Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

GENERAL MOTORS AUTOMOBILES PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8976

Members:
CASTAÑEDA, JR., *Chairperson*, *and*
CASANOVA, *JJ.*

Promulgated:
DEC 0 2 2016
4:25 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review, filed by petitioner General Motors Automobiles Philippines, Inc., against respondent Commissioner of Internal Revenue, seeks for a refund in the amount of ₱4,125,403.72, representing its alleged excess and/or unutilized input value-added tax (VAT) for calendar year (CY) 2012.[1]

The factual antecedents of the case are as follow:

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office at 37/F LKG Tower, 6801 Ayala Avenue, Makati City.[2] It is a registered taxpayer under Certificate of Registration No. OCN 9RC0000370535[3] issued on October 15, 1996.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who is empowered to perform, among

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1 Paragraph I, Pre-Trial Order dated July 6, 2015, Docket, p. 392
2 Paragraph I (1.1), Joint Stipulation of Facts and Issue (JSFI), Docket, p. 383
3 Exhibit "P-1"

others, the duty to act on and approve claims for refund or the issuance of tax credit certificate. He is represented by his counsel from the Legal Division, BIR Revenue Region 8 (Makati City) with office address at the 2/F BIR Building, 313, Sen. Gill Puyat Avenue, Makati City.[4]

Petitioner entered into several service agreements with non-resident foreign corporations.[5]

Petitioner filed its 1st, 2nd, 3rd, and 4th Quarterly VAT Returns for CY 2012 on April 23, 2012[6], July 25, 2012[7], October 22, 2012[8], and January 23, 2013[9], respectively. Subsequently, the 1st, 2nd, and 3rd Quarterly VAT Returns for CY 2012 were all amended by petitioner on March 4, 2013;[10] and the 4th Quarterly VAT Returns for CY 2012 was amended on January 24, 2013.[11]

On March 31, 2014, petitioner filed its administrative claim together with the supporting documents for a refund of its unutilized input VAT in the amount of ₱4,125,403.72, covering the four (4) quarters of CY 2012.[12] Thereafter, petitioner submitted additional supporting documents on August 27, 2014.[13]

Due to the inaction of respondent on petitioner's administrative claim for refund, the latter filed this Petition for Review[14] on January 26, 2015.

Respondent interposed the following special and affirmative defenses in the Answer[15], filed through registered mail on March 20, 2015:

> "6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and

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4 Paragraphs I (1.2) and I (1.3), JSFI, Docket, p. 384
5 Exhibits "P-5", "P-6", "P-9", "P-10", and "P-11", "P-53-B", "P-55-B", "P-57-B", and "P-59-B"
6 Exhibit "P-40"
7 Exhibit "P-42"
8 Exhibit "P-44"
9 Exhibit "P-46"
10 Exhibits "P-31", "P-32", and "P-33"
11 Exhibit "P-34"
12 Exhibits "P-2" and "P3"
13 Exhibit "P-4"
14 Docket, pp. 7-26
15 Docket, pp. 141-144

incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

7. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau.

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

9. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php4,125,403.72, allegedly representing excess and unutilized input VAT credits were not fully substantiated by proper documents, such as sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

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

11. Petitioner failed to comply with the conditions/requirements under Section 112(A)(B)(C) of the 1997 Tax Code.

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

13. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

On April 15, 2015, the Court received petitioner's Reply[16] to the Answer.

Petitioner filed its Pre-Trial Brief[17] on May 11, 2015, while the Pre-Trial Brief (for the Respondent)[18] was submitted, through registered mail, on May 7, 2015.

On May 11, 2015, petitioner moved for the commissioning of Independent Certified Public Accountant (ICPA),[19] which the Court granted on June 25, 2015.[20] Consequently, Mr. Glenn Ian D. Villanueva of Reyes Tacandong & Co. was commissioned as ICPA.[21]

The parties, thereafter, submitted their Joint Stipulation of Facts and Issue[22] on July 1, 2015. As such, the Court issued a Pre-Trial Order[23] on July 6, 2015, and terminated the pre-trial.

As trial ensued, petitioner presented its witnesses, namely: Ms. Modesty N. Alcala and Mr. Glenn Ian D. Villanueva. Thereafter, petitioner formally offered its documentary exhibits, which the Court admitted on November 12, 2015.[24]

On the other hand, respondent's counsel manifested during the hearing on December 2, 2015, that this case has no report of investigation and that he has no witness to present.[25]

Thus, considering the petitioner's Memorandum[26] filed on January 4, 2016, and the Report[27] of the Records Division dated January 12, 2016 that no memorandum has been filed by the respondent, the Court considered this case submitted for decision on January 18, 2016.[28]

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[16] Docket, pp. 148-160
[17] Docket, pp. 162-185
[18] Docket, pp. 360-361
[19] Motion for Commissioning of Independent Certified Public Accountant, Docket, pp. 186-189
[20] Minutes of the Hearing dated June 25, 2015, Docket, p. 370
[21] Docket, p. 371
[22] Docket, pp. 383-390
[23] Docket, pp. 392-398
[24] Resolution, Docket, pp. 519-520
[25] Minutes of the Hearing, Docket, p. 521
[26] Docket, pp. 522-547
[27] Docket, p. 548
[28] Resolution, Docket, p. 549

The parties stipulated that the sole issue to be resolved by this Court is whether petitioner is entitled to a tax refund in the amount of ₱4,125,403.72 representing its unutilized input VAT credits attributable to its zero-rated sales of services to its foreign affiliates for CY 2012.[29]

Petitioner anchors its claim on Section 108(B)(2), in relation to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, *viz*:

> "SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties. –**
>
> xxx xxx xxx
>
> (B) ***Transactions Subject to Zero Percent (0%) Rate.*** - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> xxx xxx xxx
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"
>
> "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

[29] Paragraph II, JSFI, Docket, p. 384

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 nonzero-rated sales."

Based on the foregoing provisions, in order to be entitled to a tax credit certificate/refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

Anent the first requisite, petitioner's Certificate of Registration No. OCN 9RC0000370535 dated October 15, 1996 shows that it is a VAT-registered entity.[30]

As regards the second requisite, the administrative claim for refund may be filed, pursuant to Section 112(A) of the NIRC of 1997,

[30] Exhibit "P-1"

as amended, within two years after the close of the taxable quarter when the sales were made. Then, the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim, in accordance with Section 112(C) of the same Code.

Section 112(C) of the NIRC of 1997, as amended, is hereunder quoted for easy reference:

> "(C) ***Period within which Refund or Tax Credit of Input Taxes shall be Made.*** - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period**, appeal the decision or the unacted claim with the Court of Tax Appeals." (*Emphasis Supplied)*

Taking into consideration the foregoing provisions, petitioner has timely filed its claim for refund both in the administrative and judicial levels, as illustrated below:

Period Covered (CY 2012)	Close of the taxable quarter	Last day of the 2-year prescriptive period to file administrative claim	Date of Administrative Claim	Submission of Supporting Documents	Last day of the 120-day period	Last day of the 30-day period to judicially appeal	Judicial Claim
1st Quarter	31-Mar-12	31-Mar-14	31-Mar-14[31]	27-Aug-14[32]	25-Dec-14	24-Jan-15	26-Jan-15[33]
2nd Quarter	30-Jun-12	30-Jun-14					
3rd Quarter	30-Sep-12	30-Sep-14					
4th Quarter	31-Dec-12	31-Dec-14					

With regard to the third requisite, petitioner alleges that its sales of services to its affiliates for the first, second, third and fourth quarters of CY 2012 are zero-rated.

[31] Exhibits "P-2" and "P-3"
[32] Exhibit "P-4"
[33] January 24, 2015 fell on a Saturday

In the case of ***Commissioner of Internal Revenue vs. Burmeister and Wain Scandivanian Contractor Mindanao, Inc.***[34], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 102(B)(2) [now Section 108(B)(2)] of the NIRC of 1997, as amended, the following requisites must be satisfied:

1. The services must be other than processing, manufacturing or repacking of goods;

2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulation; and

3. The recipient of such services must be doing business outside the Philippines.

By virtue of the Service Agreements[35] presented by petitioner, the same has proven that it rendered services to its affiliates, including, among others, consultancy and administrative services. As such, the said services rendered are not in the same category as processing, manufacturing or repacking of goods. Accordingly, petitioner has complied with the first requisite.

In compliance with the third requisite, petitioner has offered in evidence the following documents proving that its clients are non-resident foreign corporations doing business outside the Philippines:

i. Chevrolet Sales (Thailand) Ltd.

- *Certification of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), March 16, 2015* [36] - This document confirms that Chevrolet Sales (Thailand) Ltd. is neither registered in the Philippines as corporation nor as a partnership.

[34] G.R. No. 153205, January 22, 2007, 512 SCRA 124
[35] Exhibits "P-53-B", "P-55-B", "P-57-B", "P-59-B", "P-10", and "P-11"
[36] Exhibit "P-53-A"

- *Consularized Certificate of Residence of Chevrolet Sales (Thailand) Ltd. authenticated by the Philippine Embassy on June 17, 2015*[37] - Based on this document, Chevrolet Sales (Thailand) Ltd. is a resident of Thailand since 1999 and has already filed the income tax return for the taxable year 2012.

- *Consularized Certificate of Registration of Chevrolet Sales (Thailand) Ltd. authenticated by the Philippine Embassy on March 30, 2015*[38] – This document states that Chevrolet Sales (Thailand) Ltd. is registered as a Limited Company since July 16, 1999 as certified by the Department of Business Development Ministry of Commerce in Thailand.

ii. General Motors (Thailand) Limited

- *Certification of Non-Registration of Company issued by the SEC, March 17, 2015*[39] - This document confirms that General Motors (Thailand) Limited is neither registered in the Philippines as corporation nor as a partnership.

- *Consularized Certificate of Residence of General Motors (Thailand) Limited authenticated by the Philippine Embassy on June 17, 2015*[40] - Based on this document, General Motors (Thailand) Limited is a resident of Thailand since 1992 and has already filed the income tax return for the taxable year 2012.

- *Consularized Certificate of Registration of General Motors (Thailand) Limited authenticated by the Philippine Embassy on March 30, 2015*[41] – This document states that General Motors (Thailand) Limited is registered as a Limited Company since June 8, 1992 as certified by the Department of Business Development Ministry of Commerce in Thailand.

iii. General Motors Global Service Operations, Inc.

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[37] Exhibit "P-52"
[38] Exhibit "P-53"
[39] Exhibit "P-55-A"
[40] Exhibit "P-54"
[41] Exhibit "P-55"

- *Certification of Non-Registration of Company issued by the SEC, March 17, 2015* [42] - This document confirms that General Motors Global Service Operations, Inc. is neither registered in the Philippines as corporation nor as a partnership.

- *Original Certificate of Residence of General Motors Global Service Operations, Inc. issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, April 2, 2012* [43] - Based on this document, General Motors Global Service Operations, Inc. is a U.S. Corporation and a resident of the United States of America for purposes of U.S. Taxation.

- *Consularized Certificate of Incorporation of General Motors Global Service Operations, Inc. authenticated by the Philippine Embassy on March 13, 2015* [44] – This document states that General Motors Global Service Operations, Inc. is duly incorporated under the Laws of the United States of Delaware and is in good standing and has a legal corporate existence since December 20, 2006.

iv. Onstar, LLC.

- *Certification of Non-Registration of Company issued by the SEC, March 16, 2015* [45] - This document confirms that Onstar LLC is neither registered in the Philippines as corporation nor as a partnership.

- *Original Certificate of Residence of Onstar, LLC issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, February 27, 2012* [46] - Based on this document, Onstar LLC is a Limited Liability Corporation which is a branch, division, or business unit of a U.S. Corporation that is a resident of the United States of America for purposes of U.S. Taxation.

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[42] Exhibit "P-57-A"
[43] Exhibit "P-56"
[44] Exhibit "P-57"
[45] Exhibit "P-59-A"
[46] Exhibit "P-58"

- *Consularized Certificate of Incorporation of Onstar, LLC authenticated by the Philippine Embassy on March 13, 2015* [47] – Based on this document, the corporation was formed on December 7, 1999 under the name Onstar Corporation which is under the jurisdiction of the State of Delaware of the United States of America. The corporation was then converted to a Limited Liability Company on November 25, 2008, which it was named as Onstar, LLC.

v. General Motors Holdings LLC / General Motors North America / Customer Care and Aftersales

- *Certification of Non-Registration of Company issued by the SEC, April 14, 2015* [48] - This document confirms that General Motors Holdings LLC is neither registered in the Philippines as corporation nor as a partnership.

- *Certification of Non-Registration of Company issued by the SEC, March 17, 2015* [49] - This document confirms that General Motors North America is neither registered in the Philippines as corporation nor as a partnership.

- *Certification of Non-Registration of Company issued by the SEC, April 15, 2015* [50] - This document confirms that Customer Care and Aftersales is neither registered in the Philippines as corporation nor as a partnership.

- *Original Certificate of Residence of General Motors Holdings LLC, Inc. issued by the Department of the Treasury Internal Revenue Service in Philadelphia, PA, April 9, 2012* [51] - Based on this document, General Motors Holdings LLC is a Limited Liability Corporation which is a branch, division, or business unit of a U.S. Corporation that is a resident of the United States of America for purposes of U.S. Taxation.

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[47] Exhibit "P-59"
[48] Exhibit "P-61-A"
[49] Exhibit "P-61-B"
[50] Exhibit "P-61-C"
[51] Exhibit "P-60"

> *Consularized Certificate of Formation of General Motors Holdings LLC authenticated by the Philippine Embassy on May 28, 2015*[52] – Based on this document, General Motors Holdings LLC was incorporated on August 11, 2009 under the laws of the State of Delaware.

In the Judicial Affidavit[53] of Ms. Modesty N. Alcala, petitioner's Finance Manager, she manifested that Customer Care and Aftersales is only a division of General Motors North America, an operating segment of General Motors Holdings LLC. All billings to General Motors North America are addressed directly to Customer Care and Aftersales. All receipts for General Motors North America are likewise in the name of Customer Care and Aftersales since it is the Customer Care and Aftersales which directly transacts with petitioner. To prove this, petitioner has submitted Exhibits "P-29" to "P-29-B". Said exhibits are comprised of internal reports such as Forecasts, Variance Budget/Forecast against actual, and IAS Monthly Statement, of Customer Care and Aftersales to petitioner and vice versa for the months of September 2012 and October 2012.

The Court notes that even though the internal reports and billing statements pertain to Customer Care & Aftersales, the Financial Entity indicated in all the reports is GM LLC – GMNA.

Accordingly, petitioner has complied with the third requisite.

Corollary to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

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

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

xxx xxx xxx

[52] Exhibit "P-61"
[53] Exhibit "P-74"

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

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

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

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

xxx xxx xxx

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

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

Pursuant to the foregoing provisions, the foreign currency remittances referred to in Section 108(B)(2) of the NIRC of 1997, as amended, must, likewise, be supported by VAT zero-rated official receipts.

In its Quarterly VAT Returns for the four quarters of CY 2012, petitioner has declared zero-rated receipts in the total amount of ₱79,207,236.90, as follows:

Exhibit	Period Covered (CY 2012)	Zero-Rated Receipts
"P-41"	1st Quarter	₱ 5,348,879.38
"P-43"	2nd Quarter	17,929,287.49
"P-45"	3rd Quarter	31,148,142.65
"P-47"	4th Quarter	24,780,927.38
	TOTAL	**₱ 79,207,236.90**

In support of the foregoing, petitioner has offered in evidence its official receipts[54] issued to its clients. Upon examination of the same, the Court finds that there is a marked discrepancy of ₱3,366,623.14 between the total zero-rated sales of ₱75,840,613.76, with US$ equivalent of 1,794,341.90,[55] reflected in the official receipts issued by petitioner to its clients and the zero-rated sales of ₱79,207,236.90 declared by petitioner in its Quarterly VAT Returns for CY 2012. Since

[54] Exhibits "P-67", with sub-pages
[55] Summarized as per Annex 1 of the Revised ICPA Report, Exhibit "P-63"

the difference of ₱3,366,623.14 is not supported by VAT zero-rated official receipts, the same shall be denied zero-rating.

Further, to prove that the payment for such sales are in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, petitioner has presented the funds transfer credit advice[56] and the certificate of inward remittances[57] issued by Deutsche Bank AG Manila.

A verification of the foregoing documents reveals that there is a marked discrepancy of US$617,729.81 between the amounts supported by official receipts and the amount remitted per related bank credit memos, to wit:

Particulars	**Reference (Exhibit P-63)**	**Amount (in US$)**
Total Properly Supported Zero-Rated Sales	Annex 4	1,794,341.90
Total Remittances per Related Bank Credit Memos	Annex 4	2,412,071.71
Difference		**(617,729.81)**

The ICPA accounted the discrepancy of US$617,729.81, as follows:[58]

Particulars	**Reference (Exhibit P-63)**	**Amount (in US$)**
Inward Remittances Pertaining to Sales Supported by Collection Receipts and Bank Credit Memo but not Supported by Official Receipts	Annex 4	541,463.76
Inward Remittances Pertaining to Sales Supported by Non-VAT Acknowledgement Receipts and Bank Credit Memo but not Supported by Official Receipts	Annex 4	116,813.63
Payable to Customers netted against Collections	Annex 4	(40,547.88)
Rounding Off Difference	Annex 4	0.30
Difference		**617,729.81**

As ascertained by the ICPA, petitioner does not have offsetting agreement with any of its customers in relation to its zero-rated sales.

[56] Exhibit "P-69", with sub-pages
[57] Exhibits "P-70", with sub-pages
[58] Annex 4, Revised ICPA Report, Exhibit "P-63"

Also, petitioner does not have any payables to its customers that may be offset against its receivables from them. Hence, this Court finds that out of the reported zero-rated sales of ₱79,207,236.90, only the amount of US$1,753,794.02 or ₱74,121,692.81 qualifies as petitioner's substantiated zero-rated sales, determined as follows:

Particulars	Amount in US$	Amount in Php
Gross receipts supported by zero-rated official receipts	1,794,341.90	75,840,613.76
Less: Payable to Customers netted against collections	40,547.88	1,718,920.95
Substantiated Zero-Rated Sales	**1,753,794.02**	**74,121,692.81**

Having resolved that petitioner has VAT zero-rated sales of ₱74,121,692.81 for the CY 2012, the Court shall now determine the amount of input VAT attributable thereto.

For the CY 2012, petitioner declared in its Quarterly VAT Returns input VAT from domestic purchases of goods and services in the total amount of ₱4,125,644.74, broken down as follows:

Input VAT on:	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Domestic Purchase of Goods other than Capital Goods	₱ 1,861.45	₱ 44,630.34	₱ 65,035.68	₱ 112,726.09	₱ 224,253.56
Domestic Purchase of Services	78,220.90	325,468.73	2,158,811.38	1,338,890.17	3,901,391.18
Total	**₱ 80,082.35**	**₱370,099.07**	**₱2,223,847.06**	**₱ 1,451,616.26**	**₱ 4,125,644.74**

From the declared input VAT of ₱4,125,644.74, petitioner is claiming the refund of the amount of ₱4,125,403.72. In support of the foregoing, petitioner has offered various official receipts and invoices[59] issued by its supplier's, which were examined by the Court-Commissioned Independent CPA (ICPA), Mr. Glenn Ian Villanueva of Reyes Tacandong & Co. In his Report.[60] The ICPA has noted the following exceptions:

Reference	Nature	Total
Annex 1Q-Bs	Input VAT on domestic purchases of services claimed during the period January to December 2012 but the VAT ORs were not dated within the period January to December 2012	₱ 155.94

[59] Exhibits "P-65", "P-65-A", "P-65-B", and "P-65-C"

[60] Exhibit "P-63", pp.9 to 10

Annex 1Q-Bg	Input VAT on domestic purchases of goods claimed during the period January to December 2012 but the VAT Invoices were not dated within the period January to December 2012	551.17
Annex 2Q-Bg		7,860.59
Annex 3Q-Cs	Input VAT on domestic purchases of services supported by TIN VAT ORs but without OR date of incomplete OR date	58.93
Annex 1Q-Ds	Input VAT on domestic purchases of services supported by TIN VAT ORs not in the name of the Company (i.e., incomplete/misspelled company name)	364.28
Annex 2Q-Ds		2,092.00
Annex 3Q-Ds		612.35
Annex 4Q-Ds		27.86
Annex 1Q-Dg	Input VAT on domestic purchases of goods supported by TIN VAT Invoices not in the name of the Company (i.e., incomplete/misspelled company name)	211.43
Annex 2Q-Dg		44,841.64
Annex 3Q-Dg		24,386.80
Annex 4Q-Dg		25,960.21
Annex 2Q-Es	Input VAT on domestic purchases of services supported by TIN VAT ORs dated within January to December 2012 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	9,460.18
Annex 3Q-Es		3,966.13
Annex 4Q-Es		1,125.85
Annex 3Q-Eg	Input VAT on domestic purchases of services supported by TIN VAT Invoices dated within January to December 2012 issued in the name of the Company but TIN and/or registered address of the Company is not indicated	788.72
Annex 1Q-Fs	Input VAT on domestic purchases of services supported by TIN VAT ORs dated within January to December 2012 issued in the name of the Company but with erroneous TIN and/or registered address of the Company	55.18
Annex 3Q-Fs		238.29
Annex 4Q-Fs		538.72
Annex 3Q-Fg	Input VAT on domestic purchases of goods supported by TIN VAT invoices dated within January to December 2012 issued in the name of the Company but with erroneous TIN and/or registered address of the Company	32.14
Annex 4Q-Fg		75,693.60
Annex 1Q-Gg	Input VAT on domestic purchases of goods supported by TIN VAT invoices issued in the name of the Company but with the Company's TIN and/or address added/altered without countersignature or with countersignature but without letter from supplier	1,454.31
Annex 2Q-Hs	Input VAT on domestic purchases of services supported by TIN VAT ORs dated within January to December 2012 with transactions subject to VAT clearly presented as "VAT Exempt" or 'VAT Zero-rated" on the face of the document	124.29
Annex 4Q-Rs	Input VAT on domestic purchases of services claimed in the previous quarters, reversed in the 4th quarter	(24,334.06)
Annex 4Q-Rg	Input VAT on domestic purchases of goods claimed in the previous quarters, reversed in the 4th quarter	(747.86)
Annex 1Q-Xs	Input VAT on domestic purchases of services not duly supported by original pre-printed TIN VAT ORS	332.15
Annex 2Q-Xs		19,647.29
Annex 3Q-Xs		44,713.33

Annex 4Q-Xs		14,648.53
Annex 1Q-Xg	Input VAT on domestic purchases of goods not duly supported by original pre-printed TIN VAT invoices	718.63
Annex 2Q-Xg		11,296.64
Annex 3Q-Xg		985.65
Annex 4Q-Xg		938.78
Annex 1Q-Z	Input VAT on domestic purchases of goods and services not supported by any document	267.86
Annex 2Q-Z		12,864.31
Annex 3Q-Z		5,379.29
Annex 4Q-Z		12,600.20
	TOTAL	**₱ 299,911.35**

Apparently, the foregoing findings are in order.

Thus, out of the claimed input VAT of ₱4,125,403.72, petitioner has been able to substantiate only the amount of ₱3,825,492.37, and only the input VAT of ₱3,579,874.53 can be attributed to the zero-rated sales that have been substantiated, computed as follows:

Input VAT claimed for Refund	₱ 4,125,403.72
Less: Disallowances per ICPA Report	299,911.35
Substantiated input VAT	**₱ 3,825,492.37**
Divided by Reported Zero-Rated Sales	₱ 79,207,236.90
Multiply by Substantiated Zero-Rated Sales	₱ 74,121,692.81
Input VAT attributable to Substantiated Zero-Rated Sales	**₱ 3,579,874.53**

As regards the last requirement under Section 112(A) of the NIRC of 1997, as amended, although the claimed input VAT was carried over by petitioner in the succeeding Quarterly VAT Returns from the first quarter of 2013[61] to the second quarter of 2014[62], the same remained unutilized until it was deducted[63] from petitioner's total available input tax in the second quarter of 2014. Consequently, the subject claim no longer formed part of the excess input VAT of ₱2,773,450.79[64] as of the second quarter of 2014 which was carried over/applied to the succeeding third quarter of 2014[65].

WHEREFORE, premises considered, this instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱3,579,874.53** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales for the CY 2012.

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[61] Exhibits "P-48", pp. 4 to 5; "P-49", pp. 3 to 4; "P-50", pp. 4 to 5; "P-51", pp. 1 to 2
[62] Exhibits "P-48", pp. 6 to 7; "P-49", pp. 6 to 7
[63] Line 23D, Exhibit "P-49", pp. 6 to 7
[64] Line 27, Exhibit "P-49", pp. 6 to 7
[65] Line 20A, Exhibit "P-50", pp. 7 to 8

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice