REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

S&WOO CONSTRUCTION PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9731
For: Refund

Members:
CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:
JUN 01 2020
9:00 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 14, 2019 is a *Petition for Review* filed by petitioner S&WOO Construction Philippines, Inc. against respondent Commissioner of Internal Revenue on December 11, 2017, praying for the refund or issuance of a tax credit certificate in favor of petitioner in the amount of ₱207,942,934.07, representing its alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 2nd to 4th quarters of calendar year (CY) 2016.[1]

Petitioner S&WOO Construction Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal office address at U-2C JC Velasco Bldg., National Road, Brgy. Maahas, Los Baños, Laguna.[2] It is registered with the BIR with Tax Identification Number (TIN) 009-130-930-000.[3]

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[1] Statement of the Case, Pre-Trial Order dated July 26, 2018, Docket, p. 238.
[2] Exhibit "P-1", Docket, pp. 113 to 122.
[3] Exhibit "P-2", Docket, p. 123.

On the other hand, respondent, Commissioner of Internal Revenue, is vested by the National Internal Revenue Code (NIRC) with the authority to decide, approve, and grant tax refund. He may be served with summons and other court processes at the Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.[4]

On July 13, 2017, petitioner filed its letter dated July 12, 2017 and *Application for Tax Credits/Refunds* (BIR Form 1914),[5] requesting/applying for the refund in the total amount of ₱207,942,934.07, allegedly representing the excess and/unutilized input credits attributable to its zero-rated sales of services for the 2nd to 4th quarters of CY ending December 31, 2016, or from April 1, 2016 to December 31, 2016.

Petitioner filed the instant *Petition for Review* on December 11, 2017.[6] The case was initially raffled to this Court's First Division.

Respondent filed his *Answer* on March 26, 2018,[7] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4. Respondent hereby reiterates and repleads the preceding paragraphs of This [*sic*] answer as part of his Special and Affirmative Defenses.

PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES PRIOR TO THE FILING OF THE PETITION FOR REVIEW.

5. Petitioner violated the doctrine of exhaustion of administrative remedies. The doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of

[4] Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 223.
[5] Exhibits "P-8" and "P-9", Docket, pp. 135 to 140.
[6] Docket, pp. 10 to 24.
[7] Docket, pp. 76 to 89.

cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent Commissioner of Internal Revenue still has to investigate and ascertain the validity of the claim.

7. A simple perusal of the petition filed by petitioner would reveal its failure to exhaust all the administrative remedies in the administrative level. As stated by petitioner the administrative claim for refund was filed on 13 July 2017, thereafter, on 11 December 2017, it then filed its judicial claim for refund before this Honorable Court. Filing of an administrative claim is not a mere procedural requirement or a pro forma measure before filing a claim before this Honorable Court.

8. Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency the opportunity to decide correctly and prevent unnecessary and premature resort to court.

9. To allow otherwise will result to this Honorable Court becoming an indirect avenue for processing administrative claim for refund, which function rightfully belongs to the Commissioner of Internal Revenue. Hence, before resort to the courts can be obtained, all administrative remedies available should first be exhausted.

10. Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance.

11. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for

this principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicate a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reason of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act.

12. In addition to exhaustion of administrative remedies, petitioner has the burden of proving that it complied with all the administrative requirements that is a procedural compliance in pursuing administrative claim and up to the judicial review. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue:*

> '**First, a judicial claim for refund or tax credit in the Court of Tax Appeals is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, the petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for the petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' (Emphasis supplied)

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13. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before *trial de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

14. Pursuant to the previously quoted decision of the Honorable Supreme Court in the case of *Atlas Mining* clearly portrays that the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxapayer's claim for refund. Had petitioner submitted all relevant documents to substantiate its claim for tax credit, respondent would have the opportunity to determine the veracity of its claim and might refund or issue a tax credit certificate for the claimed amount. Again, failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function.

15. Well settled is the rule that, the party aggrieved by a decision of an administrative official should first apply for review of such decision by higher administrative authority before seeking judicial relief, otherwise his court suit may be dismissed for prematurity or lack of cause of action.

16. The purpose of requiring submission of supporting documents relevant to a claim for tax credit is to give the administrative agency the opportunity to ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Thus, non-compliance with the condition precedent renders the petition for review filed by petitioner dismissible.

17. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax

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authorities may not seek redress in the court of justice without first exhausting administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate, and speedy. Another thing, the respect and consideration due to each branch of the government demand that the judicial department abstain, whenever possible from interfering in the acts of the other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them. Of prime importance therefore is the requirement for petitioner to submit all relevant documents to substantiate its administrative claim for refund. The filing of the petition for review to this Honorable Court must be due to the denial by respondent of petitioner's claim or respondent's inaction which is tantamount to a denial of the said petitioner's claim. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

THE INSTANT CLAIM FOR TAX REFUND SHOULD BE DENIED FOR PETITIONER'S FAILURE TO SUBMIT COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND.

18. The amount of P207,942,934.07 representing alleged unutilized or unapplied creditable input taxes allegedly allocable and directly attributable to its VAT zero-rated sales for the period 1 April 2016 to 31 December 2016, was not properly documented.

19. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

20. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

21. In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary

requirements therefor ***(Western Mindanao Power Corporation vs. CIR, G.R. No. 181136, 13 June 2012, 672 SCRA 350, 362).***

22. Respondent humbly manifests that petitioner failed to substantiate its claim that it is entitled to the refund being prayed for. Petitioner failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005. In addition, petitioner was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

23. Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

24. Likewise, for a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be a (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period.

25. To support its claim, it is imperative for petitioner to prove and present the following:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;

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c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with the provision of Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of Php 10,923,055.28 allegedly incurred by petitioner was attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and /or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.1404-5 of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits) (Underscoring ours)

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26. With all due respect, respondent humbly manifests that petitioner has the burden of proving that it was able to substantiate its claim to be entitled to the refund being prayed for. Compliance with the aforementioned provisions of the 1997 NIRC, as amended, as well as the existing rules and regulations are necessary to establish its claim, that it indeed there is the presence of a valid zero-rated sales which would warrant the grant of administrative application for refund of its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

27. Petitioner must prove that it has submitted complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of ***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526, 16 March 2007***:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to**

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> **show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' (emphasis and underscoring supplied)

28. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer
I. Requirements mention in Annex B
II. Additional General Requirements
1) 3 copies of 'Application for VAT Credit/Refund'
2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation — for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statement, if applicable.

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17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales).

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
   a) current year/period
   b) previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

> 7) Proof of exemption under special law, if applicable
> 8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
> 9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
> 10) Proof of 'Approval for Effective Zero-Rating of Sales,' if applicable
> 11) Sample invoice/s for 'Export/Exempt Sales,' if applicable
> 12) Proof that the acceptable foreign currency exchange proceeds on export/sales foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

29. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690).*** Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to compy with such periods is fatal to its cause.

30. Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

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31. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer ***(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).***

32. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language ***(Sps. Aguilar vs. Commssioner of Internal Revenue, et. al., CA G.R. SP No. 16432, March 30, 1999***). Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authoritry and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).***

33. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***

34. The power of taxation is inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered.

35. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictisimi juris* against the taxpayers and liberally in favor of the taxing authority.

36. Tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.

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37. Thus, the petitioner is charged with the heavy burden of proving that it has complied and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

38. In the case at hand, for failure of petitioner to show that it has strictly complied with the conditions for the grant of the VAT refund/credit, petitioner is not entitled to claim for tax refund/credit.

39. Based on the foregoing, petitioner's claim for refund in the total amount of ₱207,942,934.07 has no bases in fact and in law. Thus, the instant petition should be denied for lack of merit.

CLAIMS FOR REFUND ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND IN FAVOR OF THE GOVERNMENT

40. Time and again, it has been held that the right of taxation cannot easily be surrendered, statutes granting tax exemptions are construed as a derogation of the sovereign authority. Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The general rule is that claimants for tax refunds bear the burden of proving the factual basis of their claims. Again, taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government."

Petitioner filed its *Reply* on April 13, 2018.[8]

The pre-trial conference was set[9] and held on May 31, 2018.[10]

The *Pre-Trial Brief (of Petitioner S&Woo Construction Philippines, Inc.)* was filed on May 24, 2018,[11] while the *Respondent's Pre-Trial Brief* was filed (*via* private courier) on May 25, 2018.[12]

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[8] Docket, pp. 93 to 100.
[9] Notice of Pre-Trial Conference dated April 4, 2018, pp. 91 to 92.
[10] Order dated May 31, 2018, Docket, pp. 206 to 208.
[11] Docket, pp. 105 to 112.
[12] Docket, pp. 188 to 190.

On June 19, 2018, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[13] In the Resolution dated July 5, 2018,[14] the Court approved the said JSFI in the interest of justice and deemed the Pre-Trial terminated. On July 26, 2018, the *Pre-Trial Order* was issued.[15]

Respondent transmitted the BIR Records for the instant case on July 26, 2018.[16]

The trial of the case proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: Ms. Alliana Mae C. Raz,[17] Assistant Accounting Manager of petitioner; and and Ms. Krista V. Bambao,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The ICPA *Report* was submitted on July 30, 2018.[20]

In the Order dated September 27, 2018,[21] the instant case was transferred to this Court's Second Division.

On February 11, 2019, petitioner filed its *Formal Offer of Evidence*.[22] Respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)* was filed on February 13, 2019.[23]

Thus, in the Resolution dated March 18, 2019,[24] the Court admitted petitioner's Exhibits, *except* for Exhibits "P-17-4", "P-17-6"

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[13] Docket, pp. 223 to 226.
[14] Docket, p. 233.
[15] Docket, pp. 238 to 243.
[16] Docket, pp. 269 to 271.
[17] Exhibit "P-12", Docket, pp. 147 to 158; Order dated July 24, 2018, Docket, pp. 234 to 235.
[18] Exhibit "P-153", Docket, pp. 278 to 291; Minutes of the hearing held on, and Order dated, August 30, 2018, Docket, pp. 307 to 310.
[19] Exhibit "P-11", Docket, pp. 192 to 195; and Order dated June 28, 2018, Docket, pp. 228 to 229.
[20] Exhibit "P-13", Docket, pp. 246 to 267.
[21] Docket, pp. 305 to 306.
[22] Docket, pp. 315 to 331.
[23] Docket, pp. 347 to 349.
[24] Docket, pp. 352 to 354.

and "P-17-8", for not being found in the records of the case and for failure to identify.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Certificate of Filing and the corresponding Articles of Incorporation
P-2	BIR Certificate of Registration No. 1RC0000822965
P-3	Certificate of Registration issued by the Philippine Economic Zone Authority in favor of Samsung Electro-Mechanics Phils., Corp. (SEMPHIL)
P-4	VAT Zero-rating Certificate of SEMPHIL for the year 2016
P-5	Amended Quarterly VAT Return for the second quarter of calendar year (CY) 2016
P-5-1	Reference No. 101700020555975
P-6	Amended Quarterly VAT Return for the third quarter of CY 2016
P-6-1	Reference No. 101700020556004
P-7	Amended Quarterly VAT Return for the fourth quarter of CY 2016
P-7-1	Reference No. 101700020556026
P-8	Letter Request for Refund of its excess input taxes attributable to its zero-rated sales for the second to fourth quarters of CY 2016
P-9	BIR Form No. 1914 or the Application for Refund or Tax Credit
P-10	Amended Quarterly VAT Return for the First Quarter of CY 2017
P-10-1	Tax Return Receipt Confirmation dated April 25, 2017
P-11	Judicial Affidavit of Alliana Mae C. Raz dated 22 May 2018
P-11-1	Signature of Alliana Mae C. Raz
P-12	Judicial Affidavit of Krista V. Bambao dated 22 August 2018
P-12-1	Signature of Krista V. Bambao
P-13	Independent Certified Public Accountant Report signed by Krista V. Bambao, CPA and filed on 30 July 2018
P-14	Construction Contract Agreement between petitioner and SEMPHIL., executed on 19 November 2015
P-15	Contract Amendment (Construction) dated 21 April 2016
P-16	Contract Amendment (Construction) dated 29 September 2016
P-17-1	Summary List of Sales for the month of April 2016

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P-17-2	Summary List of Sales for the month of May 2016
P-17-3	Summary List of Sales for the month of June 2016
P-17-5	Summary List of Sales for the month of August 2016
P-17-7	Summary List of Sales for the month of October 2016
P-17-9	Summary List of Sales for the month of December 2016
P-18	Audited Financial Statements for CY 2016
P-19	First Quarter BIR Form No. 2550Q for CY 2016
P-20-1	Official Receipt No. 0018 dated 27 April 2016
P-20-2	Official Receipt No. 0019 dated 27 June 2016
P-20-3	Official Receipt No. 0020 dated 25 August 2016
P-20-4	Official Receipt No. 0021 dated 27 October 2016
P-20-5	Official Receipt No. 0022 dated 24 December 2016
P-21-1	Summary List of Purchases for the month of April 2016
P-21-2	Summary List of Purchases for the month of May 2016
P-21-3	Summary List of Purchases for the month of June 2016
P-21-4	Summary List of Purchases for the month of July 2016
P-21-5	Summary List of Purchases for the month of August 2016
P-21-6	Summary List of Purchases for the month of September 2016
P-21-7	Summary List of Purchases for the month of October 2016
P-21-8	Summary List of Purchases for the month of November 2016
P-21-9	Summary List of Purchases for the month of December 2016
P-22	Dansung Builders, Inc. Document No. 0017
P-23	Dansung Builders, Inc. Document No. 0018
P-24	Dansung Builders, Inc. Document No. 0019
P-25	Dansung Builders, Inc. Document No. 0021
P-26	Dansung Builders, Inc. Document No. 0025
P-27	Dansung Builders, Inc. Document No. 0026
P-28	Dansung Builders, Inc. Document No. 0027
P-29	Dansung Builders, Inc. Document No. 0028
P-30	Dansung Builders, Inc. Document No. 0029
P-31	FSPHIL Corp. Document No. 000265
P-32	FSPHIL Corp. Document No. 000266
P-33	FSPHIL Corp. Document No. 00267
P-34	FSPHIL Corp. Document No. 000269
P-35	FSPHIL Corp. Document No. 000271
P-36	FSPHIL Corp. Document No. 000272
P-37	FSPHIL Corp. Document No. 000273
P-38	FSPHIL Corp. Document No. 000274

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P-39	FSPHIL Corp. Document No. 000348
P-40	FSPHIL Corp. Document No. 000349
P-41	FSPHIL Corp. Document No. 000350
P-42	Global Woojin I&S Corporation Document No. 00023
P-43	Global Woojin I&S Corporation Document No. 00024
P-44	Global Woojin I&S Corporation Document No. 00025
P-45	Global Woojin I&S Corporation Document No. 00027
P-46	Global Woojin I&S Corporation Document No. 00029
P-47	Global Woojin I&S Corporation Document No. 00030
P-48	Global Woojin I&S Corporation Document No. 00031
P-49	Global Woojin I&S Corporation Document No. 00033
P-50	Hanyoung E&C Inc. Document No. 00011
P-51	Hanyoung E&C Inc. Document No. 00012
P-52	Hanyoung E&C Inc. Document No. 00013
P-53	Hanyoung E&C Inc. Document No. 00014
P-54	Hanyoung E&C Inc. Document No. 00016
P-55	HCIP Const. Inc. Document No. 0076
P-56	HCIP Const. Inc. Document No. 0078
P-57	HCIP Const. Inc. Document No. 0079
P-58	HCIP Const. Inc. Document No. 0081
P-59	HCIP Const. Inc. Document No. 0082
P-60	HCIP Const. Inc. Document No. 0084
P-61	HCIP Const. Inc. Document No. 0086
P-62	HMK Philippines Steel Corporation Inc. Document No. 0011
P-63	ILWOOTEC E&C Philippines, Inc. Document No. 0000007
P-64	ILWOOTEC E&C Philippines, Inc. Document No. 0000008
P-65	ILWOOTEC E&C Philippines, Inc. Document No. 0000010
P-66	ILWOOTEC E&C Philippines, Inc. Document No. 0000011
P-67	JSP ITC Corporation Document No. 0013
P-68	JSP ITC Corporation Document No. 0014
P-69	JSP ITC Corporation Document No. 0015
P-70	JSP ITC Corporation Document No. 0016
P-71	KSTEEL Philippines Inc. Document No. 0021
P-72	KSTEEL Philippines Inc. Document No. 0023
P-73	KSTEEL Philippines Inc. Document No. 0024
P-74	KSTEEL Philippines Inc. Document No. 0025
P-75	KSTEEL Philippines Inc. Document No. 0026

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P-76	KSTEEL Philippines Inc. Document No. 0027
P-77	KSTEEL Philippines Inc. Document No. 0028
P-78	KSTEEL Philippines Inc. Document No. 0029
P-79	KSTEEL Philippines Inc. Document No. 0030
P-80	KSTEEL Philippines Inc. Document No. 0031
P-81	KSTEEL Philippines Inc. Document No. 0021
P-82	MDM Coating (Philippines) Inc. Document No. 0023
P-83	MDM Coating (Philippines) Inc. Document No. 0024
P-84	MDM Coating (Philippines) Inc. Document No. 0026
P-85	MDM Coating (Philippines) Inc. Document No. 0027
P-86	MDM Coating (Philippines) Inc. Document No. 0028
P-87	MIDONGPHIL Construction Corp. Document No. 0001027
P-88	MIDONGPHIL Construction Corp. Document No. 0001028
P-89	MIDONGPHIL Construction Corp. Document No. 0001029
P-90	MIDONGPHIL Construction Corp. Document No. 0001030
P-91	MIDONGPHIL Construction Corp. Document No. 0001033
P-92	MIRAE Global Phil. Corp. Document No. 0043
P-93	MIRAE Global Phil. Corp. Document No. 0044
P-94	MIRAE Global Phil. Corp. Document No. 0045
P-95	MIRAE Global Phil. Corp. Document No. 0046
P-96	MIRAE Global Phil. Corp. Document No. 0047
P-97	MIRAE Global Phil. Corp. Document No. 0051
P-98	MIRAE Global Phil. Corp. Document No. 0052
P-99	MIRAE Global Phil. Corp. Document No. 0053
P-100	MIRAE Global Phil. Corp. Document No. 0056
P-101	MIRAE Global Phil. Corp. Document No. 0057
P-102	MIRAE Global Phil. Corp. Document No. 0058
P-103	MIRAE Global Phil. Corp. Document No. 0063
P-104	SEBO MEC Philippines Corp. Document No. 1052
P-105	SEBO MEC Philippines Corp. Document No. 1053
P-106	SEBO MEC Philippines Corp. Document No. 1054
P-107	SEBO MEC Philippines Corp. Document No. 1055
P-108	SEBO MEC Philippines Corp. Document No. 1057
P-109	SEBO MEC Philippines Corp. Document No. 1058
P-110	SM Blooming Phils. Inc. Document No. 1357
P-111	SM Blooming Phils. Inc. Document No. 1359
P-112	SOONMI Hardware Corp. Document No. 274
P-113	SUNGDO Philippines Construction Inc. Document No. 1016
P-114	SUNGDO Philippines Construction Inc. Document

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	No. 1017
P-115	SUNGDO Philippines Construction Inc. Document No. 1018
P-116	SUNGDO Philippines Construction Inc. Document No. 1019
P-117-1	Sta. Clara International Corp. Document No. 1904
P-117-2	Sta. Clara International Corp. Document No. 0963
P-118-1	Sta. Clara International Corp. Document No. 2001
P-118-2	Sta. Clara International Corp. Document No. 0674
P-119-1	Sta. Clara International Corp. Document No. 2005
P-119-2	Sta. Clara International Corp. Document No. 0681
P-120-1	Sta. Clara International Corp. Document No. 2009
P-120-2	Sta. Clara International Corp. Document No. 0703
P-121-1	Sta. Clara International Corp. Document No. 2014
P-121-2	Sta. Clara International Corp. Document No. 0731
P-122-1	Sta. Clara International Corp. Document No. 2022
P-123-1	Sta. Clara International Corp. Document No. 2025
P-123-2	Sta. Clara International Corp. Document No. 0833
P-124-1	Sta. Clara International Corp. Document No. 2029
P-124-2	Sta. Clara International Corp. Document No. 0920
P-125	DAEJOO Heavy Builders Philippines Inc. Document No. 0003
P-126	DAEJOO Heavy Builders Philippines Inc. Document No. 0002
P-127	DAEJOO Heavy Builders Philippines Inc. Document No. 0005
P-128	DAEJOO Heavy Builders Philippines Inc. Document No. 0006
P-129	DAEJOO Heavy Builders Philippines Inc. Affidavit of Validation
P-130	MYUNGSUNG Philippine Construction Corporation Document No. 0001
P-131	MYUNGSUNG Philippine Construction Corporation Document No. 0003
P-132	MYUNGSUNG Philippine Construction Corporation Affidavit of Validation
P-133	HMK Steel Philippines Corporation Document No. 0001
P-134	HMK Steel Philippines Corporation Document No. 0003
P-135	HMK Steel Philippines Corporation Affidavit of Validation
P-136	Eagle Matrix Security Agency Document No. 9002
P-137	Global Woojin I&S Corporation Document No. 000026
P-138	Global Woojin I&S Corporation Document No. 000032
P-139	Powertrunking System Inc. Document No. 0003
P-140	Powertrunking System Inc. Document No. 0005
P-141	Powertrunking System Inc. Document No. 0007

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P-142	SM Blooming Phils. Inc. Document No. 1356
P-143	SOONMI Hardware Corp. Document No. 00270
P-144	SOONMI Hardware Corp. Document No. 00269
P-145	Sungdo Philippines Construction Inc. Document No. 1013
P-146	Sungdo Philippines Construction Inc. Document No. 1015
P-147	Sungdo Philippines Construction Inc. Document No. 1020
P-148	DAEJOO Heavy Builders Phil. Inc. Document No. 0007
P-149	DAEJOO Heavy Builders Phil. Inc. Document No. 0008
P-150	DANSUNG Builders Phil. Inc. document No. 0020
P-151	MYUNGSUNG Philippine Construction Corporation Document No. 0001
P-152	Transmittal letter of the soft copies of the ICPA Report with the corresponding annexes and exhibits addressed to the Honorable Justices

At the hearing held on April 3, 2019, respondent's counsel manifested that he has no witness to present in this case. Upon motion of the counsels for both parties, the parties were given thirty (30) days, or until May 3, 2019, to file their memoranda.[25]

Subsequently, petitioner filed its *Memorandum* on April 29, 2019;[26] while respondent filed his *Memorandum* on April 30, 2019.[27]

The case was deemed submitted for decision on May 14, 2019.[28]

THE ISSUE :

The parties submitted this lone issue[29] for this Court's resolution, to wit:

> "Whether the Petitioner is entitled to a tax refund/credit certificate amounting to Pesos: **Two Hundred Seven Million Nine Hundred Forty-Two**

[25] Minutes of the hearing held on, and Order dated, April 3, 2019, Docket, pp. 359 to 360.
[26] Docket, pp. 361 to 376.
[27] Docket, pp. 377 to 388.
[28] Resolution dated May 14, 2019, Docket, p. 390.
[29] Stipulation of Issues, JSFI, Docket, p. 224.

Thousand Nine Hundred Thirty-Four & 07/100 (₱207,942,934.07) representing its alleged unutilized input VAT attributable to its zero-rated sales for Q2 to Q4 quarters of CY 2016."

Petitioner's arguments:

In claiming that it is entitled to the refund being claimed, petitioner argues that it is a VAT registered entity as required under Section 112(A) of the Tax Code; that the administrative and judicial claims were filed within the prescriptive period provided under the Tax Code and its pertinent regulations; that it is engaged in zero-rated transactions as required under the Tax Code and its pertinent regulations; that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts; and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent's counter-arguments:

Respondent insists that based on the facts and evidence presented, the instant petition fails to state a cause of action; and that the law requires that only "creditable input taxes" that are directly attributable may be refunded.

THE COURT'S RULING:

We partially grant the instant *Petition for Review.*

Requisites for the grant of the refund or issuance of TCC under the law.

Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[30] provides:

[30] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

"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."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to

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successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. the claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[31]
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;[32]
>
> With reference to the taxpayer's registration with the BIR:
> 3. the taxpayer is a VAT-registered person;[33]
>
> In relation to the taxpayer's output VAT:
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]
> 5. for zero-rated sales under Sections 106(A)(2)(1) and (2); 106(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;[35]
>
> As regards the taxpayer's input VAT being refunded:
> 6. the input taxes are not transitional input taxes;[36]
> 7. the input taxes are due or paid;[37]
> 8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales

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[31] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc.*, G.R. No. 182364, August 3, 2010.

[32] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

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volume;[38] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

Petitioner's administrative and judicial claims were timely made.

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, which should be within two (2) years from the close of the quarter when the sales were made.

The instant claim covers the 2nd, 3rd, and 4th quarters of CY 2016. Counting two (2) years from the respective close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said three (3) quarters, to wit:

CY 2016	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
2nd Quarter	April 1, 2016 to June 30, 2016	June 30, 2016	June 30, 2018
3rd Quarter	July 1, 2016 to September 30, 2016	September 30, 2016	September 30, 2018
4th Quarter	October 1, 2016 to December 31, 2016	December 31, 2016	December 31, 2018

Considering that petitioner's administrative claim, covering the said three (3) quarters, was filed with the BIR on July 13, 2017,[40] the same was timely made.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period under the afore-quoted Section 112(C). Considering that there is no indication that respondent issued a decision relative to petitioner's administrative claim, the determination of the 120+30-day periods, as applied to this case, is shown as follows:

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

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

[40] Exhibits "P-8" and "P-9", Docket, pp. 135 to 140.

Date of Filing of Administrative Claim	End of 120 days for the CIR to decide the claim	End of 30 days from expiration of the 120 days
July 13, 2017	November 10, 2017	December 10, 2017

Since December 10, 2017 fell on a Sunday,[41] and the instant *Petition for Review* was filed on the next working day, *i.e.*, on December 11, 2017, petitioner's judicial claim was likewise seasonably filed.

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

Petitioner is a VAT-registered person.

Petitioner likewise complied with the *third* requisite considering that it is a VAT registered taxpayer, with TIN 009-130-930-000, as evidenced by BIR Certificate of Registration No. OCN 1RC0000822965.[42]

Petitioner had zero-rated sales or effectively zero-rated sales during the 2nd, 3rd and 4th quarters of CY 2016.

In this case, petitioner maintains that the construction services it rendered to its sole client, Samsung Electro-Mechanics Philippines Corporation (SEMPHIL), a Philippine Economic Zone Authority (PEZA)-registered entity, during the period April 1, 2016 to December 31, 2016, are subject to 0% VAT.

We agree.

[41] Section 1, Rule 22 of the Rules of Court reads:
"SEC. 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."
[42] Exhibit "P-2", Docket, p. 123.

Section 108(B)(3) of the NIRC of 1997, as amended, states:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (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**;" (*Emphasis supplied*)

The special law specific to this case is RA No. 7916, as amended by RA No. 8748, otherwise known as "The Special Economic Zone Act of 1995", which provides that an ecozone is considered a separate customs territory, and the business establishments operating within such ecozone are entitled to certain fiscal incentives. Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748, provide:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." (*Emphasis supplied*)

> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on**

> **business establishments operating within the ECOZONE.** xxx" (*Emphasis supplied*)

Relative thereto, the Supreme Court, in *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[43] held, to wit:

> "This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
> xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>
> The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

[43] G.R. No. 150154, August 9, 2005.

> Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?
>
> **The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of** goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT[44]. (*Emphasis supplied*)

Based on the foregoing, since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and *services* made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT.

In other words, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed exports and treated as export sales. These sales are zero-rated or subject to tax rate of zero percent.[45]

In this case, it was established that petitioner's sole client, SEMPHIL, is a PEZA-registered entity for the subject period of claim, as evidenced by the Certificate of Registration No. 97-074 dated October 16, 1997[46] and PEZA Certification dated December 11, 2015.[47] Thus, petitioner's sales of services to SEMPHIL are considered "export sales" subject to VAT at 0% rate, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748.

In any event, relative to its zero-rated transactions, petitioner must further comply with the invoicing requirements mandated by

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[44] Now at 12% VAT rate.
[45] *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*, G.R. No. 149671, July 21, 2006.
[46] Exhibit "P-3", Docket, p. 332.
[47] Exhibit "P-4", Docket, p. 333.

the NIRC, as well as by revenue regulations implementing them,[48] specifically, Sections 113 (A) (2), (B) (1), (2) (c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1 (A) (2), (B) (1) and (2) (c) of Revenue Regulations (RR) No. 16-05, which are all quoted hereunder:

> Sections 113 (A) (2), (B) (1), (2) (c) and (3) of the NIRC of 1997, as amended:
>
> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons. –*
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (2) A **VAT official receipt** for every lease of goods or properties, and **for every sale**, barter, or exchange **of services.**
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx" *(Emphases supplied)*

[48] *Takenaka Corporation–Philippine Branch vs. Commissioner of Internal Revenue,* G.R. No. 193321, October 19, 2016, citing *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012.

Sections 4.113-1 (A) (2), (B) (1) and (2) (c) of Revenue Regulations (RR) No. 16-05:

"Sec. 4.113-1. *Invoicing Requirements.* –

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

xxx xxx xxx

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

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their** invoice or **official receipts**. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

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

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

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

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

xxx xxx xxx

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

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> (3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above-stated requirements, the official receipts (ORs) must likewise be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, both of the NIRC of 1997, as amended, which respectively provide as follows:

> "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..." *(Emphases supplied)*

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis supplied)*

In its Amended Quarterly VAT Returns for the 2nd,[49] 3rd,[50] and 4th[51] quarters of CY 2016, petitioner declared no other revenues, except for the zero-rated gross receipts in the aggregate amount of

[49] Exhibit "P-5", Docket, pp. 334 to 335.
[50] Exhibit "P-6", Docket, pp. 337 to 338.
[51] Exhibit "P-7", Docket, pp. 340 to 341.

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₱2,086,203,029.30,[52] which was duly supported by zero-rated VAT official receipts, and are all compliant with the foregoing invoicing requirements under the law, to wit:

Exhibit	O.R. No.	Date[53]	In payment for:	Amount in US Dollar	Amount in Philippine Peso
"P-20-1"	0018	27-Apr-2016	P4 Project - 3rd Progress Payment	$ 15,557,500.00	₱ 742,584,875.00
"P-20-2"	0019	27-Jun-2016	P4 Project - 4th Progress Payment	6,253,625.00	296,938,706.25
"P-20-3"	0020	25-Aug-2016	P4 Project - 5th Progress Payment	13,486,760.00	640,208,240.00
"P-20-4"	0021	27-Oct-2016	P4 Project - 6th Progress Payment	6,614,657.00	326,122,839.05
"P-20-5"	0022	24-Dec-2016	P4 Project - 7th Progress Payment	1,580,549.62	80,348,369.00
			Total	**$43,493,091.62**	**₱2,086,203,029.30**

With the foregoing disquisistions, for purposes of the *fourth* requisite, the whole amount of ₱2,086,203,029.30 qualifies for VAT zero-rating under the law.

Relative to petitioner's zero-rated sales, respondent insists that the instant petition fails to state a cause of action. Respondent quotes certain portions of the cross-examination conducted by his counsel, Atty. Felix Paul Velasco, on petitioner's witness, Ms. Alliana Mae C. Raz, at the hearing held on July 24, 2018, pointing out that petitioner did not remove the input VAT component in the cost of the goods and services which it purchased and also that of its subcontractors; and that the entire cost is billed against petitioner's client, SEMPHIL. Thus, it is respondent's position that "to allow petitioner to claim the input VAT is tantamount to double recovery and unjust enrichment."[54]

The Court is not persuaded.

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	2nd Quarter	3rd Quarter	4th Quarter	Total
	(Exhibit "P-5")	*(Exhibit "P-6")*	*(Exhibit "P-7")*	
Vatable Sales/Receipts	-	-	-	-
Zero-Rated Sales/Receipts	₱ 1,039,523,581.25	₱ 640,208,240.00	₱ 406,471,208.05	₱ 2,086,203,029.30
Exempt Sales/Receipts	-	-	-	-
Total Sales/Receipts	**₱1,039,523,581.25**	**₱640,208,240.00**	**₱406,471,208.05**	**₱2,086,203,029.30**

53 The date is expressed in Day-Month-Year.

54 Respondent's Memorandum, Docket pp. 378 to 382.

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We shall not interfere with how petitioner came up with the service fee it charged to SEMPHIL.

In *Montelibano, et al. vs. Bacolod-Murcia Milling Co., Inc.,*[55] the Supreme Court held:

> "**As the resolution in question was passed in good faith by the board of directors, it is valid and binding, and whether or not it will cause losses or decrease the profits of the central, the court has no authority to review them.**
>
> **They hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty.** Whether the business of a corporation should be operated at a loss during depression, or close down at a smaller loss, is a purely business and economic problem to be determined by the directors of the corporation and not by the decision of officers and directors of a corporation, and the court is without authority to substitute its judgment of the board of directors; **the board is the business manager of the corporation, and so long as it acts in good faith its orders are not reviewable by the courts.** (Fletcher on Corporations, Vol. 2, p. 390)." *(Emphases and underscoring ours)*

The determination of the selling price, including the profits and margins that the seller may charge its buyers, clients, or customers, although such selling price may include the amount of input VAT, must be left to the sound judgment of the corporate taxpayer.

In other words, the issue being raised by respondent involves the exercise of a business judgment on how petitioner came up with the amount of fee it charged its client. As such and there being no indication of bad faith on the part of petitioner, this Court shall not interfere therewith; nor shall it consider the same as would have the effect of double recovery and unjust enrichment with the instant claim for input VAT refund.

[55] G.R. No. L-15092, May 18, 1962.

In fine, having found that petitioner had valid zero-rated sales in the total amount of ₱2,086,203,029.30 for the 2nd, 3rd, and 4th quarters of CY 2016, the Court will now proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate.

There is no need to comply with the fifth requisite.

As earlier stated, the *fifth* requisite is to the effect that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations. However, such requirement is only for zero-rated sales under Sections 106(A)(2)(a)(1), (2), 106(B), and 108(B)(1) and (2) of the NIRC of 1997, as amended. Since the legal basis for petitioner's zero-rated sales is Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748, the instant case need not comply with the said *fifth* requisite.

The input taxes being claimed are not transitional input taxes.

In its Amended Quarterly VAT Returns for the 2nd to 4th quarters of CY 2016,[56] petitioner had declared an input VAT due of ₱2,243,768.55 from its domestic purchases of goods other than capital goods and input VAT paid of ₱205,699,165.52 from its domestic purchases of services, or input VAT in the total amount of ₱207,942,934.07, which is the subject of the present claim, broken down as follows:

	2nd Quarter of CY 2016	**3rd Quarter of CY 2016**	**4th Quarter of CY 2016**	
	Exhibit "P-5"	*Exhibit "P-6"*	*Exhibit "P-7"*	**Total**
Input VAT Due on: Domestic Purchases of Goods other than Capital Goods	₱ 1,239,032.06	₱ 693,509.60	₱ 311,226.89	₱ 2,243,768.55
Input VAT Paid on: Domestic Purchase of Services	88,829,828.81	77,424,364.64	39,444,972.07	205,699,165.52
Total	**₱90,068,860.87**	**₱78,117,874.24**	**₱39,756,198.96**	**₱207,942,934.07**

[56] Exhibits "P-5", "P-6", and "P-7" (Lines 21F and 21J), Docket, pp. 334 to 335, 337 to 338, and 340 to 341, respectively.

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

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[57]

As there is no showing that the claimed input VAT are transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

The properly supported input VAT due or paid for the subject quarters.

The *seventh* requisite for the successful prosecution of input VAT claim is to the effect that the input VAT being refunded should be due or paid. Thus, the fulfillment of the said requisite would depend on petitioner's compliance with the invoicing and substantiation requirements provided by law, as quoted earlier.

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

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To support its input VAT claim of ₱207,942,934.07, petitioner submitted it's Summary List of Purchases for the months of April to December 2016,[58] and the related invoices and ORs[59] issued by various suppliers, which were examined by the ICPA, Ms. Krista V. Bambao. The summary of her findings and observations are as follows:[60]

Findings and Observations	Exhibit	Reference to ICPA Report	Input VAT
A. Properly Substantiated			
1. Purchases of Goods and Services/Rent properly substantiated for VAT purposes by VAT-registered Sales Invoice for Goods and Official Receipt for Services/Rent.	"P-22" to "P-124"	Annex 2	₱ 175,446,693.47
2. Input taxes claimed supported by VAT-registered Official Receipts with countersigned corrections in the document but with affidavit of validation authorizing such corrections.	"P-125" to "P-135"	Annex 3	17,883,949.37
Subtotal			*193,330,642.84*
B. Findings			
3. Input taxes claimed supported by VAT-registered Sales Invoice or Official Receipts with countersigned corrections in the document but without affidavit of validation authorizing such corrections.	"P-136" to "P-146"	Annex 4	6,422,593.43
4. Input tax claimed supported by VAT-registered Official Receipt but incorrect name of Petitioner.	"P-147"	Annex 5	1,120,414.12
5. Input taxes claimed supported by VAT-registered Official Receipts but without/incorrect VATable amount.	"P-148" to "P-151"	Annex 6	2,752,261.63
6. Unaccounted purchases	-	-	4,317,022.05
Subtotal			*14,612,291.23*
Total			**₱207,942,934.07**

The Court does not entirely agree with the foregoing findings of the ICPA.

Upon scrutiny of the ICPA Report and other documentary evidence, the Court finds that the input VAT in the total amount of ₱11,860,029.60[61] (Item nos. 3, 4, and 6) should be outrightly disallowed on account of petitioner's failure to meet the invoicing requirements prescribed under Sections 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.113-1 of RR No. 16-05, as amended.

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[58] Exhibits "P-21-1" to "P-21-9".
[59] Exhibits "P-22" to "P-151".
[60] Exhibit "P-13" (Table 14), Docket, p. 257.
[61] Sum of ₱6,422,593.43, ₱1,120,414.12 and ₱4,317,022.05.

Moreover, the following input VAT in the total amount of ₱1,917,043.07, included in Item no. 1 of Annex 2, should likewise be disallowed for being dated outside the period of claim, to wit:

Exhibit	Supplier	Document No.	Date[62]	Input VAT
"P-45"	GLOBAL WOOJIN I&S CORPORATION	000027	07-Jul-2017	₱ 1,772,820.00
"P-92"	MIRAE GLOBAL PHIL. CORP.	0043	05-Mar-2016	63,218.36
"P-93"	MIRAE GLOBAL PHIL. CORP.	0044	05-Mar-2016	2,132.57
"P-94"	MIRAE GLOBAL PHIL. CORP.	0045	07-Mar-2016	1,607.14
"P-95"	MIRAE GLOBAL PHIL. CORP.	0046	08-Mar-2016	6,128.57
"P-96"	MIRAE GLOBAL PHIL. CORP.	0047	11-Mar-2016	23,089.29
"P-97"	MIRAE GLOBAL PHIL. CORP.	0051	15-Mar-2016	1,028.57
"P-98"	MIRAE GLOBAL PHIL. CORP.	0052	22-Mar-2016	20,571.43
"P-99"	MIRAE GLOBAL PHIL. CORP.	0053	29-Mar-2016	26,447.14
Total				**₱1,917,043.07**

Furthermore, the input VAT in the total amount of ₱2,752,261.63 under Item no. 5 of Annex 6 should be allowed. As found by the ICPA, the input taxes were supported by VAT-registered ORs but without/incorrect VATable amount. However, upon examination of the said ORs, the Court finds the the same have complied with the above-stated invoicing and substantiation requirements.

In view thereof, the following input VAT in the total amount of ₱13,777,072.67 should be disallowed:

Findings	Exhibit	Input VAT
1. Input taxes claimed supported by VAT-registered Sales Invoice or Official Receipts with countersigned corrections in the document but without affidavit of validation authorizing such corrections.	"P-136" to "P-146"	₱ 6,422,593.43
2. Input tax claimed supported by VAT-registered Official Receipt but incorrect name of Petitioner.	"P-147"	1,120,414.12
3. Unaccounted purchases	-	4,317,022.05
4. Input VAT supported by invoice/official receipt but dated outside the period of claim	"P-45", "P-92" to "P-99"	1,917,043.07
Total		**₱13,777,072.67**

As a corollary, relative to petitioner's compliance with the *seventh* requisite, out of the reported input VAT of ₱207,942,934.07, only the remaining input VAT due/paid of ₱194,165,861.40[63], which is properly supported by VAT ORs or invoices, represents petitioner's

[62] The date is expressed in Day-Month-Year.
[63] ₱207,942,934.07 minus ₱13,777,072.67.

valid input VAT for the 2nd, 3rd, and 4th quarters of CY 2016, computed as follows:

Exhibit	Supplier	Document No.	Date[64]	Input VAT
Annex 2 of the ICPA Report				
"P-22"	DANSUNG BUILDERS, INC.	0017	13-Apr-2016	₱ 149,778.7
"P-23"	DANSUNG BUILDERS, INC.	0018	19-May-2016	1,952,670.6
"P-24"	DANSUNG BUILDERS, INC.	0019	03-Jun-2016	382,300.8
"P-25"	DANSUNG BUILDERS, INC.	0021	29-Jun-2016	3,298,815.7
"P-26"	DANSUNG BUILDERS, INC.	0025	29-Aug-2016	598,044.6
"P-27"	DANSUNG BUILDERS, INC.	0026	29-Aug-2016	422,568.9
"P-28"	DANSUNG BUILDERS, INC.	0027	22-Sep-2016	266,433.3
"P-29"	DANSUNG BUILDERS, INC.	0028	22-Sep-2016	833,366.8
"P-30"	DANSUNG BUILDERS, INC.	0029	22-Dec-2016	2,476,420.9
"P-31"	FSPHIL CORP.	000265	26-May-2016	5,150,217.1
"P-32"	FSPHIL CORP.	000266	02-Aug-2016	6,702,152.5
"P-33"	FSPHIL CORP.	000267	26-Aug-2016	548,105.3
"P-34"	FSPHIL CORP.	000269	08-Sep-2016	3,976,177.1
"P-35"	FSPHIL CORP.	000271	14-Sep-2016	3,597,375.2
"P-36"	FSPHIL CORP.	000272	10-Oct-2016	1,571,608.6
"P-37"	FSPHIL CORP.	000273	10-Oct-2016	470,020.3
"P-38"	FSPHIL CORP.	000274	24-Nov-2016	2,520,352.8
"P-39"	FSPHIL CORP.	000348	29-Apr-2016	4,983,173.7
"P-40"	FSPHIL CORP.	000349	03-Jun-2016	1,341,014.4
"P-41"	FSPHIL CORP.	000350	23-Jun-2016	4,335,827.2
"P-42"	GLOBAL WOOJIN I&S CORPORATION	000023	04-May-2016	2,328,942.4
"P-43"	GLOBAL WOOJIN I&S CORPORATION	000024	04-May-2016	908,316.8
"P-44"	GLOBAL WOOJIN I&S CORPORATION	000025	03-Jun-2016	2,598,215.4
"P-46"	GLOBAL WOOJIN I&S CORPORATION	000029	26-Aug-2016	3,861,841.2
"P-47"	GLOBAL WOOJIN I&S CORPORATION	000030	26-Aug-2016	966,506.3
"P-48"	GLOBAL WOOJIN I&S CORPORATION	000031	22-Sep-2016	1,600,444.4
"P-49"	GLOBAL WOOJIN I&S CORPORATION	000033	08-Dec-2016	123,902.1
"P-50"	HANYOUNG E&C., INC.	000011	03-Jun-2016	961,842.5
"P-51"	HANYOUNG E&C., INC.	000012	14-Jul-2016	629,515.1
"P-52"	HANYOUNG E&C., INC.	000013	26-Aug-2016	1,253,350.4
"P-53"	HANYOUNG E&C., INC.	000014	29-Sep-2016	576,620.6
"P-54"	HANYOUNG E&C., INC.	000016	27-Oct-2016	938,556.1
"P-55"	HCIP CONST. INC.	0076	04-May-2016	2,025,118.3
"P-56"	HCIP CONST. INC.	0078	03-Jun-2016	2,258,771.1
"P-57"	HCIP CONST. INC.	0079	16-Jul-2016	2,055,696.7
"P-58"	HCIP CONST. INC.	0081	26-Aug-2016	1,506,241.4
"P-59"	HCIP CONST. INC.	0082	22-Sep-2016	1,296,816.3
"P-60"	HCIP CONST. INC.	0084	27-Oct-2016	1,566,637.3
"P-61"	HCIP CONST. INC.	0086	29-Nov-2016	567,457.8
"P-62"	HMK PHILIPPINES STEEL CONSTRUCTION, INC.	0011	28-Jul-2016	2,032,904.8
"P-63"	ILWOOTEC E & C PHILIPPINES INC.	0000007	06-Jun-2016	1,760,482.9
"P-64"	ILWOOTEC E & C PHILIPPINES INC.	0000008	14-Jul-2016	2,726,510.9

[64] The date is expressed in Day-Month-Year.

"P-65"	ILWOOTEC E & C PHILIPPINES INC.	0000010	22-Sep-2016	3,226,824.0
"P-66"	ILWOOTEC E & C PHILIPPINES INC.	0000011	08-Nov-2016	459,230.9
"P-67"	JSP ITC CORPORATION	0013	03-Jun-2016	752,085.5
"P-68"	JSP ITC CORPORATION	0014	26-Aug-2016	1,345,389.0
"P-69"	JSP ITC CORPORATION	0015	29-Sep-2016	1,007,862.1
"P-70"	JSP ITC CORPORATION	0016	27-Oct-2016	371,699.1
"P-71"	KSTEEL PHILIPPINES INC.	0021	30-May-2016	543,787.4
"P-72"	KSTEEL PHILIPPINES INC.	0023	30-May-2016	934,311.9
"P-73	KSTEEL PHILIPPINES INC.	0024	23-Jun-2016	480,115.0
"P-74"	KSTEEL PHILIPPINES INC.	0025	23-Jun-2016	306,833.0
"P-75"	KSTEEL PHILIPPINES INC.	0026	28-Jul-2016	392,303.1
"P-76"	KSTEEL PHILIPPINES INC.	0027	30-Aug-2016	518,367.3
"P-77"	KSTEEL PHILIPPINES INC.	0028	09-Sep-2016	1,339,779.5
"P-78"	KSTEEL PHILIPPINES INC.	0029	09-Sep-2016	1,504,029.7
"P-79"	KSTEEL PHILIPPINES INC.	0030	29-Oct-2016	415,718.6
"P-80"	KSTEEL PHILIPPINES INC.	0031	24-Nov-2016	1,522,574.9
"P-81"	KSTEEL PHILIPPINES INC.	0032	05-Dec-2016	2,868,493.9
"P-82"	MDM COATING(PHILIPPINES) INC.	0023	03-Jun-2016	593,706.7
"P-83"	MDM COATING(PHILIPPINES) INC.	0024	11-Jul-2016	584,168.2
"P-84"	MDM COATING(PHILIPPINES) INC.	0026	10-Oct-2016	187,604.0
"P-85"	MDM COATING(PHILIPPINES) INC.	0027	24-Nov-2016	166,696.0
"P-86"	MDM COATING(PHILIPPINES) INC.	0028	22-Sep-2016	401,903.7
"P-87"	MIDONGPHIL CONSTRUCTION CORP.	0001027	03-Jun-2016	1,045,991.2
"P-88"	MIDONGPHIL CONSTRUCTION CORP.	0001028	28-Jul-2016	1,659,419.6
"P-89"	MIDONGPHIL CONSTRUCTION CORP.	0001029	08-Aug-2016	1,519,379.8
"P-90"	MIDONGPHIL CONSTRUCTION CORP.	0001030	29-Sep-2016	594,851.4
"P-91"	MIDONGPHIL CONSTRUCTION CORP.	0001033	22-Dec-2016	7,775,571.4
"P-100"	MIRAE GLOBAL PHIL. CORP.	0056	01-Apr-2016	64,260.0
"P-101"	MIRAE GLOBAL PHIL. CORP.	0057	05-Apr-2016	18,742.0
"P-102"	MIRAE GLOBAL PHIL. CORP.	0058	05-Apr-2016	12,381.6
"P-103"	MIRAE GLOBAL PHIL. CORP.	0063	18-Apr-2016	3,455.3
"P-104"	SEBO MEC PHILIPPINES CORP.	0001052	04-May-2016	3,017,956.0
"P-105"	SEBO MEC PHILIPPINES CORP.	0001053	03-Jun-2016	3,366,784.2
"P-106"	SEBO MEC PHILIPPINES CORP.	0001054	11-Jul-2016	1,430,086.7
"P-107"	SEBO MEC PHILIPPINES CORP.	0001055	26-Aug-2016	1,920,460.5
"P-108"	SEBO MEC PHILIPPINES CORP.	0001057	22-Sep-2016	1,273,471.9
"P-109"	SEBO MEC PHILIPPINES CORP.	0001058	27-Oct-2016	3,164,747.0
"P-110"	SM BLOOMING PHILS. INC.	1357	08-Sep-2016	2,266,714.2
"P-111"	SM BLOOMING PHILS. INC.	1359	29-Nov-2016	197,116.9
"P-112"	SOONMI HARDWARE CORP.	274	10-Jun-2016	426,280.0
"P-113"	SUNGDO PHILIPPINES CONSTRUCTION INC.	1016	22-Sep-2016	503,236.5
"P-114"	SUNGDO PHILIPPINES CONSTRUCTION INC.	1017	27-Oct-2016	2,634,319.2
"P-115"	SUNGDO PHILIPPINES CONSTRUCTION INC.	1018	04-May-2016	1,707,356.2
"P-116"	SUNGDO PHILIPPINES CONSTRUCTION INC.	1019	03-Jun-2016	3,174,432.5
"P-117-1"	STA.CLARA INTERNATIONAL CORP.	1904	29-Dec-2016	448,308.0
"P-118-1"	STA.CLARA INTERNATIONAL CORP.	2001	27-Apr-2016	10,812,163.3
"P-119-1"	STA.CLARA INTERNATIONAL CORP.	2005	19-May-2016	6,035,421.3
"P-120-1"	STA.CLARA INTERNATIONAL CORP.	2009	23-Jun-2016	3,949,931.4
"P-121-1"	STA.CLARA INTERNATIONAL CORP.	2014	03-Aug-2016	4,899,991.3
"P-122-1"	STA.CLARA INTERNATIONAL CORP.	2022	26-Aug-2016	5,655,439.7

"P-123-1"	STA.CLARA INTERNATIONAL CORP.	2025	20-Oct-2016	2,433,393.7
"P-124-1"	STA.CLARA INTERNATIONAL CORP.	2029	27-Oct-2016	1,473,384.8
Annex 3 of the ICPA Report				
"P-125"	DAEJOO HEAVY BUILDERS PHIL. INC.	0003	08-Apr-2016	4,409,902.9
"P-126"	DAEJOO HEAVY BUILDERS PHIL. INC.	0002	15-May-2016	2,444,606.6
"P-127"	DAEJOO HEAVY BUILDERS PHIL. INC.	0005	29-Apr-2016	1,918,929.2
"P-128"	DAEJOO HEAVY BUILDERS PHIL. INC.	0006	23-Jun-2016	407,696.4
"P-130"	MYUNGSUNG PHILIPPINE CONSTRUCTION CORPORATION	0001	24-Sep-2016	231,412.6
"P-131"	MYUNGSUNG PHILIPPINE CONSTRUCTION CORPORATION	0003	24-Nov-2016	313,804.1
"P-133"	HMK PHILIPPINES STEEL CONSTRUCTION, INC.	0001	29-Apr-2016	7,362,919.3
"P-134"	HMK PHILIPPINES STEEL CONSTRUCTION, INC.	0004	23-Jun-2016	794,677.8
Annex 6 of the ICPA Report				
"P-148"[65]	DAEJOO HEAVY BUILDERS PHIL. INC.	0007	26-Aug-2016	463,364.8
"P-149"[66]	DAEJOO HEAVY BUILDERS PHIL. INC.	0008	24-Nov-2016	496,324.3
"P-150"	DANSUNG BUILDERS, INC.	0020	23-Jun-2016	123,905.3
"P-151"	MYUNGSUNG PHILIPPINE CONSTRUCTION CORPORATION	0001	14-Jul-2016	1,668,667.0
TOTAL VALID INPUT VAT				**₱194,165,861.4**

The input VAT of petitioner is attributable to its zero-rated sales.

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

In this case, for the subject period of the claim, there exist only zero-rated or effectively zero-rated sales but no other sales. Thus, for purposes of, and with regard to petitioner's compliance with the *eight* requisite, the amount of ₱194,165,861.40 denotes valid input VAT attributable to the entire valid zero-rated sales of ₱2,086,203,029.30.

However, respondent, in his Memorandum,[67] argues as follows, to wit:

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[65] Should be Exhibit "P-149".
[66] Should be Exhibit "P-148".
[67] Docket, pp. 383 and 385.

"Section 112 of the National Internal Revenue Code of 1997 uses the word 'directly attributable' and not the word 'entirely attributable'. Therefore, the fact of 'direct attributability' must be established. Thus, it is erroneous to immediately assume that all the valid input tax is directly attributable to petitioner's zero-rated sales without establishing how it factored in the production chain. It does not necessarily follow that when a taxpayer has zero-rated sales alone, all its input tax is automatically directly attributable to such zero-rated sales.

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From the definition provided by law,[68] it is respondent's position that the input tax must come from purchases of goods and services that form part of the finished product of the taxpayer. It must be directly used in the chain of production. Let us bear in mind that the law used the word 'directly'. This means that the connection between the purchases and the finished product is 'concrete' and not 'imaginary' or 'remote'."

In support of the foregoing contentions, respondent invokes the ruling in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (the "2011 *Atlas* case"),[69] and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (the "2007 *Atlas* case"),[70] collectively referred to as the "*Atlas* cases", to wit:

<u>2011 *Atlas* case</u>:

"The CTA, applying the abovementioned rules, in its Decision dated August 24, 1998, came out with the following factual findings:

The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax

[68] Referring to Section 110(A)(1)(a) of the NIRC of 1997, as amended.
[69] G.R. No. 159471, January 26, 2011.
[70] G.R. Nos. 141104 & 148763, June 8, 2007.

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credit must be shown to be entirely attributable to the zero-rated transaction, in this case, export sales of goods. **Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being <u>directly attributable</u> to the goods so exported.**" *(Emphasis provided by respondent; Underscoring ours)*

<u>2007 *Atlas* case</u>:

"Granting *arguendo* that the application of petitioner corporation for the refund/credit of the input VAT on its zero-rated sales in the first quarter of 1992 was actually and timely filed, petitioner corporation still failed to present together with its application the required supporting documents, whether before the BIR or the CTA. As the Court of Appeals ruled—

In actions involving claims for refund of taxes assessed and collected, the burden of proof rests on the taxpayer. As clearly discussed in the CTA's decision, petitioner failed to substantiate its claim for tax refund. Thus:

xxx xxx xxx

There is the need to examine the sales invoice or receipts in order to ascertain the actual amount or quantity of goods sold and their selling price. **Without them, this Court cannot verify the correctness of petitioner's claim inasmuch as the regulations require that the input taxes being sought for refund should limited to the portion that is <u>directly and entirely attributable</u> to the particular zero-rated transaction.** In this instance, the best evidence of such transaction are the said sales invoices or receipts.

xxx xxx xxx." *(Emphasis provided by respondent; Underscoring ours)*

Respondent clearly misread the law.

A plain reading of Section 112(A) of the NIRC of 1997, as amended by RA No. 9337, as quoted earlier, would reveal that the law merely states that the creditable input VAT should be *"attributable"* to the zero-rated or effectively zero-rated sales. In other words, nowhere does the said Section 112(A) say that the refundable creditable input VAT should be ***"directly** attributable"* to such sales. It is elementary that where the law does not distinguish, none must be made. *Ubi lex non distinguit nec nos distingere debemos.*[71]

Indeed, in a claim for refund under Section 112 of the NIRC, the claimant must show that: (1) it is engaged in zero-rated sales of goods or services; and (2) it paid input VAT that are attributable to zero-rated sales. **Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or services subject to VAT (output) but at zero rate.**[72]

Admittedly, the words *"directly...attributed"* were used under the same provision. However, the said words merely relate to a situation where the creditable input VAT cannot be *"directly...attributed"* to any transaction. It does **not**, in any way, qualify the preceding sentences of the same Section 112(A) which will have the effect of making the refundable input VAT are only those which are *"directly attributable"* to zero-rated or effectively zero-rated sales.

Thus, there is no legal basis for respondent's stand that the fact of *"direct attributability"* must be established.

We cannot rely on the rulings in the *Atlas* cases being invoked by respondent, for the simple reason that the said cases were decided under RR No. 5-87 dated September 1, 1987,[73] as amended

[71] *Commissioner of Internal Revenue vs. Commission on Audit, etseq.*, G.R. Nos. 101976 and 102258, January 29, 1993.
[72] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[73] SUBJECT: Value-Added Tax

by RR No. 3-88 dated February 15, 1988,[74] Section 16 of which provides, in part, as follows:

> "In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund." *(Emphasis and underscoring ours)*

Understandably, on the basis thereof, the Supreme Court required and ruled in the said *Atlas* cases that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

Section 23 of Republic Act No. 9337 reads:

> "SEC. 23. *Implementing Rules and Regulations.* – The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations pertaining to value-added tax shall be deemed revoked.**" *(Emphasis and underscoring supplied)*

Pursuant to the foregoing provision, rules and regulations pertaining to VAT issued before the effectivity of RA No. 9337, such as RR Nos. 5-87 and 3-88, shall be deemed revoked upon the issuance of the rules and regulations implementing the said law which should be done not later than June 30, 2005.

On June 22, 2005, the Secretary of Finance, upon the recommendation of respondent, issued RR No. 14-2005, also known as the *"Consolidated Value-Added Tax Regulations of 2005"*, which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005, which took effect on November 1, 2005. The latter RR, in turn, has undergone several amendments thereafter.

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[74] SUBJECT: Regulations Governing the Application of Zero-Rate, Exemption on Certain Transactions Related to Exporters, and Refunds of Input Taxes.

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Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of July 1, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the requirement that the input VAT being claimed for refund should be *"directly and entirely attributable"* to the zero-rated sales, has not been retained. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, as applied to the said *Atlas* cases, is no longer binding, upon the effectivity of RR No. 14-2005, *i.e.,* on July 1, 2005.

Considering that the CY under consideration is 2016, the provisions of RR Nos. 5-87 and 3-88, as applied to the above-stated *Atlas* cases, may no longer be validly applied to the instant case.

The input taxes being claimed have not been applied against output taxes during and in the succeeding quarters.

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, the Court shall now determine whether the same was applied against its output VAT liability during and in the succeeding quarters, relative to the *ninth* requisite for the successful prosecution of an input VAT refund claim.

Considering that petitioner had no other type of sales except for zero-rated sales for the subject period of claim, petitioner was able to prove that the claimed input VAT of ₱207,942,934.07 for the 2nd, 3rd, and 4th quarters of CY 2016 was not applied against any output VAT during the period of claim and even in the succeeding quarters.

It is noteworthy that petitioner deducted the claimed input VAT amount of ₱207,942,934.07 as *"VAT Refund/TCC claimed"* in its Amended 4th Quarterly VAT Return of CY 2016.[75] By virtue thereof, the subject claim, which includes the above-stated amount of ₱194,165,861.40, was no longer carried-over to the succeeding 1st quarter of CY 2017[76], to wit:

	2nd Quarter of CY 2016 *(Exhibit "P-5")*	3rd Quarter of CY 2016 *(Exhibit "P-6")*	4th Quarter of CY 2016 *(Exhibit "P-7")*	1st Quarter o CY 2017 *(Exhibit "P-10'*
Vatable Sales/Receipts	₱ -	₱ -	₱ -	₱ 101,785.7
Zero-Rated Sales/Receipts	1,039,523,581.25	640,208,240.00	406,471,208.05	249,800,580.6
Total	1,039,523,581.25	640,208,240.00	406,471,208.05	249,902,366.3
Output Tax Due	-	-	-	12,214.2
Input Tax Carried Over From Previous Period	-	90,068,860.87	168,186,735.11	-
Current transactions				
Domestic Purchases of Goods other than Capital Goods	1,239,032.06	693,509.60	311,226.89	113,509.0
Domestic Purchase of Services	88,829,828.81	77,424,364.64	39,444,972.07	16,923,785.6
Total	90,068,860.87	78,117,874.24	39,756,198.96	17,037,294.6
Total Available Input Tax	90,068,860.87	168,186,735.11	207,942,934.07	17,025,080.3
Less: VAT Refund/TCC claimed	-	-	207,942,934.07	-
Total Amount Payable/Overpayment	₱ 90,068,860.87	₱168,186,735.11	₱ -	₱17,025,080.3

Thus, it cannot be disputed that petitioner fulfilled the *ninth* requisite to successfully obtain a credit/refund of input VAT.

In sum, petitioner is entitled to refund or issuance of tax credit certificate in the amount of ₱194,165,861.40.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund or issue a tax credit certificate in favor of petitioner the amount of **₱194,165,861.40**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the 2nd, 3rd, and 4th quarters of CY 2016.

[75] Exhibit "P-7" (Line 23D), Docket, p. 341.
[76] Exhibit "P-10" (Line 20A), Docket, p. 343.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice