 481.
7 Docket, pp. 9 to 22.
8 Docket, pp. 58 to 64.
9 Respondent's *Compliance* dated February 17, 2022, Docket, p. 56.

The Pre-Trial Conference was set and held on May 23, 2022.[10] Prior thereto, petitioner's *Pre-Trial Brief* was filed on May 6, 2022,[11] while respondent's *Pre-Trial Brief* was submitted on May 18, 2022.[12]

On June 3, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[13] which was approved and adopted by this Court in the Pre-Trial Order issued on June 22, 2022,[14] thereby terminating the Pre-Trial.

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

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Rosebelle Liu,[15] its Office Manager; and, (2) Atty. Adan T. Delamide,[16] the Court-commissioned Independent Certified Public Accountant (ICPA).[17]

The *Report* of the ICPA was filed through registered mail on October 27, 2022.[18]

On March 15, 2023, petitioner filed its *Formal Offer of Evidence*,[19] to which respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)* on March 28, 2023.[20] In the Resolution dated June 23, 2023,[21] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-27" and "P-285 to P-286", for not being found in the records of the case.

For his part, respondent offered the testimony of Revenue Officer Kim Bradelle S. Bayran.[22]

On March 18, 2024, respondent filed his *Formal Offer of Evidence*,[23] to which petitioner then filed its *Comment to Respondent's Formal Offer of*

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[10] Notice of Pre-Trial Conference dated March 2, 2022, Docket, pp. 67 to 68; Minutes of the hearing held on, and Order dated, May 23, 2022, Docket, pp. 122 to 123.
[11] Docket, pp. 69 to 74.
[12] Docket, pp. 113 to 117.
[13] Docket, pp. 127 to 130.
[14] Docket, pp. 140 to 149.
[15] Exhibit "P-14", Docket, pp. 41 to 48; Minutes of the hearing held on, and Order dated, September 27, 2022, Docket, pp. 159, and 161 to 162, respectively.
[16] Exhibit "P-16", Docket, pp. 183 to 191; Minutes of the hearing held on, and Order dated, January 19, 2023, Docket, pp. 193 to 193-B.
[17] *Oath of Commission* dated September 27, 2022, Docket, p. 160; Minutes of the hearing held on, and Order dated, September 27, 2022, Docket, pp. 159. and 161 to 162, respectively.
[18] Exhibit "P-126", Docket, pp. 163 to 177.
[19] Docket, pp. 214 to 224.
[20] Docket, pp. 507 to 509.
[21] Docket, pp. 513 to 515.
[22] Exhibit "R-6", Docket, pp. 78 to 87; Minutes of the hearing held on, and Order dated, March 5, 2024, Docket, pp. 530 to 532.

*Evidence* on March 21, 2024.[24] In the Resolution dated May 17, 2024,[25] the Court admitted all of respondent's offered exhibits.

The *Memorandum for Petitioner* was filed on June 19, 2024,[26] while respondent's *Memorandum* was filed through registered mail on June 25, 2024.[27]

This case was considered submitted for decision on July 3, 2024.[28]

## THE STIPULATED ISSUE

The sole issue to be resolved by the Court as stipulated by the parties is whether petitioner is entitled to its claim for refund of its alleged unutilized input VAT allegedly acquired during the first quarter of TY 2019 amounting to ₱718,630.38.[29]

### *Petitioner's arguments*

Petitioner argues that its administrative and judicial claims for refund were timely filed in accordance with Section 112 of the NIRC of 1997, as amended; that it is a VAT-registered entity; that it established rendering services subject to VAT zero-rate and substantiated the present claim with relevant supporting documents; that it substantiated its input VAT paid/incurred during the first quarter of TY 2019, which are all attributable to its VAT zero-rated sales; and, that its input VAT acquired during the first quarter of TY 2019 were not applied against any output VAT in the succeeding periods.

### *Respondent's counter-arguments*

Respondent contends that this Court has no jurisdiction to entertain the instant petition for being filed out of time; that assuming this Court has jurisdiction to entertain the instant petition, the same must be denied as petitioner failed to fully substantiate its claim for VAT refund; that petitioner's sales to EDC for the first quarter of TY 2019 are not zero-rated; and that tax refunds are construed *strictissimi juris* against the taxpayer, hence, entitlement to tax refund must be duly proven. M

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[23] Docket, pp. 533 to 536.
[24] Docket, pp. 539 to 540.
[25] Docket, pp. 542 to 543.
[26] Docket, pp. 544 to 557.
[27] Docket, pp. 558 to 568.
[28] Minute Resolution dated July 3, 2024, Docket, p. 570.
[29] Issue, JSFI, Docket, p. 128.

## THE COURT'S RULING

The *Petition for Review* is partly meritorious.

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

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 10963,[30] provides, in part, as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
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> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the

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

> decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

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

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

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[31]

2. in case of full or partial denial of the refund claim rendered within a period of 90 days from the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within 30 days from receipt of the decision;[32]

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

3. the taxpayer is a VAT-registered person;[33]

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

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B);[35] and 108(B)(1) and (2), the acceptable foreign

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[31] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

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

[33] *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.*

[34] *Id.*

[35] Section 106(B) cited in Section 112(A) of RA No. 8424 was later amended by RA No. 9337 to pertain to Section 106(A)(2)(b). Accordingly, Section 112(A), as amended by RA No. 9337, reads as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of

currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[36]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[37]

7. the input taxes are due or paid;[38]

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;[39] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[40]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[41] Petitioner's compliance with all the VAT invoicing requirements is, thus, required to be able to file a claim for input taxes attributable to zero-rated sales.[42] The

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creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under **Section 106(A)(2)**(a)(1), (2) and **(b)** and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of 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 added*)

However, in view of the amendments introduced by RA No. 10963, Section 106(A)(2)(b) is now deleted.

36 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

37 *Id.*

38 *Id.*

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

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

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

invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[43] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[44]

Strict compliance with substantiation and invoicing requirements is necessary considering the VAT's nature and the VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[45]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[46] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

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

To reiterate, the *first* requisite pertains to the filing of the claim for tax credit or refund of input VAT before the BIR, within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the taxable period from January 1, 2019 to March 31, 2019. Counting two years from the close of the said quarter, petitioner had until March 31, 2021, within which to file its administrative claim for refund.

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

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

[45] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

[46] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

However, pursuant to Section 4(tt) of RA No. 11494[47] signed into law on September 11, 2020, the statutory deadlines and timelines for the filling and submission of any document were extended, to wit:

> (tt) Moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under CQ[48];

To implement the same, Revenue Regulations (RR) No. 27-2020[49] dated October 6, 2020 was issued, where Section 5 thereof provides, in part, that [i]f the deadline for the filing of the VAT refund claim falls within the Enhanced Community Quarantine (ECQ) or Modified Enhanced Community Quarantine (MECQ) period, filing of the claim shall be extended for 30 days after the lifting of the ECQ or MECQ. This applies to the affected areas of the processing offices or to the registered business address of the taxpayer-claimant where the restrictions are strictly enforced.

Relative thereto, Revenue Memorandum Circular (RMC) No. 39-2021[50] dated March 18, 2021 provides that the filing of VAT Refund, where the two-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021.

Thereafter, RMC No. 45-2021[51] was issued on April 5, 2021, which provides that the extended deadline for filing of VAT refund applications with the VAT Credit Audit Division (VCAD) which falls due on April 12, 2021 per RMC No. 39-2021 is 30 days from the lifting of the ECQ.

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

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

48 Community Quarantine.

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

50 SUBJECT: Extension of the Deadline for the Filing of Applications and Suspension of the Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Pursuant to Section 112 of the Tax Code of 1997, as Amended by the R.A. No. 10963 (TRAIN Law) with the VAT Credit Audit Division (VCAD).

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

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

Hence, petitioner's administrative claim for refund was timely filed within the extended deadline on May 6, 2021.[52]

As for the *second* requisite, the same necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision or after the expiration of the 90-day period from the date of submission of the ORs or invoices and other documents in support of the application for refund under Section 112(C) of the NIRC of 1997, as amended by RA No. 10963.

Thus, from the filing of petitioner's administrative claim on May 6, 2021, respondent had 90 days therefrom, or until August 4, 2021, to decide on petitioner's claim for refund.

In the present case, the denial letter was issued on July 8, 2021,[53] which was within the 90-day period to decide, and was received by petitioner on August 2, 2021.[54] As such, petitioner had 30 days from such receipt, or until September 1, 2021, to file an appeal before this Court.

However, due to the physical closure of the Courts brought about by the COVID-19 pandemic, the following Office of the Court Administrator (OCA) Circulars and Supreme Court Administrative Circulars (ACs) were issued suspending the filing periods for pleadings and motions for courts in the NCR, among others, until the physical reopening of the relevant court, to wit:

| Issuance | Date Issued | Subject | Content |
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| OCA Circular No. 114-2021 | August 20, 2021 | RE: Court Operations Starting 23 August 2021 | Considering that the NCR has been placed under MECQ beginning August 21, 2021, all courts in the NCR, except the Supreme Court, shall be **PHYSICALLY CLOSED** to court users for the duration of the MECQ. xxx |

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[52] Exhibits "P-12" and "R-1", BIR Records, pp. 440 to 448.
[53] Exhibit "P-13", Docket, 479 to 481.
[54] *Id.*

| Issuance | Date Issued | Subject | Content |
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| | | | The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven calendar days counted from the first day of the physical reopening of the relevant court. |
| OCA Circular No. 117-2021 | August 28, 2021 | RE: Reiteration of OCA Circular No. 114-2021, Dated 20 August 2021 | Considering that the NCR and other identified areas shall remain under MECQ until September 7, 2021, OCA Circular No. 114-2021, dated 20 August 2021, is hereby reiterated.<br><br>All courts in the NCR and identified areas under MECQ, except the Supreme Court, shall be **PHYSICALLY CLOSED** to court users for the duration of the MECQ. xxx<br><br>The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven calendar days counted from the first day of the physical reopening of the relevant court. |
| OCA Circular No. 119-2021 | September 7, 2021 | RE: Court Operations Beginning 8 September 2021 | In view of the continued surge of confirmed COVID-19 cases in different variants, and considering that the proposed granular or localized lockdown will be pilot-tested in the NCR which is on |

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| | | | Alert Level 4 (except the City of Manila), **ALL COURTS** in the NCR, except the Supreme Court, shall remain **PHYSICALLY CLOSED** to court users until September 30, 2021, notwithstanding the NCR will be under GCQ **beginning September 8, 2021**. xxx<br><br>The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven calendar days counted from the first day of the physical reopening of the relevant court, xxx |
| AC No. 72-2021 | September 15, 2021 | RE: Court Operations Beginning 16 September 2021 | Notwithstanding that the NCR will be under GCQ with Alert Level 4 **beginning September 16, 2021**, **ALL COURTS** in the NCR will continue to remain **PHYSICALLY CLOSED** to court users until further notice.<br><br>xxx xxx xxx<br><br>The time for filing and service of pleadings and motions during this period **REMAINS SUSPENDED** and shall resume after seven calendar days |

| Issuance | Date Issued | Subject | Content |
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| | | | counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which shall consider the physical closure of the courts and the granular lockdowns in the different areas. |
| AC No. 75-2021 | October 1, 2021 | RE: Court Operations Beginning 4 October 2021 | Notwithstanding any modification of the alert level guidelines in the NCR, all appellate collegiate courts within the NCR, except the Supreme Court, shall, **beginning October 4, 2021 until further notice, remain PHYSICALLY CLOSED** to court users EXCEPT for urgent matters where in-court hearings may be deemed necessary, at the sound discretion of the Presiding Justice or the Chairpersons of the different divisions.<br><br>xxx xxx xxx<br><br>The time for filing and service of pleadings and motions during this period shall **REMAIN SUSPENDED** until further notice. |
| AC No. 83-2021 | October 18, 2021 | RE: Court Operations Beginning October 20, 2021 until October 29, 2021 | Considering that the NCR has been placed under Alert Level 3 of the IATF's COVID-19 Alert Levels System, **all appellate** |

| Issuance | Date Issued | Subject | Content |
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| | | | **collegiate courts within the NCR**, beginning October 20, 2021 until October 29, 2021, may conduct in-court proceedings on urgent matters and on other matters as may be determined by the presiding justice or the chairpersons of the different divisions, but in-court attendance shall be limited to lawyers, parties, and witnesses required to participate in-court. All others who are not required to be in-court but wish to observe the proceedings may do so through videoconferencing, subject to existing guidelines.<br><br>**The suspension of the time for filing and service of pleadings and motions**, regardless of the alert level or community quarantine, is **LIFTED**. Pursuant to Administrative Circular No. 72-2021, the period for filing and service **shall resume seven calendar days from October 20, 2021.** xxx |

Based on the foregoing issuances, all appellate collegiate courts within the NCR reopened on October 20, 2021, and the filing of pleadings and motions resumed on October 27, 2021. Considering that petitioner timely filed its judicial claim for refund through the present *Petition for Review* on

October 8, 2021,[55] this Court has jurisdiction to take cognizance of the present case.

Such being the case, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

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

Anent the *third* requisite, it is undisputed that petitioner is a VAT-registered taxpayer, having been issued a Certificate of Registration No. OCN 9RC0000652585E with TIN 251-156-024-00000 by the BIR Revenue Region No. 8, RDO No. 47.[56] Petitioner, thus, complied with the said requisite.

***Petitioner was able to establish that it was engaged in zero-rated sales during the first quarter of TY 2019.***

The *fourth* requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales.

In its letter application for VAT refund,[57] petitioner claims that, during the period from January 1, 2029 to March 31, 2019, it had accumulated excess or unutilized input VAT in the amount of ₱718,630.38 arising from its local purchases of goods and services, purchases of services rendered by non-residents and importation of non-capital goods directly attributable to its sale of services to EDC, a Renewable Energy (RE) Developer; and thus, its sale of services to EDC is considered VAT zero-rated.

As such, petitioner invokes Section 108(B)(3) of the NIRC of 1997, as amended and Section 15(g) of RA No. 9513 or the Renewable Energy Act of 2008, which grants certain tax incentives to RE developers, such as EDC. Said provisions read, in part, as follows:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. –*
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[55] Docket, pp. 9 to 22.
[56] Exhibit "P-1", Docket, p. 225.
[57] Exhibits "P-12" and "R-1", BIR Records, pp. 440 to 448.

(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

(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;** *(Emphases added.)*

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), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

**All RE Developers shall be entitled to zero-rated value added tax on its purchases** of local supply of goods, properties and **services needed for the development, construction and installation of its plant facilities.**

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. *(Emphases and underscoring added.)*

Relative to the foregoing provisions, Part III, Rule 5, Section 13.G of the Department Circular (DC) No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE), or the Implementing Rules and Regulations (IRR) of RA No. 9513, provides:

**SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities**

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

*G. Zero Percent Value-Added Tax Rate*

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

xxx xxx xxx

(b) **Purchase of** local goods, properties and **services needed for the development, construction, and installation of the plant facilities of RE Developers**; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors**. *(Emphases added.)*

Based on the foregoing provisions, all RE Developers are entitled to zero-rated VAT on their purchases of local supply of goods, properties and services needed for the development, construction and installation of plant facilities. Furthermore, the law declares that the VAT zero-rating applies to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

However, the same Part III, Rule 5 of the IRR of RA No. 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

**SEC. 18. Conditions for Availment of Incentives and Other Privileges**

*A.* ***Registration/Accreditation with the DOE***

**For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:

**B.** ***DOE Certificate of Registration*** — **issued to an RE Developer holding a valid RE Service/Operating Contract.**

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> xxx xxx xxx

> *C. Registration with the Board of Investments (BOI)*
>
> The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.
>
> **To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.**
>
> The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.
>
> ***D. Certificate of Endorsement by the DOE***
>
> **<u>RE Developers</u>,** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis**.
>
> The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.
>
> xxx xxx xxx *(Emphases and underscoring added)*

However, the DOE, expressing its contemporaneous interpretation on the conditions for the availment of incentives and other privileges of RE Developers under RA No. 9513, issued DC No. DC2021-12-0042, amending Section 18(c) of the IRR of RA No. 9513, to state that, as a rule, RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA No. 9513 after securing a DOE *Certificate of Registration* and that a *Certificate of Endorsement* is necessary only on importations by an RE developer, *viz.*:

> SEC. 18. Conditions for Availment of Incentives and Other Privileges –
>
> xxx xxx xxx
>
> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS. *(Underscoring added.)*
>
> xxx xxx xxx

Thus, in order to qualify for and be entitled to VAT zero-rating on an RE Developer's purchases as contemplated under RA No. 9513 and its IRR, the RE developer must present the following documents:

1. Registration with the DOE; and,
2. Registration with the Board of Investments (BOI).

Records reveal, however, that only EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, were duly supported with the aforementioned documents, *viz.*:

| **Location of EDC's Projects** | **DOE Certificate of Registration** | **Registration with the BOI** |
|---|---|---|
| Tongonan, Leyte | GRESC-2009-10-001 dated October 23, 2009[58] | Certificate of Registration No. 2012-024 dated February 6, 2012[59] |
| Palinpinon, Negros Oriental | GRESC-2009-10-002 dated October 23, 2009[60] | Certificate of Registration No. 2014-027 dated |

[58] Exhibit "P-6", Docket, p. 314.
[59] Exhibit "P-7", Docket, pp. 319 to 325.
[60] Exhibit "P-6-A", Docket, p. 315.

| | | |
|---|---|---|
| | | February 12, 2014[61] |
| Bacon-Manito Sorsogon/Albay | GRESC-2009-10-003 dated October 23, 2009[62] | None |
| Kidapawan City, North Cotabato | GRESC-2009-10-004 dated October 23, 2009[63] | None |
| Northern Negros, Negros Occidental | GRESC-2009-10-005 dated October 23, 2009[64] | None |

Hence, petitioner failed to establish that EDC's projects in (1) Bacon-Manito Sorsogon/Albay; (2) Kidapawan City, North Cotabato; and, (3) Northern Negros, Negros Occidental, have been registered with the BOI. Correspondingly, only the sale of services made to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, shall be subject to VAT zero-rating under the law.

Nonetheless, petitioner must still show compliance with the pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which provides that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties, and for every sale, barter or exchange of services, issue a VAT official receipt (OR) which must contain the information stated in the said provisions, to wit:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

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[61] Exhibit "P-7-A", Docket, pp. 326 to 333.
[62] Exhibit "P-6-B", Docket, p. 316.
[63] Exhibit "P-6-C", Docket, p. 317.
[64] Exhibit "P-6-D", Docket, p. 318.

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

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

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

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

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

The foregoing provisions are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, to wit:

SEC. 4.113-1. *Invoicing Requirements.* —

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

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

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

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

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

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

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

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

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

In addition to the above requirements, the pertinent sales invoices and ORs must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

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

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

xxx xxx xxx

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

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

Simply put, petitioner is required to issue BIR-registered VAT ORs for the gross receipts derived from its sale of services, containing the above-stated information.

In its Amended Quarterly VAT Return for the first quarter of TY 2019, petitioner declared zero-rated sales/receipts in the total amount of ₱26,967,278.67.[65] In support thereof, petitioner presented the ORs and the related billing invoices, summarized as follows:

| Exhibit No. | OR No. | Exhibit No. | Billing Invoice No. | Amount in US Dollar ($) | Amount in Philippine Peso(₱) |
|---|---|---|---|---|---|
| "P-20" | 1007 | "P-21" | 517 | 235,537.44 | ₱ 13,358,385.45 |
| | | "P-22" | 518 | 19,867.60 | |
| "P-23" | 1008 | "P-24" | 519 | 258,115.72 | 13,608,893.22 |
| | | | **TOTAL** | **513,520.76** | **₱ 26,967,278.67** |

A scrutiny of the aforesaid supporting documents reveals that the reported zero-rated sales of ₱26,967,278.67 were duly supported by zero-rated ORs compliant with the invoicing requirements under the VAT law and regulations.

Considering the foregoing, petitioner has sufficiently proven that its sales of services to EDC during the first quarter of TY 2019 in the amount of ₱26,967,278.67 is entirely subject to VAT zero-rating, thereby satisfying the *fourth* requisite.

[65] Line 17, Exhibit "P-3-B", Docket, p. 282.

***There is no need to comply with the fifth requisite.***

The *fifth* requisite is to the effect that the refund claimant must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, but only for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), all of the NIRC of 1997, as amended. Since the legal basis for petitioner's zero-rated sales is Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513, the present case need not comply with the said *fifth* requisite.

To be sure, Section 108(B)(3) of the NIRC of 1997, as amended, only requires that the services be rendered to persons or entities enjoying tax exemption under special laws or international agreements to which the Philippines is signatory. Petitioner is, thus, not required to present proof that the transaction was paid in acceptable foreign currency.

***The input taxes being claimed are not transitional input taxes.***

In its Amended Quarterly VAT Return for the first quarter of TY 2019,[66] petitioner declared a total input VAT of ₱718,630.38 from its domestic purchases of goods and services and purchases of services rendered by non-residents, as shown below:

| | **Current Purchases** | **Input VAT** |
|---|---|---|
| Domestic purchases of goods other than capital goods | ₱ 406,934.02 | ₱ 48,832.08 |
| Domestic purchases of services | 1,349,912.33 | 161,989.48 |
| Services rendered by non-residents | 4,231,740.15 | 507,808.82 |
| Purchases Not Qualified for Input Tax | 142,171.85 | |
| | **Total** | **₱ 718,630.38** |

The said claimed 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

[66] Exhibit "P-3-B", Docket, pp. 282 to 283.

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.

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.[67]

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

***Not all input taxes due or paid by petitioner during the first quarter of TY 2019 are valid and duly substantiated.***

Anent the *seventh* requisite in claiming VAT refund, it is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed during the first quarter of TY 2019 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2 and 4.110-8 of RR No. 16-2005, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as the case may be, as well as, the import entry or other equivalent documents showing actual payment of VAT (for importation of goods) and BIR Form 1600 with corresponding payment confirmation (for services rendered by non-residents).

As mentioned earlier, petitioner reported total current input VAT of ₱718,630.38 from its domestic purchases of goods and services, and services rendered by non-residents, which is the subject of petitioner's claim for refund. 

[67] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., et seq.*, G.R. Nos. 158885 and 170680, April 2, 2009.

In support of its input VAT, petitioner presented, among others, the suppliers' ORs and invoices,[68] and Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld Return (BIR Form No. 1600),[69] which were all examined by the Court-commissioned ICPA.

Based on the findings of the ICPA, the total input VAT of ₱26,436.51 shall be disallowed for petitioner's failure to meet the substantiation and invoicing requirements prescribed under the VAT law and regulations, as follows:[70]

| | |
|---|---|
| With invalid supporting documents | ₱ 7,751.53 |
| Without supporting documents | 18,586.16 |
| Over-claimed input VAT | 98.82 |
| **Total** | **₱ 26,436.51** |

Upon further verification, the Court finds that the additional input VAT on domestic purchases of goods and services in the total amount of **₱9,935.70** shall likewise be disallowed for reasons stated herein, *viz.*:

| Exhibit No. | Supplier | Input Tax | Reason for the Disallowance |
|---|---|---|---|
| "P-27" | Business Process Outsourcing International, Inc. | ₱ 7,200.00 | Not found in the records of the case/USB |
| "P-29" | Globe Telecom, Inc. | 1,351.14 | Nature of service cannot be ascertained |
| "P-60" | Globe Telecom, Inc. | 1,349.53 | Nature of service cannot be ascertained |
| "P-100" | LBC Express, Inc. | 17.14 | TIN of petitioner not indicated |
| "P-101" | LBC Express, Inc. | 17.89 | TIN of petitioner not indicated |
| | **Total** | **₱ 9,935.70** | |

Hence, for purposes of compliance with the *seventh* requisite, out of the total reported input VAT of ₱718,630.38, only the amount of **₱682,258.17** represents petitioner's valid input VAT due or paid for the first quarter of TY 2019, as computed below:

[68] Exhibits "P-25" to "P-119", USB exhibit.
[69] Exhibit "P-120" and "P-120-1", USB exhibit.
[70] Exhibit "P-126", Docket, pp. 169, 173 to 176.

| | | |
|---|---|---|
| Input VAT per VAT Return | | ₱ 718,630.38 |
| Less: Disallowances | | |
| Per ICPA findings | ₱ 26,436.51 | |
| Per Court's further verification | 9,935.70 | 36,372.21 |
| **Substantiated valid input VAT** | | **₱ 682,258.17** |

***Petitioner's input taxes claimed are attributable to zero-rated sales.***

The *eighth* 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.

Here, considering that petitioner had no other type of sales except zero-rated sales, the entire substantiated input VAT of **₱682,258.17** is attributable thereto. To be sure, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes.[71]

Thus, petitioner has complied with the said *eighth* requisite.

***The subject input taxes have not been applied against output taxes during and in the succeeding quarters.***

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

Since petitioner had no VATable sales subject to 12% for the first quarter of TY 2019, it had no output VAT against which the claimed input VAT of ₱718,630.38 may be applied or credited.

[71] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 255324 & 255353, April 12, 2023.

Further, although the claimed input VAT amount of ₱718,630.38, which necessarily includes the substantiated input VAT of **₱682,258.17**, was carried over by petitioner in the succeeding quarters,[72] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[73] in its Amended Quarterly VAT Return for the fourth quarter of TY 2020, filed on March 29, 2021. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱91,929,977.47[74] as of the end of the fourth quarter of TY 2020. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarters of TY 2020. Verily, petitioner complied with the *ninth* requisite for the grant of the input VAT claimed for refund or issuance of tax credit certificate.

In sum, petitioner has sufficiently proven its entitlement to the refund in the amount of **₱682,258.17**, representing unutilized input VAT attributable to its zero-rated sales for the first quarter of TY 2019.

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, amounting to **₱682,258.17**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the first quarter of taxable year 2019 or for the period covering January 1, 2019 to March 31, 2019.

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

**WE CONCUR:**

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

72 Exhibits "P-4-A", "P-4-C", "P-4-E", "P-5-A", "P-5-C", "P-5-D" and "P-5-F", Docket, pp. 286 to 287, 290 to 291, 294 to 295, 298 to 299, 302 to 303, 304 to 305, and 308 to 309, respectively.
73 Exhibit "P-5-F-1", Line 23D, Docket, p. 308.
74 Exhibit "P-5-F", Line 29, Docket, p. 309.

**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.

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

## CERTIFICATION

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

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