REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILEX MINING CORPORATION, Petitioner,	**CTA CASE NO. 10037**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson,* and **Bacorro-Villena**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 05 2021 3:15 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The *Petition for Review* filed on February 28, 2019 prays for the refund and/or issuance of a tax credit certificate (TCC) in the amount of ₱21,529,612.72, allegedly representing petitioner's excess and unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2017.[1]

THE PARTIES

Petitioner Philex Mining Corporation is a domestic corporation duly organized and existing under Philippine laws with principal place of business at 2/F Launchpad, Reliance cor. Sheridan Streets,

[1] Summary of the Case, Pre-Trial Order dated July 15, 2019, Docket – Vol. I, p. 189.

Mandaluyong City.[2] It is registered with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. OCN 8RC0000699737E dated October 7, 2016, with Taxpayer Identification Number (TIN) 000-283-731-00000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, represented by the Litigation Division of the BIR National Office who may be served with pleadings and court processes at 7th Floor, Litigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City.[4] He is empowered to perform the duties of sad office including, among others, the power to decide, approve and grant claims for refund or tax credit of erroneously paid or overpaid taxes, as provided by law.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 29, 2018, petitioner filed with the BIR VAT Credit Audit Division an *administrative claim for refund*,[6] with attached *Application for Tax Credits/Refunds* (BIR Form No. 1914)[7] and supporting documents, for the refund or tax credit of input VAT amounting to **₱68,882,568.83** for CY 2017.

Subsequently, petitioner received the letter (VAT Refund Notice) dated January 16, 2019 on January 31, 2019 from respondent, ***partially granting*** its request for refund of excess and unutilized input VAT for the said four (4) quarters of CY 2017 in the amount of **₱46,729,507.99**,[8] computed as follows:

VAT Refund Claimed	₱68,882,568.83
Less: Deductions	(₱22,153,060.84)
Net Allowable VAT Refund	**₱46,729,507.99**

The administrative claim was partially denied on the basis of the recommendation by certain Revenue Officers as follows:

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[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 165.
[3] Exhibit "P-3", Docket – Vol. II, pp. 561 to 562.
[4] Par. 2, Admitted Facts, JSFI, Docket – Vol. I, p. 165.
[5] Par. 3, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 11 and 104, respectively.
[6] Exhibit "P-9", Docket – Vol. II, pp. 593 to 596.
[7] Exhibit "P-10", Docket – Vol. II, p. 603.
[8] Par. 3, Admitted Facts, JSFI, Docket – Vol. I, p. 165; Exhibit "P-11", Docket – Vol. II, pp. 604 to 605; Exhibit "R-2", BIR Records, p. 278.

"...The Revenue Officers recommended the issuance of VAT refund in the reduced amount of Php62,149,937.30, net of deductions for Php11,454,157.90 as shown below:

xxx xxx xxx

Final evaluation of the case disclosed that there was substantial compliance with the requirements set forth in processing claims for tax credit/refund including documentary requirements under Revenue Memorandum Order Nos. 16 & 22-2007 and RMC No. 29-2009 & 17-2018.

However, **input VAT attributable to export sales of Php15,420,429.31 arising from <u>transactions without valid documentary proof of inward remittances</u>, was deducted from the herein claim**, recomputed and summarized in the attached Annex 'A'."[9] *(Emphasis and underscoring added)*

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Review* on February 28, 2019.[10]

On April 22, 2019, respondent filed his *Answer*,[11] interposing the certain special and affirmative defenses, to wit: (1) petitioner failed to show proof of compliance with the requirements under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, particularly pertaining to zero-rated sales; (2) bereft of the documentary and invoicing requirements for input VAT refund, petitioner' claim must be denied; (3) tax refunds are in the nature of tax exemptions which result to loss of revenue for the government, and these exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only in a clear and unequivocal provision of law on the basis of language too plain to be mistaken; and (4) such exemptions must be strictly

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[9] Exhibits "P-14" and "R-1", BIR Records (Exhibit "R-3"), pp. 269 to 273, at p. 272.
[10] Docket – Vol. I, pp. 10 to 26.
[11] Docket – Vol. I, pp. 104 to 110.

construed against the taxpayer, as taxes are the lifeblood of the government.

The Pre-Trial Conference was set and held on May 23, 2019.[12] Respondent filed its *Pre-Trial Brief* on May 20, 2019.[13]

In the meantime, respondent transmitted the *BIR Records* for the instant case on May 16, 2019.[14]

On June 19, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[15] Subsequently, the Pre-Trial Order dated July 15, 2019 was issued,[16] approving and adopting the said JSFI, and thereby deeming termination of the pre-trial.

The trial of the case then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Sylvia D. Delos Santos,[17] Accounting Manager of petitioner; (2) Atty. Maria Myla S. Maralit,[18] the Court-commissioned Independent Certified Public Accountant (ICPA);[19] and (3) Ms. Eileen C. Rodriguez,[20] Group Manager of petitioner for Corporate Treasury.

Petitioner filed its *Formal Offer of Evidence (with Motion to Admit Photocopies as Secondary Evidence)* on November 6, 2019.[21] Respondent filed his *Comment (on Petitioner's Formal Offer of*

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[12] *Notice of Pre-Trial Conference* dated May 10, 2019, Docket – Vol. I, pp. 112 to 113; Minutes of the hearing held on, and Order dated, May 23, 2019, Docket – Vol. I, pp. 130 to 131.
[13] Docket – Vol. I, pp. 124 to 127.
[14] Docket – Vol. I, pp. 119 to 121.
[15] Docket – Vol. I, pp. 165 to 179.
[16] Docket – Vol. I, pp 189 to 194.
[17] Exhibit "P-16", Docket – Vol. I, pp. 198 to 217; Minutes of the hearing held on, and Order dated, July 17, 2019, Docket – Vol. I, pp. 302 to 303; Exhibit "P-19", Docket –Vol. I, pp. 436 to 440; Minutes of the hearing held, and Order dated, September 23, 2019, Docket – Vol. II, pp. 461 to 462.
[18] Exhibit "P-17", Docket – Vol. I, pp. 402 to 412; Minutes of the hearing held on, and Order dated, August 28, 2019, Docket – Vol. I, pp. 413 to 415; Exhibit "P-23", Docket – Vol. I, pp. 447 to 454; Minutes of the hearing held, and Order dated September 23, 2019, Docket – Vol. II, pp. 461 to 462.
[19] *Oath of Commission* dated July 17, 2019, Docket – Vol. I, p. 301; Minutes of the hearing held on, and Order dated, July 17, 2019, Docket – Vol. I, pp. 302 to 303.
[20] Exhibit "P-25", Docket – Vol. II, pp. 468 to 472; Minutes of the hearing held, and Order dated October 14, 2019, Docket – Vol. II, pp. 491 to 492.
[21] Docket – Vol. II, pp. 497 to 534.

Evidence) on November 15, 2019.[22] Thus, in the Resolution dated December 2, 2019,[23] the Court admitted petitioner's Exhibits, *except* for the following:

1) Exhibits "P-13", "P-15", and "P-15-A", for failure to identify;
2) Exhibits "P-20", "P-1129" to "P-1129-A", and "P-1130" to "P-1130-A", for failure to present the originals for comparison; and
3) The commercial invoices issued by the suppliers and attached to the BOC SSDT/SAD, marked as Exhibits "P-689" to "P-744", "P-746", "P-747" to "P-805", "P-806" to "P-866", "P-867" to "P-924", and "P-926" to "P-1063", for being mere photocopies as determined by the ICPA.

Petitioner then filed its *Motion for Partial Reconsideration (Re: Resolution dated December 2, 2019)* on December 16, 2019,[24] praying for the partial reconsideration of the Court's Resolution dated December 2, 2019; and for the admission of Exhibit "P-20", as petitioner's evidence for the purposes stated in its *Formal Offer of Evidence* dated November 6, 2019. Respondent filed his *Comment (on Petitioner's Motion for Partial Reconsideration)* on January 17, 2020.[25]

For his part, respondent likewise presented his testimonial and documentary evidence. He proffered the sole testimony of Mr. Dexter Bustillos,[26] a Revenue Officer of the BIR.

On December 6, 2019, respondent filed his *Formal Offer of Evidence*.[27] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on December 16, 2019.[28]

In the Resolution dated February 7, 2020,[29] the Court, inter alia, admitted respondent's Exhibits; and denied petitioner's *Motion for Partial Reconsideration (Re: Resolution dated December 2, 2019)*. ℓ

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[22] Docket – Vol. II, pp. 613 to 614.
[23] Docket – Vol. II, pp. 630 to 639.
[24] Docket – Vol. II, pp. 650 to 654.
[25] Docket – Vol. II, pp. 657 to 659.
[26] Exhibit "R-4", Docket – Vol. II, pp. 620 to 623; Minutes of the hearing held, and Order dated December 2, 2019, Docket – Vol. II, pp. 640 to 641.
[27] Docket – Vol. II, pp. 642 to 644.
[28] Docket – Vol. II, pp. 646 to 649.
[29] Docket – Vol. II, 662 to 665.

Petitioner filed its *Memorandum* on June 30, 2020,[30] while respondent filed his *Memorandum* on July 2, 2020.[31]

On July 13, 2020, the instant case was submitted for decision.[32]

THE ISSUE RAISED BY THE PARTIES

Due to parties' failure to stipulate a common issue in this case, they submitted separate issues[33] to be resolved by this Court, to wit:

"For Petitioner:

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF PHP21,529,612.72, REPRESENTING INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR CY 2017.

For Respondent:

> WHETHER OR NOT THE DOCUMENTS SUBMITTED BY PETITIONER WITH THE ADMINISTRATIVE LEVEL WERE SUFFICIENT TO JUSTIFY ITS CLAIM FOR REFUND."

Petitioner's arguments:

Petitioner argues that it is a VAT-registered taxpayer; that it is engaged in zero-rated transactions or effectively zero-rated sales; that the input taxes are due and paid; that the input taxes are not transitional input taxes; that the input taxes subject of the current judicial claim have not been applied against output tax during and in the succeeding quarters; that the input taxes that petitioner is claiming represent the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales; and that its claim for refund/TCC was filed within the mandatory periods provided under the law.

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[30] Docket – Vol. II, pp. 670 to 706.
[31] Docket – Vol. II, pp. 707 to 717.
[32] Resolution dated July 13, 2020, Docket – Vol. II, p. 719.
[33] Par. 4, Issue/s Stipulated upon by the Parties, JSFI, Docket – Vol. I, p. 166.

Moreover, petitioner also claims that respondent erred in denying its administrative claim for refund due to the alleged unremitted export sales; and that it is entitled to its claim for refund of excess and unutilized input VAT for the four (4) quarters of CY 2017 in the amount of ₱16,699,203.24.

Respondent's counter-arguments:

Respondent counter-argues that the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; and that claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

This Court finds no merit in the instant *Petition for Review.*

Requisites under the law for the refund or issuance of TCC of input VAT.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 10963[34] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law)], provides as follows:

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

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[34] 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 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
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> xxx xxx xxx
>
> (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."

Pursuant to the above provision, certain requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit: *gr*

As to the timeliness of the filing of the administrative and judicial claims:

1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[35]
2. that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision.

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[36]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[37]
5. for 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 have been duly accounted for in accordance with BSP rules and regulations;[38]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[39]
7. the input taxes are due or paid;[40]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[41] and

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

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

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

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

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[42]

It must be emphasized that in cases filed before this Court, which are litigated de novo, party-litigants must prove every minute aspect of their case.[43] Thus, it behooves petitioner to show compliance with each of the foregoing requisites.

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite pertains to the filing of the refund of input taxes before the BIR, within two (2) years from the close of the taxable quarter when the supposed zero-rated or effectively zero-rated sales were made.

The present claim covers the four (4) quarters of taxable year 2017, which closed on March 31, 2017, June 30, 2017, September 30, 2017, and December 31, 2017, respectively. Counting two (2) years from the said dates, petitioner had until March 31, 2019, June 30, 2019, September 30, 2019, and December 31, 2019, respectively, within which to file its administrative claim for refund. Thus, petitioner's administrative claim was timely filed with the BIR on October 29, 2018,[44] as shown below:

CY 2017	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st Quarter	March 31, 2017	March 31, 2019	October 29, 2018
2nd Quarter	June 30, 2017	June 30, 2019	
3rd Quarter	September 30, 2017	September 30, 2019	
4th Quarter	December 31, 2017	December 31, 2019	

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

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

[44] Exhibit "P-9", Docket – Vol. II, pp. 593 to 596; Exhibit "P-10", Docket – Vol. II, p. 603.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of respondent's decision rendered within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application for refund under Section 112(C) of the NIRC of 1997, as amended by the TRAIN law.

As already stated, petitioner's administrative claim was filed on October 29, 2018. Thus, respondent had ninety (90) days therefrom, or until January 27, 2019 to decide on the petitioner's claim for refund. Consequently, the letter (VAT Refund Notice) partially granting petitioner's refund claim was timely issued by the BIR on January 16, 2019. As such, petitioner had 30 days from the receipt of the said letter on January 31, 2019, or until March 2, 2019, to file an appeal before this Court. Therefore, the filing of the instant *Petition on Review* on February 28, 2019[45] was likewise timely made.

Such being the case, petitioner fulfilled both the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered person.

As for the *third* requisite, it is undisputed that petitioner is registered with the BIR under Certificate of Registration No. OCN8RC0000699737E dated October 7, 2016 and with TIN No. 000-283-731-000, indicating that it is liable to VAT.[46] Thus, petitioner's compliance with the said requisite is undoubtedly fulfilled.

Petitioner was able to prove its zero-rated sales for the four (4) quarters of CY 2017.

The *fourth* and *fifth* requisites respectively require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in

[45] Docket – Vol. I, pp. 10 to 26.
[46] Exhibit "P-3", Docket - Vol. II, pp. 561 to 562.

accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.

Records show that petitioner is registered with the Securities and Exchange Commission (SEC) with Company Registration No. 10044, the primary purpose of which is *"to carry on the business of engineering consultants and contractors and prepare plans and specification of machinery, mills, plants, buildings and works and the undertaking and performance of contracts for the construction and erection of the same and the operation thereof".*[47] Likewise, petitioner is registered with the Board of Investments (BOI) as an *"Expanding Export Producer of Copper Concentrates including Gold and Silver"* under BOI Certificate of Registration No. EP 2004-080 dated July 16, 2004.[48]

Petitioner claims that during the four (4) quarters of CY 2017, it exported and sold mineral products to Pan Pacific Copper Co. Ltd, Louis Dreyfus Company Metals Suisse SA, and Heraus Limited,[49] the consideration for which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Thus, petitioner believes that the said export sales are zero-rated for VAT purposes pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x
>
> (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

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[47] Exhibit "P-1", Docket - Vol. II, pp. 536 and 539.
[48] Exhibit "P-2", Docket - Vol. II, p. 555.
[49] Par. 40, Discussion, Petitioner's Memorandum, Docket – Vol. II, p. 682.

accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);"

Based on the foregoing provision, in order for an export sale to qualify as zero-rated, the following essential elements must be present:

1.) the sale was made by a VAT registered person;
2.) there was sale and actual shipment of goods from the Philippines to a foreign country; and
3.) the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *first* essential element, since it is the same as the above-stated *third* requisite, the said element has already been complied with by petitioner.

In relation to the *second* essential element, the VAT-registered taxpayer claiming VAT zero-rated direct export sales must still present, among others, the following documents:

1.) the sales invoice as proof of sale of goods; and
2.) the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first type of document, the sales invoices must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –

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

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

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 her 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 shown as a separate item in the invoice or receipt;

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

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

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

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

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

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

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 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 her 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;

xxx xxx xxx

(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." *(Underscoring added)*

In addition to the above requirements, the sales invoices must also be duly registered with the BIR as prescribed under Sections 237 238, both of the NIRC of 1997, as amended, which respectively provide:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial</u> <u>invoices</u>, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx
>
> xxx xxx xxx"
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Thus, only the export sales of goods supported by the above stated documents that are compliant with substantiation and invoicing requirements shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Needless to state, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[50] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[51] More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[52]

In its Amended Quarterly VAT Returns for the four quarters of CY 2017,[53] petitioner reported a total sales amounting to ₱10,753,552,619.26, which includes zero-rated sales in the amount of ₱10,714,206,566.18, as shown below:

	Exhibit "P-4"	Exhibit "P-5"	Exhibit "P-6"	Exhibit "P-7"	
	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
Vatable Sales	₱ 6,071,999.75	₱ 5,165,608.17	₱ 20,498,167.83	₱ 7,610,277.33	₱ 39,346,053.08
Zero Rated Sales	3,047,832,253.00	2,153,993,353.00	2,272,655,619.72	3,239,725,340.46	10,714,206,566.18
Total Sales	₱3,053,904,252.75	₱2,159,158,961.17	₱2,293,153,787.55	₱3,247,335,617.79	₱10,753,552,619.26

To substantiate its alleged zero-rated direct export sales, petitioner submitted its Monthly Working File for VAT Zero-Rated Sales for the months of CY 2017,[54] Schedule of Total VAT Zero-Rated Sales[55] and the corresponding sales invoices,[56] Bureau of Customs Single Administrative Documents (BOC SAD),[57] and bills of lading,[58] which were duly examined by the Court-commissioned ICPA, Maria Myla S. Maralit of R.G. Manabat & Co.

A perusal of the above-mentioned documents shows that out of the total reported zero-rated sales of ₱10,714,206,566.18, the total amount of ₱1,726,147,760.44, as detailed below, was found as ***not* fully compliant** with the invoicing requirements prescribed in the afore-quoted laws and regulations, hence, not qualified for VAT zero-rating, *viz.*

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[50] *JRA Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[51] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[52] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[53] Exhibits "P-4", "P-5", "P-6", and "P-7", Docket - Vol. II, pp. 563 to 564, 567 to 568, 571 to 572, and 575 to 576, respectively.
[54] Exhibits "P-46" to "P-57".
[55] Exhibits "P-58" to "P-77".
[56] Exhibits "P-78" to "P-116".
[57] Exhibits "P-163" to "P-182".
[58] Exhibits "P-183" to "P-202".

Shipment No.	Sales reported in CY 2017 per VAT Returns[59]		Less: properly supported by Sales Invoice				Unsupported
	in US Dollars	in Philippine Peso	Exhibit No.	SI Nos.	in US Dollars	in Philippine Peso[60]	in Philippine Peso
1. Zero-rated sales of goods which are not supported by VAT zero-rated sales invoice.							
723-PPC	$15,674,397.22	₱779,694,191.02	"P-85"	90	$12,111,987.47	₱603,055,856.13	₱61,347,955.98
			"P-94"	99	2,329,333.85	115,290,378.91	
724-PPC	15,071,260.66	760,467,701.55	"P-96"	101	12,002,182.03	604,249,854.30	60,667,033.48
			"P-104"	109	1,868,051.10	95,550,813.77	
725-PPC	14,944,551.48	757,028,877.58	"P-99"	104	11,382,940.03	575,179,959.72	60,917,871.66
			"P-106"	111	2,359,860.40	120,931,046.20	
726-PPC	14,617,968.05	742,185,829.38	"P-100"	105	11,347,434.15	576,392,917.65	60,255,733.30
			"P-109"	114	2,083,656.04	105,537,178.43	
44-LDM	14,265,102.26	715,733,536.58	"P-87"	92	12,227,241.35	614,174,333.01	56,450,520.78
			"P-95"	100	911,102.46	45,108,682.79	
45-LDM	14,882,079.30	749,747,829.31	"P-89"	94	12,540,938.65	631,561,670.41	57,377,413.05
			"P-97"	102	1,202,229.06	60,808,745.85	
46-LDM	14,951,687.55	750,098,679.50	"P-90"	95	12,348,439.09	618,903,767.19	57,303,736.96
			"P-98"	103	1,460,877.33	73,891,175.35	
47-LDM	14,761,197.04	736,854,441.16	"P-92"	97	12,494,433.60	622,035,376.78	54,272,500.40
			"P-101"	106	1,179,325.36	60,546,563.98	
48-LDM	14,002,727.70	698,191,006.49	"P-93"	98	11,878,032.54	591,169,679.52	53,534,374.46
			"P-103"	108	1,050,721.00	53,486,952.51	
PAD-AUREX 123	620,900.06	31,852,172.87	"P-108"	113	619,213.55	31,765,655.12	86,517.75
2. Zero-rated sales of goods which are either not supported by VAT zero-rated sales invoice or supported by sales invoice but dated outside the period of claim (dated 2018).							
727-PPC	15,449,860.69	786,475,158.57	"P-102"	107	12,654,687.76	644,186,880.42	142,288,278.15
728-PPC	16,501,252.65	847,999,373.85	"P-105"	110	14,668,081.49	753,792,707.77	94,206,666.08
729-PPC	16,155,687.37	827,985,141.69	"P-107"	112	14,836,691.72	760,306,267.19	67,678,874.50
49-LDM	15,158,814.48	760,062,957.85	"P-110"	115	12,414,194.16	622,447,695.18	137,615,262.67
3. Zero-rated sales of goods which are supported by VAT zero-rated sales invoice but dated outside the period of claim (dated 2018).							
50-LDM	15,297,973.13	762,145,021.22					762,145,021.22
Total							**₱1,726,147,760.44**

Consequently, only the zero-rated export sales of goods in the amount of ₱8,988,058,805.74,[61] which were properly supported by VAT zero-rated sales invoices in accordance with the above stated Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Section 4.113-1(A) and (B) of RR No. 16-2005, complied with the *second* essential element. ℊ

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[59] Exhibit "P-18", Docket – Vol. I, p. 319.
[60] PhP value per Exhibit "P-18", Docket – Vol. I, p. 336.
[61] Total reported zero-rated sales of ₱10,714,206,566.18 less disallowed zero-rated sales of ₱1,726,147,760.44.

As for the *third* essential element, and in relation to the *fifth* requisite, petitioner presented the Certifications of Inward Remittance[62] issued by Union Bank, PNB, BPI and BDO Unibank, Inc., purportedly showing the payments for its export sales in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP. Notably, the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP".*[63]

Records reveal that the amounts shown in the summary of VAT zero-rated sales supported with sales invoices dated 2017 **can be traced with certainty** to the certificates of inward remittance as found by the ICPA.[64] Thus, respondent's basis (*i.e.*, that certain export sales are "without valid documentary proof of inward remittances") in denying part of petitioner's administrative claim is untenable.

Correspondingly, the said certificates satisfied the *third* essential element and the *fifth* requisite, *i.e.,* the sales were paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations.

In fine, and for purposes of compliance with the *fourth* requisite, petitioner was able to establish that its export sales of goods for CY 2017, in the reduced amount of ₱8,988,058,805.74, qualify as VAT zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

The input taxes being claimed do not appear to be transitional input taxes.

The claimed input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC.111. *Transitional/Presumptive Input Tax Credits.* –

[62] Exhibits "P-205" to "P-232" and "P-1124" to "P-1128".
[63] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.
[64] Exhibit "P-18", Docket – Vol. I, pp. 345 to 346.

> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on her beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax".

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[65]

In this case, there is no showing that petitioner is a newly VAT-registered entity, thus, in the absence of any indication that the claimed input taxes are transitional input taxes, the Court holds that the *sixth* requisite for the grant of an input VAT refund has been satisfied by petitioner.

Not all of petitioner's input VAT being claimed for refund were duly substantiated with supporting documents.

Anent the *seventh* requisite, petitioner is required to provide supporting documents that could prove that the subject input taxes were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* — &

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[65] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 158885 and 170680, April 2, 2008.

(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 (₱1,000,000): 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."

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, which provide as follows:

"SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

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

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

(4) For use as raw materials supplied in the sale of services; or gz

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

xxx xxx xxx

SECTION 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.

SECTION 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 (₱1,000,000.00), 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. *gc*

(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 (₱1,000,000.00), 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 installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Furthermore, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits on domestic purchases of goods, properties and services, to wit:

"SECTION 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 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."

Thus, in order for petitioner to prove that its input taxes were actually due or paid, it input VAT must be duly substantiated by supporting documents prescribed under Section 4.110-8 of RR No. 16-2005. Furthermore, said documents must likewise comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005. *gr*

In its amended Quarterly VAT Returns for CY 2017,[66] petitioner reported a total input VAT of ₱73,604,095.37 from its purchase of capital goods exceeding ₱1Million, domestic purchases of goods other than capital goods, and importation of goods other than capital goods, out of which the amount of ₱21,529,612.72 is the subject of the present claim for refund or TCC, as computed below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter	₱ 29,680,239.07	₱ 28,735,380.19	₱ 48,807,419.49	₱ 57,406,696.17	₱ 164,629,734.92
Add: Input Tax due on Purchase of Capital Goods exceeding ₱1Million	1,167,924.12	22,788,035.00	12,242,865.00	5,864,411.00	42,063,235.12
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	28,735,380.19	48,807,419.49	57,406,696.17	59,413,771.12	194,363,266.97
Amortization of Input Tax on Capital Goods exceeding ₱1Million	*₱ 2,112,783.00*	*₱ 2,715,995.70*	*₱ 3,643,588.32*	*₱ 3,857,336.05*	*₱ 12,329,703.07*
Add: Current Input Tax on:					
Domestic Purchases of Goods Other than Capital Goods	₱ 30,970.08	₱ 36,332.19	₱ 20,566.36	₱ 255,678.74	₱ 343,547.37
Importation of Goods Other than Capital Goods	13,164,717.00	17,583,290.97	17,047,628.96	13,135,208.00	60,930,844.93
Total	*₱13,195,687.08*	*₱ 17,619,623.16*	*₱ 17,068,195.32*	*₱ 13,390,886.74*	*₱ 61,274,392.30*
Total Input Taxes for the period	**₱15,308,470.08**	**₱20,335,618.86**	**₱20,711,783.64**	**₱17,248,222.79**	**₱73,604,095.37**
Less: Output Tax Due	728,639.97	619,872.98	2,459,780.14	913,233.28	4,721,526.37
Excess Input VAT	**₱14,579,830.11**	**₱19,715,745.88**	**₱18,252,003.50**	**₱16,334,989.51**	**₱68,882,569.00**
Less: Allowable input VAT for TCC/Refund per BIR Letter dated January 16, 2019[67]					46,729,507.99

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[66] Exhibits "P-4", "P-5", "P-6", and "P-7", Docket - Vol. II, pp. 563 to 564, 567 to 568, 571 to 572, and 575 to 576, respectively.
[67] Exhibit "P-11", Docket, pp. 604 to 605.

Disallowances per VCAD verification					623,448.12[68]
Excess Input VAT claimed for refund					**₱ 21,529,612.89[69]**

However, the following items shall be disallowed by the Court for the corresponding reasons stated:

a) Amortization of Input VAT on Capital Goods exceeding ₱1Million – ₱12,329,703.07

Based on ICPA's examination, the capital goods exceeding ₱1Million presented in the amortization schedule were acquired by petitioner through importation.[70] In proving the actual payment of VAT thereon, Section 4.110-8(a)(1) of RR No. 16-05, as amended, requires that the same should be supported with import entry or other equivalent documents. Thus, petitioner presented its Amortization Schedule of Imported Capital Goods exceeding ₱1Million[71] and the related Statement of Settlement of Duties and Taxes (SSDTs), BOC SADs and commercial invoices to substantiate the amount of ₱12,329,703.07, representing its amortization of input VAT on capital goods exceeding ₱1Million.

However, records reveal that the corresponding commercial invoices attached to the aforesaid BOC SSDT/SAD, marked as Exhibits "P-926" to "P-1063", were denied admission by this Court in its Resolution dated December 2, 2019,[72] for being mere photocopies as determined by the ICPA. Therefore, the amortization of input VAT on capital goods exceeding ₱1Million in the amount of ₱12,329,703.07 shall be disallowed.

b) Input VAT from Domestic Purchase of Goods other than Capital Goods – ₱343,547.37

Moreover, upon verification of the documents supporting petitioner's domestic purchases of goods other than capital goods, *ge*

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[68] Disallowed input taxes of ₱622,357.18 add Additional output VAT assessed on other income of ₱1,090.94, Exhibit "P-11", Docket, p. 605.
[69] ₱0.17 difference per Petition for Review.
[70] Exhibit "P-18", Item C.i)(3), Docket – Vol. I, p. 357.
[71] Exhibits "P-925" to "P-925-A".
[72] Resolution, Docket - Vol. II, p. 638

the ICPA noted that some of the transactions therein actually pertain to domestic purchase of services.[73]

In support of its input VAT on domestic purchases of goods and services with an aggregate amount of ₱343,547.37, petitioner submitted invoices and official receipts[74] issued by its suppliers.

However, the ICPA disallowed the input VAT from domestic purchases of goods other than capital goods and domestic purchases of services in the amount of ₱286,762.58,[75] due to the following reasons:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Disallowed input VAT from domestic purchases of goods other than capital goods					
The address of petitioner is either not indicated, incorrect or incomplete				₱ 45,174.71	₱ 45,174.71
Disallowed input VAT from domestic purchases of services					
Computer-generated OR with manual alteration	₱ 4,152.33	₱ 3,249.12	₱ 590.39	326.25	8,318.09
Computer-generated OR with manual alteration, the address of petitioner is either not indicated, incorrect or incomplete and the OR is dated in 2016	694.73				694.73
Computer-generated OR with manual alteration and the address of petitioner is either not indicated or incomplete		4,595.94		62.32	4,658.26
The address of petitioner is either not indicated, incorrect or incomplete	6,675.86	5,916.83	6,432.90	14,106.99	33,132.58
The TIN of petitioner is either not indicated, incorrect or incomplete	37.80	156.00		814.32	1,008.12
The TIN and address of petitioner are either not indicated, incorrect or incomplete		865.23	1,206.05	3,696.28	5,767.56
The address of petitioner is either not indicated, incorrect or incomplete and the OR is dated in 2016	12,100.85				12,100.85
The address of petitioner is either not indicated, incorrect or incomplete			186.97	934.83	1,121.80

[73] Exhibit "P-18", Docket – Vol. I, p. 352.
[74] Exhibits "P-466" to "P-684".
[75] Exhibit "P-18", Annexes "R" to "Z", Docket – Vol. I, pp. 353 to 354 and 379 to 387, respectively.

and VAT amount is not separately indicated on the OR.					
VAT amount is not properly indicated on the OR				62.32	62.32
The name, TIN and address of petitioner are either not indicated, incorrect or incomplete			2,919.68		2,919.68
The address of petitioner is either not indicated, incorrect or incomplete, the supporting OR is dated in 2016 and VAT amount is not separately indicated on the OR	1,653.21				1,653.21
The TIN and address of petitioner are either not indicated, incorrect or incomplete and the OR is dated in 2016	137.89				137.89
Purchase of service supported with document other than VAT OR		250.69	62.32	156,813.02	157,126.03
Disallowed input VAT from domestic purchases the nature of which cannot be determined solely on the basis of the supporting documents provided by PMC.					
Nature of transaction not determinable	1,963.11	3,505.01	3,522.70	3,895.93	12,886.75
Total	**₱27,415.78**	**₱18,538.82**	**₱ 14,921.01**	**₱225,886.97**	**₱286,762.58**

Upon further verification of the records of the instant case, the Court agrees with the foregoing findings in the ICPA *Report* to be in order. Thus, the total amount of ₱286,762.58 shall be disallowed for petitioner's failure to meet the invoicing and substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended.

c) Input VAT from Importation of Goods other than Capital Goods – ₱60,930,844.93

In support of its claimed input VAT from importation of goods other than capital goods in the amount of ₱60,930,844.93, petitioner submitted various SSDTs, BOC SADs and commercial invoices. Nevertheless, the said BOC SSDT/SAD, marked as Exhibits "P-689" to "P-744" and "P-746" to "P-924", were among the exhibits that have been denied admission in the Court's Resolution dated December 2, 2019,[76] for being mere photocopies as determined by the ICPA.[77] &

[76] Resolution, Docket - Vol. II, p. 638.
[77] Resolution, Docket - Vol. II, pp. 638.

Thus, the input VAT of ₱60,930,844.93 must be disallowed from petitioner's claim.

In sum, out of the total input VAT of ₱73,604,095.37 for the four quarters of CY 2017, only the amount of ₱56,784.62, as computed below, represents petitioner's valid input VAT for the same period:

Total Input VAT for the period		₱73,604,095.37
Less: Disallowances		
Per ICPA Report		
Domestic purchases of goods and services	₱ 286,762.58	286,762.58
Per this Court's further verification		
Capital Goods exceeding ₱1M	₱12,329,703.07	
Importation of goods other than Capital Goods	60,930,844.93	
Difference in the amount per Petition for Review against per VAT Returns[78]	0.17	73,260,548.17
Valid input VAT		**₱ 56,784.62**

Since there are both taxable sales and zero-rated sales, the valid input VAT of ₱56,784.62 shall be proportionately allocated on the basis of sales volume.

To reiterate, the *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

As mentioned earlier, for the subject period of claim, there exist taxable sales subject to 12% VAT and zero-rated sales in the following amounts:

Particulars	Amount
12% VATable Sales	₱ 39,346,053.08
Zero-Rated Sales	10,714,206,566.18
Total Sales	**₱ 10,753,552,619.26**

[78] Petition for Review of ₱21,529,612.72 less per VAT Returns as recomputed of ₱21,529,612.89.

Considering that petitioner's input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱56,784.62 shall be allocated proportionately on the basis of the volume of its sales, as shown below:

Total Taxable Sales subject to 12% VAT for the period	₱ 39,346,053.08
Divided by the Total Sales for the period	10,753,552,619.26
Multiplied by Total Valid Input VAT	56,784.62
Valid input VAT allocated to sales subject to 12% VAT	**₱ 207.77**

Total Zero-Rated Sales for the period	₱ 10,714,206,566.18
Divided by the Total Sales for the period	10,753,552,619.26
Multiplied by Total Valid Input VAT	56,784.62
Valid input VAT allocated to zero-rated sales	**₱ 56,576.85**

Thus, for purposes of, and with regard to petitioner's compliance with, the *eighth* requisite, only the allocated amount of ₱56,576.85 represents valid input VAT attributable to total zero-rated sales.

Refund of input VAT is only proper when the input VAT attributable to zero-rated sales exceeds output VAT.

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

Records show that after deducting the input VAT attributable to taxable sales subject to 12% VAT amounting to ₱207.77 from its output VAT liability of ₱4,721,526.37[79] on the said sales, petitioner still has a net output VAT payable of ₱4,721,318.60, as computed below:

79

CY 2017	Taxable Sales	Output VAT	Exhibit
1st Quarter	₱ 6,071,999.75	₱ 728,639.97	"P-32-B"
2nd Quarter	5,165,608.17	619,872.98	"P-33-B"
3rd Quarter	20,498,167.83	2,459,780.14	"P-34-B"
4th Quarter	7,610,277.33	913,233.28	"P-35-B"
Total	**₱ 39,346,053.08**	**₱ 4,721,526.37**	

Output VAT per Returns	₱ 4,721,526.37
Less: Valid Input VAT allocated to 12% Vatable Sales	207.77
Net Output VAT Payable	**₱ 4,721,318.60**

Since the input VAT attributable to 12% vatable sales is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability of ₱4,721,318.60. However, it is apparent that the input VAT attributable to zero-rated sales of ₱56,576.85 is way lower than the net output VAT payable of ₱4,721,318.60. Consequently, petitioner still has net output VAT due of ₱4,664,741.75, computed as follows:

Net Output VAT Payable	₱ 4,721,318.60
Less: Valid Input VAT allocated to Zero-Rated Sales	56,576.85
Net Output VAT still due	**₱4,664,741.75**

Although petitioner's amended Quarterly VAT Returns for the four quarters of CY 2017 reflected the respective amounts of ₱106,202,493.63, ₱120,782,323.74, ₱54,426,664.73 and ₱72,678,668.23[80] as *"Input Tax Carried Over from Previous Period"*, still, petitioner failed to substantiate the same.

Consequently, the input tax carry over of ₱106,202,493.63, ₱120,782,323.74, ₱54,426,664.73 and ₱72,678,668.23, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> "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:
>
> xxx xxx xxx

[80] Exhibits "P-4", "P-5", "P-6", and "P-7", (Line 20A), Docket – Vol. II, pp. 563, 567, 571, and 575, respectively.

(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: xxx."

Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input tax credits to cover its output tax liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or tax credit certificate, the instant claim must be denied.

One final note, let it be stressed that it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[81] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[82] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[83] Strict adherence to the conditions prescribed by law is required of the taxpayer.[84]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[81] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[82] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[83] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, *citing J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.
[84] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice