REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU INC., Petitioner,	**CTA CASE NO. 10689**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 09 2024 11:40 a.m.

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DECISION

FERRER-FLORES, J.:

The **Petition for Review** prays for the Court, after due hearing, to render judgment granting the instant *Petition* ordering the respondent to make an additional refund of cash or issue a tax credit certificate (TCC) in favor of the petitioner in the amount of ₱3,053,477.29.[1]

THE PARTIES

Petitioner **Pilipinas Kyohritsu Inc.** is a domestic corporation registered with the Securities and Exchange Commission (SEC) with Company Registration No. 157828.[2] It is also a registered entity with the Board of Investments,[3] and with the Bureau of Internal Revenue (BIR) as liable to value-added tax (VAT) under Taxpayer Identification No. 000-269-082-00000, with address at Km. 75 Laurel Highway Inosloban, Lipa City, Batangas.[4]

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1 Statement of the Case, Pre-Trial Order dated October 3, 2022, Docket – Vol. I, p. 466.
2 ICPA Exhibit "P-1B", USB (Exhibit "P-14.2").
3 Exhibits "P-2" to "P-5", Docket – Vol. 2, pp. 628 to 658.
4 Exhibit "P-1", Docket – Vol. 2, pp. 626 to 627.

Respondent is the duly appointed **Commissioner of Internal Revenue** (CIR), who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 17, 2021, petitioner filed with the BIR VAT Credit Audit Division (VCAD) the letter dated May 26, 2021,[6] with the corresponding Application for Tax Credits/Refunds (BIR Form No. 1914)[7] and Revised Checklist of Mandatory Requirements for Claims for VAT Credit/Refund,[8] applying for VAT refund in the amount of ₱13,164,872.60 for the covered period April 1, 2019 to June 30, 2019.

Thereafter, on October 29, 2021, petitioner received the *VAT Refund Notice* dated September 30, 2021,[9] signed by Assistant Commissioner, Assessment Service, Ms. Maria Luisa I. Belen, the contents of which are as follows:

> This has reference to your claim for Value Added Tax (VAT) refund covering the period from April 01, 2019 to June 30, 2019 in the amount of Php13,164,872.60 pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> Please be informed that, upon processing of the aforementioned claim under Tax Verification Notice (TVN) No. TVN201800143157 dated June 23, 2021, the amount of input tax allowable on local [purchases] and importations is **Php6,679,022.84**. Details are shown on the attached sheet marked as Annex 'A' and summarized as follows:

A. <u>Local Purchases</u>	
VAT Refund Claimed	Php9,210,172.86
Deductions from Claim	(3,810,645.68)
Net Allowable VAT Refund	**Php5,399,527.18**
B. <u>Importations</u>	
VAT Refund Claimed	Php3,954,699.74
Deductions from Claim	(2,675,204.08)
Net Allowable VAT Refund	**Php1,279,495.66**

Total Amount Allowable for VAT Refund <u>Php6,679,022.84</u>

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5 Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 450.
6 Exhibit "P-6", Docket – Vol. 2, pp. 659 to 660.
7 Exhibit "P-8", Docket – Vol. 2, p. 662.
8 Exhibits "P-7" and "R-2", BIR Records – Folder II (Exhibit "R-6"), p. 164.
9 Exhibit "R-5", BIR Records – Folder [III] (submitted on October 20, 2022), pp. 1 to 5.

The amount of **Php1,279,495.66** representing the recommended VAT refund/credit on importations is subject to further verification and processing by the Bureau of Customs (BOC), in compliance with the requirements of the Commission on Audit (COA).

The approved report on the said claim may be subject to post-audit by the COA as mandated under Section 112(D) of the NIRC of 1997, as amended, and/or further audit/investigation under the directive of higher authorities. Should there be findings requiring adjustment/deduction on the amount granted, the deficiency tax or excess tax refund/credit shall be collected and/or deducted from future tax refund claim/s, if there is any.

Moreover, please note that you have the judicial remedy, within thirty (30) days from receipt of this letter, to appeal the disallowed portion of your claim with the Court of Tax Appeals pursuant to Section 112(C) of the NIRC of 1997, as amended by Republic Act No. 10963.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on November 29, 2021.[10]

In the Resolution dated December 16, 2021,[11] the Court ordered petitioner to submit a compliant/correct *Petition for Review* pursuant to A.M. No. 19-10-20-SC, to which petitioner filed its *Compliance* via registered mail on January 12, 2022.[12] The said *Compliance* was noted by the Court in the Resolution dated March 17, 2022.[13]

On April 21, 2022, respondent filed a *Motion for Extension of Time to File Answer*,[14] which was granted by the Court in the Resolution dated April 27, 2022.[15] Subsequently, on May 23, 2022, respondent filed his *Answer (Re: Petition for Review dated 29 November 2021)*,[16] interposing his special and affirmative defenses.

[10] Docket – Vol. I, pp. 6 to 34.
[11] Docket – Vol. I, pp. 134 to 135.
[12] Docket – Vol. I, pp. 136 to 144.
[13] Docket – Vol. I, pp. 309 to 310.
[14] Docket – Vol. I, pp. 312 to 315.
[15] Docket – Vol. I, p. 319.
[16] Docket – Vol. I, pp. 320 to 336.

The Pre-Trial Conference was set and held on August 16, 2022.[17] Prior thereto, *Respondent's Pre-Trial Brief* was filed on August 11, 2022,[18] while petitioner's *Pre-Trial Brief* was submitted on August 12, 2022.[19]

Respondent transmitted the *BIR Records* for this case on August 16, 2022,[20] consisting of two folders, and on October 20, 2022,[21] one folder.

On September 23, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[22] which was admitted and approved by the Court in the Resolution dated September 29, 2022,[23] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated October 3, 2022 was then issued.[24]

Trial ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Edna Luisa Lopez,[25] petitioner's previous Manager of Finance and Management Accounting Department, but now Deputy General Manager of the Administration Department; (2) Ms. Evelyn Ocampo,[26] petitioner's Assistant Manager of Finance and Management Accounting Department; and (3) Mr. Garry S. Pagaspas,[27] the Court-commissioned Independent Certified Public Accountant (ICPA).[28]

The *Final Report* of the ICPA was submitted on January 3, 2023.[29]

On March 29, 2023, petitioner filed its *Formal Offer of Evidence*,[30] without respondent's comment, despite due notice.[31] In the Resolution dated

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17 Notice of Pre-Trial Conference dated May 25, 2022, Docket – Vol. I, pp. 338 to 339; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket – Vol. I, pp. 386 to 388.
18 Docket – Vol. I, pp. 356 to 359.
19 Docket – Vol. I, pp. 342 to 355.
20 *Compliance* dated August 16, 2022, Docket – Vol. I, pp. 389 to 391.
21 *Compliance* dated October 20, 2022, Docket – Vol. I, pp. 475 to 477.
22 Docket – Vol. I, pp. 450 to 455.
23 Docket – Vol. I, p. 460.
24 Docket – Vol. I, pp. 466 to 471.
25 Exhibit "P-11", Docket – Vol. I, pp. 146 to 177; Minutes of the hearing held on, and Order dated, October 6, 2022, Docket – Vol. I, pp. 472 to 475.
26 Exhibit "P-12", Docket – Vol. I, pp. 274 to 300; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. I, pp. 486 and 489 to 490, respectively.
27 Exhibit "P-13", Docket – Vol. I, pp. 606 to 624; Minutes of the hearing held on, and Order dated, February 28, 2023, Docket – Vol. 2, pp. 603 and 605, respectively.
28 *Oath of Commission* dated November 3, 2022, Docket – Vol. I, p. 487; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. I, pp. 486 and 489 to 490, respectively.
29 Exhibit "P-14", Docket – Vol. I, pp. 542 to 578.
30 Docket – Vol. 2, pp. 606 to 624.
31 Records Verification Report dated May 29, 2023 issued by this Court's Judicial Records Division, Docket – Vol. 2, p. 887.

June 27, 2023,[32] the Court admitted petitioner's offered exhibits, *except* the following:

1. Exhibits "P-8" and "P-11-15", for not being found in the records;

2. Exhibit "P-9", for failure to submit the duly marked exhibit;

3. Exhibit "P-15", for failure to correspond with the document actually marked, to submit the original for comparison and to identify, to wit:

	Exhibit formally offered	*Document actually marked*
"P-15"	Various supporting documents to be examined by the ICPA, inclusive of sub-markings	Sales Invoice No. 0002650

Petitioner filed its *Omnibus Motion (For Reconsideration of Resolution dated 27 June 2023, Substitution of Copies of Exhibits)* on July 25, 2023.[33] However, respondent failed to file his comment thereto.[34] In the Resolution dated November 28, 2023,[35] the Court partially granted petitioner's *Omnibus Motion*, thus: (1) allowing the substitution of the clearer copies of Exhibits "P-5B", "P-11-13" and "P-24-C27f"; (2) admitting Exhibit "P-8"; and, (3) denying the admission of Exhibit "P-11-15", for not being found in the records, and Exhibit "P-9", for failure to submit duly marked exhibit.

For his part, respondent offered the testimonies of the following Revenue Officers, namely: (1) Marjorie C. Dioso[36] and (2) Eufemia Mylene N. Mabingnay.[37]

Respondent's Formal Offer of Evidence was filed on March 18, 2024,[38] to which petitioner filed its *Motion to Admit Comment*,[39] with attached *Comment (to Respondent's Formal Offer of Evidence dated 15 March 2024)*

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32 Docket – Vol. 2 pp. 890 to 892.
33 Docket – Vol. 2, pp. 895 to 899.
34 Records Verification dated October 17, 2023 issued by this Court's Judicial Records Division, Docket – Vol. 2, p. 908.
35 Docket – Vol. 2, pp. 911 to 912.
36 Exhibit "R-7", Docket – Vol. I, pp. 375 to 380; Minutes of the hearing held on, and Order dated, March 7, 2024, Docket – Vol. 2, pp. 914 to 916.
37 Exhibit "R-8", Docket – Vol. I, pp. 365 to 370; Minutes of the hearing held on, and Order dated, March 7, 2024, Docket – Vol. 2, pp. 914 to 916.
38 Docket – Vol. 2, pp. 917 to 920.
39 Docket – Vol. 2, pp. 922 to 925.

on March 27, 2024.[40] In the Resolution dated June 27, 2024,[41] the Court admitted all of respondent's offered exhibits.

The *Memorandum (For the Petitioner)* was filed on August 2, 2024;[42] while respondent submitted a *Manifestation* on August 29, 2024,[43] stating that he will adopt the arguments raised in his *Answer* filed on May 23, 2022 as his *Memorandum*.

The present case was considered submitted for decision on September 9, 2024.[44]

Hence, this Decision.

THE STIPULATED ISSUE

As stipulated by the parties, the issue for this Court's resolution is:[45]

> Whether or not petitioner is entitled to the additional refund of cash or TCC in the amount of ₱3,053,477.29 for the period April 1, 2019 to June 30, 2019

Petitioner's arguments:

Petitioner argues that the following disallowances of respondent were incorrect: (1) ₱354,300.00, due to violation of invoicing requirements; (2) ₱2,592.00, due to absence of *Statement of Account/Billing Statement*; (3) ₱13,088.57, per BIR Integrated System; and (4) ₱2,675,204.08, due to invalid supporting documents.

Respondent's counter-arguments:

Respondent in his *Answer* avers that the present claim should be denied for petitioner's failure to substantiate its claim for refund at the administrative level; that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon the filing of the claim; that tax refunds are subject to administrative routinary

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40 Docket – Vol. 2, pp. 927 to 930.
41 Docket – Vol. 2, pp. 935 to 936.
42 Docket – Vol. 2, pp. 937 to 956.
43 Docket – Vol. 2, pp. 958 to 960.
44 Minute Resolution dated September 9, 2024, Docket – Vol. 2.
45 Issue, JSFI, Docket – Vol. I, p. 451.

investigation; and, that tax refunds are strictly construed against the taxpayer and in favor of the government.

THE COURT'S RULING

The present *Petition for Review* is partially granted.

Requisites under the law for the refund or issuance of tax credit certificate of input VAT.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (R.A.) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law,[46] provides, in part, as follows:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed

[46] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, otherwise Known as the National Internal Revenue Code of 1997, As Amended, and For Other Purposes, Effective January 1, 2018.

> in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to 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 refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[47]

2. in case of full or partial denial of the refund claim rendered within a period of 90 days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within 30 days from receipt of the decision,[48] or after the expiration of the 90-day period;[49]

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

3. the taxpayer is a VAT-registered person;[50]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated

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

[48] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[49] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

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

sales;[51]

5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2),[52] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);[53]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[54]

7. the input taxes are due or paid;[55]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[56] and,

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[58] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[59] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[60] Moreover, it must be

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51 *Ibid.*

52 Under R.A. No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

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

54 *Ibid.*

55 *Ibid.*

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

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

58 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

59 *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

60 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[61]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[62]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[63] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

First and second requisites:
Petitioner timely filed its administrative and judicial claims.

The *first* requisite pertains to the filing of a claim for tax credit or refund of input VAT before the BIR, within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st quarter of the fiscal year ending March 31, 2020 (FY 2020), or the period from April 1, 2019 to June 30, 2019. Counting two years from the close of the said quarter, petitioner had until June 30, 2021, within which to file its administrative claim for refund. Petitioner's administrative claim filed on June 17, 2021,[64] thus, fell within the two-year prescriptive period.

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61 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

62 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

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

64 Exhibit "P-6", Docket – Vol. 2, pp. 659 to 660, Exhibits "P-7" and "R-2", BIR Records – Folder II (Exhibit "R-6"), p. 164; Exhibit "P-8", Docket – Vol. 2, p. 662; ICPA Exhibits "P-6" to "P-8", USB (Exhibit "P-14.2").

The *second* requisite necessitates that the judicial claim must have been filed within 30 days from receipt of respondent's decision, or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended. Thus, from the filing of petitioner's administrative claim on June 17, 2021, respondent had 90 days therefrom, or until September 15, 2021, to act on the said claim.

Notably, on October 6, 2020, Revenue Regulations (RR) No. 27-2020 was issued,[65] suspending the filing and 90-day processing of VAT refund claims, to wit:

> **SECTION 5. Suspension Beyond the Effectivity of R.A. No. 11494.** - In areas where the Enhanced Community Quarantine (ECQ) or the Modified ECQ (MECQ) is in force after the effectivity of R.A. No. 11494, the following shall be observed:
>
> xxx xxx xxx
>
> 2. The 90-day period of processing VAT refund claims is suspended during the declaration of ECQ or MECQ in the area and shall resume thirty (30) days after the same has been lifted.
>
> xxx xxx xxx.

In relation thereto, the National Capital Region (NCR) was placed under Enhanced Community Quarantine (ECQ) from August 6, 2021 to August 20, 2021, then placed under Modified ECQ (MECQ) beginning August 21, 2021 until September 15, 2021, pursuant to the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) Resolution No. 130-A dated July 29, 2021, IATF Resolution No. 134 dated August 19, 2021, IATF Resolution No. 135-A dated August 26, 2021, and IATF Resolution No. 137 dated September 7, 2021, respectively.

Considering that the NCR was placed under ECQ/MECQ from August 6, 2021 until September 15, 2021, the 90-day period to process petitioner's VAT refund claim pending with the VCAD during the ECQ/MECQ was suspended and only resumed 30 days after September 15. The Court notes that, from the filing of the administrative claim on June 17, 2021 until August 5, 2021, the day before the NCR was placed under ECQ, only 50 out of the 90 days have lapsed. Counting 30 days from when the MECQ was lifted on September 15, 2021, the 90-day period to process VAT refund claims resumed

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[65] Regulations Suspending the Filing and Ninety (90) – Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

on October 15, 2021. Thus, respondent had 40 days therefrom, or until November 24, 2021, to act on the administrative claim.

In this regard, respondent acted on petitioner's claim when Assistant Commissioner Belen issued the *VAT Refund Notice* dated September 30, 2021, informing petitioner that its claim was partially approved in the amount of ₱6,679,022.84.[66] Correspondingly, since petitioner received the said *VAT Refund Notice* on October 29, 2021,[67] which was before the lapse of the 90-day period, the filing of the present *Petition for Review* on November 29, 2021[68] was timely made within the prescribed 30-day period.

Such being the case, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

***Third requisite*: Petitioner is a VAT-registered entity.**

Anent the *third* requisite, petitioner has fulfilled the same by presenting its BIR Certificate of Registration with OCN No. 8RC0000906901E dated March 14, 2017, under the TIN 000-269-082-00000.[69]

***Fourth and fifth requisites*: Not all of petitioner's reported zero-rated sales or effectively zero-rated sales during the 1st quarter of FY 2020 qualify as such.**

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

Petitioner alleges that, in the course of manufacturing and exporting parts and accessories, specifically wiring harness, corrugated and vinyl tubes, engineering design activity and tie-band, it purchased raw materials, supplies, spare parts and capital goods from its local and foreign suppliers — specifically, wiring harness, weld cap, spare parts supplies. The raw materials

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66 Exhibit "R-5", BIR Records – Folder [III] (submitted on October 20, 2022), pp. 1 to 5.
67 *Id.*
68 Docket – Vol. I, pp. 6 to 34; November 28, 2021, the 30th day, fell on a Sunday.
69 Exhibit "P-1", Docket – Vol. 2, pp. 626 to 627.

or goods are intended to complete its finished products and the various capital equipment are used for the manufacture and production thereof. The spare parts and capital goods/equipment were also for use in its registered activities. During the same period, petitioner exported and sold its finished products to various foreign clients or customers. Being export sales, all of these are considered zero-rated for VAT purposes under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.[70]

In its amended Quarterly VAT Return for the 1st quarter of FY 2020,[71] petitioner declared total sales in the amount of ₱1,905,345,455.94, which included zero-rated sales of ₱1,899,527,096.15, as shown below:

	Amount
VATable Sales/Receipt	₱ 5,818,359.79
Zero Rated Sales/Receipts	1,899,527,096.15
Total Sales/Receipts	**₱ 1,905,345,455.94**

Per the ICPA's *Final Report*, petitioner's zero-rated sales amounting to ₱1,899,527,096.15, as shown in its *Summary of VAT Zero-rated Sales* for the 1st quarter of FY 2020, was categorized as follows:[72]

Particulars	US$	PhP
1. Actual export sale of service	351,584.39	18,369,676.28
2. Sale to a PEZA-registered entity	68,175.00	3,569,962.28
3. Actual export sale of goods	35,950,109.21	1,877,587,457.59
TOTAL	**36,369,868.60**	**1,899,527,096.15**

Based on the above breakdown, petitioner has three sources of zero-rated sales, viz.:

(i) Export sale of service under Section 108(B)(2) of the NIRC of 1997, as amended;

(ii) Sale to Philippine Economic Zone Authority (PEZA)-registered entity under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended; and,

(iii) Actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

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70 Par. 2, Statement of Facts, *Memorandum (For the Petitioner)*, Docket – Vol. 2, p. 938.
71 ICPA Exhibit "P-9C", USB (Exhibit "P-14.2").
72 ICPA Table 11 - Summary of VAT Zero-rated Sales, ICPA Report (Exhibit "P-14"), Docket – Vol. I, p. 557.

(i) Export sale of service under Section 108(B)(2) of the NIRC of 1997, as amended - (₱18,369,676.28)

Section 108(B)(2) 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**:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**; *(Emphasis supplied)*

Based on the foregoing, in order for a sale or supply of services to qualify as zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following *essential elements* must be present:

1. The services fall under any of the categories under Section 108(B)(2),[73] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[74]

2. The payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules;[75]

3. The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a non-resident person not engaged in business who is

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[73] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[74] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

[75] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

outside the Philippines when the services were performed;[76] and,

4. The service must be performed in the Philippines[77] by a VAT-registered person.

Relative to the *first* essential element, the Engineering Service Agreement[78] entered into by and between SWS and petitioner provides for the services requested by the former and the services to be provided by the latter, to wit:

> ARTICLE 1. STATEMENT OF SERVICES
>
> (a) Services requested by SWS
> During the term of this Agreement, PKI shall furnish SWS with its services for the input and maintenance of designing data of automotive wiring harnesses in the capacity of an independent contractor. All arrangements for the services shall be made in writing duly executed on behalf of SWS by its authorized representative and duly accepted on behalf of PKI by its authorized representative.
> SWS shall specify the time period for performance and, if PKI shall have an issue with the time period specified, the parties shall consult.
>
> (b) Services provided by PKI
> All services shall be performed by PKI in accordance with the terms and conditions of this Agreement.
> Regarding other additional jobs, SWS shall give instructions to PKI in a separate letter. The compensation and other terms and conditions for such additional jobs as may be requested shall be agreed to by the parties in advance of work and paid to PKI by SWS separate from the contract fees of this Agreement.

On the other hand, the Service Consignment Agreement[79] entered into by and between SEWS and petitioner provides the services requested by the former and the services to be provided by the latter, to wit:

> Article 1 Statement of Service
> 1. Services Required by SEWS
> During the term of this Agreement, SEWS shall provide technical background information related to the relevant service materials to PKI. PKI, as an independent contractor, shall perform services in accordance with the instructions of SEWS in relation to wiring harnesses and other

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[76] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[77] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

[78] ICPA Exhibit "P-15C", USB (Exhibit "P-14.2").

[79] ICPA Exhibit "P-15D", USB (Exhibit "P-14.2").

related manufacturing and design technology of automotive parts, and shall furnish accomplishments to SEWS. SEWS shall specify the time period for performance of services, and if PKI does not initially accept the time period specified, the parties shall mutually consult each other for agreeable conditions.

2. Services Provided by PKI
PKI shall perform the above services in accordance with the terms and conditions of this Agreement. In the case of additional work, SEWS shall provide separate written instructions. The compensation and other terms and conditions for such additional work as may be requested shall be agreed upon by the parties in advance of the additional work and paid to PKI by SEWS separately from the contract fees of this Agreement. About the evidence of design (drawings and checked evidence) need to preserve 1 year.

Evidently, the above services to SWS and SEWS are not in the same category as *"processing, manufacturing or repacking of goods"*. A further examination of the ORs and other supporting documents issued by the petitioner reveals that the nature of services rendered is "Engineering Design".[80] Petitioner, thus, complied with the *first* essential element.

As regards the *second* essential element, petitioner presented the Certificate of Inward Remittance issued by MUFG Bank, Ltd. – Manila Branch,[81] purportedly showing the remittances of SWS and SEWS. Upon checking, the sales amounts reflected in the ORs are traceable to the said Certificate of Inward Remittance. Considering that the certification (or proof) of inward remittances attests to the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP"*, petitioner is considered to have complied with the above-stated *second* essential element.

Anent the *third* essential element, to prove that the recipient of services is a non-resident foreign corporation (NRFC) doing business outside the Philippines, petitioner, at the very least, must present **both** the SEC *Certification of Non-Registration of Company*, **and** proof of incorporation or registration in a foreign country (*e.g.*, *Articles/Certificate of Incorporation/Registration* and/or *Tax Residence Certificate*) of the foreign corporation.[82]

Here, petitioner presented SEC *Certifications of Non-Registration of Company* both dated March 15, 2021 indicating that the SEC records "do not

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[80] ICPA Exhibit "P-15 to P-15.3.3c", USB (Exhibit "P-14.2").
[81] ICPA Exhibit "P-19", USB (Exhibit "P-14.2").
[82] Refer to *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020; and *Commissioner of Internal Revenue vs. BW Shipping, Inc.*, G.R. No. 261171, October 4, 2023.

show the registration of [SWS[83] and SEWS,[84]] as a corporation, partnership or One Person Corporation (OPC)." However, no proof of incorporation or registration of SWS and SEWS in a foreign country was presented by petitioner. As it is, petitioner's documentary evidence is not sufficient to prove that petitioner's client, SWS and SEWS are NRFCs doing business outside the Philippines; thus, it cannot be said that petitioner fulfilled the *third* essential element.

Moreover, petitioner likewise failed to comply with the *fourth* essential element as it was not able to establish that the services it provided to SWS and SEWS were performed in the Philippines.

Verily, petitioner fell short in establishing that its sales of services amounting to ₱18,369,676.28 qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

(ii) Sale to PEZA-registered entity under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended – (₱3,569,962.28)

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended by R.A. No. 10963, provides:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* – The term 'export sales' means:
>
> xxx xxx xxx
>
> (5) Those **considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws**; and
>
> xxx xxx xxx
>
> *Provided*, That subparagraphs (3), (4), and (5) hereof shall be subject to the twelve percent (12%) value-added tax and no longer be

[83] ICPA Exhibit "P-15B", USB (Exhibit "P-14.2").
[84] ICPA Exhibit "P-15A", USB (Exhibit "P-14.2").

considered export sales subject to zero percent (0%) VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau: *Provided*, That, to determine the effectivity of item no. 1, all applications filed from January 1, 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application; and

(2) All pending VAT refund claims as of December 31, 2017 shall be fully paid in cash by December 31, 2019.[85]

xxx xxx xxx *(Emphasis supplied)*

Relative thereto, Section 4.106-5(a) of RR No. 16-2005,[86] as amended by RR No. 13-2018,[87] which implements the foregoing provision, states:

SEC. 4.106-5. <u>Zero-Rated Sales of Goods or Properties</u>. – xxx

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* – *'Export Sales'* shall mean:

xxx xxx xxx

(4) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and **other special laws**.

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided, That* sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further,* **That without actual exportation the following shall be considered constructively exported for purposes of these provisions:** (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export**

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[85] These conditions have not been met during the period of the subject claim (April 1, 2019 to June 30, 2019); as such, sales under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended by R.A. No. 10963, are still zero-rated. Note that these conditions have been fully satisfied pursuant to RR No. 9-2021, which became effective on June 27, 2021, but the implementation thereof was deferred pursuant to RR No. 15-2021 issued on July 28, 2021.

[86] Consolidated Value-Added Tax Regulations of 2005.

[87] Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended.

> **processing zones**; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (4) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> xxx xxx xxx *(Emphasis supplied)*

The special law applicable to this case is R.A. No. 7916,[88] as amended by R.A. No. 8748,[89] otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof read:

> SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONES 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."
>
> xxx xxx xxx
>
> SEC. 24. *Exemption from 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)*

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 VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[90] 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.**

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[88] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating For This Purpose, the Philippine Economic Zone Authority (PEZA), and For Other Purposes.

[89] An Act Amending Republic Act No. 7916, Otherwise Known as the "Special Economic Zone Act Of 1995".

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

xxx An ECOZONE or a Special Economic Zone has been described as —

> . . . [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.

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%)[91] VAT. *(Emphasis supplied)*

Based on the foregoing, for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present:

1. the sale was made by a VAT registered person; and,

2. there was sale of goods to an entity which is entitled to incentives under Executive Order No. (E.O.) 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

As for the *first* essential element, as earlier established, petitioner is a VAT-registered person.

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[91] Now at 12% VAT rate.

Relative to the *second* essential element, records show that petitioner sold goods to Sumi Philippines [Wiring] Systems Corporation (SPWSC) amounting to ₱3,569,962.28 during the period of April 1, 2019 to June 30, 2019,[92] which are duly supported by sales invoices[93] in accordance with the applicable law and regulations.

To prove that the said client is duly registered with PEZA, petitioner presented the letter dated November 11, 2020, signed by BGen Charito B. Plaza, PEZA Director General,[94] confirming the issuance of VAT zero-rating certification to SPWSC, which is valid for the years 2019 and 2020.

Based on the foregoing submissions, petitioner is considered to have complied with the above-stated *second* essential element. Accordingly, petitioner satisfactorily proved that its sale of goods to SPWSC, a PEZA-registered entity, amounting to ₱3,569,962.28, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

(iii) Actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended - (₱1,877,587,457.59).

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, states:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

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92 ICPA Table 10 - Schedule of Sale to Sumi Philippines Systems Corporation, ICPA Exhibit "P-17", USB (Exhibit "P-14.2").
93 ICPA Exhibits "P-17.1.1" to "P-17.1.3", USB (Exhibit "P-14.2").
94 ICPA Exhibit "P-18", USB (Exhibit "P-14.2").

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

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

As to the *first* essential element, it has been established that petitioner is a VAT-registered person.

Relative to the *second* essential element, it is incumbent upon the VAT-registered person to have, at the minimum, the following supporting documents:

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

Only export sales supported by above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

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

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by 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:

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

xxx xxx xxx

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

xxx xxx xxx

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

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

The above provision is implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, to wit:

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

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

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

xxx xxx xxx

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

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

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

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

(3) In the case of sales in the amount of one thousand pesos (P1,000.00) 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. *(Emphasis supplied)*

The sales invoices supporting the export sales must likewise be duly registered with the BIR and contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address, of the purchaser, customer or client: *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

Records show that the bulk of petitioner's sales are from export of goods to SEWS and SWS amounting to US$35,950,109.21, with a peso equivalent of ₱1,877,587,457.59.[95] Upon examination of the Court, all of its export sales to SEWS and SWS are found to be supported by valid Sales Invoices pre-printed with "*Zero-Rated Sale*" and containing the required information, Export Declarations, and airway bills (AWBs)/bills of lading (BLs).[96] Thus, petitioner satisfactorily complied with the *second* essential element.

As to the *third* essential element (*i.e.,* the sale was paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations), petitioner presented the Certificate of Inward Remittance issued by MUFG Bank, Ltd. - Manila Branch[97] and Schedule of Zero-Rated Sale of Goods with Offsetting Agreement[98] to support that the export sales of goods in the amount of US$35,950,109.21, with a peso equivalent of ₱1,877,587,457.59, were paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Petitioner and SWS entered into a Supply and Purchase Agreement,[99] with attached Memorandum No. 1,[100] in which the parties agree to offset the petitioner's payment for the purchase of materials from SWS against the SWS' payment for the purchase of petitioner's products.[101] The details of these transactions were supported by a "*Schedule of Offsetting of Receivables and Payables*"[102] and "*Comparison of Inward Remittance, Offsetting Agreement and Export Sale of Goods*".[103]

On the other hand, petitioner and SEWS entered into a *Sales and Purchase Agreement*,[104] in which, the petitioner shall manufacture and ship the products in accordance with the individual contracts and the instructions given by SEWS,[105] and such payments shall be made under the terms and conditions in *Annex I*.[106]

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95 ICPA Table 9 - Schedule of Zero-Rated Sale of Goods with Offsetting Agreement, ICPA Exhibit "P-16", USB (Exhibit "P-14.2").
96 ICPA Exhibits "P-16.1.1" to "P-16.3.64", USB (Exhibit "P-14.2").
97 ICPA Exhibit "P-19", USB (Exhibit "P-14.2").
98 ICPA Table 9, ICPA Exhibit "P-16", USB (Exhibit "P-14.2").
99 ICPA Exhibit "P-19A.1" USB (Exhibit "P-14.2").
100 ICPA Exhibit "P-19A.2" USB (Exhibit "P-14.2").
101 Article 1: Offset of payment, ICPA Exhibit "P-19A.2", USB (Exhibit "P-14.2").
102 ICPA Exhibit "P-19A", USB (Exhibit "P-14.2").
103 ICPA Table 13, ICPA Exhibit "P-20", USB (Exhibit "P-14.2").
104 ICPA Exhibit "P-19A.3", USB (Exhibit "P-14.2").
105 Par. 6(1), ICPA Exhibit "P-19A.3", USB (Exhibit "P-14.2").
106 ICPA Exhibit "P-19A.3", p. 7, USB (Exhibit "P-14.2").

In relation to petitioner's offsetting arrangement with SWS, Revenue Memorandum Circular (RMC) No. 42-2003[107] provides for the required documents in case of offsetting arrangements, as follows:

> Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the **acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements**?
>
> A-8: **In the case of offsetting arrangements, the following documents should be required:**
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales.

Verily, the Court finds that the Supply and Purchase Agreement and supporting schedules, on their own, are not compliant with the above required documentation to substantiate its offsetting arrangement.

Aside from foregoing, note that the BIR, through RMC No. 61-2016,[108] has prohibited "offsetting arrangements" for taxation purposes, to wit:

> **BACKGROUND:**
>
> It is a general principle of accounting that the offsetting of assets and liabilities in the balance sheet is improper. Hence, under no circumstance is offsetting to be considered appropriate in recording transactions that are subject to a wide range of "netting" arrangements or similar practices, including those with standard commercial provisions that allow parties to "net settle," such as trade receivables and payables.
>
> Questions have been raised about offsetting amounts recognized for transactions for which the net amount of those transactions, rather than the

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[107] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

[108] Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving "Netting" or "Offsetting".

gross amount is reported for accounting/tax purposes. In the absence of definitive policies for reporting assets and liabilities arising from those transactions, various financial reporting practices have developed giving rise to accounting treatments that result in offsetting which adversely affect the complete measurement of an asset or a liability.

TAX CONSEQUENCE:

The practice of offsetting due to/due from and/or payable/receivable transactions of taxpayers and consequently the accounting and recording of the same and its related transactions in the books of the parties is <u>strictly prohibited for taxation purposes</u>. Thus, at all times, the accrued receivables or payables arising from sale or lease of goods or properties or the performance of service, shall be recognized at gross for income and value-added tax or percentage tax purposes. *(Emphasis and underscoring supplied)*

To reconcile the sales and the payments of its customers, petitioner submitted the following: (1) Schedule of Zero-Rated Sale of Goods with Offsetting Agreement ("Schedule of Zero-Rated Sale of Goods"),[109] wherein the sales invoice numbers, sales in foreign currency (US$), accredited bank (MUFG) and remittance reference numbers are listed; (2) Certificate of Inward Remittance issued by MUFG Bank, Ltd. – Manila Branch;[110] (3) Comparison of Inward Remittance, Offsetting Agreement and Export Sale of Goods;[111] and, (4) Summary of Comparison of Inward Remittance, Offsetting Agreement and Export Sale of Goods.[112]

Scrutiny of the above documents reveals that, while the amounts per sales invoice were traceable to the Certificate of Inward Remittance as summarized in the Schedule of Zero-Rated Sale of Goods,[113] there are significant amounts of adjustments on the invoice price before arriving at the net remittances which are too substantial to be ignored, viz.:[114]

Period	Sales Amount per Invoice (in US$)	Add/(Deduct) Adjustments (in US$)				Net Amount Remitted (in US$)
		Adjustment of Sales based on BL Date	Other Receivable Credited to PKI	Purchases	Other Charges Debited from PKI	
April 2019	9,798,237.22	-	9,192.76	(3,087,760.73)	(190,132.50)	6,529,536.75
May 2019	13,048,009.37	1,222,934.50	5,840.06	(3,239,361.39)	(207,791.02)	10,829,631.52
June 2019	13,103,862.62	(1,352,268.08)	3,901.41	(3,251,088.11)	(140,639.18)	8,363,768.66
TOTAL	**35,950,109.21**	**(129,333.58)**	**18,934.23**	**(9,578,210.23)**	**(538,562.70)**	**25,722,936.93**

[109] ICPA Table 9, ICPA Exhibit "P-16", USB (Exhibit "P-14.2").
[110] ICPA Exhibit "P-19", USB (Exhibit "P-14.2").
[111] ICPA Table 13, ICPA Exhibit "P-20", USB (Exhibit "P-14.2").
[112] ICPA Table 14, ICPA Report (Exhibit "P-14"), Docket – Vol. I, p. 560.
[113] ICPA Table 9, ICPA Exhibit "P-16", USB (Exhibit "P-14.2").
[114] ICPA Table 14, ICPA Report (Exhibit "P-14"), Docket – Vol. I, p. 560.

In view of the foregoing principle against offsetting or netting for tax purposes and given that petitioner failed to present evidence relative to the above adjustments, the Court cannot simply consider the full amount of sales per sales invoices as zero-rated sales. As such, it cannot be said that the full invoice amount was remitted in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

To determine petitioner's valid zero-rated sales, the Court compared the total amount of sales per sales invoice ("invoice amount") with the corresponding amount actually remitted per Certificate of Inward Remittance. Should the amount actually remitted be lower than the invoice amount, the amount considered as valid zero-rated sales shall be only to the extent of the amount actually remitted. On the other hand, if the amount actually remitted exceeds the invoice amount, the valid zero-rated sales shall only be to the extent of the invoice amount. To put it simply, the valid zero-rated sales shall be the lower between the invoice amount or the remitted amount. We present below the result of the comparison:

Period of Sale	Invoice Amount per Schedule of Zero-Rated Sale of Goods (in US$) [A]	Amount Remitted per Certificate of Inward Remittance (in US$) [B]	Valid Zero-Rated Sales (in US$) (Lower between A or B) [C]	Exchange Rate per Schedule of Rated Sale of Goods [D]	Valid Zero-Rated Sales (in PhP) [C]*[D]
SEWS					
April	5,456,034.76	5,354,282.76	5,354,282.76	52.500	**281,099,844.90**
May	5,350,991.73	6,474,499.23	5,350,991.73	52.105	**278,813,424.09**
June	7,312,227.28	5,889,239.88	5,889,239.88	52.160	**307,182,752.14**
SWS					
April	4,342,202.46	1,175,253.99	1,175,253.99	52.500	**61,700,834.48**
May	7,697,017.64	4,355,132.29	4,355,132.29	52.105	**226,924,167.97**
June	5,791,635.34	2,474,528.78	2,474,528.78	52.160	**129,071,421.16**
TOTAL	**17,830,855.44**	**8,004,915.06**	**8,004,915.06**		**417,696,423.61**

Based on the above comparison, only US$8,004,915.06, with peso equivalent of ₱417,696,423.61, shall be considered compliant with the *third* essential element and, consequently, deemed to be valid zero-rated export sale of goods.

To recapitulate, out of the total zero-rated sales for the 1st quarter of FY 2020 amounting to ₱1,899,527,096.15, only the amount of ₱421,266,385.89 represents petitioner's valid zero-rated sales for the same period comprised of the following:

Particulars	Amount in PhP
Sale to a PEZA-registered entity	3,569,962.28
Actual export sale of goods	417,696,423.61
TOTAL	**421,266,385.89**

Having found that petitioner had VAT zero-rated sales in the total amount of ₱421,266,385.89 for the subject period of claim, the Court shall now proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

Sixth requisite: The input VAT being claimed do not appear to be transitional input taxes.

The claimed input taxes do not appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended. 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.[115]

Since there is no showing that the above-stated input VAT are transitional input VAT, the *sixth* requisite is likewise fulfilled.

Seventh requisite: Not all of the input VAT being claimed are due or paid.

Anent the *seventh* requisite, it is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must also comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

In its amended *Quarterly VAT Return* for the 1st quarter of FY 2020, petitioner reported total input VAT of ₱13,863,075.78 arising from its amortization of input VAT on purchases of capital goods exceeding ₱1Million, domestic purchases and importation of goods other than capital

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

goods, and domestic purchase of services, out of which the amount of ₱13,164,872.60, net of output VAT, was the subject of the total administrative claim for refund or issuance of tax credit certificate, detailed as follows:[116]

Input VAT Due on Capital Goods exceeding P1Million:	
Deferred from previous period	₱23,231,646.80
Add: Purchase of Capital Goods exceeding P1Million	3,672,776.22
Less: Deferred for the succeeding period	(24,574,262.21)
Amortized Input VAT on Capital Goods exceeding P1Million	**₱ 2,330,160.81**
Input VAT Due/Paid on:	
Domestic Purchases of Goods Other than Capital Goods	₱ 1,585,272.61
Importation of Goods Other than Capital Goods	2,684,210.15
Domestic Purchase of Services	7,263,432.21
Subtotal	**₱11,532,914.97**
Total Input VAT for the 1st quarter of FY 2020	**₱13,863,075.78**
Less: Output VAT	(698,203.17)
Amount of administrative claim	**₱ 13,164,872.61**[117]

Based on the foregoing, petitioner allegedly had unutilized and/or unused input VAT and paid the same in the amount ₱13,164,872.60 for the period April 1, 2019 to June 30, 2019.[118]

Out of petitioner's total claim for refund covering the period of April 1, 2019 to June 30, 2019 in the amount of ₱13,164,872.60, supposedly representing the sum of the ₱9,210,172.86 input VAT claim on local purchases and ₱3,954,699.74 input VAT claim on importations, only the input taxes amounting to ₱6,679,022.84 was approved for refund by respondent, summarized as follows:[119]

A. <u>Local Purchases</u>	
VAT Refund Claimed	Php9,210,172.86
Deductions from Claim	(3,810,645.68)
Net Allowable VAT Refund	**Php5,399,527.18**
B. <u>Importations</u>	
VAT Refund Claimed	Php3,954,699.74
Deductions from Claim	(2,675,204.08)
Net Allowable VAT Refund	**Php1,279,495.66**
Total Amount Approved for VAT Refund	**Php6,679,022.84**

[116] ICPA Exhibit "P-9C", USB (Exhibit "P-14.2").
[117] With ₱0.01 difference.
[118] Par. 3, Statement of Facts, *Memorandum (For the Petitioner)*, Docket – Vol. 2, p. 938; ICPA Exhibit "P-9C" to "P-9C-2A", USB (Exhibit "P-14.2").
[119] Exhibit "R-5", BIR Records [III] (submitted on October 20, 2022), pp. 1 to 2.

In arriving at the amount of ₱6,679,022.84 approved for VAT refund, respondent disallowed the amount of ₱6,485,849.76 based on the following findings:[120]

	LOCAL	MPORTATION	TOTAL
Amount of Claim	**₱9,210,172.86**	**₱3,954,699.74**	**₱13,164,872.60**
Deductions from Claim			
Violation of invoicing requirements pursuant to Sec. 113 in relation to Sec. 110 of the NIRC of 1997, as amended	₱(1,977,830.85)		₱(1,977,830.85)
No SOA/Billing Statement	(61,739.87)		(61,739.87)
No Documents/Invalid Supporting Documents	(78,654.63)	(2,675,204.08)	(2,753,858.71)
Disallowed per BIR Integrated System (ITS)	(13,088.57)		(13,088.57)
Deferment on CG>1M (Current)	(1,611,125.27)		(1,611,125.27)
Output tax assessed on proceeds from disposal of PPE	(46,916.72)		(46,916.72)
Compromise penalty pursuant to Sec. 255 of the Tax Code	(6,250.00)		(6,250.00)
Input VAT attributable to unqualified zero-rated sales	(15,039.77)		(15,039.77)
Total Deductions	**₱(3,810,645.68)**	**₱(2,675,204.08)**	**₱(6,485,849.76)**
AMOUNT APPROVED FOR VAT REFUND	**₱ 5,399,527.18**	**₱ 1,279,495.66**	**₱ 6,679,022.84**

Among the above-enumerated disallowances of ₱6,485,849.76, petitioner only assailed the findings of respondent in the amount of ₱3,053,477.29, as follows:[121]

Particulars	Amount
1. Disallowed input VAT due to violation of invoicing requirements	₱ 354,300.00
2. Disallowed input VAT from purchases without SOA/Billing Statement	2,592.00
3. Disallowed input VAT from purchases without documents or invalid supporting documents	2,675,204.08
4. Disallowed input VAT per BIR Integrated System (ITS)	13,088.57
5. Output tax assessed on proceeds from disposal of PPE	8,292.64
TOTAL	**₱ 3,053,477.29**

1. *Disallowed input VAT due to violation of invoicing requirements – ₱354,300.00.*

The disallowed input VAT due to violation of invoicing requirements amounting to ₱354,300.00 is listed as follows:[122]

Registered Name	OR No.	OR Date	Amount	Input VAT	Exhibit
Lima Logistics Corporation	6308	April 12, 2019	₱316,100.00	₱ 37,932.00	"P-12-2"[123]
Trancy Logistics (Philippines), Inc.	03557	May 2, 2019	1,081,000.00	129,720.00	"P-12-3"[124]

[120] Exhibit "R-5", BIR Records – Folder [III] (submitted on October 20, 2022), p. 2.
[121] PKI Appealed column, ICPA Table 20 – Difference of BIR Disallowed and PKI Appeal on Input VAT, ICPA Report (Exhibit "P-14"), Docket – Vol. I, p. 565.
[122] ICPA Exhibit "P-21", USB (Exhibit "P-14.2").
[123] USB (Exhibit "P-14.2").
[124] USB (Exhibit "P-14.2").

Registered Name	OR No.	OR Date	Amount	Input VAT	Exhibit
Trancy Logistics (Philippines), Inc.	03072	June 27, 2019	888,150.00	106,578.00	"P-12-4"[125]
Trancy Logistics (Philippines), Inc.	03044	June 25, 2019	667,250.00	80,070.00	"P-12-5"[126]
			Total	**₱354,300.00**	

As intimated earlier, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[127]

Scrutiny of the official receipts presented by petitioner to support its purchase of services reveals that the nature of the services cannot be ascertained. Section 113(B)(3) of the NIRC of 1997, as amended, is categorical in requiring that the nature of the service rendered be indicated in the VAT Official Receipt. Thus, the disallowance of ₱354,300.00 input VAT is proper.

2. *Disallowed input VAT from purchases without SOA/Billing Statement - ₱2,592.00*

As to the disallowed input VAT from purchases due to lack of Statement of Account (SOA)/billing statement, petitioner submitted the following official receipts with the corresponding SOA/billing statement, summarized as follows:[128]

OR No.	Exhibit No.	BS No.	Exhibit No.	Amount	Input Tax
07437	"P-22.1"	27156	"P-22.1a"	₱ 1,800.00	₱ 216.00
07450	"P-22.2"	27186	"P-22.2a"	1,800.00	216.00
07449	"P-22.3"	27188	"P-22.3a"	1,800.00	216.00
07430	"P-22.4"	27170	"P-22.4a"	1,800.00	216.00
07429	"P-22.5"	27172	"P-22.5a"	1,800.00	216.00
07453	"P-22.6"	27180	"P-22.6a"	1,800.00	216.00
07452	"P-22.7"	27182	"P-22.7a"	1,800.00	216.00
07426	"P-22.8"	27178	"P-22.8a"	1,800.00	216.00
07432	"P-22.9"	27166	"P-22.9a"	1,800.00	216.00
07433	"P-22.10"	27164	"P-22.10a"	1,800.00	216.00
07443	"P-22.11"	27144	"P-22.11a"	1,800.00	216.00
07441	"P-22.12"	27148	"P-22.12a"	1,800.00	216.00
			Total	**₱ 21,600.00**	**₱ 2,592.00**

[125] USB (Exhibit "P-14.2").
[126] USB (Exhibit "P-14.2").
[127] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[128] ICPA Exhibits "P-22", "P-22.1" to "P-22.12a", USB (Exhibit "P-14.2").

Per examination of the Court, the input VAT amounting to ₱2,592.00 are properly supported by VAT ORs, compliant with the rules on invoicing and substantiation requirement; hence, the same should be considered as valid input VAT.

3. *Disallowed input VAT from purchases without documents or invalid supporting documents – ₱2,675,204.08*

Respondent disallowed the input VAT from importations in the amount of ₱2,675,204.08 for being supported with invalid documents.

The ICPA's verification of the importations amounting to ₱22,293,367.33 shows that payment of input VAT totaling to ₱2,675,204.08 are supported with Statement of Settlement of Duties and Taxes (SSDT), BC Form No. 38-A, Assessment Notice, Single Administrative Documents (SAD), Invoices and Withdrawal Permit,[129] as summarized in *ICPA Table 24 - Summary of Compliant Importation Other Than Capital Goods Appealed.*[130] Further, it revealed that the supporting SAD, Assessment Notice and/or SSDT have a watermark "***Not an Official BOC Document***". The ICPA further noted that the said input VAT on importations totaling ₱2,675,204.08 is included in the details of the Certification[131] from the Bureau of Customs (BOC) certifying among others, that input VAT on importation have been verified, submitted and remitted to the Bureau of Treasury.[132]

Section 4.110-8(a)(1) of RR No. 16-2005 provides for the substantiation requirements of input tax credits from importation of goods and input taxes withheld from services rendered by non-residents, to wit:

> SEC. 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) **Input taxes for the importation of goods** or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents**, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) **For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.** *(Emphasis supplied)*

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[129] ICPA Exhibits "P-24-A1" to "P24-C27f", USB (Exhibit "P-14.2").
[130] ICPA Exhibit "P-24", USB (Exhibit "P-14.2").
[131] Certification of Payment from the Chief, Revenue Accounting Division of Bureau of Customs dated January 5, 2021, ICPA Exhibit "P-25", USB (Exhibit "P-14.2").
[132] Pars. J and K, *V. INPUT VAT ON PURCHASES: Q1 FY ENDING MARCH 31, 2020*, ICPA Report (Exhibit "P-14"), Docket – Vol. I, p. 566.

Thus, the relevant import entry, or other equivalent documents, showing actual payment of VAT must be presented to claim input VAT credit for importation of goods.

It must be emphasized that the supporting SAD and SSDT[133] presented by petitioner bear the watermark "***Not an Official BOC Document***". Moreover, it is not enough that the input VAT from importations were supported by corresponding VAT payment Certification[134] issued by the BOC as this document merely prove the fact of payment. On the other hand, the SAD,[135] proves the fact of importation and the nature of the goods imported, *i.e.*, whether or not the goods imported are related to the business of petitioner. Thus, without the import entry document (*e.g.*, SAD/SSDT), the Court cannot reasonably verify or link a payment of customs duties and taxes recorded in the VAT Payment Certification issued by the BOC to the specific import declaration of the goods subject of the case.

Absent the SAD/SSDT, the subject input VAT from importation of goods supported only by VAT Payment Certification issued by the BOC is not sufficient.

Thus, the Court finds the disallowance of ₱2,675,204.08 input VAT from importations without documents or invalid supporting documents in order.

4. *Disallowed input VAT per BIR Integrated System (ITS) - ₱13,088.57*

As to the disallowed input VAT from non-VAT registered supplier per BIR ITS verification,[136] petitioner submitted the following official receipt and sales invoice to prove otherwise:

Registered Name	Invoice/ OR No.	Invoice/ OR Date	Amount	Input Tax	ICPA Exhibit
Qualitees Clothing	0003	April 30, 2019	₱ 89,875.00	₱ 10,785.00	"P-11-12"[137]
Business Machines Corp.	0070453	May 7, 2019	19,196.43	2,303.57	"P-11-14"[138]
		Total	**₱ 109,071.43**	**₱ 13,088.57**	

[133] ICPA Exhibits "P-24-A1" to "P24-C27f", USB (Exhibit "P-14.2").
[134] Certification of Payment from the Chief, Revenue Accounting Division of Bureau of Customs dated January 5, 2021, ICPA Exhibit "P-25", USB (Exhibit "P-14.2").
[135] Formerly, Import Entry and Internal Revenue Declaration (IEIRD), now SAD.
[136] Par. 3, Exhibit "R-3", BIR Records – Folder I (Exhibit "R-6"), p. 699.
[137] USB (Exhibit "P-14.2").
[138] USB (Exhibit "P-14.2").

Per examination of the Court, the input VAT amounting to ₱13,088.57 is properly supported by VAT ORs/invoices, compliant with the rules on invoicing and substantiation requirements; hence, the same should be considered as valid input VAT.

5. *Output VAT assessed on proceeds from disposal of PPE - ₱8,292.64*

As for the output VAT on proceeds from disposal of Property, Plant and Equipment (PPE) amounting to ₱8,292.64, petitioner contends that the amount of ₱69,105.35, representing the proceeds from disposal of PPE, already forms part of the taxable sales reported for the period of July 2019 to December 2019 or the 2nd and 3rd quarters of FY 2020, as listed below:[139]

Invoice Date	Invoice No.	Payee	Amount (in US$)	Amount (in PhP)	ICPA Exhibit
Reported in Q2 FY Ending March 31, 2020[140]					
July 26, 2019	0002642	Queenstar Metal Trading	97.58	5,000.00	*None*
Aug. 16, 2019	0002650	Various Employees	7.02	357.14	"P-11-16"
Sept. 25, 2019	0002666	Norton Trading	61.67	3,209.82	"P-11-17"
Sub-Total			**166.27**	**8,566.96**	
Reported in Q3 FY Ending March 31, 2020[141]					
Oct. 30, 2019	0002677	Various Employees	86.13	4,464.29	"P-11-20"
Oct. 30, 2019	0002679	Queenstar Metal Trading	208.79	10,821.43	"P-11-21"
Nov. 4, 2019	0002681	Queenstar Metal Trading	157.67	8,000.00	"P-11-22"
Nov. 15, 2019	0002685	Queenstar Metal Trading	105.58	5,357.14	"P-11-23"
Nov. 20, 2019	0002690	Queenstar Metal Trading	505.38	25,642.86	"P-11-24"
Nov. 29, 2019	0002697	Queenstar Metal Trading	114.59	5,814.28	"P-11-25"
Dec. 18, 2019	0002705	Norton Trading	8.63	438.39	"P-11-26"
		Sub-Total	**1,186.77**	**60,538.39**	
		Total	**1,353.04**	**69,105.35**	

Per examination of the documents pertaining to the proceeds from disposal of PPE, the sales invoices[142] show that the total amounts per invoice are inclusive of output VAT, which are traceable to the corresponding Schedule of Taxable Sales,[143] and are then traced as reported in petitioner's Quarterly VAT Returns for the 2nd and 3rd quarters of FY 2020.[144] It is noteworthy that this item is not an *input* VAT, but is, in effect, an assessment of *output* VAT, albeit deducted from petitioner's *input* VAT claim. Consequently, respondent's deduction of ₱8,292.64 from the amount claimed is not proper.

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139 ICPA Table 28, ICPA Report (Exhibit "P-14"), Docket – Vol. I, pp. 570 to 571.
140 ICPA Exhibit "P-11-18", USB (Exhibit "P-14.2").
141 ICPA Exhibit "P-11-27", USB (Exhibit "P-14.2").
142 ICPA Exhibits "P-11-16", "P-11-17" and "P-11-20" to "P-11-26", USB (Exhibit "P-14.2").
143 ICPA Exhibits "P-11-18" and "P-11-27", USB (Exhibit "P-14.2").
144 ICPA Exhibits "P-11-19" and "P-11-28", USB (Exhibit "P-14.2").

In sum, out of the appealed input VAT of ₱3,053,477.29, only the amount of ₱23,973.21 pertains to valid input VAT, computed as follows:

Particulars	Amount
Appealed Input VAT	₱ 3,053,477.29
Less exceptions:	
Violation of invoicing requirements	354,300.00
Disallowed input VAT from importations	2,675,204.08
Valid Input VAT	**₱ 23,973.21**

***Eighth requisite*: The valid input VAT of ₱23,973.21 is attributable to 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.

Based on respondent's VAT Refund Notice,[145] petitioner's appealed input VAT of ₱3,053,477.29, which is part of the ₱6,485,849.76 input VAT denied for refund, is already attributed to zero-rated sales by respondent. Consequently, petitioner's valid input VAT of ₱23,973.21 attributable to the declared valid zero-rated sales of ₱421,266,385.89 amounts only to ₱5,317.26, computed as follows:

	Amount		Allocation Factor	Allocated Valid Input VAT	
	[a]		*[c = a ÷ b]*	*[e = c x d]*	
Valid Zero-Rated Sales/Receipts	421,266,385.89		22.18%	**5,317.26**	
Invalid Zero-Rated Sales/Receipts	1,478,260,710.26		77.82%	18,655.95	
Total Sales/Receipts	**1,899,527,096.15**	*[b]*	100.00%	**23,973.21**	*[d]*

Thus, with regard to petitioner's compliance with the *eighth* requisite, only the amount of **₱5,317.26** represents its valid input VAT attributable to valid zero-rated sales for the 1st quarter of FY 2020.

[145] *Annexes "A" and "A.6"*, Exhibit "R-5", BIR Records – Folder [III] (submitted on October 20, 2022), pp. 2 and 4, respectively.

***Ninth requisite*: The subject valid input taxes 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, this 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 period under consideration, *i.e.*, 1st quarter of FY 2020, petitioner has an output VAT liability of ₱698,203.17,[146] which was already deducted in petitioner's administrative claim[147] amounting to ₱13,164,872.60. The same amount was also reflected in respondent's VAT Refund Notice.[148]

As to the succeeding quarters, petitioner was able to establish that the input VAT claim filed with the BIR's VCAD amounting to ₱13,164,872.60[149] was never utilized as the same was deducted in the amended Quarterly VAT Return for the 1st quarter of FY 2021 as *"VAT Refund/TCC Claimed"*.[150]

Upon further examination of the amended *Quarterly VAT Return*[151] for the 2nd quarter of FY 2021, it was likewise determined that the same input VAT claimed was not carried over to the subsequent period.

Hence, the claim filed with the BIR's VCAD amounting to ₱13,164,872.60 no longer forms part of the excess input VAT of ₱61,182,658.75[152] as of the end of the 1st quarter of FY 2020 that was carried over/applied to the succeeding quarters.

As such, petitioner is deemed to have fulfilled the *ninth* requisite in the refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.

In fine, petitioner is entitled to the above-stated additional amount of **₱5,317.26** representing input VAT allocable to valid zero-rated sales arising from input VAT improperly disallowed by the respondent.

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146 Line 15B, ICPA Exhibit "P-9C", USB (Exhibit "P-14.2").
147 ICPA Exhibit "P-8", USB (Exhibit "P-14.2").
148 *Annexes "A" and "A.6"*, Exhibit "R-5", BIR Records – Folder [III] (submitted on October 20, 2022), pp. 2 and 6, respectively.
149 ICPA Exhibit "P-8", USB (Exhibit "P-14.2").
150 Line 23D, ICPA Exhibit "P-9C4", USB (Exhibit "P-14.2").
151 Line 20A, ICPA Exhibit "P-9C5", USB (Exhibit "P-14.2").
152 Line 29, ICPA Exhibit "P-9C", USB (Exhibit "P-14.2").

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the additional amount of **₱5,317.26**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the period covering the 1st quarter of FY 2020, or from April 1, 2019 to June 30, 2019.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

(On leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice