REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**CTA CASE NO. 8928**
	Members:
- *versus* -	**BAUTISTA**, *Chairperson* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 19 2017 4:25 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Lepanto Consolidated Mining Company on November 17, 2014, pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], which seeks for the

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[1] *Records, CTA Case No. 8928, Vol. 1, Petition for Review ("PFR")*, pp. 6-46, with annexes.

[2] *Section 7(a)(2)*[2] *of RA No. 1125* reads as follows:

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

[3] An Act Creating the Court of Tax Appeals, as Amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

Court to render judgment declaring petitioner entitled to a tax credit certificate ("TCC") in the amount of Fifteen Million Seven Hundred and Eight Thousand Seven Hundred Ninety-Five and 39/100 Pesos (Php15,708,795.39), representing unutilized input value added tax ("VAT") attributed to petitioner's zero-rated export sales in the second half of 2012, and ordering respondent Commissioner of Internal Revenue ("CIR") to issue to petitioner a TCC in the said amount.[6]

The Parties

Petitioner is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Barangay Bel Air, Makati City.[7] Petitioner registered with, and authorized by, the Board of Investments ("BOI") as a new export producer/non-pioneer for gold bullions[8] under BOI Certificate of Registration No. EP 2004-001[9], issued on January 5, 2004. Petitioner is a duly registered VAT taxpayer with Taxpayer's Identification No. 000-160-247-000 since 1994 continuously up to the present.[10]

Respondent is the duly appointed CIR, who has authority to grant tax credits under the law, and holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[11]

The Facts

Petitioner filed its Quarterly VAT Return (BIR Form No. 2550-Q) for the third and fourth quarters of 2012 on October 17, 2012[12] and January 23, 2013[13]. It then filed two (2) amended returns for the third quarter on January 23, 2013[14] and April 10, 2013[15]; and one (1) for the fourth quarter on April 10, 2013[16].

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[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.
[6] *Records, Vol. 1, PFR, Prayer,* p. 13.
[7] *Id., Vol. 2, Joint Stipulation of Facts and Issue ("JSFI"), Stipulation of Facts, par. 1,* p. 1033.
[8] *Id., Exhibit "P-9-A,"Certification from BOI,* p. 1173.
[9] *Id., Exhibit "P-3," BOI Certificate of Registration No. EP 2004-001,* p. 1162.
[10] *Id., JSFI, Stipulation of Facts, par. 3,* p. 1033.
[11] *Id., par. 2,* p. 1033.
[12] *Box 1 of 1, Exhibits "P-12-C," Quarterly VAT Return (BIR Form No. 2550-Q), Third Quarter 2012.*
[13] *Id., Exhibits "P-13-B," Quarterly VAT Return (BIR Form No. 2550-Q), Fourth Quarter 2012.*
[14] *Id., Exhibits "P-12-B," Quarterly VAT Return (BIR Form No. 2550-Q), Third Quarter 2012, First Amended.*

On June 20, 2014, the BIR VAT Credit Audit Division received petitioner's Applications for Tax Credits/Refunds (BIR Form No. 1914) for the periods July 1 to September 30, 2012[17] and October 1 to December 31, 2012[18], claiming for TCCs in the amounts of Php9,821,453.32 and Php5,887,342.07, respectively, representing unutilized or unapplied creditable input VAT. Petitioner likewise submitted documents in support of its applications for tax credits.[19]

On account of the BIR's inaction, petitioner filed the present Petition for Review[20] on November 17, 2014.

On December 4, 2014, the Court issued a Summons[21], requiring respondent to file his Answer to the Petition for Review.

After being granted an extension,[22] on January 23, 2015, respondent filed an Answer[23], wherein he raised the following special and affirmative defenses: *(1)* the power of taxation is an inherent attribute of sovereignty, hence, the right to taxation cannot easily be surrendered; *(2)* the law frowns upon exemptions from taxation, and statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; *(3)* the taxpayer is charged with a heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund, and that it is incumbent upon petitioner to establish its right to a tax refund or TCC; and *(4)* that petitioner's claim for refund is not properly documented.

On February 27, 2015[24] and March 6, 2015[25], respondent and petitioner filed their respective Pre-Trial Briefs.

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[15] *Box 1 of 1, Exhibits "P-12-A," Quarterly VAT Return (BIR Form No. 2550-Q), Third Quarter 2012, Second Amended.*
[16] *Id., Exhibits "P-13-A," Quarterly VAT Return (BIR Form No. 2550-Q), Fourth Quarter 2012, Amended.*
[17] *Records, Vol. 2, Exhibit "P-6," Applications for Tax Credits/Refunds (BIR Form No. 1914), July to September 2012,* p. 1169
[18] *Id., Exhibit "P-7," Applications for Tax Credits/Refunds (BIR Form No. 1914), October to December 2012,* p. 1170.
[19] *Id., Exhibit "P-8," Checklist of Mandatory Requirements for Claims for VAT Credit/Refund, p. 1171.*
[20] *Id., Vol. 1, PFR,* pp. 6-46, with annexes.
[21] *Id., Summons,* p. 47.
[22] *Records, Vol. 1, Motion for Extension of Time to File Answer,* pp. 48-51; *Records, Vol. 1, Order,* p. 52.
[23] *Id., Answer,* pp. 59-65.
[24] *Id., Respondent's Pre Trial Brief,* pp. 70-74.
[25] *Id., Pre-Trial Brief* pp. 78-83.

On March 19, 2015, the parties filed their Joint Stipulation of Facts and Issues[26] ("JSFI"). Thereafter, the Court issued a Pre-Trial Order[27] on April 1, 2015.

During trial, petitioner presented the following witnesses: *(1)* the Court-commissioned[28] Independent Certified Public Accountant ("ICPA") Mr. Glenn Ian D. Villanueva ("Mr. Villanueva")[29]; *(2)* Mr. Teofilo Sacpa[30] ("Mr. Sacpa"), petitioner's Chief Accountant; and *(3)* Ms. Angeline Mendoza Bangloy[31] ("Ms. Bangloy"), petitioner's Clearing Staff under its Purchasing Department.

Mr. Villanueva testified *via* judicial affidavit[32] that as the Court-commissioned ICPA, he was tasked to evaluate the merits of petitioner's claim for tax refund or TCC of its input VAT paid in the second semester of 2012, to review and audit petitioner's documents and/or evidence supporting such claim, and to submit a report thereon; and that he submitted his report to the Court. Mr. Villanueva stated that based on his findings, petitioner is entitled to a tax refund or TCC of its third and fourth quarters 2012; and that his findings were based on the original and/or certified true copies that were given to him by petitioner.

Mr. Sacpa testified *via* judicial affidavit[33] that as petitioner's Chief Accountant, it is his duty to oversee and manage all the accounting and tax concerns of petitioner, including its claims for tax refund and/or TCC. Mr. Sacpa stated that he caused the filing of two (2) applications for tax refund/TCC, specifically, for the third and fourth quarters of 2012, amounting to Php9,821,453.32 and Php5,887,342.07, respectively, on June 20, 2014; that on the day the applications for refund were filed, the BIR checked for all the required documents in support of the applications based on the BIR Checklist of Mandatory Requirements for Claims for VAT

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[26] *Records, Vol. 2, JSFI,* pp. 1033-1039.
[27] *Id., Pre-Trial Order ("PTO"),* pp. 1041-1046.
[28] *Id., Minutes of Hearing on March 10, 2015,* p. 1026.
[29] *Id., Minutes of Hearing on May 5, 2015,* p. 1120.
[30] *Id., Minutes of Hearing on July 7, 2015,* p. 1123.
[31] *Id., Minutes of Hearing on September 1, 2015,* p. 1142.
[32] *Records, Vol. 2, Exhibit "P-40," Judicial Affidavit [Of Commissioned [ICPA], Glenn Ian D. Villanueva],* pp. 1181-1188.
[33] *Id., Vol. 1, Exhibit "P-41," Judicial Affidavit [Of Petitioner's Witness, Teofilo Sacpa],* pp. 103-700, with annexes.

Credit/Refund; and that the BIR stamped "Complete as to Requirements" on the said applications.

Ms. Bangloy testified *via* judicial affidavit[34] that petitioner imported inventory, equipment, materials, products, and goods necessary in its mining operations in Mankayan, Benguet; and that after the items were imported to the Philippines, petitioner would withdraw the same from the Bureau of Customs, after full payment of all the duties and taxes due, and the items are ultimately brought to the Inventory Management Department ("IMD"). Ms. Bangloy stated that they have documents to prove that all the duties and taxes on the importations were paid, *i.e.*, the import entry and internal revenue documents ("IEIRD"), Statements of Settlement of Duties and Taxes ("SSDT"), and Single Administrative Documents ("SAD"s), and that these documents formed part of the ICPA Report.

According to Ms. Bangloy's statement, the IMD is in charge of the management and custody of all the inventory needs of the company for its mining operations in Mankayan, Benguet; that after the imported inventory, equipment, materials, goods, and products were brought to the IMD, the end-users of petitioner retrieve them and use them in the mining operations of the company - either in the underground mining of gold ores or in the milling/processing of such gold ores into gold bars, which were then eventually exported by petitioner.

On September 11, 2015, petitioner filed its Offer of Exhibits[35] submitting *Exhibits* "P-1," "P-2," "P-3-A" to "P-3-C," "P-4-A," "P-5," "P-6," "P-7," "P-8," "P-9," "P-9-A," "P-10-A" to "P-10-C," "P-11" to "P-11-C," "P-12-A" to "P-12-C," "P-13-A" to "P-13-B," "P-14-A" to "P-14-B," "P-15-A" to "P-15-D," "P-16-A" to "P-16-AH," "P-17-A" to "P-17-AG," "P-18-A" to "P-18-AE," "P-19-A" to "P-19-AE," "P-20-A" to "P-20-AJ," "P-21-A" to "P-21-D," "P-22-A" to "P-22-L," "P-23-A" to "P-23-Y," "P-24-A" to "P-24-CF," "P-25-A" to "P-25-DW," "P-26-A" to "P-26-AQ," "P-27-A" to "P-27-B," "P-28-A," "P-29-A" to "P-29-N," "P-30-A" to "P-30-C," "P-31," "P-32," "P-33 series," "P-34-A" to "P-34-H," "P-35-A" "P-36-A" to "P-36-E," "P-37-A" to "P-37-BO," "P-38-A," "P-39," "P-40," and "P-41," for the purposes indicated.

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[34] *Records, Vol. 2, Exhibit "P-42," Judicial Affidavit of Ms. Angeline Mendoza Bangloy,* pp. 1124-1141, with annexes.
[35] *Id., Offer of Exhibits,* pp. 1143-1149.

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On October 6, 2015, the Court resolved[36] to admit only *Exhibits* "P-39," "P-40," and "P-41;" but rejected most of the other exhibits for not being found on the records, for failure to identify in open court, for failure to correspond with the marked document on record, and for failure to bear the proper markings.

On October 23, 2015, petitioner filed an Omnibus Motion [For Reconsideration of the Honorable Court's Resolution Dated 6 October 2015; and to Re-Open Petitioner's Presentation of Evidence and Recall its Witness [Mr. Sacpa] and to Re-Mark Exhibits][37] ("Motion for Reconsideration"). This was partially granted[38] by the Court on November 16, 2015, hence, admitting *Exhibits* "P-1," "P-2," "P-5," "P-6," "P-7," "P-8," "P-9," "P-11," and "P-31;" ordering petitioner to submit a Supplemental Judicial Affidavit of ICPA Villanueva to incorporate *Exhibit* "P-32;" and setting a commissioner's hearing for the re-marking of the other exhibits.

After being granted an extension, petitioner submitted its Supplemental Judicial Affidavit [Of Commissioned Independent Certified Public Accountant, Glenn Ian D. Villanueva][39] on December 7, 2015 *via* registered mail.

On April 19, 2016, petitioner filed a Manifestation and Motion[40] requesting that it be clarified as to the reason why majority of its evidence were denied for failure to bear the proper markings, despite the fact that said evidence were marked and filed with the Court by the ICPA; and that the only defect it found in the Offer of Evidence is with respect to the *Exhibit* "P-23 series," which was done by oversight and honest mistake; that what was offered as evidence is only up to *Exhibit* "P-23-Y," while what was marked was only up to *Exhibit* "P-23-DY;" that the pieces of evidence are already part of the case records as they were already submitted as part of the ICPA Report; and that it prays that it be allowed to offer in evidence *Exhibits* "P-23-AA" to "P-23-DY."

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[36] *Records, Vol. 2, Resolution,* pp. 1196-1197.
[37] *Id., Vol. 3, Omnibus Motion [For Reconsideration of the Honorable Court's Resolution Dated 6 October 2015; and to Re-Open Petitioner's Presentation of Evidence and Recall its Witness [Mr. Sacpa] and to Re-Mark Exhibits],* pp. 1198-1265, with annexes.
[38] *Id., Resolution,* pp. 1272-1275.
[39] *Id., Supplemental Judicial Affidavit [Of Commissioned Independent Certified Public Accountant, Glenn Ian D. Villanueva* pp. 1289-1296, with annexes.
[40] *Id., Manifestation and Motion,* pp. 1314-1324, with annexes.

On June 20, 2016, the Court promulgated a Resolution[41] granting petitioner's Manifestation and Motion, and admitting *Exhibits* "P-3-A" to "P-3-C," "P-4," "P-10-A" to "P-10-C," "P-12-A" to "P-12-C," "P-13-A" to "P-13-B," "P-14-A" to "P-14-B," "P-15-A" to "P-15-D," "P-16-A" to "P-16-AH," "P-17-A" to "P-17-AG," "P-18-A" to "P-18-AE," "P-19-A" to "P-19-AE," "P-20-A" to "P-20-AJ," "P-21-A" to "P-21-D," "P-22-A" to "P-22-L," "P-23-A" to "P-23-Y," "P-24-A" to "P-24-CF," "P-25-A" to "P-25-DW," "P-26-A" to "P-26-AQ," "P-27-A" to "P-27-B," "P-28-A," "P-29-A" to "P-29-N," "P-30-A" to "P-30-C," "P-32," "P-33," "P-34-A" to "P-34-H," "P-35-A," "P-36-A" to "P-36-E," "P-37-A" to "P-37-BO," and "P-38-A."

Petitioner then filed a Supplemental Offer of Evidence[42] offering *Exhibits* "P-23-AA" to "P-23-DY" on July 4, 2016; which were all ultimately admitted[43] on November 9, 2016.

During the hearing on November 14, 2016, respondent manifested that no report of investigation was submitted by the Revenue Officers, hence, he has no evidence to present.[44] The Court then granted the parties thirty (30) days or until December 14, 2016 to submit their respective memoranda, which was confirmed by the Court in its Order[45] of even date.

With petitioner's Memorandum[46] and respondent's Manifestation[47] that he is adopting his Answer to the Petition for Review as his memorandum, both filed on December 14, 2016, the Court resolved[48] to submit the case for decision on December 20, 2016; hence this Decision.

The Issue[49]

WHETHER PETITIONER IS ENTITLED TO A TAX CREDIT OF INPUT VAT AMOUNTING TO PHP15,708,795.39 REPRESENTING INPUT VAT IN THE SECOND HALF OF 2012.

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[41] *Records, Vol. 3, Resolution,* pp. 1330-1332.
[42] *Id., Supplemental Offer of Evidence,* pp. 1334-1336.
[43] *Id., Resolution,* p. 1346.
[44] *Id., Minutes of Hearing on November 14, 2016,* p. 1348.
[45] *Id., Order,* p. 1349.
[46] *Id., Memorandum,* pp. 1354-1382.
[47] *Records, Vol. 3, Manifestation,* pp. 1350-1353.
[48] *Id., Resolution,* p. 1384.
[49] *Id., Vol. 2, PTO, Issue,* p. 1042.

Petitioner's Arguments[50]

Petitioner alleges that it is entitled to a tax refund or TCC of its input VAT paid for the second half of 2012, as it satisfied all the legal requirements provided under *Section 112(A) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*, as well as the requisites laid down in *San Roque Power Corporation v. CIR*. Petitioner avers that it is a VAT-registered taxpayer; that it is engaged in zero-rated or effectively zero-rated sales; that the input taxes are due or paid; that the input taxes are not transitional input taxes; that the input taxes has not been applied against output taxes during and in the succeeding quarters; that the input taxes are attributable to zero-rated or effectively zero-rated sales; that for zero-rated sales under *Sections 106(A)(2)(1) and (2), 106(B) and 108(B)(1) and (2) of the 1997 NIRC*, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with Bangko Sentral ng Pilipinas ("BSP")'s rules and regulations; and that the claim for refund was timely filed within two (2) years after the close of the taxable quarter when such sales were made.

Respondent's Counter-Arguments[51]

On the other hand, respondent counters that the power of taxation is an inherent attribute of sovereignty; that the government chiefly relies on taxation to obtain the means to carry on its operations; that taxes are the lifeblood of the nation, hence the law frowns upon exemptions from taxation; that statues granting tax exemptions are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority; and that tax refunds partake the nature of tax exemptions, which are construed strictly against the taxpayer.

Respondent avers that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund; that taxes paid and collected are presumed to have been made in accordance with the laws and regulations; that petitioner's alleged claim for tax credit is subject to administrative routinary investigation or examination by the BIR; that petitioner must

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[50] *Records, Vol. 3, Memorandum, Discussion*, pp. 1360-1381.
[51] *Id., Vol. 1, Answer, Special and Affirmative Defenses*, pp. 60-62.

establish, by sufficient and competent evidence, that it is entitled to a tax refund or issuance of a TCC; that it is incumbent upon the taxpayer to prove its compliance with the registration requirements of a VAT taxpayer in compliance with *Revenue Regulations ("RR") No. 7-2012* in relation to *Section 236(A), (B), (C) and (D) of the 1997 NIRC;* that petitioner should also prove compliance with the invoicing and accounting requirements for VAT-registered persons, pursuant to *Sections 112, 113, and 114 of the 1997 NIRC,* to validly claim for a tax refund or issuance of a TCC; that is incumbent upon petitioner to establish the factual and legal bases of its claim for tax credit; and that petitioner failed to present clear and convincing evidence to merit a tax credit.

The Ruling of the Court

The Court has jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative and judicial claims for refund, *Section 112(A) of the 1997 NIRC,* provides as follows:[52]

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.*- <u>any VAT-registered person, whose sales are zero-rated or effectively zero-rated 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,</u> 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

[52] Underscoring ours.

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

xxx xxx xxx

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

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

xxx xxx xxx[53]

Corollary, *Section 4.112-1(d) of RR No. 16-2005*[54] states the following:

Sec. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.

xxx xxx xxx

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

[53] Underscoring ours.
[54] Consolidated Value-Added Tax Regulations of 2005, effective November 1, 2005.

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> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. <u>However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.</u>[55]

Based on *Section 112(A) of the 1997 NIRC,* petitioner has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim. Further, *Section 112(C) of the 1997 NIRC,* in relation to *RR No. 16-2005,* states that if no action was taken by the CIR after the one hundred and twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within thirty (30) days therefrom.

The taxable quarters involved in the case at bar are July 1 to September 30, 2012, and October 1 to December 31, 2012, with the ends of the periods serving as the dates when the respective quarters close. Therefore, the administrative claim is due two (2) years from September 30, 2012 and December 31, 2012, or September 30, 2014 and December 31, 2014, respectively. Records disclose that petitioner timely filed its Application for Tax Credits/Refunds on June 20, 2014, together with the documents necessary to support its claim, for the third and fourth quarters of 2012.

Thereafter, petitioner had one hundred and twenty (120) days or until October 18, 2014 to await the CIR's decision. To elaborate as to the running of the periods, in the recent case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[56], the Supreme Court ruled that:

> Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax

[55] Underscoring ours.
[56] G.R. No. 182737, March 2, 2016.

> refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[57]

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[58], the Supreme Court reminded taxpayers that when the one hundred and twenty (120)-day period lapses and there is inaction on the part of the CIR, they must no longer await for a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the one hundred and twenty (120)-day waiting period, this period is mandatory and jurisdictional.

As enunciated by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*[59], strict compliance with the mandatory 120+30-day period is necessary for a claim for tax refund or credit.

Applying the foregoing to the instant case, the one hundred and twenty (120)-day period began to run from June 20, 2014, the date when petitioner filed its administrative claim. Thus, respondent had until October 18, 2014 within which to decide the administrative claim.

However, the CIR did nothing after petitioner filed its administrative claim. Consequently, petitioner had thirty (30) days from October 18, 2014 or until November 17, 2014 to file its judicial claim with the CTA. Therefore, on November 17, 2014, petitioner timely filed the instant Petition for Review, for reference:

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[57] Underscoring ours.
[58] G.R. No. 168950, January 14, 2015, 745 SCRA 669.
[59] G.R. Nos. 187485, 196113, and 197156, October 8, 2013, 690 SCRA 336.

QUARTER	ADMIN DUE DATE (2 YRS. FROM CLOSE OF QTR)	ADMIN CLAIM FILED	END OF 120 DAYS	+ 30 DAYS FROM THE EXPIRATION OF 120 DAYS	JUDICIAL CLAIM FILED
Close of 3rd Qtr.: September 30, 2012	September 30, 2014	June 20, 2014	October 18, 2014	November 17, 2014	November 17, 2014
Close of 4th Qtr.: December 31, 2012	December 31, 2014	June 20, 2014	October 18, 2014	November 17, 2014	November 17, 2014

Having found that both administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the case at bar. The Court shall now proceed to determine whether petitioner is entitled to the issuance of a TCC.

Petitioner is entitled to the claim for issuance of a TCC, albeit, at a reduced amount.

Petitioner anchors its claim on *Section 112(A) of the 1997 NIRC.* Pursuant to the said provision and as laid down by the Supreme Court in a number of cases[60], a taxpayer may claim a refund or the issuance of a TCC for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. that the taxpayer must be VAT-registered;

2. that the claim for refund must be filed within the two (2)-year prescriptive period;

3. that there must be zero-rated or effectively zero-rated sales;

4. that input taxes were incurred or paid;

[60]*Commissioner of Internal Revenue v. Toledo Power Company,* G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511; *Luzon Hydro Corporation v. Commissioner of Internal Revenue,* G.R. No. 188260, November 13, 2013, 709 SCRA 462; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 179632, October 19, 2011, 659 SCRA 658; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue,* G.R. No. 172378, January 17, 2011, 639 SCRA 521; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010, 626 SCRA 567; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009, 605 SCRA 536; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007, 522 SCRA 657.

5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and

6. that the input taxes were not applied against any output VAT liability.

Petitioner complied with the first requisite by presenting its Certificate of Registration[61] issued by the BIR, with Taxpayer's Identification No. 000-160-247-000, indicating that it is subject to VAT.

As discussed above, petitioner was able to prove compliance with the second requisite.

Anent the third requisite, petitioner claims that its entire gold bullion and copper concentrate products are exported and sold directly to foreign commodities traders abroad. For this purpose, petitioner was certified by the BOI as an entity engaged in export sales.[62] By virtue thereof, petitioner maintains that its export sales are subject to VAT at zero (0%) percent, pursuant to *Section 106(A)(2)(a)(1)*[63] *of the 1997 NIRC.*

Relative thereto, *Section 113(A)(1), (B)(1) and (2)(c) of the 1997 NIRC,* as implemented by *Sections 4.113- 1(A)(1), B(l) and (2)(c) of RR No. 16-2005, as amended,* requires that a VAT taxpayer shall, for every sale, issue a VAT invoice which must contain the following information:

1997 NIRC

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[61] *Box 1 of 1, Exhibit "P-4-A," BIR Certificate of Registration.*
[62] *Id., Exhibits "P-3-A," "P-3-B," and "P-3-C," BOI Cover Letter and Certification.*
[63] SEC. 106. *Value-added Tax on Sale of Goods or Properties. –*
(A) *Rate and Base of Tax. –*
xxx xxx xxx
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales.* - The term 'export sales' means:
(1)The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

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

xxx xxx xxx

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

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

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

xxx xxx xxx

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

RR No. 16-2005

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

xxx xxx xxx

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

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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:

xxx xxx xxx

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

In addition, the invoice or receipt must be duly registered with the BIR, as prescribed under *Sections 237 and 238 of the 1997 NIRC,* to wit:

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx

SEC. 238. Printing of Receipts or Sales or Commercial Invoices. - All persons who are engaged in business shall

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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.

Pursuant to afore-quoted provisions, any VAT-registered person claiming VAT zero-rated direct export sales may present the following documents to prove its claim, to wit:

1. Sales Invoice, as proof of sale of goods;

2. Export Declaration and Bill of Lading or Airway Bill, as proof of actual shipment of goods from the Philippines to a foreign country; and

3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In its Quarterly VAT Returns for the third[64] and fourth[65] quarters of 2012, petitioner declared total zero-rated sales of Php1,084,234,088.00, broken down as follows:

TAXABLE YEAR 2012	ZERO-RATED SALES
3rd Quarter	Php 587,219,661.55
4th Quarter	497,014,426.45
TOTAL	**PHP 1,084,234,088.00**

To substantiate the foregoing, petitioner presented the Summary List of Sales[66], Schedule of Exportations[67], Zero-Rated

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[64] *Box 1 of 1, Exhibit "P-12-A," line 17.*
[65] *Id., Exhibit "P-13-A," line 17.*

Provisional Invoices[68], Zero-Rated Final Invoices[69], Export Declarations[70], Air Waybills[71], UCPB Credit Memos[72], and UCPB Certificate of Inward Remittances.[73]

As ascertained by the ICPA, out of the Php1,084,234,088.00 zero-rated sales reported by petitioner for the third and the fourth quarters of 2012, only the amount of Php951,219,589.89[74] qualify as properly supported zero-rated export sales of goods. The valid zero-rated sales can be broken down, as follows:

EXHIBIT REFERENCE	INVOICE NUMBER	INVOICE DATE	AMOUNT USD	FOREX RATE	AMOUNT PHP	BOX
3RD QUARTER						
"P-17-A"	5130	8/1/2012	758,523.06	41.885	31,770,738.37	1 of 1
"P-17-B"	5131	8/1/2012	666,371.06	41.885	27,910,951.85	1 of 1
"P-17-C"	5132	8/1/2012	1,043,901.99	41.885	43,723,834.85	1 of 1
"P-17-F"	5135	8/21/2012	936,729.29	42.063	39,401,644.13	1 of 1
"P-17-H"	5137	9/3/2012	581,121.21	42.063	24,443,701.46	1 of 1
"P-17-I"	5138	9/3/2012	569,841.40	42.063	23,969,238.81	1 of 1
"P-17-J"	5139	9/24/2012	885,864.87	42.063	37,262,134.03	1 of 1
"P-17-K"	5140	9/24/2012	965,136.12	42.063	40,596,520.62	1 of 1
"P-17-L"	5141	9/24/2012	610,231.15	42.063	25,668,152.86	1 of 1
"P-17-M"	5142	9/24/2012	692,290.02	41.727	28,887,185.66	1 of 1
"P-17-N"	5143	9/24/2012	553,070.75	41.727	23,077,983.19	1 of 1
Total for 3rd Quarter					Php 346,712,085.82	
4TH QUARTER						
"P-17-O"	5144	10/12/2012	663,909.48	41.727	27,702,950.87	1 of 1
"P-17-P"	5145	10/12/2012	651,922.33	41.727	27,202,763.06	1 of 1
"P-17-Q"	5146	10/12/2012	807,544.55	41.727	33,696,411.44	1 of 1
"P-17-R"	5147	10/12/2012	1,500,356.29	41.727	62,605,366.91	1 of 1
"P-17-S"	5148	10/29/2012	694,693.93	41.428	28,779,780.13	1 of 1
"P-17-T"	5149	10/29/2012	578,974.58	41.428	23,985,758.90	1 of 1
"P-17-U"	5150	10/29/2012	674,063.78	41.428	27,925,114.28	1 of 1
"P-17-V"	5169	11/5/2012	759,425.03	41.428	31,461,460.14	1 of 1
"P-17-W"	5170	11/5/2012	677,225.15	41.428	28,056,083.51	1 of 1
"P-17-X"	5171	11/5/2015	1,130,046.71	41.428	46,815,575.10	1 of 1
"P-17-Y"	5172	11/27/2012	864,311.96	41.105	35,527,543.12	1 of 1
"P-17-Z"	5173	11/27/2012	845,309.12	41.105	34,746,431.38	1 of 1
"P-17-AA"	5174	12/27/2012	1,147,207.80	41.105	47,155,976.62	1 of 1
"P-17-AB"	5175	12/27/2012	926,110.06	41.105	38,067,754.02	1 of 1
"P-17-AC"	5176	12/27/2012	693,245.78	41.105	28,495,867.79	1 of 1
"P-17-AD"	5177	12/27/2012	827,604.06	41.017	33,945,835.73	1 of 1
"P-17-AE"	5178	12/31/2012	932,980.84	41.017	38,268,075.11	1 of 1
"P-17-AG"	5182	12/31/2012	245,477.63	41.017	10,068,755.95	1 of 1
Total for 4th Quarter					Php 604,507,504.07	

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66 *Id., Exhibits "P-14-A" to "P-14-B."*
67 *Id., Exhibits "P-15-A" to "P-15-B."*
68 *Box 1 of 1, Exhibits "P-16-A" to "P-16-AH."*
69 *Id., Exhibits "P-17-A" to "P-17-AG."*
70 *Id., Exhibits "P-18-A" to "P-18-AE."*
71 *Id., Exhibits "P-19-A" to "P-19-AE."*
72 *Id., Exhibits "P-20-A" to "P-20-AJ."*
73 *Id., Exhibits "P-21-A" to "P-21-D."*
74 *Records, Vol. 2, Exhibit "P-33," ICPA Report, Annex 7,* p. 1086.

GRAND TOTAL	PHP951,219,589.89

The remaining Php133,014,498.11 shall be denied VAT zero-rating for being supported with incomplete documents and/or for being company adjustments with no supporting documents, broken down, *viz.*:

PARTICULARS	REFERENCE	AMOUNT
Zero-rated sales supported by final sales invoices, bank credit memo, export declaration but not supported by air waybill	*Exhibit* "P-33" Annex 8 of ICPA Report Records, Vol. 2, p. 1065	Php 80,408,769.38
Zero-rated sales supported by final sales invoices, bank credit memo, air waybill but not supported by export declarations	*Exhibit* "P-33" Annex 8 of ICPA Report Records, Vol. 2, p. 1065	51,531,124.98
Company adjustments on zero-rated sales not supported by any document	*Exhibit* "P-33" Annex 9 of ICPA Report Records, Vol. 2, p. 1065	1,074,603.75
TOTAL		**PHP 133,014,498.11**

Anent the fourth and fifth requirements, based on the Quarterly VAT Returns for the third and fourth quarters of 2012, the unutilized input VAT on purchases or importation of goods claimed for tax credit is Php15,708,795.39, computed as follows:

PARTICULARS	3RD QUARTER (*Exhibit* "P-12")		4TH QUARTER (*Exhibit* "P-13")		TOTAL	
Input tax deferred on Cap. Goods exceeding 1M from previous quarter	Php	225,043.60	Php	314,418.39	Php	539,461.99
Input tax on cap. Goods exceeding 1M from this quarter		120,132.00		945,591.00		1,065,723.00
Total	Php	345,175.60	Php	1,260,009.39	Php	1,605,184.99
Less:						
Input tax Cap. Goods exceeding 1M deferred for the succeeding period	Php	96,105.60	Php	756,472.80	Php	852,578.40
Amortization of input tax on cap. goods exceeding 1M		249,070		503,536.59		752,606.59
Importation of goods other than cap. goods		10,778,245.00		11,189,885.00		21,968,130.00
Total Input Tax	Php	11,027,315.00	Php	11,693,421.59	Php	22,720,736.59
Less: Output Tax	Php	1,205,861.68	Php	5,806,079.52	Php	7,011,941.20
TOTAL UNUTILIZED INPUT TAX *PER* CLAIM	**PHP**	**9,821,453.32**	**PHP**	**5,887,342.07**	**PHP**	**15,708,795.39**

To support its claim, petitioner presented as evidence IEIRDs[75], SSDTs[76], SADs[77], Bank Certifications[78], VAT Sales Invoices/Official Receipts[79], Schedule of Importation of Capital Goods exceeding 1

75 *Box 1 of 1, Exhibits "P-23-A" to "P-23-Y."*
76 *Id., Exhibits "P-24-A" to "P-24-CF."*
77 *Id., Exhibits "P-25-A" to "P-25-DW."*
78 *Id., Exhibits "P-22-A" to "P-22-L."*
79 *Id., Exhibits "P-26-A" to "P-26-AQ."*

Million[80], Schedule of Input VAT Amortization[81], and Subsidiary Ledger of Mine Machineries and Equipment[82], which were examined by the ICPA. The ICPA findings[83] can be summarized in the following manner:

REFERENCE	NATURE	AMOUNT	
Annex 12-A(3Q)	Input VAT on importations duly supported by original copy of Import Entry and Internal Revenue Declarations (IEIRDs) with machine validation and/or BOC receipt dated within the period July to September 2012, or in case of importations under electronic to mobile customs system (e2m customs), supported by single administrative documents (SADs), statement of settlement of duties and taxes (SSDTs) and certification from authorized agent bank (AAB)	Php	10,777,434.00
Annex 12-A(4Q)	Input VAT on importations duly supported by original copy of Import Entry and Internal Revenue Declarations (IEIRDs) with machine validation and/or BOC receipt dated within the period October to December 2012, or in case of importations under electronic to mobile customs system (e2m customs), supported by single administrative documents (SADs), statement of settlement of duties and taxes (SSDTs) and certification from authorized agent bank (AAB)		11,088,512.00
Annex 12-B(4Q)	Input VAT on importations under electronic to mobile customs system (e2m Customs), supported by single administrative documents (SADs), statement of settlement of duties and taxes (SSDTs) and certification from authorized agent bank (AAB) not dated within the period July to December 2012 but within the taxable year 2012		8,193.00
Annex 15	Amortization of input VAT on importation of capital goods exceeding 1 million under electronic to mobile customs system (e2m Customs), supported by single administrative documents (SADs), statement of settlement and duties (SSDTs) and certification from authorized agent bank (AAB)		13,161.85
TOTAL		Php	21,887,300.85
Exceptions:			
Annex 12-C (3Q)	Input VAT on importations supported by photocopied informal import declaration and entry and BOC ORs dated within the period July to September 2012	Php	811.00
Annex 12-C (4Q)	Input VAT on importations supported by photocopied informal import declaration and entry and BOC ORs dated within the period October to December 2012		21,333.00
Annex 12-D (4Q)	Input on importations under electronic to customs mobile system (e2m Customs) supported only by single administrative document (SAD) not dated within the period July to December 2012 but		23,226.00

[80] *Id., Exhibits "P-27-A" to "P-27-B."*
[81] *Records, Exhibit "P-28-A."*
[82] *Box 1 of 1, Exhibits "P-29-A" to "P-29-N."*
[83] *Records, Vol. 2, Exhibit "P-33," ICPA Report,* pp. 1068-1069.

	within the taxable year 2012	
Annex 12-E (4Q)	Input VAT on importations supported by photocopied informal import declaration and entry and BOC ORs not dated within the period July to December 2012 but within the taxable year 2012	48,621.00
Annex 15	Amortization of input VAT overclaimed on supported importation of capital goods with an aggregate amount exceeding 1 million	108,421.95
Annex 16	Amortization of input VAT on importation of capital goods not supported by any documents	631,022.79
Total Exceptions		Php 833,435.74
TOTAL		**PHP 22,720,736.59**

From the above findings, the Court notes that aside from the input VAT disallowed by the ICPA, in the amount of Php833,435.74, input VAT amounting to Php8,193.00 under Annex 12B(4Q) should also be disallowed for being an out of period claim.

Therefore, out of petitioner's reported input VAT of Php22,720,736.59 for the third and fourth quarters of CY 2012, only the amount of Php21,879,107.85 represents petitioner's valid input VAT, computed as follows:

	3RD QUARTER	**4TH QUARTER**	**TOTAL**
Total Input Tax	Php 11,027,315.00	Php 11,693,421.59	Php 22,720,736.59
Less: Exceptions			
ICPA Exception	141,459.05	691,976.69	833,435.74
Additional Exception	-	8,193.00	8,193.00
Total Exceptions	Php 141,459.05	Php 700,169.69	Php 841,628.74
TOTAL VALID INPUT TAX	**PHP 10,885,855.95**	**PHP 10,993,251.90**	**PHP 21,879,107.85**

However, considering that petitioner declared taxable sales subject to both zero percent (0%) and twelve percent (12%) rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the valid input VAT proportionately on the basis of volume of its sales. Thus:

	3RD QUARTER	**4TH QUARTER**
Vatable Sales (A)	Php 10,048,847.35	Php 48,383,996.00
Zero-rated Sales (B)	587,219,661.55	497,014,426.45
Total Sales (C)	Php 597,268,508.90	Php 545,398,422.45
Allocation of Valid Input VAT:		
Valid Input VAT (D)	Php 10,885,855.95	Php 10,993,251.90
Vatable Sales [(A/C) x D]	183,150.97	975,245.68
Zero-rated Sales [(B/C) x D]	10,702,704.98	10,018,006.22
TOTAL	**PHP 10,885,855.95**	**PHP 10,993,251.90**

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Since petitioner's input VAT allocated to vatable sales in the respective amounts of Php183,150.97 and Php975,245.68 for the third and fourth quarters of CY 2012 is not enough to cover its output VAT liability in the amounts of Php1,205,861.66[84] and Php5,806,076.52[85] for the third and fourth quarters of CY 2012, respectively; the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of Php1,022,710.69 and Php4,830,830.34 for the third and fourth quarters of CY 2012, respectively, to wit:

	3RD QUARTER		4TH QUARTER	
Output VAT	Php	1,205,861.66	Php	5,806,076.52
Less: Valid input VAT				
Allocated to Vatable sales		183,150.97		975,245.68
Remaining output VAT	Php	1,022,710.69	Php	4,830,830.84
Less: Valid input VAT				
Allocated to zero-rated sales		10,702,704.98		10,018,006.22
EXCESS INPUT VAT	**PHP**	**9,679,994.29**	**PHP**	**5,187,175.38**

Based on the foregoing, petitioner has excess input VAT of Php9,679,994.29 and Php5,187,175.38 for the third and fourth quarters, respectively, which can be attributed to the entire amount of Php1,084,234,088.00[86] zero-rated sales declared by petitioner in its Quarterly VAT Return for the third and fourth quarters of the same year. However, only the input VAT of Php3,095,430.27 and Php2,892,075.13 are attributable to the valid zero-rated sales of Php346,712,085.82 and Php604,507,504.07 for the third and fourth quarters of CY 2012, respectively, as computed below:

	3RD QUARTER	4TH QUARTER
Excess input VAT Attributable to Zero-rated Sales	Php 9,679,994.29	Php 5,187,175.38
Multiplied by:		
Valid Zero-Rated Sales	346,712,085.82	604,507,504.07
Total Zero-Rated Sales	1,084,234,088.00	1,084,234,088.00
Percentage of Valid Zero-Rated Sales	31.97760%	55.7543%
REFUNDABLE EXCESS INPUT VAT	**PHP 3,095,430.27**	**PHP 2,892,075.13**

As previously discussed, petitioner's excess input VAT is more than enough to apply it against its output VAT liability for the third

[84] *Box 1 of 1, Exhibit "P-12-A," line 15B.*
[85] *Id., Exhibit "P-13-A," line 15B.*
[86] Php587,219,661.55 plus Php497,014,426.45.

Since petitioner's input VAT allocated to vatable sales in the respective amounts of Php183,150.97 and Php975,245.68 for the third and fourth quarters of CY 2012 is not enough to cover its output VAT liability in the amounts of Php1,205,861.66[84] and Php5,806,076.52[85] for the third and fourth quarters of CY 2012, respectively; the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of Php1,022,710.69 and Php4,830,830.34 for the third and fourth quarters of CY 2012, respectively, to wit:

	3RD QUARTER		4TH QUARTER	
Output VAT	Php	1,205,861.66	Php	5,806,076.52
Less: Valid input VAT Allocated to Vatable sales		183,150.97		975,245.68
Remaining output VAT	Php	1,022,710.69	Php	4,830,830.84
Less: Valid input VAT Allocated to zero-rated sales		10,702,704.98		10,018,006.22
EXCESS INPUT VAT	**PHP**	**9,679,994.29**	**PHP**	**5,187,175.38**

Based on the foregoing, petitioner has excess input VAT of Php9,679,994.29 and Php5,187,175.38 for the third and fourth quarters, respectively, which can be attributed to the entire amount of Php1,084,234,088.00[86] zero-rated sales declared by petitioner in its Quarterly VAT Return for the third and fourth quarters of the same year. However, only the input VAT of Php3,095,430.27 and Php2,892,075.13 are attributable to the valid zero-rated sales of Php346,712,085.82 and Php604,507,504.07 for the third and fourth quarters of CY 2012, respectively, as computed below:

	3RD QUARTER	4TH QUARTER
Excess input VAT Attributable to Zero-rated Sales	Php 9,679,994.29	Php 5,187,175.38
Multiplied by:		
Valid Zero-Rated Sales	346,712,085.82	604,507,504.07
Total Zero-Rated Sales	1,084,234,088.00	1,084,234,088.00
Percentage of Valid Zero-Rated Sales	31.97760%	55.7543%
REFUNDABLE EXCESS INPUT VAT	**PHP 3,095,430.27**	**PHP 2,892,075.13**

As previously discussed, petitioner's excess input VAT is more than enough to apply it against its output VAT liability for the third

[84] *Box 1 of 1, Exhibit "P-12-A," line 15B.*
[85] *Id., Exhibit "P-13-A," line 15B.*
[86] Php587,219,661.55 plus Php497,014,426.45.

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and fourth quarters of CY 2012 in the amounts of Php1,205,861.66[87] and Php5,806,076.52,[88] respectively.

Anent the sixth requisite, although the claimed input VAT was carried-over by petitioner in its Quarterly VAT Return for the first quarter of 2013 until the second quarter of 2014, the same remained unutilized since it was deducted in the second amended Quarterly VAT Return of 2012,[89] as "VAT Refund/TCC claimed"[90] from the total available input tax of Php51,897,873.00.[91] Thus, the claimed input taxes for the third and fourth quarters of CY 2012 could not have been carried-over or utilized in the succeeding third quarter of 2014.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **FIVE MILLION NINE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED FIVE AND 40/100 PESOS (PHP5,987,505.40)** representing excess and unutilized input VAT for the third and fourth quarters of CY 2012.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[87] *Box 1 of 1, Exhibit "P-12-A," line 15B.*
[88] *Id., Exhibit "P-13-A," line 15B.*
[89] *Box 1 of 1, Exhibit "P-36-A, line 15B.*
[90] *Id., line 23D.*
[91] *Id., line 22.*

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice