REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

GAMESA EOLICA, SL-UNIPERSONAL PHILIPPINE BRANCH

Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA CASE NO. 9668

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 0 2 2020 3:10 p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] filed on 25 August 2017 by Gamesa Eolica, SL-Unipersonal Philippine Branch asking the Court to grant its application for refund or issuance of a tax credit certificate in the total amount of ₱12,646,222.73, representing its alleged excess and unutilized input Value-Added Tax ("VAT") for the first ("1st") quarter of calendar year ("CY") 2015.

The Parties

Petitioner Gamesa Eolica, SL-Unipersonal-Philippine Branch is a foreign corporation organized and existing under the laws of Spain. It is registered with the Securities and Exchange Commission ("SEC") as a branch office with SEC Registration No. FS201120007. It is also registered with the Bureau of Internal Revenue ("BIR") Revenue District Office ("RDO") No. 044 as a VAT entity with BIR Tax Identification No. ("TIN") 416-244-858-000.

---

[1] Records, Vol. 1, pp. 10-109, with annexes.

Petitioner is engaged in the development, preparation, manufacture, production, marketing, sale and supply on wholesale basis, and commercialization of wind turbines and wind generators, including components thereof such as blades, moulds models, and stands for blades and other similar components for wind generators, and to perform after-sales, auxiliary, or support services necessary for the proper installation, use, and maintenance of wind turbines and wind generators, including components thereof necessary for the generation of wind energy.

On the other hand, respondent is the Commissioner of the BIR, vested by the National Internal Revenue Code of 1997, as amended (hereinafter referred to as "Tax Code") the authority to decide, approve, and grant tax refunds. He may be served with summons and other Court processes at Room 511, 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 31 March 2017, petitioner filed its Application for Tax Credits/Refunds (BIR Form No. 1914), with attached letter and supporting documents to BIR RDO No. 44 requesting for the refund and/or issuance of a tax credit certificate of its alleged excess/unutilized input VAT amounting to ₱12,646,222.73 for the 1st Quarter of CY 2015.[2]

Subsequently, on 17 August 2017, petitioner received from the BIR a letter, dated 14 July 2017, partially granting its VAT refund/credit claim in the amount of ₱1,419,010.24 (hereinafter referred to as "BIR Decision").[3]

Petitioner then filed the instant Petition for Review on 25 August 2017.[4]

On 18 September 2017, the Court issued a Resolution,[5] ordering the petitioner to submit, within five (5) days from receipt thereof, proof that it actually received the BIR Decision on 17 August 2017, and an original or certified true copy of the Secretary's Certificate or Board Resolution authorizing: (a) petitioner's counsel to act on its behalf, and (b) petitioner's Head of Administration, Mr. Jesus Tomas I. Ibañez to sign the Certification and Verification of Non-Forum Shopping.

On 6 October 2017, petitioner filed a Motion for Extension of Time to Submit Documents[6] asking for an additional period of twenty (20) days to comply with the aforementioned Resolution. The Court granted the same.[7]

---

[2] Exhibits "P-3", "P-3-A", and "P-3-B", BIR Records, Folder 2, pp. 515, and 517-518.
[3] Exhibit "P-47", Records, Vol. 1, pp. 122-123.
[4] See Petition for Review, Records, Vol. 1, pp. 10-109, with annexes.
[5] See Resolution dated 18 September 2017, Vol. 1 p. 111.
[6] See Motion for Extension of Time to Submit Documents, Records, Vol. 1, pp. 112-115.
[7] See Resolution dated 19 October 2017, Records, Vol. 1, p. 117.

On 26 October 2017, petitioner filed its Manifestation and Motion for Extension of Time to Submit Document[8] manifesting that it was submitting to Court a letter, dated 6 October 2017, issued by the Tax Audit Review Division of the BIR confirming petitioner's receipt of the BIR Decision on 17 August 2017. However, it requested for an additional period of 20 days to submit the Secretary's Certificate or Board Resolution. The Court granted petitioner's request and gave it a final non-extendible period of 20 days or until 16 November 2017 to submit the required document.[9]

On 16 November 2017, petitioner filed its Compliance,[10] submitting the Affidavit of Mr. Leandro Ben M. Robediso, attesting his receipt of the BIR Decision on 17 August 2017, on behalf of the petitioner, and the duly notarized and authenticated Director's Certificate authorizing petitioner's counsel to represent the same in the above-captioned case and Mr. Jesus Tomas I. Ibañez to sign the Certification and Verification of Non-Forum Shopping.

Thereafter, on 1 December 2017, the Court issued the Summons requiring respondent to file its Answer.[11]

Respondent filed his Answer on 8 February 2018[12] which is within the extended period granted by the Court.[13]

In his Answer, respondent interposed the following defenses: (a) that it is incumbent upon the petitioner to prove that it received the BIR Decision only on 17 August 2017; (b) that the petitioner failed to prove with sufficient evidence that it is entitled to the VAT refund/credit prayed for; (c) that the Court should only consider pieces of evidence submitted by the petitioner to the BIR in support of its administrative claim; and (d) that this case, being a tax refund case, should be construed strictly against the taxpayer and in favor of the government.

After filing his Answer, respondent transmitted the BIR Records on 19 February 2018[14] and filed a Manifestation on 21 February 2018 stating that it submitted a compact disc together with the BIR Records but was inadvertently not described in the Compliance it filed with the BIR Records.[15]

---

[8] See Manifestation and Motion for Extension of Time to Submit Document, Records, Vol. 1, pp. 118-124.
[9] See Resolution dated 9 November 2017, Records, Vol. 1, p. 148.
[10] See Compliance, Records, Vol. 1, pp. 125-138.
[11] See Summons, Records, Vol. 1, pp. 143-144.
[12] See Answer; Records, Vol. 1, pp. 157-166.
[13] See Resolution dated 22 December 2017, Records, Vol. 1, p. 150, and Resolution dated 30 January 2018, Records, Vol. 1, p. 156.
[14] See Compliance; Records, Vol. 1, pp. 169-171.
[15] See Manifestation, Records, Vol. 1. pp. 172-174.

On 26 April 2018, respondent filed his Pre-Trial Brief,[16] while petitioner submitted its Pre-Trial Brief on 7 May 2018.[17]

The Pre-Trial Conference was held on 8 May 2018.[18] However, only respondent's counsel was present in the hearing despite notice to petitioner's counsel. This prompted the Court to dismiss the instant case.[19]

Aggrieved, petitioner filed a Manifestation and Motion for Reconsideration and to Reinstate Case on 10 May 2018,[20] asking the Court to reverse its order dismissing the instant case. Petitioner explained that its counsel arrived in Court ten (10) minutes after the scheduled time of the hearing due to the unforeseen re-routing in Agham Road and had no intention to miss the Pre-Trial Conference.

On 21 June 2018, the Court reversed its order of dismissal and set the Pre-Trial Conference anew on 18 September 2018.[21]

On 17 September 2018, petitioner filed a Motion to Commission an Independent Certified Public Accountant[22] asking the Court to commission Mr. Richard S. Querido to act as the Independent Certified Public Accountant ("ICPA") in this case.

Subsequently, on 18 September 2018, the Pre-Trial Conference took place.[23]

On 3 October 2018, the parties filed their Joint Stipulation of Facts and Issue,[24] following which, the Court issued a Pre-Trial Order on 11 October 2018.[25]

Thereafter, trial proceeded.

On 4 December 2018, the Court granted petitioner's Motion to Commission an Independent Certified Public Accountant and appointed Mr. Richard S. Querido as the ICPA in the instant case.[26]

---

[16] See Respondent's Pre-Trial Brief, Records, Vol. 1, pp. 177-181.
[17] See Petitioner's Pre-Trial Brief, Records, Vol. 1, pp. 185-200.
[18] See Minutes of Hearing, Records, Vol. 1, p. 201.
[19] See Order dated 8 May 2018, Records, Vol. 1, p. 202.
[20] See Manifestation and Motion for Reconsideration and to Reinstate Case, Records, Vol. 1, p. 208-231.
[21] See Resolution dated 21 June 2018, Records, Vol. 1, pp. 270-271.
[22] See Motion to Commission an Independent Certified Public Accountant, Records, Vol. 1, pp. 272-286.
[23] See Order dated 18 September 2018, Records, Vol. 1, pp. 288-289.
[24] See Joint Stipulation of Facts and Issue, Records, Vol. 1, pp. 290-292.
[25] See Pre-Trial Order, Records, Vol. 1, pp. 294-300.
[26] See Minutes of the Hearing dated 4 December 2018, Vol. 1, p. 314; Oath of Commission, Vol. 1, p. 315; Order dated 4 December 2018, Vol. 1, pp. 316-317.

As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (a) Mr. Jesus Tomas I. Ibañez-Head of Administration of petitioner;[27] and (b) Mr. Richard S. Querido-Court-commissioned ICPA.[28]

On 18 January 2019, Mr. Querido submitted the ICPA Report.[29]

On 30 January 2019, petitioner filed its Motion to Admit,[30] stating that it is submitting to Court documents that were inadvertently not attached to the Judicial Affidavit of its witness Mr. Jesus Tomas I. Ibañez, and prayed for the Court to admit the same to form part of the records of the instant case. Considering that respondent did not interpose any objection to the Motion to Admit, the Court granted the same in open court on 31 January 2019.[31]

On 8 February 2019, petitioner filed the Consolidated Motions for the Re-Marking of Exhibits and for the Pre-Marking of Exhibits Attached to the ICPA Report,[32] asking the Court to allow it to re-mark and pre-mark some of its exhibits. The Court granted the said motion in open court on 21 February 2019.[33]

Subsequently, on 8 March 2019 petitioner filed its Formal Offer of Evidence[34] while respondent submitted his Comment Re: Petitioner's Formal Offer of Evidence on 18 March 2019.[35]

In a Resolution dated 22 May 2019, petitioner's exhibits were admitted, except Exhibit "P-2"[36] for failure to submit the duly marked exhibit and Exhibits "P-2-a"[37] and "P-2-b" to "P-2-c"[38] for failure to present originals for comparison and failure to identify the said exhibits.[39]

On 13 June 2019, respondent presented his lone witness Revenue Officer Leo-Gibbs C. Tapiru.[40]

---

[27] Exhibit "P-199", Records, Vol. 1, pp. 322-334; Order dated 31 January 2019, Vol. 2, p. 817.
[28] Exhibit "P-200", Records, Vol. 2, pp. 615-815; Order dated 21 February 2019, Vol. 2, pp. 821-822.
[29] Exhibit "P-201", Records, Vol. 1, pp. 335-391.
[30] See Motion to Admit, Records, Vols. 1 and 2, pp. 394-603.
[31] See Minutes of Hearing dated 31 January 2019, Records, Vol. 2, p. 816; Order dated 31 January 2019, Records, Vol. 2, p. 817.
[32] See Consolidated Motions for the Re-Marking of Exhibits and for the Pre-Marking of Exhibits Attached to the ICPA Report, Records, Vol. 2, pp. 604-609.
[33] See Minutes of Hearing dated 21 February 2019, Records, Vol. 2, p. 820; Order dated 21 February 2019, Records, Vol. 2, pp. 821-822.
[34] See Formal Offer of Evidence for the Petitioner, Records, Vol. 2, pp. 823-923.
[35] See Comment Re: Petitioner's Formal Offer of Evidence, Records, Vol. 2, pp. 925-928.
[36] Petitioner's SEC License to Transact Business in the Philippines issued on 23 November 2011.
[37] SEC Letter dated 23 November 2011.
[38] Guidelines for the Investment Requirement of Foreign Corporations under Section 123 of the Corporation Code of the Philippines.
[39] See Resolution dated 22 May 2019, Records, Vol. 2, pp. 942-944.
[40] See Minutes of Hearing dated 13 June 2019, Records, Vol. 2, p. 945; Order dated 13 June 2019, Records, Vol. 2, pp. 946-947.

On 1 July 2019, respondent filed his Formal Offer of Evidence.[41] Petitioner submitted its Comments/Opposition to Respondent's Formal Offer of Evidence on 11 July 2019.[42] The Court issued a Resolution admitting all the exhibits of the respondent.[43]

On 4 September 2019, respondent filed a Manifestation stating that he is adopting his Answer as his Memorandum.[44] Meanwhile, petitioner filed its Memorandum on 23 September 2019.[45]

Thereafter, the instant case was submitted for decision on 26 September 2019.[46]

The Issue

The sole issue for this Court's resolution is:

> WHETHER PETITIONER IS ENTITILED TO A REFUND/TAX CREDIT OF ITS ALLEGED EXCESS OR UNUTILIZED INPUT VAT PAYMENTS FOR THE FIRST QUARTER OF CY 2015 IN THE FULL AMOUNT OF ₱12,646,222.73.[47]

Arguments of the Parties

Petitioner's Arguments[48]

Petitioner argues that it is entitled to a VAT refund or a tax credit certificate for its alleged unutilized input VAT for the 1st quarter of 2015. It contends that both its administrative and judicial claims were timely filed; that it is a VAT-registered entity engaged in VATable and VAT zero-rated transactions; that its sales were made mostly to Renewable Energy ("RE") Developers which under ***Section 15 (g) of Republic Act ("RA") No. 9513***[49] and ***Section 108(B)(3) of the Tax Code*** enjoy VAT zero-rating on its purchases of local supply of goods, properties, and services needed for the development, construction, and installation of its plant facilities; that its input VAT for the 1st quarter of CY 2015 remains to be unutilized; that its input

[41] See Formal Offer of Evidence, Records, Vol. 2, pp. 950-954.
[42] See Comments/Opposition to Respondent's Formal Offer of Evidence, Records, Vol. 2, pp. 956-959.
[43] See Resolution dated 7 August 2019, Records, Vol. 2, pp. 967-968.
[44] See Manifestation, Records, Vol. 2, pp. 972-974.
[45] See Memorandum, Records, Vol. 2, pp. 981-1008.
[46] See Resolution dated 26 September 2019, Vol. 2, p. 1010.
[47] See Pre-Trial Order; Records, Vol. 1, pp. 294-300.
[48] See Memorandum, Records, Vol. 2, pp. 981-1008.
[49] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes (Renewable Energy Act of 2008), 16 December 2008.

VAT is directly attributable to its zero-rated sales for CY 2015; and that it has submitted all the documentary requirements in support of its VAT refund/credit claim provided under ***Revenue Memorandum Circular ("RMC") No. 54-2014***[50] and ***Revenue Regulation ("RR") No. 16-2005***[51].

Respondent's Counter-Arguments[52]

On the other hand, respondent alleges that it is incumbent upon the petitioner to prove that it received the BIR Decision after the lapse of the one hundred twenty ("120") day period or on 17 August 2017 and overturn the presumption that an addressee is presumed to have immediately received a letter that was transmitted to it in the ordinary course of mail.

Furthermore, the respondent argues that petitioner's claim for VAT refund/credit arising from its unutilized input VAT carried over from the previous period, in the amount of ₱11,149,552.88, should be disallowed considering that its corresponding supporting documents were not ascertained to be in accordance with ***Section 110(A)*** in relation to ***Section 113 of the Tax Code.*** Aside from the foregoing, respondent also alleges that the unutilized input VAT arising from petitioner's purchase to Carmont Enterprises in the amount of ₱60,000 should be disallowed since it was not proven to be paid by petitioner. As for the remaining VAT refund/credit claim of the petitioner, respondent alleges that it, too, should be disallowed for failure of the former to present sufficient evidence to prove its entitlement.

Respondent also avers that this Court should only consider the pieces of evidence that the petitioner presented to the BIR during its administrative claim for VAT refund/credit since the judicial claim for refund is not an original action but an appeal from an unsuccessful administrative remedy.

Lastly, respondent states that this case being a tax refund case should be construed strictly against the taxpayer and in favor of the government.

The Ruling of the Court

We grant the instant Petition for Review.

The provisions governing the claim for refund or issuance of a tax credit certificate of excess or unutilized creditable input VAT attributable to zero-rated sales are ***Sections 112(A) and (C) of the Tax Code***, which provide:

[50] Subject: Clarifying Issues Relative to the Application for Value Added Tax ("VAT") Refund/Credit under Section 112 of the Tax Code, as amended, 11 June 2014.
[51] Subject: Consolidated Value-Added Tax Regulations of 2005, 22 June 2005
[52] See Answer; Records, Vol. 1, pp. 157-166.

"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**: 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.

xxx xxx xxx

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

In case of **full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**."[53]

The foregoing provisions have been interpreted by various case laws which have laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. The said requisites are classified into certain categories, to wit:

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

1. The administrative claim with the BIR should be filed within two ("2") years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made;[54]

---

[53] Emphasis supplied.
[54] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, 23 July 2018.

2. that in case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty ("120") days, the judicial claim should be filed with this Court, within thirty ("30") days from receipt of the decision or after the expiration of the said 120-day period;[55]

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

3. the taxpayer is a VAT-registered person;[56]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[57]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2), and (b) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[58]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[59]
7. the input taxes are due or paid;[60]
8. the input taxes have not been applied against output taxes during and in the succeeding quarters; and[61]
9. 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.[62]

A review of the records would show that petitioner has complied with these requisites as to qualify it to be entitled to the credit or refund of input VAT.

---

[55] *Id.*
[56] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, 19 October 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*

Petitioner's Administrative and Judicial Claims were timely filed.

In ***Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue***,[63] the Supreme Court explained the requisites pertaining to the timeliness of the filing of the administrative and judicial claims for VAT refund/credit, to wit:

> "xxx **a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application. The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.**
>
> From the submission of complete documents to support the administrative claim, **the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction. The period to appeal is thirty (30) days counted from the receipt of the decision or inaction by the CIR.**"[64]

In order to satisfy the *first* and *second requisites* of a VAT refund/credit claim, jurisprudence provides that: (a) the administrative claim must be filed within 2 years from the close of the taxable quarter when the pertinent zero-rated sales were made; and (b) that the judicial claim be made within 30 days either from the receipt of the decision of the CIR or after the lapse of 120 days from the submission of the complete documents in support of the administrative claim, whichever comes first.

The submission of the taxpayer-applicant's complete supporting documents should be made simultaneously with the submission of its VAT refund/credit claim application to the BIR which accordingly triggers the running of the 120-day period in accordance with the pronouncement of the Supreme Court in ***Pilipinas Total Gas, Inc., v. CIR***,[65] to wit:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his

[63] G.R. No. 191495, 23 July 2018.
[64] Emphasis supplied.
[65] G.R. No. 207112, 8 December 2015.

administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench. **As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:**

The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."[66]

Applying the foregoing rules, the present claim covers the 1st quarter of CY 2015 which closed on 31 March 2015. Counting 2 years from the said date, petitioner had until 31 March 2017 within which to file its administrative claim for VAT refund/credit claim.

In this case, petitioner filed its VAT refund/credit claim with the BIR on 31 March 2017.[67] Hence, the administrative claim was seasonably filed.

---

[66] Emphasis supplied.
[67] Exhibit "P-3", "P-3-A", and "P-3-B", BIR Records, Folder 2, pp. 515-518.

As for the judicial claim, petitioner submitted its complete supporting documents to the BIR also on 31 March 2017.[68] Accordingly, the BIR had until 29 July 2017 to decide on the VAT refund/credit claim, and the petitioner until 28 August 2017 to file its Petition for Review determined as follows:

Period Covered	**Date of Filing of Administrative Claim**	**End of 120 days for BIR to decide on the claim**	**End of 30 days from the expiration of the 120 days**	**Date of Filing of the Petition for Review**
1st Quarter of CY 2015	31 March 2017[69]	29 July 2017	28 August 2017	25 August 2017[70]

As shown above, the Petition for Review was filed on 25 August 2017. Thus, petitioner's judicial claim was, likewise, timely filed.

Petitioner's receipt of the BIR Decision is inconsequential in the determination of the timeliness of the judicial claim since the said letter was received by the petitioner only on 17 August 2017, which is after the lapse of the 120-day period. Hence, without receiving a decision from the BIR on or before 29 July 2017, the period to file the judicial claim commenced after the expiration of the 120-day period, consistent with the ruling of the Supreme Court in the case of ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue***,[71] to wit:

> "The **judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**."[72]

Respondent's argument that the petitioner failed to overturn the presumption that it received the BIR Decision immediately after it was transmitted to them is without basis.

The fact of petitioner's receipt of the BIR Decision on 17 August 2017 was acknowledged by Nelia A. Castillo, Chief of the Tax Audit Review

---

[68] Exhibit "P-3-B, BIR Records, Folder 2, p. 517.
[69] *Id.*
[70] Records, Vol. 1, pp. 10-109, with annexes.
[71] G.R. No. 182737, 2 March 2016.
[72] Emphasis supplied.

Division of the BIR in its letter[73] addressed to the petitioner dated 6 October 2017, which states:

> "This refers to your request for a Certified True Copy (CTC) of the **decision of this Bureau relative to your Value-Added Tax (VAT) refund claim for the period January to March 2015 dated July 14, 2017 which was duly received by your authorized representative on August 17, 2017**. xxx"[74]

Aside from the letter of Ms. Castillo, the petitioner also presented the affidavit of Mr. Leandro Ben M. Robediso attesting to his receipt of the BIR Decision on 17 August 2017.[75]

Hence, given the confirmation of the BIR itself and the affidavit of Mr. Robediso, the Court cannot give merit to the contention of the respondent.

Petitioner is a VAT-registered entity.

Petitioner submits its BIR Certificate of Registration ("COR") OCN No. 9R0000408724 with TIN No. 416-244-858-000, showing that it is registered as a VAT entity.[76] The Court finds the COR as sufficient proof of petitioner's compliance with the *third requisite*.

Petitioner is engaged in zero-rated sales.

The *fourth requisite* requires that the taxpayer-applicant must be engaged in zero-rated or effectively zero-rated sales. The importance of the fourth requisite is highlighted in the case of ***Coca-Cola Bottlers Philippines, Inc., v. CIR***,[77] to wit:

> "A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.** Such is the clear import of the Court's ruling in San Roque, to wit:

[73] Exhibit "P-46", Records, Vol. 1, p. 121.
[74] Emphasis supplied.
[75] Exhibit "P-45", Records, Vol. 1, p. 128.
[76] Exhibit "P-7-b", Records, Vol. 2, p. 872.
[77] G.R. No. 222428, 19 February 2018.

> **Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy.** xxx."[78]

In this case, the petitioner claims that it rendered VAT zero-rated sales of services to Petrowind Energy, Inc. ("Petrowind") and Alternergy Wind One Corporation ("Alternergy") which are Renewable Energy Developers ("RE Developers"), under ***Section 15(g) of RA No. 9513***. On the basis of the same, petitioner alleges that it is entitled to VAT refund/credit claim.

This Court finds the contention of the petitioner meritorious.

Sections 106(A)(2)(c)[79] ***and 108(B)(3) of the Tax Code***[80] provide that sales of goods/properties or services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such goods/properties or services to zero percent (0%) rate.

The applicable special law herein is ***Chapter VII, Section 15(g) of RA No. 9513***[81] which provides:

> "Section 15. *Incentives for Renewable Energy Projects and Activities.* – **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE**, in consultation with the BOI, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

---

[78] Emphasis supplied.

[79] SEC. 106. Value-Added Tax on Sale of Goods or Properties. –
(A) Rate and Base of Tax. - xxx
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

[80] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
(B) Transactions Subject to Zero Percent (0%) Rate.- The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

[81] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes (Renewable Energy Act of 2008), 16 December 2008.

> **All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.**
>
> This provision shall **also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power,** including but not limited to the services performed by subcontractors and/or contractors."[82]

Implementing the aforementioned provision is ***Part III, Rule 5, Section 13(G)(b) of the Department Circular No. DC2009-05-0008 (hereinafter referred to as "REA IRR")***[83] issued by the Department of Energy ("DOE"), which provides:

> PART III. INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES
>
> RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT
>
> SEC.13. Fiscal Incentives for Renewable Energy Projects and Activities
>
> DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:
>
> xxx xxx xxx
>
> G. *Zero Percent Value-Added Tax Rate*
>
> The **following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT)**, pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:
>
> xxx xxx xxx
>
> (b) Purchase of local goods, properties and services **needed for the development, construction, and installation of the plant facilities** of RE Developers; and
>
> (c) **Whole process of exploration and development of RE sources up to its conversion into power,** including, but not limited to, the services performed by subcontractors and/or contractors.

---

[82] Emphasis supplied.

[83] Rules and Regulations Implementing Republic Act No. 9513, 25 May 2009.

In order to qualify for the incentives under RA No. 9513, ***Chapter VII, Section 25 of RA No. 9513*** requires the RE Developers to register with the DOE, through the Renewable Energy Management Bureau ("REMB"). Upon registration, a certification will be issued to the RE Developer which will serve as proof of its entitlement of the incentives provided under Chapter VII of RA No. 9513, to wit:

> "Section 25. Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment. – **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy, through the Renewable Energy Management Bureau. <u>Upon registration, a certification shall be issued to each RE Developer</u>** and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment **<u>to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act."</u>**

In addition, the ***REA IRR*** require the taxpayer-applicant to present the RE Developers' Registration with the Board of Investment ("BOI") and Certificate of Endorsement by the DOE as additional conditions for availment of the incentives under RA No. 9513, to wit:

> SECTION 18. Conditions for Availment of Incentives and Other Privileges. —
>
> A. Registration/Accreditation with the DOE
>
> **<u>For purposes of entitlement to the incentives and privileges under the Act,</u> existing and new RE Developers, and manufacturers, fabricators, <u>and suppliers of locally-produced RE equipment</u> shall register with the DOE, through the Renewable Energy Management Bureau (REMB).** The following certifications shall be issued:
>
> **(1) DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract.**
>
> For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.
>
> The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.
>
> Any investment added to existing RE projects shall be subject to prior approval by the DOE.
>
> xxx xxx xxx

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

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

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

For this purpose, the DOE shall, within six (6) months from the effectivity of this IRR, issue guidelines on the procedures and requirements for the availment of incentives based on specific criteria, such as, but not limited to:

(1) Compliance with Obligations — The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;

(2) Compliance with Directives — The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with the directives and circulars which the DOE may issue from time to time in pursuance of its powers under the Act; aIcHSC

(3) Compliance with Pre-Registration/Registration Conditions — The RE Developers or manufacturers, fabricators, and suppliers of locally-

> produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;
>
> (4) Compliance with Reportorial Requirements — An RE Developer shall maintain distinct and separate books of accounts for its operations inside the RE facilities and shall submit technical, financial and other operational reports/documents to DOE on or before their respective due dates; and
>
> (5) Remittance of Government Shares and Payment of Applicable Financial Obligations — An RE Developer shall observe timely remittance of Government Share, and payment of applicable fees and other financial obligations to the DOE.
>
> RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

Hence, based on the foregoing provisions, to qualify for VAT zero-rating under RA No. 9513, the petitioner must prove with sufficient evidence that:

(1) It is engaged in the sale of goods and services to RE Developers;
(2) The goods and services sold (a) are needed for the development, construction, and installation of the plant facilities of RE Developers or (b) pertain to the whole process of exploration and development of RE sources up to its conversion into power; and
(3) The RE Developers must have secured a DOE Certificate of Registration, Registration with the BOI, and Certificate of Endorsement by the DOE.

As culled from the records, petitioner rendered inland transportation, installation, start up, and testing of wind turbine generators and the execution of certain electrical and civil works to the RE Developers - Alternergy and Petrowind, as evidenced by the following documents:

(1) DOE Certificate of Registration:

Client	DOE Certificate of Registration No.	Date of Issuance	Exhibit No.
Alternergy Wind One Corporation	WESC 2009-09-018	23 October 2009	"P-8"[84]
Petrowind Energy Inc.	WESC-2009-09-002	1 August 2013	"P-9"[85]

[84] Exhibit "P-8", Records, Vol. 2, p. 874.
[85] Exhibit "P-9", Records, Vol. 2, p. 875.

(2) BIR-approved Application Forms for VAT Zero Rate issued to Gamesa Eolica, S.L.-Unipersonal:

Client	ALTEID Approved Control No.	Period of Exemption Covered	Description of Goods and Services	Issued in connection with DOE Certificate of Registration No.	Exhibit No.
Alternergy Wind One Corporation	2015-0018	January 1, 2015 to December 31, 2015	Delivery and installation of wind turbine equipment parts and accessories Civil and Electrical Construction to Erect and Connect Wind Turbine Generators to the Grid	WESC 2009-09-018	"P-11-a"[86]
Petrowind Energy Inc./ Gibon, Nabas, Aklan	2015-0017	January 1, 2015 to December 31, 2015	Delivery and installation of wind turbine equipment parts and accessories Civil and Electrical Construction to Erect and Connect Wind Turbine Generators to the Grid	WESC-2009-09-002	"P-10-a"[87]

Given the aforementioned, the Court notes that, out of the three documents required by the ***REA-IRR*** for a RE Developer to qualify for VAT zero-rating, petitioner was only able to present the DOE Certificate of Registration of the RE Developers.

As a rule, the failure of the taxpayer-applicant to present the foregoing documents will automatically result to the denial of its VAT refund/credit claim. However, in this case, the petitioner was able to submit its BIR-approved Application Forms for VAT Zero Rate.

[86] Exhibit "P-11-a", Records, Vol. 2, p. 879.
[87] Exhibit "P-10-a", Records, Vol. 2, p. 877.

The BIR-approved Application Forms for VAT Zero Rate is a document required by the BIR for VAT Zero-Rated transactions falling under ***Sections 106(A)(2)(a)(3)(5) and (6), 106(A)(2)(c), and 108(B)(3), (4) and (5) of the Tax Code.***[88]

In order to secure the BIR-approved Application Forms for VAT Zero-Rate, ***Revenue Memorandum Order No. 07-06***[89] requires the taxpayer-applicant to submit the application with complete supporting documents, which includes the BOI Certification, DOE Certificate of Registration, and the Contract between the RE Developer and the taxpayer-applicant, among others. Once the BIR finds the documents to be in order, it will then check if the RE Developer is included in the list of accredited entities provided by the DOE-REMB to the BIR. Once found to be in order, the BIR will approve the application of the taxpayer-applicant.

Given that the petitioner was able to submit its DOE Certificate of Registration, and since the BIR has already ascertained the eligibility of the RE Developers to VAT zero-rating through the issuance of the BIR-approved Application Forms for VAT Zero-Rate, this Court finds that the petitioner was able to prove with sufficient evidence that the sales of service it rendered to the RE Developers qualifies for VAT zero-rating under the Tax Code.

Corollary thereto, the petitioner must also prove that it, indeed, rendered services to the RE Developers during the 1st Quarter of CY 2015, by presenting the pertinent official receipts it issued to the RE Developers which should be compliant with the invoicing requirements as provided under ***Sections 113(A)(1) and (2), (B)(1), (2)(c) and (d), (3) and (4) of the Tax Code***, 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
>
> **(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

[88] SUBJECT: Prescribing Guidelines and Procedures in the Processing of Applications for Zero-Rating of Effectively Zero-Rated Transactions for Value-Added Tax Purposes, Revenue Memorandum Order No. 07-06, 15 December 2005.
[89] *Ibid.*

(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. Provided, That:

xxx xxx xxx

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

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.[90]

Implementing the aforementioned provision is Sections ***4.113-1(A)(1) and (2), (B)(1) and (2)(c) of Revenue Regulation ("RR") No. 16-05***,[91] 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

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

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

[90] Emphasis supplied.
[91] Subject: Consolidated Value-Added Tax Regulations of 2005, 22 June 2005.

receipt. All purchases covered by invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. -The following information shall be indicated in VAT invoice or VAT official receipt:

(1) **A statement that the seller is a VAT-registered person, followed by his TIN;**

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

xxx xxx xxx

(c) **If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;**"[92]

Furthermore, the official receipts must be duly registered with the BIR as prescribed under ***Sections 237 and 238 of the Tax Code***, to wit:

"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 (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensations, 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 shall further show the Taxpayer Identification Number (TIN) of the purchaser. 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

---

[92] Emphasis supplied.

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. xxx"

In its amended 1st Quarterly VAT Return for CY 2015,[93] petitioner declared total sales/receipts of ₱471,522,994.77, which is consisted of zero-rated sales/receipts and VATable sales/receipts, broken down as follows:

Transaction	**Gross Receipts**
VATable Sales/Receipts	₱ 219,508,799.74
Zero-rated Sales/Receipts	252,014,195.03
Total Sales/Receipts	**₱ 471,522,994.77**

As mentioned the VAT zero-rated sales were rendered to Petrowind and Alternergy in the following amounts:

Customer	**Amount in PHP**
Petrowind Energy, Inc.	₱ 176,032,523.49
Alternergy Wind One Corp.	75,981,671.54
TOTAL	**₱ 252,014,195.03**[94]

In support of the said sales of services, petitioner presented its Schedule of Zero-rated Sales[95] with the related official receipts,[96] which were examined by the ICPA, Mr. Richard S. Querido. The official receipts submitted by the petitioner are as follows:

Company Name	**Official Receipt No.**	**Official Receipt Date**	**Amount in USD**	**Amount in PHP**	**Exhibit No.**
Petrowind Energy, Inc.	1008	9 February 2015	$ 760,519.53	₱33,702,422.97	P-165
Alternergy Wind One Corporation	1009	20 February 2015	$ 1,718,809.02	₱75,981,671.54	P-167
Petrowind Energy, Inc.	1011	24 March 2015	$ 431,975.14	₱19,304,969.01	P-169
Petrowind Energy, Inc.	1012	24 March 2015	$2,752,855.93	₱123,025,131.51	P-172
Total			**$5,664,159.62**	**₱252,014,195.03**	

[93] Exhibit "P-13", BIR Records, Folder 2, pp. 488-489.
[94] Exhibit "P-201", Records, Vol. 1, pp. 335-391.
[95] Exhibit "P-193", CD submitted by ICPA.
[96] Exhibit "P-164" to "P-172", CD submitted by ICPA.

After a perusal of petitioner's VAT official receipts, this Court finds that the same complies with the invoicing requirements as provided under the Tax Code and RR No. 16-2005. Thus, petitioner was able to prove that it generated zero-rated receipts for the 1st Quarter of CY 2015 from services rendered to Petrowind Energy, Inc. and Alternergy in the aggregate amount of ₱252,014,195.03.

As for the *fifth requisite*, it is not applicable in this case since petitioner did not render zero-rated sales under ***106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the Tax Code.***

Petitioner's input VAT are not Transitional Input Taxes.

As for the *sixth requisite*, the Tax Code and jurisprudence provide that the input taxes claimed should not be Transitional Input Taxes.

Transitional Input Tax is an input tax on a taxpayer's beginning inventory of goods, materials, and supplies equivalent to two percent (2%) of the value of such inventory or the actual VAT paid on such goods, materials, and supplies, whichever is higher, which shall be creditable against the output tax.[97] The Transitional Input Tax operates as a benefit to newly VAT-registered persons on their transition from non-VAT to VAT status, to alleviate the impact of the VAT on the taxpayer.[98]

In this case, there is no showing that the input VAT claimed by the petitioner are Transitional Input Tax. Hence, the Court finds that the petitioner is compliant with the sixth requisite.

Petitioner's input VAT were due or paid.

As for the *seventh requisite* for a taxpayer to successfully prosecute a VAT refund/credit claim, it must prove that the input VAT it is claiming should either be due or paid.

---

[97] Section 111 of the Tax Code.
"SEC. 111. Transitional/Presumptive Input Tax Credits. -
(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 rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner, be allowed input tax on his 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."

[98] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. No. 158885 and 170680, 2 October 2009

In its amended 1st Quarter VAT Returns for CY 2015, petitioner has available input VAT in the amount of ₱38,987,278.68 arising from: input tax carried over from previous period - ₱11,149,552.88; domestic purchases of goods other than capital goods - ₱4,848.00; domestic purchase of services - ₱24,357,459.05; and services rendered by non-residents - ₱3,475,418.75.

Meanwhile, since petitioner also incurred output tax due for the same period amounting to ₱26,341,055.97, petitioner's remaining excess input tax is ₱12,646,222.71, which is also the amount being claimed for refund, computed as follows:

	1st Quarter (Exhibit "P-13")
Input Tax Carried Over from Previous Period	₱ 11,149,552.88
Add: Current Input Tax on:	
Domestic Purchase of Goods Other than Capital Goods	4,848.00
Domestic Purchase of Services	24,357,459.05
Services Rendered by Non-residents	3,475,418.75
TOTAL AVAILABLE INPUT TAX	**38,987,278.68**
LESS: Output Tax Due	(26,341,055.97)
EXCESS INPUT TAX	**₱ 12,646,222.71**

In support of the foregoing, petitioner presented various official receipts, invoices, BIR Forms No. 1600, and other documents issued by its suppliers.[99] These documents were examined by the ICPA, Mr. Querido, who noted the following exceptions:

Particulars	Reference	Total
TOTAL INPUT VAT (A)		**₱38,987,278.75**
Less: EXCEPTIONS NOTED		
Input VAT on domestic purchase of services supported by VAT ORs with difference on the input VAT between computation and schedule and indicated in OR	*Exhibit P-76 and P-113 to P-114*	1,187,041.85
Input VAT on domestic purchase of services supported by certified true copy of VAT OR but incomplete invoicing requirements	*Exhibit P-77*	5,980.80
Input VAT on domestic purchase of services supported by photocopied billing statement	*Exhibit P-78*	35,789.58
Input VAT on domestic purchase of services supported by invoices not registered with the BIR	*Exhibit P-79 to P-85*	3,638.89
Input VAT on domestic purchase of services supported by VAT ORs with difference on the input VAT between computation and schedule	*Exhibit P-115*	60,000.00

[99] Exhibits "P-54" to "P-56" "P-66" to "P-152", CD submitted by the ICPA.

and indicated in OR and OR is issued outside validity period of OR		
Input VAT on domestic purchase of services supported by VAT ORs with no VAT amount indicated	*Exhibit P-116*	17,659.59
Input VAT on domestic purchase of services with no available supporting documents		208,823.84
Input VAT on domestic purchase of goods other than capital goods supported by photocopied invoice	*Exhibit P-86 to P-87*	97,939.24
Input VAT on domestic purchase of goods other than capital goods supported by invoice not registered with BIR	*Exhibit P-117*	2,424.00
Input VAT on domestic purchase of goods other than capital goods supported by photocopied invoice not registered with BIR and out of period claim	*Exhibit P-118*	2,424.00
Input VAT on services rendered by non-residents supported by photocopied pro-forma invoice only	*Exhibit P-100*	413,823.75
TOTAL NOT VALID INPUT VAT (B)		2,035,545.54
VALID INPUT VAT (C=A - B)		**₱36,951,733.21**

After a thorough review of all the supporting documents submitted by the petitioner, the Court agrees with the exceptions/findings of the ICPA and his recommendation to disallow petitioner's input VAT in the amount of ₱2,035,545.54 for failure to meet the substantiation requirements prescribed under the Tax Code.

As such, petitioner has valid input VAT in the amount of ₱36,951,733.21 for the 1st quarter of CY 2015, computed as follows:

Input VAT from previous quarters	₱10,372,876.81
Domestic Purchase of Services	23,103,437.62
Services rendered by Non-Residents	3,475,418.78
TOTAL VALID INPUT VAT	**₱36,951,733.21**

Petitioner's input VAT was not applied against any output taxes during and in the succeeding quarters.

Coming now to the *ninth requisite,* it provides that the input VAT should have not been applied against the output VAT during and in the succeeding quarters.

Based on petitioner's amended VAT Return for the 1st Quarter of CY 2015,[100] it has VATable sales of ₱219,508,799.74, and an output VAT of ₱26,341,055.97.

As mentioned, the output VAT was already applied or formed part of the input VAT claim of ₱12,646,222.71. Meanwhile, the excess input VAT was carried-over by petitioner in its succeeding quarters[101] and remained unutilized until it was deducted as "VAT/Refund/TCC Claimed from the total available input tax on its 1st Quarter VAT Return for CY 2017.[102]

Hence, the subject claim no longer forms part of the excess input VAT of ₱39,979,260.37 as of the end of the 1st Quarter of CY 2017 that was carried over/applied to the succeeding quarters.

Given the foregoing, the petitioner is precluded from the possibility of applying the present claim to its future output VAT liability. Hence, petitioner is compliant with the ninth requisite.

Petitioner's input VAT is attributable to its valid zero-rated sales.

Finally, as for the *eight requisite*, ***Section 112(A) of the Tax Code*** provides 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.

To reiterate, petitioner have the following valid input VAT, to wit:

Input VAT from previous quarters	₱10,372,876.81
Domestic Purchase of Services	23,103,437.62
Services rendered by Non-Residents	3,475,418.78
TOTAL VALID INPUT VAT	**₱36,951,733.21**

As found by the Court, the remaining input VAT from previous quarters is from the purchases of the petitioner from CY 2014.[103] Based on the VAT returns of the petitioner for CY 2014, its transactions were only limited to zero-rated transactions; hence, the full amount of the Input VAT from previous quarters is found to be attributable to petitioner's zero-rated sales.

[100] Exhibit "P-13", BIR Records, Folder 2, pp. 488-489
[101] Exhibits "P-13" to "P-20", CD submitted by the ICPA.
[102] Exhibit "P-21", CD submitted by the ICPA.
[103] Exhibit "P-12-A" to "P-12-D", CD submitted by ICPA.

As for CY 2015, petitioner's total sales/receipts consisted of both zero-rated receipts and VATable receipts. Considering that petitioner failed to prove that the total valid input VAT due or paid is attributable to its zero-rated sales, the Court shall allocate the excess valid input VAT of ₱26,578,856.40 proportionately on the basis of the volume of its sales, as follows:[104]

Amount attributable to Vatable Sale:

Vatable Receipts per Quarterly VAT return[105]	₱219,508,799.74
Divided by the Total Receipts per 2015 Quarterly VAT Return	/471,522,994.77
Multiplied by valid input VAT for CY 2015	X 26,578,856.40[106]
Excess valid Input VAT due or paid allocated to Vatable Receipts	**₱12,373,294.48**

Amount attributable to Zero-rated Sale:

Valid Zero-Rated Receipts per this Court's Verification	₱252,014,195.03
Divided by the Total Receipts per 2015 Quarterly VAT Return	/471,522,994.77
Multiplied by valid input VAT due or paid	X 26,578,856.40
Valid input VAT due or paid allocated to Zero-Rated Receipts	₱14,205,561.92
Add: Valid input VAT from previous quarters	10,372,876.81
Input VAT due or paid allocated to Zero-Rated Receipts	**₱24,578,438.73**

Also in CY 2015, petitioner incurred an output VAT liability of ₱26,341,055.97.[107] Since petitioner's valid input VAT in the amount of ₱12,373,294.48 allocated to VATable sales is not enough to cover the said output VAT liability, the valid input VAT attributable to total zero-rated sales in the amount of ₱13,967,761.49 shall then be utilized against the remaining output VAT liability. Consequently, only the remaining input VAT of ₱10,610,677.24 can be attributed to the entire zero-rated sales reported by the petitioner in the amount of ₱252,014,195.03, computed as follows:

Output VAT	₱26,341,055.97
Less: Input VAT allocated to VATable Sales	12,373,294.48
Excess Output VAT	₱13,967,761.49

[104] Section 4.110-4, Revenue Regulation No. 16-05, 1 September 2005.
[105] Exhibit "P-13", BIR Records, Folder 2, pp. 488-489.
[106] ₱23,103,437.62+₱3,475,418.78=₱26,578,854.40.
[107] Exhibit "P-13", CD submitted by the ICPA.

Input VAT allocated to Zero-Rated Sales	₱24,578,438.73
Less: Excess Output VAT	13,967,761.49
Excess Input VAT attributable to valid Zero-Rated Sale	**₱10,610,677.24**

Accordingly, since neither parties alleged and presented evidence that a Tax Credit Certificate was issued to Petitioner in relation to the BIR Decision, petitioner is entitled to receive the full amount of ₱10,610,677.24.

Petitioner is not precluded to submit additional documents to support its VAT refund/credit claim in Court.

As for respondent's argument that the petitioner is precluded from submitting to Court additional documents not submitted to the BIR during its administrative claim, the Court finds the same without basis.

As ruled by the Supreme Court in ***Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,***[108] after a VAT refund/credit claim reaches the Courts, the Rules of Court governs, and the question on whether the evidence submitted by a party is sufficient lies within the sound discretion and judgment of the Court.

It is well-settled that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed *strictissimi juris* against the taxpayer. Accordingly, the pieces of evidence presented entitling a taxpayer to an exemption must also be *strictissimi* scrutinized and duly proven.[109] In this case, petitioner was able to prove with competent evidence its entitlement to a refund or issuance of a tax credit certificate.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱10,610,677.24**, representing petitioner's unutilized excess input taxes for the 1st quarter of CY 2015 attributable to its zero-rated sales.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

[108] G.R. No. 207112, 8 December 2015
[109] Atlas Consolidated Mining and Development Corporation v. CIR, G.R. No. 159490, 18 February 2008.

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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