REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

KEPCO ILIJAN CORPORATION,
Respondent.

CTA EB No. 2475
(CTA Case No. 6966)

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KEPCO ILIJAN CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2477
(CTA Case No. 6966)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, *JJ.*

Promulgated:
JAN 09 2023 3:27pm

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DECISION

REYES-FAJARDO, ***J.*:**

Before the Court *En Banc* are two (2) *Petitions for Review,* assailing the Amended Decision dated September 22, 2020[1] and Resolution dated March 12, 2021[2], rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 6966, entitled *"Kepco Ilijan Corporation v. Commissioner of Internal Revenue."* These cases involve Kepco Ilijan Corporation's claim for refund or issuance of tax credit certificate (TCC) in the amount of ₱74,658,481.68 allegedly representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales for the taxable year (TY) 2002. The Court in Division partially granted the refund or issuance of TCC in the amount of ₱23,389,050.05.

CTA EB No. 2475

CTA EB No. 2475 is the *Petition for Review* filed on June 28, 2021[3] by the Commissioner of Internal Revenue (CIR) against Kepco Ilijan Corporation (KEILCO), wherein the CIR prays that the assailed Amended Decision and Resolution in CTA Case No. 6966 partially granting the refund or the issuance of TCC in the amount of ₱23,389,050.05 for TY 2002 be reversed and the Petition for Review be dismissed for lack of merit.

CTA EB No. 2477

CTA EB No. 2477 is the *Petition for Review* filed on June 30, 2021[4] by KEILCO against CIR, wherein KEILCO prays that the assailed Amended Decision and Resolution in CTA Case No. 6966 be reversed only insofar as the Amended Decision and Resolution denied a portion of the claim and that the CIR refund or issue a TCC in the amount of ₱47,559,061.24, over and above the amount of ₱23,389,050.05, which has already been granted in favor of KEILCO.

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1 *Rollo,* (CTA EB No. 2475), pp. 19-37; and (CTA EB 2477), pp. 36-55.
2 *Rollo,* (CTA EB No. 2475), pp. 38-48; and (CTA EB 2477), pp. 58-68.
3 *Rollo,* (CTA EB NO. 2475), pp.4-17.
4 *Rollo,* (CTA EB NO. 2477), pp.19-35.

THE FACTS

The facts are summarized from the Amended Decision dated September 22, 2020, as follows:

KEILCO, a domestic corporation engaged in the production of electricity as an independent power producer and in the sale of electricity solely to the National Power Corporation (NPC), claimed the refund or issuance of the TCC amounting to ₱74,658,481.68 for the VAT incurred in TY 2002.

On the other hand, the CIR is the government official charged with the administration and enforcement of national internal revenue laws. The CIR is vested with authority to administer all laws pertaining to internal revenue taxes and vested with the power to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes as provided by law.

KEILCO filed its quarterly VAT returns for the four quarters of TY 2002. On April 13, 2004, KEILCO filed its administrative claim for refund with Revenue District Office No. 43 of the Bureau of Internal Revenue (BIR), claiming excess input VAT amounting to ₱74,658,481.68 for TY 2002. The CIR has not acted upon KEILCO's claims for refund.

CTA Case No. 6966

On April 22, 2004, nine days after filing the administrative claim, KEILCO filed its petition for review, which was assigned to the Second Division of the CTA. On April 14, 2009, the Second Division of the CTA rendered judgment in CTA Case No. 6966 partly granting the petition for review, and ordering the CIR to refund or to issue a TCC in the reduced amount of ₱23,389,050.05 representing KEILCO's excess and unutilized input VAT attributable to its zero-rated sales to NPC for the second, third and fourth quarters of TY 2002, but denying KEILCO's input VAT claim for the first quarter of TY 2002 and the other input VAT claims. On April 30, 2009, KEILCO moved for partial reconsideration with prayer to admit attached additional supporting documents. The Second Division of the CTA promulgated the amended decision dated February 18, 2011, denying the entire claim on the ground of prematurity. It opined that it did not acquire jurisdiction over the petition for review because of KEILCO's non-observance of the periods provided under the NIRC of 1997, as amended, citing the rulings in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[5] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (Aichi)[6].

CTA EB Case No. 733

KEILCO elevated the case to the CTA *En Banc*, contending that it had seasonably filed its administrative and judicial claims and that the CTA had properly acquired jurisdiction over the judicial claim. On September 6, 2012, the CTA *En Banc* promulgated the Decision which denied the Petition for Review docketed as CTA EB No. 733. On December 13, 2012, the CTA *En Banc* denied KEILCO's motion for reconsideration.

G.R. No. 205185

On March 1, 2013, KEILCO filed a Petition for Review on Certiorari with the Supreme Court docketed as G.R. No. 205185. The Supreme Court reversed the decision promulgated on September 6, 2012, by the CTA *En Banc* and remanded the case to the Court in Division for further proceedings on KEILCO's claim for refund of its excess and unutilized input VAT for 2nd, 3rd, and 4th quarters of TY 2002.

On May 20, 2019, the Court in Division received the Supreme Court's Entry of Judgment for KEILCO's case, certifying, *inter alia*, that on December 4, 2018, the decision therein became final and executory. On July 5, 2019, the Court *En Banc* issued a Resolution which remanded the case to the former Second Division of this Court for further proceedings.

On July 24, 2019, the Court in Division issued a resolution which ordered both parties to file a written Manifestation, alleging any supervening event that may have transpired which they would want to present before the Court in Division for consideration, within

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5 G.R. No. 172129, September 12, 2008.
6 G.R. No. 184823, October 6, 2010.

fifteen (15) days from notice. On August 8, 2019, KEILCO filed a Manifestation (with Motion to Reconsider Supplemental Evidence).

On October 3, 2019, the case was deemed submitted for decision.

On September 22, 2020, the Court in Division rendered the assailed Amended Decision, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, We maintain and reiterate the ruling in this Court's Decision dated April 14, 2009, entitling petitioner only to the reduced amount of ₱23,389,050.05, representing unutilized excess input VAT attributable to its zero-rated sales of electricity to NPC for the 2nd, 3rd, and 4th quarters of taxable year 2002.
>
> Accordingly, petitioner's Motion for Partial Motion for Reconsideration (Re: Decision dated April 14, 2009) filed on April 30, 2009 is **DENIED** for lack of merit.

On October 9, 2020, KEILCO filed a *Motion for Partial Reconsideration (of the Amended Decision dated 22 September 2020)* with the Court in Division. On October 26, 2020, the CIR filed a *Motion for Partial Reconsideration (Decision dated 22 September 2020)* with the Court in Division. In a Resolution dated March 12, 2021, the Court in Division denied KEILCO's *Motion for Partial Reconsideration* and the CIR's *Motion for Partial Reconsideration* for lack of merit.

CTA En Banc Proceedings

On June 28, 2021 and June 30, 2021, respectively, the CIR and KEILCO filed their respective Petitions for Review with the Court *En Banc* within the extended period granted.[7]

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[7] The Court *En Banc* in a Minute Resolution dated June 14, 2021, granted CIR a period of fifteen (15) days from June 12, 2021 or until June 27, 2021, within which to file her Petition for Review. Thus, CIR filed on time a Petition for Review on June 28, 2021, the next working day, following the last day for filing which fell on a Sunday. On the other hand, the Court *En Banc* in a Minute Resolution granted KEILCO a period of fifteen (15) days from June 15, 2021 or until June 30, 2021, within which to file its Petition for Review. Hence, the filing of KEILCO's Petition for Review on June 30, 2021 was timely.

On July 5, 2021, the Court *En Banc* consolidated CTA EB No. 2477 with CTA EB No. 2475 under Section 1, Rule 31 of the Revised Rules of Court.[8]

On October 27, 2021, KEILCO filed its *Comment (on the Commissioner of Internal Revenue's Petition for Review)* in CTA EB No. 2475.[9] On the other hand, per Report of the Judicial Records Division dated November 11, 2021, the CIR failed to file a comment on the Petition for Review in CTA EB No. 2477.[10]

On January 10, 2022, the consolidated Petitions for Review were submitted for decision.[11]

THE ISSUES

In ***CTA EB No. 2475,*** the CIR alleges that the Court in Division erred in partially granting KEILCO's Petition for Review and ordering the refund or issuance of TCC in the amount of ₱23,389,050.05, representing KEILCO's excess and unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the 2nd, 3rd, and 4th quarters of TY 2002 because KEILCO's judicial claim was prematurely filed. KEILCO had only given the CIR nine (9) days to evaluate its administrative claim and it did not observe the 120-day plus 30-day mandatory period as provided under Section 112(D) of the NIRC of 1997, as amended. Moreover, KEILCO failed to comply with the invoicing requirements for it to be entitled to a tax refund or issuance of TCC.

In ***CTA EB No. 2477,*** KEILCO contends that the Court in Division erred in deciding that it is not entitled to the refund or issuance of TCC for KEILCO's excess and unutilized input VAT in the additional amount of ₱47,559,061.24 over and above the amount of ₱23,389,050.05, which has already been granted in favor of KEILCO. KEILCO argues that it should not be faulted for the alleged failure of its suppliers/sellers to comply with invoicing requirements pursuant to Section 4.108-1 of Revenue Regulations (RR) No. 07-1995. KEILCO maintains that purchase invoices and official receipts

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[8] *Minute Resolution dated July 5, 2021, Rollo,* (CTA EB No. 2475), p. 52.
[9] *Rollo,* (CTA EB No. 2475), pp. 61-68.
[10] *Rollo,* (CTA EB No. 2475), p. 69.
[11] *Resolution promulgated on January 10, 2022, Rollo,* (CTA EB No. 2475), pp. 71-73.

containing "TIN-V" should be considered as valid supporting documents for its claim of excess and unutilized input VAT since "TIN-V" is equivalent to "TIN-VAT." KEILCO adds that the supporting purchase invoices and official receipts issued in the name of "Kepco," could only mean to refer to Kepco Ilijan Corporation.

THE RULING OF THE COURT *EN BANC*

Both *Petitions for Review* lack merit.

The Court notes that the issues and arguments raised by the parties are mere reiterations of what have been considered and passed upon by the Court in Division in the assailed Amended Decision and Resolution as well as in the Decision dated April 14, 2009. Consequently, the Court adopts the findings of the Court in Division and expounds on matters below.

CIR's Petition for Review
(CTA EB No. 2475)

KEILCO need not observe the 120-day mandatory period before it could file a judicial claim with the CTA. Hence, the Court in Division acquired jurisdiction over KEILCO's judicial claim.

Section 112 (A) and (D) of the NIRC of 1997, as amended provides the requisites for refund/issuance of TCC of Input VAT attributable to zero-rated sales:

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

> input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> ...
>
> (D) ***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 compete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

In *Kepco Ilijan Corporation v. Commissioner of Internal Revenue,*[12] (2018 KEILCO case), the Supreme Court allowed the premature filing of KEILCO's judicial claim. The Supreme Court clarified that KEILCO need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review because the judicial claim was filed within the period December 10, 2003 up to October 6, 2010. During this period, the existing interpretation laid down in BIR Ruling No. DA-489-03 is that a taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. It was only on December 6, 2010, when the Supreme Court ruled in *Aichi* that the 120+30-day period under Section 112(D) of the NIRC of 1997, as amended is mandatory and jurisdictional.

In the 2018 KEILCO case, the Supreme Court explained:

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12 G.R. No. 205185, September 26, 2018.

> ...
>
> The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of the *Aichi* pronouncement on October 06, 2010. **Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule.**
>
> As a result, the case has to be remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002. ...[13]

Thus, the 2018 KEILCO case concluded:

> ...
>
> **WHEREFORE,** the Court **PARTLY GRANTS** the petition for review on *certiorari;* **REVERSES and SETS ASIDE** the decision promulgated on September 6, 2012 by the Court of Tax Appeals *En Banc* in CTA EB Case No. 733; and **ORDERS** the remand of the case to the Court of Tax Appeals in Division for further proceedings on the petitioner's claim for refund of its unutilized excess input Value-Added Tax for the second, third and fourth quarters of taxable year 2002.
>
> No pronouncement on costs of suit.
>
> **SO ORDERED.**

It bears emphasis that this is just a continuation of the 2018 KEILCO case. Specifically, the Supreme Court remanded the case to this Court for further proceedings on KEILCO's claim for refund of its excess and unutilized input VAT for the second, third, and fourth quarters of TY 2002.

The ruling in the 2018 KEILCO is conclusive and binding upon the present case. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law

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13 Boldfacing supplied.

is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[14]

The mere allegation that KEILCO failed to comply with the invoicing requirements will not merit a reversal of the grant of tax refund or issuance of TCC in the amount of ₱23,389,050.05.

The CIR's claim that KEILCO failed to comply with the invoicing requirements, thereby rendering improper its claim for tax refund in the amount of ₱23,389,050.05 is without merit.

As correctly found by the Court in Division in the assailed Resolution, there is no showing that the CIR made express reference to the findings or conclusions which are not supported by the evidence or contrary to law. The CIR did not adduce any evidence showing that KEILCO failed to comply with the requisites for refund or issuance of TCC of its excess and unutilized input VAT in the amount of ₱23,389,050.05. The CIR failed to point out the specific invoices and official receipts which should have been disallowed. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[15]

Thus, the Court in Division was correct in maintaining its Decision dated April 14, 2009, that KEILCO has sufficiently proven that is entitled to a refund or issuance of tax credit certificate corresponding to its unutilized input VAT for the second, third and fourth quarters of taxable year 2002 in the amount of ₱23,389,050.05.

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14 *Commissioner of Internal Revenue, v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947. July 15, 2003.

15 *LNS International Manpower Services v. Armando C. Padua, Jr.*, G.R. No. 179792, March 05, 2010.

KEILCO's Petition for Review (CTA EB No. 2477)

The Court in Division correctly disallowed the amount of ₱47,559,061.24 for failure to comply with the invoicing requirements.

As found by the Court in Division, KEILCO, failed to meet the invoicing requirements mandated by the NIRC of 1997, as amended and the revenue regulations implementing it that will establish its entitlement to the refund or issuance of TCC for the alleged excess and unutilized input VAT input in the amount of ₱47,559,061.24.

To recall, the Court in Division in the assailed Amended Decision disallowed the following input VAT claims:

a. the amount of ₱856,222.14 representing KEILCO's purchases of goods and services supported by invoices and official receipts with pre-printed "TIN-V" instead of "TIN-VAT";
b. the amount of ₱12,990,949.32 because the official receipts issued by Marsh Philippines, Inc. to KEILCO do not bear the latter's registered name, address, and TIN;
c. the amount of ₱19,235,421.78 because the official receipts issued by Marsh Philippines, Inc. and Raytheon Ebasco Overseas Ltd in the amounts of US$2,617,138.84 and US$1,524,763.64, respectively, to KEILCO do not likewise bear the latter's address and TIN; and,
d. the amount of ₱14,476,468.00 because the check vouchers presented and prepared by KEILCO, being an internal document, is self-serving. The VAT indicated therein cannot be considered as sufficient proof that the VAT were actually paid and remitted to the Bureau of Customs during TY 2002.

We affirm the Court in Division's findings.

At the outset, a tax credit or refund, like tax exemption, is strictly construed against the taxpayer. The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case VAT input tax, by submitting evidence that he has complied with the requirements laid down in the Tax Code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[16]

Sections 113(A) and 237 of the NIRC of 1997, as amended provide the invoicing requirements that all VAT-registered taxpayers should observe:

> SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -
>
> (A) Invoicing Requirements. - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
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> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
>
> (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. ...
>
> SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt

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16 See *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.

> shall further show the Taxpayer Identification Number (TIN) of the purchaser.
>
> The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.
>
> The Commissioner may, in meritorious cases, exempt any person subject to internal revenue tax from compliance with the provisions of this Section.

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.108-1 of Revenue Regulations (RR) 7-95, which states:

> Sec. 4.108-1. Invoicing Requirements. - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and
> 6. the invoice value or consideration.
>
> ...
>
> **Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT invoice" shall not give rise to any input tax.**[17]

Contrary to KEILCO's contentions, the above-quoted provisions specifically require, as follows:

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17 Boldfacing supplied.

One, that a VAT registered person print TIN-VAT on its invoices or receipts to be considered a VAT invoice or receipt. Indeed, the NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95; and

Two, duly registered receipts or sales invoices showing name, TIN, business style, if any, and address of the VAT-registered purchaser, customer, or client. The disallowed official receipts and invoices which do not show KEILCO's name, TIN and address cannot be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of KEILCO. Also, this Court cannot assume that the name KEPCO in the disallowed official receipts and invoices refer to one entity, KEILCO. In *Bonifacio Water Corp. v. Commissioner of Internal Revenue,* the Supreme Court ruled that the absence of official receipts issued in a name approved and authorized by the Securities and Exchange Commission was tantamount to non-compliance with the substantiation requirements under the law.[18]

The Court sustains the Court in Division's finding that out of KEILCO's claimed input VAT of ₱74,658,481.68 for the TY 2002, only the amount of ₱23,389,050.05 represents substantiated input VAT, computed as follows:

Amount of claim			₱74,658,481.68
Less:	Barred by prescription - 1st Quarter	₱1,740,640.93	
	Disallowance per ICPA Report - 2nd to 4th Quarters[19]	1,106,701.67	
	Disallowances per Court's verification - 2nd to 4th Quarters[20]	48,422,089.03	51,269,431.63
Refundable Input VAT			₱23,389,050.05

WHEREFORE, the Petitions for Review filed by the CIR and KEILCO are **DENIED** for lack of merit. Accordingly, the Amended Decision dated September 22, 2020 and Resolution dated March 12,

[18] *Commissioner of Internal Revenue v. Philex Mining Corporation,* G.R. No. 230016, November 23, 2020 citing G.R. No. 175142, July 22, 2013.
[19] See pp. 11-12 of the Decision in CTA Case No. 6966 dated April 14, 2009.
[20] See Annex A pp.1-3 of the Decision in CTA Case No. 6966 dated April 14, 2009.

2021, in CTA Case No. 6966, whereby the Court's Special Second Division maintained and reiterated the ruling of the Second Division's Decision dated April 14, 2009,[21] partially granting KEILCO's claim for refund or issuance of a TCC in the reduced amount of ₱23,389,050.05, representing unutilized and excess input VAT attributable to its zero-rated sales of electricity to NPC for the 2nd, 3rd, and 4th quarters of TY 2002 are **AFFIRMED.**

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice