REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9882, 9959 and 10010

Members:

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

Promulgated:
JUN 03 2022

x- x

DECISION

BACORRO-VILLENA, J.:

At bar are consolidated Petitions for Review[1] filed by petitioner Philippine Geothermal Production Company, Inc. (**petitioner/PGPCI**) pursuant to Rule 4, Section 3(a)(1)[2] of the Revised Rules of the Court of

---

1 Filed on 24 July 2018, Division Docket (CTA Case No. 9882), Volume I, pp. 10-31; Filed on 24 October 2018, Division Docket (CTA Case No. 9959), pp. 10-31; and Filed on 18 January 2019, Division Docket (CTA Case No. 10010), pp.12-33.

2 **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions*.- The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

Tax Appeals (**RRCTA**). The consolidated cases seek the refund or issuance of tax credit certificate (**TCC**) for the unutilized input taxes attributable to petitioner's zero-rated sales/receipts for the 1st, 2nd, and 3rd quarters of calendar year (**CY**) 2016 in the amounts of ₱14,418,095.54, ₱10,885,442.20, and ₱3,036,629.01, respectively, or a total of ₱28,340,166.75.

PARTIES OF THE CASE

Petitioner is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with the authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.

FACTS OF THE CASE

On 27 March 2018, petitioner filed an application for tax refund of unutilized input value-added tax (**VAT**) for the 1st quarter of CY 2016 amounting to ₱14,418,095.54 with the Bureau of Internal Revenue (**BIR**).[3] Later, or on 26 June 2018, petitioner received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. Petitioner was granted a total VAT refund of ₱6,637,325.77.[4]

---

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

3 Division Docket (CTA Case No. 9882), Volume I, p. 12.

4 Id., p. 13.

On 24 July 2018, petitioner filed the present Petition for Review[5] before the Court claiming a refund or issuance of a TCC in the amount of ₱14,418,095.54 for alleged unutilized input VAT for the 1st quarter of CY 2016. The case was docketed as **CTA Case No. 9882** and was raffled to the First Division that issued summons[6] on respondent. On 29 August 2018, respondent filed his Answer.[7] On 10 September 2018, respondent also filed his Pre-Trial Brief[8] (**PTB**).

Subsequently, in an Order dated 27 September 2018[9], this case was transferred to the Court's Second Division pursuant to CTA Circular No. 02-2018.[10]

On 28 September 2018, petitioner filed its PTB.[11] Later, the Pre-Trial Conference ensued where and the parties were given twenty (20) days therefrom to file their Joint Stipulation of Facts and Issues (**JSFI**).[12] On 12 December 2018, the parties submitted their JSFI.[13]

On 26 June 2018, petitioner filed with the Bureau of Internal Revenue (**BIR**) an application for tax refund of unutilized input VAT for the 2nd quarter of CY 2016 amounting to ₱10,885,442.20.[14] On 24 September 2018, petitioner received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. Petitioner was granted a total VAT refund of ₱10,846,915.98.[15]

Later, on 24 October 2018, petitioner filed another Petition for Review[16] claiming a refund or issuance of a TCC amounting to ₱10,885,442.20, allegedly representing unutilized input VAT for the 2nd quarter of CY 2016. The case was docketed as **CTA Case No. 9959** and was raffled to the First Division.

---

5 Supra at note 1.
6 Division Docket (CTA Case No. 9882), Volume I, p. 48.
7 Id., pp. 50-59.
8 Id., pp. 60-63.
9 Id., p. 68.
10 Reorganizing the Three (3) Divisions of the Court.
11 Division Docket (CTA Case No. 9882), Volume I, pp. 69-83.
12 See Order dated 22 November 2018, id., Volume III, p. 742.
13 Id., pp. 753-759.
14 Division Docket (CTA Case No. 9959), p. 12.
15 Id., p. 13.
16 Supra at note 1.

After the issuance of summons, respondent also filed his Answer[17] on 12 December 2018. On 19 December 2018, petitioner filed a Motion to Consolidate[18] CTA Case No. 9959 with CTA Case No. 9882 before the Second Division. The latter Division granted the same in a Resolution[19] dated 27 February 2019.

Still later, on 27 September 2018, petitioner filed with the BIR an application for tax refund of unutilized input VAT for the 3rd quarter of CY 2016 amounting to ₱3,036,629.01.[20] On 21 December 2018, petitioner received an Authority to Issue VAT Refund and a VAT Refund Notice partially granting its claim for refund. Petitioner was granted a total VAT refund of ₱3,015,281.60.[21]

On 18 January 2019, petitioner filed yet again another Petition for Review[22] claiming a refund or issuance of a TCC amounting to ₱3,036,629.01, allegedly representing unutilized input VAT for <u>the 3rd quarter of CY 2016</u>. This was docketed as <u>**CTA Case. No. 10010**</u> and was raffled to the Third Division of this Court.

On 12 April 2019, respondent filed an Answer[23] to petitioner's last petition. Subsequently, on 05 March 2019, petitioner also sought to consolidate[24] CTA Case No. 10010 with CTA Case No. 9882 (then already pending before the Second Division). In a Resolution dated 04 April 2019[25], the Third Division granted the same.

With the consolidation of the cases, petitioner filed its Consolidated PTB to the aforementioned cases on 31 May 2019.[26]

Thereafter, on 24 June 2019, the parties filed a "Motion to Admit (with Attached [JSFI])".[27] The Court admitted and approved the

---

17 Division Docket (CTA Case No. 9959), Volume I, pp. 56-66.
18 Id., pp. 72-76.
19 Id., p. 98.
20 Division Docket (CTA Case No. 10010), p. 14.
21 Id., p. 15.
22 Supra at note 1.
23 Division Docket (CTA Case No. 10010), pp. 94-104.
24 Id., pp. 69-73.
25 Id., p. 89.
26 Division Docket (CTA Case No. 9882), Volume III, pp. 824-843.
27 Id., Volume IV, pp. 1645-1653.

parties' JSFI as contained in the Pre-trial Order dated 15 July 2019.[28] In an Order dated 17 July 2019[29], the Court likewise granted petitioner's Motion to Commission an Independent Certified Public Accountant (**ICPA**).

In the trial that ensued, petitioner presented the following witnesses who all testified by way of their judicial affidavits: (1) petitioner's accountant, Auwie May A. Gamez (**Gamez**); (2) petitioner's Director for Legal and Corporate Affairs and Corporate Secretary, Atty. Ma. Fe Concepcion L. Guirnalda-Lucero (**Atty. Lucero**); and, (3) the court-appointed ICPA, Edwin F. Ramos (**ICPA Ramos**).

Gamez's testimony was offered to prove that petitioner is a Renewable Energy (**RE**) Developer and is registered with the Board of Investments (**BOI**) and the Department of Energy (**DOE**). She further attested to petitioner's accumulation of unutilized input VAT for the 1st, 2nd, and 3rd quarters of CY 2016.[30]

Next, Atty. Lucero's testimony was offered to prove the genuineness of petitioner's documentary exhibits. The witness testified that her responsibilities include the maintenance and safekeeping of those documents.[31]

Lastly, the ICPA testified to the contents of his Report.[32] According to his findings, petitioner is entitled to the following input VAT refund claims: (1) ₱11,792,270.00 for the 1st quarter of CY 2016; (2) ₱10,747,233.17 for the 2nd quarter of CY 2016; and, (3) ₱3,018,218.09 for the 3rd quarter of CY 2016. In total, the ICPA calculated petitioner's total amount of unutilized input at ₱25,557,711.26.[33]

---

28 Id., pp. 1707-1727.
29 Id., Volume V, p. 1730.
30 Judicial Affidavit of Auwie My A. Gamez, id., pp. 1807-1815.
31 Judicial Affidavit and Supplemental Judicial Affidavit of Ma. Fe Concepcion L. Guirnalda-Lucero, id., Volume III, pp. 850-866 and Volume IV, pp. 1283-1312, respectively.
32 ICPA Report.
33 Judicial Affidavit of Edwin F. Ramos, Division Docket (CTA Case No. 9882), Volume V, pp. 1745-1786.

With no other witnesses to present, petitioner rested its case. Accordingly, the Court, in an Order dated 18 September 2019[34], gave petitioner five (5) days within which to file its Formal Offer of Evidence (**FOE**). Respondent was granted a similar period to file its opposition to petitioner's FOE. On 23 October 2019, petitioner filed its FOE[35] while respondent filed his Comment[36] thereto on 24 October 2019.

In a Resolution dated 27 December 2019[37], the Court resolved to admit all of petitioner's documentary exhibits *except* Exhibits "**P-208**" **to** "**P-254**", "**P-256**" **to** "**P-260**", "**P-262**" **to** "**P-289**", "**P-344**", "**P-346**", "**P-388**", "**P-395**" **to** "**P-396**", "**P-406**", "**P-426**", "**P-429**" (pages 3 to 4), "**P-470**", "**P-426-A**", "**P-470-A**", "**P-426-B**", "**P-470-B**", "**P-421-C**", "**P-422-C**", "**P-426-C**" **to** "**P-428-C**", "**P-430-C**" **and** "**P-432-C**" **to** "**P-492-C, and** "**P-421-D**", "**P-422-D**", "**P-426-D**" **to** "**P-428-D**", "**P-430-D**" and "**P-432-D**" **to** "**P-492-D**"[38], for petitioner's failure to present the originals thereof.

34 Id., p. 1821.
35 Id., pp. 1833-1869.
36 Id., Volume VI, pp. 2601-2604.
37 Id., pp. 2611-2613.
38

Exhibit	Description
"P-208" to "P-254"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 1st quarter of period ended September 30, 2016.
"P-256" to "P-260"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 1st quarter of period ended September 30, 2016.
"P-262" to "P-289"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 1st quarter of period ended September 30, 2016.
"P-344"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 2nd quarter of period ended September 30, 2016.
"P-346"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 2nd quarter of period ended September 30, 2016.
"P-388"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 3rd quarter of period ended September 30, 2016.
"P-395" to "P-396"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 3rd quarter of period ended September 30, 2016.
"P-406"	Documents supporting the input tax on domestic purchases of goods and services other than capital goods for the 3rd quarter of period ended September 30, 2016.
"P-426"	Single Administrative Document (SAD).
"P-429" (pages 3 to 4)	SAD.
"P-470"	SAD.
"P-426-A"	Statement of Settlement of Duties and Taxes (SSDT).

Thereafter, on 21 January 2020, petitioner filed a Motion for Reconsideration[39] (**MR**) of the above Resolution, without comment or opposition from respondent.[40] In a Resolution dated 15 June 2020[41], the Court partially granted the motion and admitted Exhibits **"P-208" to "P-223"** and **"P-429"** (Pages 3 to 4).

After petitioner rested its case, respondent presented its lone witness, Revenue Officer (**RO**) Leonila DC. Manuel (**Manuel**) who testified *via* judicial affidavit. On the witness stand, RO Manuel declared that she was the officer authorized to investigate petitioner's claims for refund and that she evaluated the same on the basis of documents that petitioner submitted to the BIR.

After the termination of Manuel's testimony, the Court directed respondent to submit his FOE and for the parties to submit their respective memoranda in an Order dated 21 July 2020.[42]

Respondent filed his FOE[43] on 29 July 2020. On 29 August 2020, petitioner filed a Comment[44] to respondent's FOE stating that it had no objection to the admission of respondent's Exhibits. In a Resolution dated 09 October 2020[45], *except* for **Exhibit "R-1" (CTA Case No. 9959)**[46], which was excluded for respondent's failure to submit the original thereof, the Court admitted all of respondent's exhibits.

"P-470-A"	SSDT.
"P-426-B"	Assessment Notice.
"P-470-B"	Assessment Notice.
"P-421-C"	Invoices.
"P-422-C"	Invoices.
"P-426-C" to "P-428-C"	Invoices.
"P-430-C"	Invoices.
"P-432-C" to "P-492-C	Invoices.
"P-421-D"	Bill of Lading.
"P-422-D"	Bill of Lading.
"P-426-D" to "P-428-D"	Bill of Lading.
"P-430-D"	Bill of Lading.
"P-432-D" to "P-492-D"	Bill of Lading.

[39] Division Docket (CTA Case No. 9882), Volume VI, pp. 2614-2618.
[40] *Per* Records Verification dated 03 March 2020, id., p. 2625.
[41] Id., pp. 2623-2625.
[42] Id., p. 2627.
[43] Id., pp. 2628-2634.
[44] Id., pp. 2635-2638.
[45] Id., Volume VII, pp. 2640-2641.
[46] Memorandum of Assignment No. RC-06-18-025 dated 26 June 2017.

After respondent's filing of his Omnibus Motion[47] calling for partial reconsideration of the above resolution and for a commissioner's hearing, respondent was able to reoffer **Exhibit "R-1" (CTA Case No. 9959)**, which was found to be a certified true copy as *per* a Commissioner's Report dated 03 February 2020. [48] On 18 February 2021[49], the Court admitted **Exhibit "R-1" (CTA Case No. 9959)** as part of respondent's documentary evidence.

On 25 March 2021, petitioner filed its Memorandum[50] while respondent had already previously filed his Memorandum[51] on 09 November 2020. In a Resolution dated 03 June 2021[52], the Court submitted the consolidated cases for decision.

ISSUE

The issues put forth by the parties may be summarily stated as follows —

> WHETHER PETITIONER PHILIPPINE GEOTHERMAL PRODUCTION COMPANY, INC. IS ENTITLED TO ITS CLAIM FOR REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AGGREGATE AMOUNT OF ₱28,340,166.75, REPRESENTING UNUTILIZED INPUT TAXES FOR THE 1ST, 2ND, AND 3RD QUARTERS OF CALENDAR YEAR (CY) 2016.

ARGUMENTS

In support of its petitions, petitioner essentially argues that as an RE Developer, its sales of fuel or power generated from renewable sources are VAT zero-rated. It contends that the excess input VAT claimed for refund has not been applied by petitioner to its output taxes during the 1st, 2nd, and 3rd quarters of CY 2016 as well as the subsequent quarters. Petitioner also maintains that said input taxes are directly attributable to its zero-rated sales.

---

47 Filed on 23 October 2020, Division Docket (CTA Case No. 9882), Volume VII, pp. 2642-2646.
48 Id., p. 2674.
49 Id., pp. 2682-2683.
50 Id., pp. 2684-2735.
51 Id., pp. 2649-2664.
52 Id., p. 2737.

On the other hand, respondent stood firm on his decisions partially denying petitioner's applications for refund. Respondent calls for the Court to confine its findings on the documents that petitioner submitted with the BIR. Lastly, respondent claims that petitioner's claims for refund should be strictly construed against it.

RULING OF THE COURT

After a careful scrutiny of the records and the parties' evidence, the Court finds the arguments raised in support of the present petitions partly meritorious.

As an RE Developer, petitioner is governed by the provisions of Republic Act (**RA**) No. 9513, otherwise known as the "Renewable Energy Act of 2008". Under said law, petitioner is entitled to a zero-rated VAT on its local purchases, to wit:

> ...
>
> 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:
>
> ...
>
> (g) Zero Percent Value-Added Tax Rate. — ...
>
> ...
>
> **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 <u>development</u>, <u>construction</u> and <u>installation</u> 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.**[53]
>
> ...

---

[53] Emphasis and underscoring supplied.

Under RA 9513, an RE Developer's zero-rated purchases are those necessary for the development, construction and installation of plant facilities. In the instant cases, however, the sources of input are domestic purchases consisting of office supplies, utilities, and communication expenses for the operation of the plant facilities. Furthermore, the enjoyment of zero-rating on petitioner's purchases are, as stated, limited only to domestic purchases but *not* to international purchases.

A perusal of the records would show that a chunk of petitioner's unutilized input VAT sought to be refunded pertains to input VAT paid by petitioner on its importations.

As the records show, petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by RA 10963[54], otherwise known as the Tax Reform for Acceleration and Inclusion (**TRAIN Law**). The said provisions read as follows:

> ...
>
> **Sec. 110.** *Tax Credits.* —
>
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...

[54] 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.

> **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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (C) Period within which Refund 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.
>
> 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 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.
>
> ...

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[55], the Supreme Court laid down the requisites that must

---

[55] 721 Phil. 202 (2013).

concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit:

> ...
>
> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (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.
>
> ...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the first (1^{st}) and ninth (9^{th}) requisites, followed by the second (2^{nd}) and seventh (7^{th}) requisites, then the third (3^{rd}), fourth (4^{th}), fifth (5^{th}) and eighth (8^{th}) requisites, jointly.

<u>FIRST (1^{ST}) REQUISITE:</u>
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

Undisputedly, petitioner is a VAT-registered entity with Tax Identification Number (**TIN**) 214-127-981-000 as evidenced by its Certificate of Registration Number OCN 8RC0000038356 dated 30 October 2001.[56]

---

56 Exhibit "P-4", Formal Offer of Evidence (FOE), CD.

NINTH (9TH) REQUISITE:
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with Section 112(A) and (C)[57] of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claims cover the 1st, 2nd and 3rd quarters of CY 2016. Thus, petitioner's last day for filing of its administrative claims and the actual filing of its administrative claim for the said periods fell on the following dates:

Period Covered	**Last Day to File Administrative Claim**	**Actual Date of Filing of Administrative Claim**
January to March 2016 (1st Quarter)	31 March 2018	27 March 2018[58]
April to June 2016 (2nd Quarter)	30 June 2018	26 June 2018[59]
July to September 2016 (3rd Quarter)	30 September 2018	27 September 2018[60]

Clearly, as shown above, petitioner's administrative claims were filed within the two-year prescriptive period.

As regards the timeliness of petitioner's judicial claims, respondent had ninety (90) days from the date of submission of the complete documents (in support of the application for refund or tax credit) within which to grant or deny the claim.

In the event that respondent denies the claim for refund, in full or partially, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (**CTA**) within thirty (30) days from receipt of the former's decision. However, if after the 90-day period, the BIR

---

57 Supra at p. 11.
58 Exhibit "P-26", FOE, CD.
59 Exhibit "P-102", id.
60 Exhibit "P-104", id.

Commissioner fails to act on the application for refund/tax credit, the taxpayer's remedy is to appeal the inaction to the CTA within 30 days from the expiration of the said period.

The table below shows that petitioner was able to file its judicial claims well within the 30-day period and only after respondent's decision or the lapse of the 90-day period, to wit:

Period Covered	Actual Date of Filing of Administrative Claim	End of 90-day Period	Date of Receipt of Respondent's Decision	Actual Date of Filing of Judicial Claim	End of 30-day Period to File a Judicial Claim
1st Quarter	27 March 2018	25 June 2018	26 June 2018[61]	24 July 2018[62]	25 July 2018
2nd Quarter	26 June 2018	24 September 2018	24 September 2018[63]	24 October 2018[64]	24 October 2018
3rd Quarter	27 September 2018	26 December 2018	21 December 2018[65]	18 January 2019[66]	20 January 2019

Evidently, petitioner satisfies the jurisdictional requirement for this Court to take cognizance of its Petitions for Review.

<u>SECOND (2ND) AND SEVENTH (7TH) REQUISITES:</u>
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND FOR WHICH THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

Petitioner is primarily engaged in the development and exploitation of geothermal energy and other similar products.[67]

---

61 Exhibit "P-88", BIR Records (CTA Case No. 9882), p. 226.
62 Petition for Review, Division Docket (CTA Case No. 9882), Volume I, p. 10.
63 Exhibit "P-163", BIR Records (CTA Case No. 9959), p. 326.
64 Petition for Review, Division Docket (CTA Case No. 9959), p. 10.
65 Exhibit "P-165", BIR Records (CTA Case No. 10010), Folder 1, p. 352.
66 Petition for Review, Division Docket (CTA Case No. 10010), p. 12.
67 Amended Articles of Incorporation, Exhibit "P-3", FOE, CD.

Under RA 9513, an RE Developer is defined as "individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities".[68] Section 15(g) thereof further provides for the zero-rating incentives that an RE Developer enjoys, to wit:

> ...
>
> **CHAPTER VII**
> **GENERAL INCENTIVES**
>
> **SEC. 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:
>
> ...
>
> (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.[69]
>
> ...

Pursuant to the abovementioned provision, to avail of the incentives, an RE Developer must be duly certified by the DOE. More specifically, under the Implementing Rules and Regulations[70] (**IRR**) of RA 9513, an RE Developer must comply with the following requirements:

> ...
>
> **Section 18.** ***Conditions for Availment of Incentives and Other Privileges.***
>
> ***A. Registration/Accreditation with the DOE***

---

[68] Republic Act No. 9513, Section 4(pp), Renewable Energy Act of 2008.
[69] Emphasis supplied.
[70] Department Circular No. DC2009-05-0008, 25 May 2009.

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:

(1) DOE Certificate of Registration — . . .

...

B. Registration with the Board of Investments (BOI)

...

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

...

C. Certificate of Endorsement by the DOE

RE Developers, 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.

...

In relation thereto, Section 108(B)(7) of the NIRC of 1997, as amended, provides:

...

SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

...

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

...

While, Section 4.108-5(b)(7) of Revenue Regulations (**RR**) No. 16-2005[71] implementing the above provision qualifies the applicability of such zero-rating as follows:

> ...
> SEC. 4.108-5. ***<u>Zero-Rated Sale of Services</u>***. —
> ...
>
> (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:
> ...
>
> > (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided*, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.
>
> ...

Petitioner is registered with the DOE as an "RE Developer of Geothermal Energy Resources" under Certificate of Registration (**COR**) Nos. GSC 2013-04-045[72] and GSC 2013-04-044[73], in accordance with the provisions of the Omnibus Investment Code of 1987. Both DOE CORs provide that petitioner's registration as an RE Developer took effect on 25 April 2013.

Likewise, petitioner was issued COR Nos. 2014-067[74] and 2014-066[75] by the BOI as an RE Developer of 236 MW Geothermal Resources (Makiling-Banahaw [Mak-ban] Geothermal Production Field) and 136 MW Geothermal Resources (Tiwi Geothermal Production Field), respectively. Both BOI CORs were issued on 15 April 2014.

---

71 *Consolidated Value-Added Tax Regulations of 2005.*
72 Exhibit "P-5", FOE, CD.
73 Exhibit "P-6", id.
74 Exhibit "P-7", id.
75 Exhibit "P-10", id.

The specific terms and conditions issued to petitioner by the BOI for both the Makiling-Banahaw (Mak-Ban) Geothermal Production Field and the Tiwi Geothermal Production Field specifically provide that petitioner's sale of power is subject to zero-rated VAT, to wit:

> ...
>
> The sale of power generated by the enterprise as well as its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC.
>
> ...

With petitioner's right to the enjoyment of the foregoing incentives having been established, We proceed with the computation of the amount of refund it is actually entitled to.

As indicated in petitioner's final amended Quarterly VAT Returns for the 1st, 2nd, and 3rd Quarters of CY 2016, petitioner declared zero-rated sales in the aggregate amount of ₱3,005,030,029.15, detailed as follows:

	1st Quarter of 2016[76]	**2nd Quarter of 2016**[77]	**3rd Quarter of 2016**[78]	**Total**
Zero-rated Sales	₱878,202,205.90	₱1,022,855,660.69	₱1,103,972,162.56	₱3,005,030,029.15

To substantiate the foregoing, petitioner presented official receipts[79] (**ORs**) and statements of account (**SOAs**)[80] to show its sale of steam generated through renewable geothermal energy from AP Renewables, Inc. The ICPA examined and verified these documents, as summarized below:[81]

76 Exhibit "P-39", FOE, CD.
77 Exhibit "P-42", id.
78 Exhibit "P-45", id.
79 Exhibits "P-28", "P-31", "P-34", "P-142", "P-145", "P-148", "P-151", "P-153", "P-156" and "P-159", id.
80 Exhibits "P-30", "P-33", "P-36", "P-144", "P-147", "P-150", "P-152", "P-155", "P-158" and "P-161", id.
81 Annex 2, ICPA Report dated 16 August 2019, Exhibit "P-200", id, p. 11.

Description	ICPA Annex	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	TOTAL
Zero-rated sales/receipts properly supported by zero-rated ORs	Annex 2-1Q-a Annex 2-2Q-a Annex 2-3Q-a Annex 2-1Q-b Annex 2-2Q-b	₱875,829,563.98	₱1,017,113,515.77	₱337,920,834.99	₱2,230,863,914.74
Disallowances					
Zero-rated sales/receipts supported by zero-rated OR not dated within the period of claim	Annex 2-3Q-b	-	-	772,307,741.88	772,307,741.88
Zero-rated sales – foreign exchange differential supported by other than OR (Statement of Accounts)	Annex 2-1Q-c Annex 2-2Q-c Annex 2-3Q-c	2,288,457.38	(2,853,272.46)	(7,542,415.20)	(8,107,230.28)
Zero-rated sales – variance due to timing difference supported by other than OR (journal entries)	Annex 2-1Q-d Annex 2-2Q-d Annex 2-3Q-d	84,184.54	8,595,417.38	1,286,000.89	9,965,602.81
Subtotal		*2,372,641.92*	*5,742,144.92*	*766,051,327.57*	*774,166,114.41*
Total Zero-Rated Sales/Receipts		**₱878,202,205.90**	**₱1,022,855,660.69**	**₱1,103,972,162.56**	**₱3,005,030,029.15**

As petitioner represented, the foreign currency variance is due to the difference between the billing rate and collection rate. As can be gleaned from Annex 2 of the ICPA Report, petitioner declares zero-rated sales based on the Billing Statements and not based on the ORs it issued. Considering that petitioner is engaged in the sale of services, the 12% VAT is computed based on *gross receipts* which is defined under Section 108(A)[82] of the NIRC of 1997, as "the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received..."

---

82 **SEC. 108**. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to twelve percent (12%)[91] of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

...

The term "***gross receipts***" means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

Clearly, from the foregoing, the VAT on the sale of services accrues upon **actual or constructive receipt of the consideration**, whether or not the service has been rendered. Accordingly, Section 108 (C)[83] provides that the tax on the sale of services shall be computed by multiplying the total **amount indicated in the OR**. Thus, only the amount as reflected in petitioner's ORs shall be considered as valid zero-rated sales. Also, the Court could not give credence to the difference due to the reversal and accrual of sales since only journal entries[84] generated from petitioner's accounting system support them. Essentially, the difference noted was the reversal of accrual from December 2015 and the accrual from September 2016 which will reverse the following month, *i.e.*, October 2016. The Court, therefore, is unable to recognize whether the same was actually declared in petitioner's VAT returns owing to the absence of documents supporting the reversal and accrual of the said zero-rated sales.

As it is, the Court agrees with the ICPA's findings on the above-noted exceptions in the amount of ₱774,166,114.41. Out of the total zero-rated sales of ₱3,005,030,029.15 for the 1st, 2nd and 3rd quarters of CY 2016, only the amount of ₱2,230,863,914.74 qualifies as valid zero-rated sales, as follows:

Description	**1st Quarter of 2016**	**2nd Quarter of 2016**	**3rd Quarter of 2016**	**TOTAL**
Total declared zero-rated sales	₱878,202,205.90	₱1,022,855,660.69	₱1,103,972,162.56	₱3,005,030,029.15
Less: Disallowances				
Per ICPA Report	2,372,641.92	5,742,144.92	766,051,327.57	774,166,114.41
Total Valid Zero-Rated Sales	**₱875,829,563.98**	**₱1,017,113,515.77**	**₱337,920,834.99**	**₱2,230,863,914.74**

THIRD (3RD), FOURTH (4TH), FIFTH (5TH), and EIGHTH (8TH) REQUISITES: PETITIONER INCURRED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

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

...

(C) Determination of the Tax – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

84 Exhibits "P-496" to "P-505", FOE, CD.

The Court shall jointly determine whether petitioner complied with the following remaining requisites:

a. 3rd requisite: the input taxes are due or paid;
b. 4th requisite: the input taxes are not transitional input taxes;
c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,
d. 8th requisite: where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In its Amended 1st, 2nd, and 3rd Quarterly VAT Returns for CY 2016[85], petitioner declared excess and unutilized input VAT of ₱28,340,166.75 on its domestic purchases of goods and services, and importations for CY 2016, as shown below:

	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Input Tax on Domestic Purchases of Goods Other Than Capital Goods	₱31,797.09	₱26,094.59	₱11,817.78	₱69,709.46
Input Tax on Importation of Goods Other Than Capital Goods	14,220,188.00	10,788,261.00	2,980,421.00	27,988,870.00
Input tax on Domestic Purchases of Services	166,110.45	71,086.61	44,390.23	281,587.29
Total Input VAT Applied for Refund	**₱14,418,095.54**	**₱10,885,442.20**	**₱3,036,629.01**	**₱28,340,166.75**

To establish that petitioner incurred/paid the aforementioned input VAT, it submitted various ORs and sales invoices on the local purchases of goods and services which included medical, office supplies, utilities and transportation expenses. Petitioner also submitted the original printouts of Statement of Settlement of Duties and Taxes[86] (**SSDT**) and Single Administrative Document[87] (**SAD**), Assessment Notices[88], Invoices[89], Bill of Lading[90] and Bank Certification of Payment to BOC.[91]

85 Exhibits "P-39", "P-42", and "P-45", id.
86 Exhibits "P-415-A" to "P-492-A", id.
87 Exhibits "P-415" to "P-492", id.
88 Exhibits "P-415-B" to "P-492-B", id.
89 Exhibits "P-421-C", "P-422-C", "P-426-C" to "P-428-C", "P-430-C" and "P-432-C" to "P-492-C", id.

Upon verification of petitioner's importation of goods other than capital goods, the ICPA ascertained that the amount of ₱567,749.08 should be disallowed for the following reasons as detailed below:[92]

	ICPA Annex	1st Quarter of CY 2016	2nd Quarter of CY 2016	3rd Quarter of CY 2016	Total
1. Supported by SAD, SSDT, Assessment Notice, bank certification of payments, invoice and bill of lading with SAD not dated within the year or period of claim and amount of claim is greater than the amount per SSDT	Annex 4-1Q-d	₱787,873.00	₱-	₱-	**₱787,873.00**
2. Supported by SAD, SSDT and Assessment Notice, bank certification of payments with SAD not dated within the year or period of claim	Annex 4-1Q-e	1,224,724.00	-	-	**1,224,724.00**
3. Supported by SAD, SSDT, Assessment Notice, bank certification of payments, and photocopy of Manual IEIRD with SAD and Manual IEIRD not dated within the year or period of claim	Annex 4-1Q-f	408,764.00	-	-	**408,764.00**
4. Supported by bank certification of payments and photocopies of SAD, SSDT, Assessment Notice, invoice and bill of lading	Annex 4-1Q-g Annex 4-2Q-g	6,557.00	40,596.00	-	**47,153.00**
5. Supported by SAD, SSDT, Assessment Notice, bank certification of payments, invoice and bill of lading with amount of claim greater than the amount indicated in the SAD	Annex 4-2Q-h	-	59,521.00	-	**59,521.00**
Total		**₱2,427,918.00**	**₱100,117.00**	**₱-**	**₱2,528,035.00**

Moreover, as stated in the ICPA Report, an additional input VAT on domestic purchases of goods and/or services amounting to ₱254,420.55 must be disallowed for not being properly substantiated by VAT zero-rated ORs as prescribed under Sections 110(A)[93] and 113(A) and (B)[94] of the NIRC of

---

90 Exhibits "P-421-D", "P-422-D", "P-426-D" to "P-428-D", "P-430-D" and "P-432-D to P-492-D", id.

91 Exhibit "P-414", id.

92 Supra at note 32, pp. 15-16.

93 **SEC. 110.** *Tax Credits.* —
(A) *Creditable input Tax.* —

---

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

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

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

94 **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That*:

(a) The amount of the tax shall be known 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;

1997, as amended, in relation to Sections 4.110-2[95], 4.110-3[96], 4.110-8[97] and 4.113-1[98] of RR No. 16-2005[99], as amended. The ICPA's findings[100] are as follows:

(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 involved 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 known 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 (P1,000) 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.
...

95 **SEC. 4.110-2.** *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
(a) To the importer upon payment of VAT prior to the release of goods from customs custody;
(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

96 **SEC. 4.110-3.** *Claim for Input Tax on Depreciable Goods.* - Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in instalment for an acquisition cost of more than P1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.
...

97 **SEC. 4.110-8.** *Substantiation of Input Tax Credits.* -
(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must

Nature	ICPA Annex	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Purchase of Goods other than Capital Goods					
Supported by VAT Reg. TIN invoice without petitioner's name, petitioner's TIN and petitioner's Address	Annex 6-1Q-e; Annex 6-2Q-e; Annex 6-3Q-e	₱31,797.05	₱26,094.59	₱10,758.48	₱68,650.12
Purchase of Services					
Supported by photocopied VAT Reg TIN ORs	Annex 6-1Q-f	₱160,888.19	₱-	₱-	₱160,888.19

be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
(1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
(2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

98 **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 pesos (₱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.

99 Supra at note 71.

100 Annex 6, supra at note 32.

Nature	ICPA Annex	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Supported by other than VAT OR	Annex 6-1Q-g; Annex 6-2Q-g; Annex 6-3Q-g	2,019.86	248.51	971.63	3,240.00
Supported by certified true copy VAT Reg. TIN OR with inserted petitioner's TIN but without countersign, with incorrect petitioner's address, without reason for payment indicated and with VAT breakdown not shown separately but can be computed using other information provided in the OR	Annex 6-1Q-h	1,042.50	-	-	1,042.50
Supported by VAT Reg TIN OR dated not within the quarter but within the period of claim, with VAT breakdown altered without countersign and with nature of payment not indicated	Annex 6-2Q-i	-	10,177.40	-	10,177.40
Supported by VAT Reg TIN OR with inserted petitioner's TIN but without countersign, with incorrect petitioner's address, without nature of payment indicated and without VAT breakdown shown separately	Annex 6-2Q-j; Annex 6-3Q-j	-	387.86	180.00	567.86
Supported by VAT Reg. TIN OR but not in the name of the petitioner, with incorrect petitioner's TIN and with overclaimed VAT amount	Annex 6-2Q-k; Annex 6-3Q-k	-	555.44	595.24	1,150.68
Supported by VAT Reg. TIN OR dated not within the quarter and period of claim, with incomplete petitioner's address and with nature of payment indicated	Annex 6-3Q-l	-	-	728.31	728.31
Supported by VAT Reg. TIN OR not in the name of the petitioner, with unclear or unreadable date, with incorrect petitioner's TIN, with incorrect petitioner's address and with overclaimed VAT amount	Annex 6-3Q-m	-	-	281.71	281.71
Supported by VAT Reg. TIN OR not in the name of the petitioner, without transaction date, without petitioner's TIN, with incorrect petitioner's address and with overclaimed VAT amount	Annex 6-2Q-n	-	305.19	-	305.19
Supported by VAT Reg. TIN OR with incorrect petitioner's address, with underclaimed VAT amount and with nature of payment indicated	Annex 6-3Q-o	-	-	428.58	428.58
Supported by VAT Reg. TIN OR with incorrect petitioner's TIN and with nature of payment indicated	Annex 6-3Q-p	-	-	3,939.71	3,939.71
Supported by VAT Reg. TIN OR with petitioner's name written on a printed OR, with petitioner's TIN written on a computer printed OR, with incorrect petitioner's address and with VAT breakdown not shown separately	Annex 6-3Q-q	-	-	264.08	264.08

Nature	ICPA Annex	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Supported by VAT Reg. TIN OR with petitioner's TIN written on a computer printed OR, with incorrect petitioner's address and with VAT breakdown not shown separately	Annex 6-3Q-r	-	-	160.92	160.92
Supported by VAT Reg. TIN OR without transaction date, with petitioner's name written on a printed OR, with petitioner's TIN written on a computer printed OR, with incorrect petitioner's address and without VAT breakdown shown separately	Annex 6-2Q-s	-	261.98	-	261.98
No supporting documents	Annex 6-1Q-t	2,160.00	-	-	2,160.00
Supported by VAT Reg. TIN ORs with overstated VAT amount claimed	Annex 6-2Q-d; Annex 6-3Q-d	-	71.06	102.26	173.32
Subtotal		***166,110.55***	***12,007.44***	***7,652.44***	***185,770.43***
Total		**₱197,907.60**	**₱38,102.03**	**₱18,410.92**	**₱254,420.55**

Thus, out of petitioner's claimed input VAT of ₱28,340,166.75 for the 1st, 2nd and 3rd quarters of CY 2016, only the amount of ₱25,557,711.20 represents the substantiated input VAT, computed as follows:

	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Claimed Input VAT	₱14,418,095.54	₱10,885,442.20	₱3,036,629.01	**₱28,340,166.75**
Less: Disallowances				
Input Tax on Domestic Purchases of Goods Other Than Capital Goods	₱31,797.05	₱26,094.59	₱10,758.48	**₱68,650.12**
Input Tax on Importation of Goods Other Than Capital Goods	2,427,918.00	100,117.00	-	**2,528,035.00**
Input tax on Domestic Purchases of Services	166,110.55	12,007.44	7,652.44	**185,770.43**
Subtotal	***2,625,825.60***	***138,219.03***	***18,410.92***	***2,782,455.55***
Substantiated/Valid Input VAT	**₱11,792,269.94**	**₱10,747,223.17**	**₱3,018,218.09**	**₱25,557,711.20**

Consequently, only the substantiated input VAT of ₱25,557,711.20 can be attributed to the total zero-rated sales in the amount of ₱3,005,030,029.15, and only the excess and unutilized input VAT of ₱23,371,346.09 is attributable to the valid zero-rated sales of ₱2,230,863,914.74, as determined below:

	1st Quarter of 2016	2nd Quarter of 2016	3rd Quarter of 2016	Total
Total Zero-Rated Sales [A] Valid Zero-Rated Sales [B]	₱878,202,205.90 875,829,563.98	₱1,022,855,660.69 1,017,113,515.77	₱1,103,972,162.56 337,920,834.99	₱3,005,030,029.15 2,230,863,914.74
Percentage of Valid Zero-Rated Sales [C=B/A]	99.73%	99.44%	30.61%	
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [D]	11,792,269.94	10,747,223.17	3,018,218.09	25,557,711.20
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [D x C]	**₱11,760,430.81**	**₱10,687,038.72**	**₱923,876.56**	**₱23,371,346.09**

Furthermore, the claimed input VAT of ₱28,340,166.75 was deducted as "VAT Refund/TCC Claimed" in petitioner's VAT returns as follows:

VAT Return	Amount
Amended 3rd Quarterly VAT Return 2017[101]	₱14,418,095.54
Amended 1st Quarterly VAT Return 2018[102]	10,885,442.20
Amended 2nd Quarterly VAT Return 2018[103]	3,036,629.01
Total	**₱28,340,166.75**

Clearly, the subject claim no longer formed part of the excess input VAT as of the end of the 2nd quarter of CY 2018 that was to be carried over or applied to the succeeding quarters. As such, it eliminates the possibility that petitioner's claimed unutilized input VAT was applied to its subsequent output VAT liabilities.

Lastly, in arguing that petitioner cannot offer before this Court the evidence documents it failed to supply the BIR during the pendency of its administrative claim, respondent cites the Supreme Court's ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[104], wherein it was held:

> ...
>
> ... It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and

101 Exhibit "P-56", FOE, CD.
102 Exhibit "P-118", id.
103 Exhibit "P-125", id.
104 G.R. No. 207112, 08 December 2015.

> evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> ...

While the Court may agree with respondent on this particular note, he did not, however, specify what documents had petitioner withheld from the BIR. In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC in the reduced amount of ₱23,371,346.09[105], representing the excess and unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd, and 3rd quarters of CY 2016.

WHEREFORE, in view of the foregoing, the consolidated Petitions for Review filed by petitioner Philippine Geothermal Production Company, Inc. on 24 July 2018, 24 October 2018, and 18 January 2019 are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱23,371,346.09**, the excess and unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd, and 3rd quarters of CY 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

105 Respondent's Authority to Issue VAT Refund (Exhibits "P-87", "P-162", "P-164") are deemed amended to reflect the proper amount of excess and unutilized input VAT attributable to petitioner's zero-rated sales for the 1st, 2nd, and 3rd quarters of CY 2016.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With due respect, I submit my Dissenting Opinion)
LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE GEOTHERMAL PRODUCTION CO., INC.,
Petitioners,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9882, 9959 and 10010

Members:

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

Promulgated:

JUN 03 2022

x- -x

1:10 p.m.

DISSENTING OPINION

CUI-DAVID, J.:

With high respect to my esteemed colleagues in the majority, I vote to deny petitioner's consolidated Petitions for Review asking for the refund or issuance of a tax credit certificate (TCC) of the unutilized input taxes attributable to petitioner's alleged zero-rated sales/receipts for the first, second and third quarters of calendar year (CY) 2016.

As stated in the *ponencia*, to avail of the VAT zero-rating incentives provided under Section 15(g)[1] of Republic Act (RA) No. 9513, a Renewable Energy (RE) Developer must comply with the conditions laid down under Part III, Rule 5 of the

---

[1] 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.

Implementing Rules and Regulations (IRR) of RA No. 9513. 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:
>
> ***(1) DOE Certificate of Registration*** — xxx
>
> ***B. Registration with the Board of Investments (BOI)***
>
> xxx xxx xxx
>
> To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.
>
> ***C. Certificate of Endorsement by the DOE***
>
> RE Developers 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.

From the foregoing, an RE Developer must secure the following documents to avail of the fiscal incentives including the benefit of VAT zero-rating, to wit:

1. DOE Certificate of Registration;
2. Registration with the BOI; and
3. Certificate of Endorsement by the DOE.

In the instant consolidated cases, the record reveals that petitioner is registered with the Department of Energy (DOE) as an "RE Developer of Geothermal Energy Resources" under Certificate of Registration (COR) Nos. GSC 2013-04-045 and

MW

GSC 2013-04-044. Both DOE CORs provide that petitioner's registration as an RE Developer took effect on April 25, 2013.

The record further reveals that petitioner was issued COR Nos. 2014-067 and 2014-066 by the Board of Investments (BOI) as an RE Developer of 236 MW Geothermal Resources [Makiling-Banahaw (Mak-Ban) Geothermal Production Field] and 136 MW Geothermal Resources (Tiwi Geothermal Production Field), respectively. Both BOI CORs were issued on April 15, 2014.

However, there is no showing that petitioner was issued a Certificate of Endorsement by the DOE on a per transaction basis relative to its sales of renewable energy covering the first, second, and third quarters of CY 2016, as mandated by Section 18(C), Rule 5, Part III of the IRR of RA No. 9513. Without this requirement, petitioner's alleged sales/receipts, if any, do not qualify for VAT zero-rating.

Truth to tell, this Court has been consistent in ruling that all three requirements, *i.e.*, DOE Certificate of Registration, BOI Registration, and Certificate of Endorsement by the DOE, are needed to avail of the VAT zero-rating incentive under Section 15(g) of RA No. 9513 and its IRR. In *North Luzon Renewable Energy, Corp. vs. Commissioner of Internal Revenue*[2] and in *Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue*,[3] it was held that all three (3) documents must be presented; otherwise, the sale could not qualify for VAT zero-rating under Section 15(g) of RA No. 9513 and its IRR. The word "shall" in the IRR indicates mandatory submission of the requirements to qualify for VAT zero-rating.

Thus, consistent with my stance in *Trans-Asia Renewable Energy Corporation vs. Commissioner of Internal Revenue and Commissioner of Internal Revenue vs. Trans-Asia Renewable Energy Corporation*,[4] the failure of petitioner to show that it was issued a Certificate of Endorsement by the DOE on a per transaction basis, its alleged sales/receipts, if any, do not qualify for VAT zero-rating.

[2] CTA Case No. 9886, 19 February 2021.
[3] CTA Case Nos. 9208 & 9274, 24 July 2020.
[4] CTA EB Nos. 2314 and 2347 (CTA Case No. 9516), May 17, 2022.

Given the foregoing, I vote to **DENY** the instant consolidated Petitions for Review.

LANEE S. CUI-DAVID
Associate Justice