**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**TOLEDO POWER COMPANY,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NOS. 8450, 8512, 8547 & 8596**

Members:
**CASTAÑEDA, JR.,** *Chairperson;*
**CASANOVA,** *and*
**MANAHAN,** *JJ.*

Promulgated:
JUN 09 2017
4:05 p.m.

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## DECISION

**CASANOVA, J.:**

These consolidated Petitions for Review[1] pray for the refund of the amount of ₱6,126,105.97, ₱15,461,554.31, ₱10,540,887.95, and ₱49,064,418.84, allegedly representing unutilized value-added tax (VAT) input taxes for the 1st, 2nd, 3rd, and 4th quarters of taxable year (TY) 2010, respectively.

Petitioner is a partnership between GBH Cebu Ltd. Duration Co. and ARB Power Ventures, Inc.,[2] which is duly organized and existing under Philippine laws with principal office located at Sangi, Toledo City, Cebu.[3] It is a registered taxpayer under Certificate of Registration No. 2RC0000074406 dated January 1, 1997 with Taxpayer's Identification Number (TIN) 003-883-626-000[4] and, likewise, registered in the

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[1] Docket, CTA Case No. 8450 (Vol. I), pp. 6-22; Docket, CTA Case No. 8512, pp. 10-26; Docket (Vol. I), CTA Case No. 8547, pp. 5-21; Docket, CTA Case No. 8596, pp. 6-22.
[2] (5) Q & A of Judicial Affidavit of Ms. Reymonda Aida B. Obrero, Exhibit "RR", Docket CTA Case No. 8450 (Vol. I), p. 760.
[3] Paragraph 2, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket CTA Case No. 8450 (Vol. I), p. 168; Exhibit "A".
[4] Par. 4, I. Summary of Admitted Facts, JSFI, Docket CTA Case No. 8450 (Vol. I), p. 169; Exhibit "D".

Energy Regulatory Commission as an entity with authority to operate its generation facilities.[5] It is represented by its counsel Du-Baladad & Associates with office address at the 20th Floor, Chatham House Building, Rufino corner Valero Streets, Salcedo Village, Makati City.[6]

Respondent is the duly appointed Commissioner of Internal Revenue who has the duty and power, among others, to act on and approve claims of refund as provided by law, with business office at Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[7]

On April 24, 2002, ARB Power Ventures, Inc. and CMS Generation Cebu Limited Duration Company amended their Agreement of General Partnership for the purpose of, among others, acquiring, owning, rehabilitating, maintaining and operating the Sangi coal-fired and oil-fired electrical generation facility located in Sangi, Toledo City, Cebu, Philippines and the Carmen diesel fueled electric generation facility located in Barangay Don Andres Soriano, Toledo City, Cebu, Philippines.[8]

Petitioner's 1st, 2nd, 3rd, and 4th Quarterly VAT Returns for TY 2010 were filed on April 23, 2010, July 23, 2010, October 26, 2010, and January 25, 2011, respectively.[9] Then, petitioner amended its 1st and 2nd Quarterly VAT Returns on July 23, 2010, while its 3rd and 4th Quarterly VAT Returns were amended on March 15, 2011.[10]

Petitioner filed its administrative claims for refund of its unutilized input VAT on November 29, 2011,[11] March 5, 2012,[12] May 30, 2012,[13] and August 23, 2012[14] for the 1st, 2nd, 3rd, and 4th quarters of TY 2010, respectively.

Due to the inaction of respondent, petitioner filed these Petitions for Review docketed as CTA Case Nos. 8450, 8512, 8547, and 8596 on March 30, 2012, July 6, 2012, September 28, 2012, and December 28, 2012, respectively.

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[5] Exhibit "C".
[6] Par. I(3), JSFI, Docket CTA Case No. 8450 (Vol. I), p. 169.
[7] Par. 1, I. Summary of Admitted Facts, JSFI, Docket CTA Case No. 8450 (Vol. I), p. 168.
[8] Exhibit "B".
[9] Exhibits "J", "L", "M", and "O".
[10] Exhibits "K", "N", and "P".
[11] Exhibits "E", and "F".
[12] Exhibits "CC" and "DD".
[13] Exhibits "EE" and "FF".
[14] Exhibits "GG" and "HH".

In the Answer[15] filed on May 11, 2012 for CTA Case No. 8450, respondent interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

7. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

8. To support its claim, it is imperative for petitioner to prove the following, *viz*:

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 Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with 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**

[15] Docket, CTA Case No. 8450 (Vol. I), pp. 103-129

> **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 petitioner's petition for review;
>
> d. That the input taxes of ₱6,126,105.97 allegedly paid by petitioner on its purchases of goods and services for the 1st quarter of 2010 were 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) were filed within the periods provided in Sections 112 (A) and (D) 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 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

9. Petitioner must prove that the aggregate amount of ₱6,126,105.97 allegedly representing excess and unutilized input VAT for the 1st quarter of 2010 is properly documented.

10. As petitioner states in its petition before this Honorable Court, the subject of its claim for refund are

allegedly excess and unutilized input VAT on its purchases of goods and services covering the 1st quarter of 2010.

11. The instant petition involving petitioner's claim for refund in the amount of Six Million, One Hundred Twenty Six Thousand, One Hundred Five and 97/100 (₱6,126,105.97) allegedly paid and incurred for the 1st quarter of taxable year 2010 is not warranted for lack of jurisdiction as petitioner failed to exhaust all administrative remedies before elevating this case to the Honorable Court.

12. Unmistakably, Section 1 (j) of Rule 16 of the 1999 Rules of Civil Procedure provides that:

> 'MOTION TO DISMISS'
>
> Section 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx
>
> (j) That a condition precedent for filing the claim has not be complied with.'

13. Corollary thereto, Section 112 (D) [now Section 112(c) of the Tax Code of 1997] provides as follows, *to wit*:

> **'SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> x x x
>
> **(D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made.** – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in**

> **support of the application filed** in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim** or after the expiration of the one hundred twenty day-period, **appeal the deicison or the unacted claim with the Court of Tax Appeals.**' (*Emphasis supplied*)

Pursuant to the aforequoted provision of law, the Commissioner of Internal Revenue ('CIR', *for brevity*) has 120 days from the **submission of the complete supporting documents** to decide the claim for refund. It logically follows that a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The CIR cannot decide the claim for refund without the complete supporting documents.

14. 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 Statements, if applicable.
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.

Indubitably, the law 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 judicial remedies as provided for in the law.

Far from complying with the checklist of requirements, evidence on record shows that respondent merely submitted sixteen (16) classes of documents in its administrative claim for refund for the quarter. This fact is clearly stated in petitioner's alleged claim for refund dated November 25, 2011. For the 1st quarter of 2010, these documents are enumerated therein as follows:

1. Application for Tax Refund/Credit;

2. Authorization Letter issued by the Company;

3. TPC's Certification showing amount of zero-rated sales, taxable sales and exempt sales;

4. ERC Certificte of Compliance;

5. BIR Certificate of Registration;

6. SEC Certificate of Registration of TPC;

7. EPPA between CEBECO III and TPC;

8. MOA between Carmen Cooper and TPC;

9. MOA between Balamban Enerzone Corporation and TPC;

10. Summary importations made during the period;

11. Summary list of purchases/Input tax schedule;

12. Invoices, official receipts, import entry documents and other documents evidencing payment of input VAT or input taxes incurred on local purchases and importations;

13. Summary of sales;

14. Invoices, receipts supporting sales/receipts;

15. Duly filed quarterly VAT returns (BIR Form No. 2550-Q) for 2010 1st quarter; and

16. DOF Certification of Non-filing of Similar/Previous and/or Outstanding Claim for the 1st quarter of 2010.

15. A careful examination of the BIR records shows that petitioner failed to prove that it has submitted complete documents to substantiate its administrative claim for refund and to reckon the commencement of the 120-day period for the CIR. This is a requirement established by law and jurisprudence. Ergo, respondent humbly submits that failure on the part of petitioner to submit the required complete supporting documents would render the instant petition with this Honorable Court to have been prematurely filed.

16. This is not a claim for refund of erroneously or illegally collected taxes where petitioner may choose the evidence it wishes to submit to prove its case. This is merely a claim for excess input taxes where the prescribed documentation is needed by the BIR

17. 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 CIR still has to investigate and ascertain the validity of the claim.

18. Respondent respectfully avers that 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. As stated by the Honorable Supreme Court:

> '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 respondent 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 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*)

19. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions such as that exercised by the Honorable Court herein. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

20. Well-settled is the rule that exhaustion of available administrative remedies is a condition sine qua non before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought (**Province of Zamboanga del Norte vs. Court of Appeals, 342 SCRA 549, 557 [2000]; Zabat vs. Court of Appeals, 338 SCRA 551, 560 [2000]; Diamonon vs. Department of Labor and Employment, 327 SCRA 283, 291 [2000]; Social Security System Employees Association vs. Bathan-Velasco, 313 SCRA 250, 252 [1999]; Paat vs. Court of Appeals, 266 SCRA 167, 175 [1997]**).

21. Moreso, the Honorable Supreme Court had the occasion to rule that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to give the administrative agency the opportunity to decide the matter

by itself correctly, but also to prevent unnecessary and premature resort to courts. Thus, 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 an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

22. The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. 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 (***Gorospe vs. Vinzons-Chato, G.R. No. 132228. January 21, 2003***).

23. Respondent respectfully submits that the 120-day period provided for by law within which the CIR has to act on petitioner's claim for refund has not yet commenced considering petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit (*i.e submission of complete supporting documents*). While it is true that petitioner filed an administrative claim for refund, the same is considered merely *pro forma* as it failed to submit documentary evidence to prove its entitlement thereto. Petitioner here failed to substantiate its administrative claim for refund.

24. Had petitioner submitted all relevant documents to substantiate its claim for refund or 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. Such 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. It must be remembered, that in the case of *Jariol vs. Commission on Elections*, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

25. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available 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. (**Bagatsing vs. Ramirez, 74 SCRA 306**)

26. Equally noteworthy is the fact that the Highest Tribunal in the case of **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 145526 promulgated on March 26, 2007** held:

> '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 proceeding 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. <u>Therefore, as in every appeal or petition for review, a petitioner has to convince the</u>

> appellate court that quasi-judicial agency a quo did not have reason to deny its claim. **In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.** xxx' (*Emphasis and Underscoring provided*)

Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. 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.

27. Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of formality but is jurisdictional in nature.

28. Prescinding from and anent the foregoing considerations, petitioner's failure to exhaust all available administrative remedies which led to the premature filing of the instant petition divests the Honorable Court jurisdiction over the instant petition.

29. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (***Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670***).

30. 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. Hence, a taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to establish its right to refund.

31. It can never be emphasized enough that in this jurisdiction tax refunds/credits are in the nature of tax exemptions, hence, laws relating to them call for a strict application against the claimant. As held by the Honorable Supreme Court:

> 'Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.'

32. Taxes collected are presumed to be in accordance with laws and regulations.

33. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***). Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (***Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005***). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be

mistaken and too categorical to be misinterpreted (***Sea-Land Service vs. Court of Appeals, 357 SCRA 444***).

34. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law. Thus, the instant petition should be dismissed for lack of jurisdiction and/or for lack of merit."

In the Answers filed on September 17, 2012[16], November 26, 2012[17], and January 24, 2013[18] for CTA Case Nos. 8512, 8547, and 8596, respectively, respondent raised substantially the same special and affirmative defenses as cited above.

For CTA Case No. 8450, Respondent's Pre-Trial Brief[19] was filed on May 31, 2012 and petitioner's Pre-Trial Brief[20] was filed on June 4, 2012. Then, the parties submitted their Joint Stipulation of Facts and Issues[21] on July 9, 2012, which the Court approved on July 11, 2012.[22] Consequently, the pre-trial was deemed terminated.[23]

On September 13, 2012, petitioner moved that CTA Case No. 8512 pending before the First Division of the CTA be consolidated with CTA Case No. 8450 pending before the Second Division.[24] The First Division granted the said consolidation with the conformity of the Second Division; thus, a pre-trial was set.[25]

On January 24, 2013, petitioner filed again two motions to consolidate CTA Case No. 8547 and CTA Case No. 8596 which were both pending with the Third Division of the CTA, with CTA Case Nos. 8450 and 8512.[26] Since the Third Division granted the aforesaid consolidation with the conformity of the Second Division, CTA Case Nos. 8547 and 8596 were consolidated with CTA Case Nos. 8450 and 8512.[27]

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[16] Docket CTA Case No. 8512, p. 109-123.
[17] Docket CTA Case No. 8547, p. 92-113.
[18] Docket CTA Case No. 8596, p. 90-101.
[19] Docket CTA Case No. 8450 (Vol. I), pp. 131 to 135.
[20] Docket CTA Case No. 8450 (Vol. I), pp. 136 to 151.
[21] Docket CTA Case No. 8450 (Vol. I), pp. 168 to 171.
[22] Resolution, Docket CTA Case No. 8450, (Vol. I), p. 172.
[23] *Ibid.*
[24] Motion to Consolidate, Docket CTA Case No. 8450 (Vol. I), pp. 193 to 196.
[25] Resolutions dated November 16, 2012 and December 4, 2012, Docket CTA Case No. 8450 (Vol. I), p. 202 and p. 204, respectively.
[26] Motions to Consolidate, Docket CTA Case No. 8450 (Vol. I), pp. 208 to 212 and pp. 213 to 217.
[27] Resolutions dated February 7, 2013; February 11, 2013; February 15, 2013; and February 21, 2013, Docket CTA Case No. 8450 (Vol. I), p. 224, p. 226, p. 240, and p. 242, respectively.

The parties' Consolidated Pre-Trial Briefs were filed on May 2, 2013[28] and May 3, 2013[29].

Petitioner filed a Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals[30] on May 3, 2013, which the Court granted on June 10, 2013.[31] As such, Mr. Joseph Cedric V. Calica was commissioned as the Independent Certified Public Accountant (CPA) on June 10, 2013.[32]

The parties submitted anew a Joint Stipulation of Facts and Issues[33] on June 6, 2013. Accordingly, the Court issued a Pre-Trial Order[34] on June 19, 2013, and terminated the pre-trial.

During trial, petitioner presented its witnesses, namely: Ms. Reymonda Aida B. Obrero, Joseph Cedric V. Calica, Mr. Rolando L. Vicente, and Ms. Edita C. Encarnacion. Petitioner formally offered its testimonial evidence, as well as documentary evidence, which were admitted by the Court with the exception of Exhibits "EEEE", "BBB-3226", and "BBB-3825".[35]

On October 8, 2014, petitioner was allowed by the Court to present additional evidence.[36] Consequently, petitioner presented Mr. Joseph Cedric V. Calica and Mr. Isidito Camota Desina. Thereafter, petitioner formally offered its supplemental testimonial evidence as well as documentary evidence which the Court admitted in a Resolution[37] dated April 16, 2016.

On the other hand, respondent's counsels manifested during hearing on April 20, 2015, that they would no longer present evidence.[38]

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[28] Docket CTA Case No. 8450 (Vol. I), p. 244-248.
[29] Docket CTA Case No. 8450 (Vol. I), p. 407-420.
[30] Docket CTA Case No. 8450 (Vol. I), pp. 426 to 429.
[31] Minutes of the Hearing, Docket CTA Case No. 8450 (Vol. I), p. 450.
[32] Docket CTA Case No. 8450 (Vol. I), p. 451.
[33] Docket CTA Case No. 8450 (Vol. I), pp. 447 to 449.
[34] Docket CTA Case No. 8450 (Vol. I), pp. 453 to 456.
[35] Resolutions dated September 8, 2014 and October 8, 2014, Docket CTA Case No. 8450 (Vol. II), pp. 921 to 922 and pp. 956 to 957, respectively.
[36] Resolution, Docket CTA Case No. 8450 (Vol. II), p. 956.
[37] Resolution dated April 16, 2015, Docket CTA Case No. 8450 (Vol. IV), pp. 2237 to 2238.
[38] Resolution, Docket CTA Case No. 8450 (Vol. IV), p. 2241.

On May 19, 2015, petitioner filed again a motion to reopen the case,[39] which the Court granted on July 23, 2015.[40] As such, petitioner presented anew Mr. Joseph Cedric V. Calica to the witness stand; and the Court admitted the supplemental documentary evidence of petitioner.[41]

After the Court considered petitioner's Memorandum[42] filed on June 17, 2016, and the Report of the Records Division[43] dated June 20, 2016, that no memorandum has been filed by the respondent, these cases were deemed submitted for decision on June 23, 2016.[44]

The parties presented the following issues[45] for the Court's determination:

1. Whether petitioner is entitled to a refund for the alleged unapplied and unutilized input VAT in the total amount of six million one hundred twenty-six thousand one hundred five pesos and 97/100 (₱6,126,105.97), fifteen million four hundred sixty-one thousand five hundred fifty-four pesos and 31/100 (₱15,461,554.31), ten million five hundred forty thousand eight hundred eighty-seven and 95/100 (₱10,540,887.95), forty nine million sixty-four thousand four hundred eighteen and 84/100 (₱49,064,418.84) for the 1st, 2nd, 3rd, and 4th quarters, respectively, of taxable year 2010;

2. Whether petitioner has complied with Sections 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended; and

3. Whether the Court has jurisdiction over the case.

The foregoing issues may be summarized into one main issue of whether or not petitioner is entitled to a refund in the amount of ₱81,192,967.07, representing its alleged unutilized input VAT attributable to its zero-rated sales for the four quarters of TY 2010.

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[39] Motion to Reopen the Case, Docket CTA Case No. 8450 (Vol. I), pp. 2246 to 2251.
[40] Resolution, CTA Case No. 8450 (Vol. V), pp. 2257 to 2258.
[41] Resolution dated April 14, 2016, Docket CTA Case No. 8450 (Vol. V), pp. 2336 to 2337.
[42] Docket CTA Case No. 8450 (Vol. V), pp. 2344 to 2372.
[43] Docket CTA Case No. 8450 (Vol. V), p. 2375.
[44] Resolution, docket CTA Case No. 8450, (Vol. V), p. 2376.
[45] II. Statement of the Issues, JSFI, Docket CTA Case No. 8450 (Vol. I), pp. 448 to 449.

Petitioner contends that it is entitled to a refund of unutilized input VAT on its purchases of goods and services attributable to its zero-rated sales, pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, since it complied with all the requisites provided by law to refund, and presented sufficient evidence to prove the same.

Petitioner's claim finds legal basis on Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

> "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. xxx.
>
> 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."

Pursuant thereto, in order to be entitled to a refund or issuance of a TCC for unutilized input VAT attributable to zero-rated sales, the following requisites must be complied with:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in zero-rated or effectively zero-rated sales;
3. the input taxes were incurred or paid;
4. the input taxes due or paid must be attributable to zero-rated sales or effectively zero-rated sales;
5. the input taxes were not applied against any output VAT liability; and
6. the claim for refund must be filed within the prescriptive period.

***Petitioner's administrative and judicial claims were filed within the prescriptive period***

The Court shall ascertain first the timeliness of the filing of petitioner's claims as the same will determine whether it is still necessary to resolve petitioner's compliance with the other requisites for input VAT refund.

Applying the above-quoted Section 112(A), the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thus, petitioner's administrative claims for the four quarters of 2010 were filed within the two-year prescriptive period, as shown below:

| Taxable Quarter | Close of Quarter | End of 2-year period | Filing of Administrative claim |
|---|---|---|---|
| 1st Qtr of 2010 | March 31, 2010 | March 31, 2012 | November 29, 2011[46] |
| 2nd Qtr of 2010 | Jun. 30, 2010 | Jun. 30, 2012 | Mar. 5, 2012[47] |
| 3rd Qtr of 2010 | Sept. 30, 2010 | Sept. 30, 2012 | May 30, 2012[48] |
| 4th Qtr of 2010 | Dec. 31, 2010 | Dec. 31, 2012 | Aug. 23, 2012[49] |

As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides that the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days after the expiration of such 120-day period.

Applying the same to the instant case, the following are the pertinent dates to petitioner's claim for refund:

| Taxable Quarter | Filing of Administrative claim/ Submission of Supporting Documents | End of 120-day period | End of 30-day period | Filing of Petition for Review |
|---|---|---|---|---|
| 1st Qtr of 2010 | November 29, 2011 | March 28, 2012 | April 27, 2012 | March 30, 2012 |
| 2nd Qtr of 2010 | March 5, 2012 | July 3, 2012 | August 2, 2012 | July 6, 2012 |
| 3rd Qtr of 2010 | May 30, 2012 | September 27, 2012 | October 27, 2012 | September 28, 2012 |
| 4th Qtr of 2010 | August 23, 2012 | December 21, 2012 | January 20, 2013 | December 28, 2012 |

It is clear that petitioner's judicial claims were, likewise, filed within the period prescribed by law.

### *Petitioner is VAT-registered*

Indubitably, petitioner is a duly registered VAT taxpayer per BIR Certificate of Registration No. 2RC0000074406 with Tax Identification No. 003-883-626-000.[50]

[46] Exhibits "E" and "F".
[47] Exhibits "CC" and "DD".
[48] Exhibits "EE" and "FF".
[49] Exhibits "GG" and "HH".
[50] Exhibit "D".

***Petitioner has excess input taxes for the fourth quarter of the taxable year 2010 which may be attributed to its declared zero-rated or effectively zero-rated sales for the same quarter***

In its Quarterly VAT Returns for calendar year (CY) 2010, petitioner reported input VAT in the aggregate amount of ₱207,584,778.89, out of which, only the amount of ₱81,192,967.07 is the subject of petitioner's claim, which allegedly consisted of the following:

| Quarter | Total Input Tax | Input Tax allocated to zero-rated sales net of output tax |
|---|---|---|
| 1st Qtr | ₱ 45,772,154.50 | ₱ 6,126,105.97[51] |
| 2nd Qtr | 47,220,171.04 | 15,461,554.31[52] |
| 3rd Qtr | 44,065,265.53 | 10,540,887.95[53] |
| 4th Qtr | 70,527,187.82 | 49,064,418.84[54] |
| **Total** | **₱ 207,584,778.89** | **₱ 81,192,967.07** |

The breakdown of the ₱207,584,778.89 input VAT for CY 2010 is as follows:

| | 1st Qtr 2010 (Exhibit K) | 2nd Qtr 2010 (Exhibit L) | 3rd Qtr 2010 (Exhibit N) | 4th Qtr 2010 (Exhibit P) | Total |
|---|---|---|---|---|---|
| Input Tax deferred on Capital Goods exceeding ₱1M from previous quarter *(Line 20B)* | ₱ 2,419,606.20 | ₱ 2,092,150.77 | ₱ 1,764,695.36 | ₱ 1,836,490.61 | ₱ 8,112,942.94 |
| Add: Input Tax on Purchase of Capital Goods exceeding ₱1M *(Line 21D)* | - | - | 420,263.85 | - | 420,263.85 |
| Total | ₱ 2,419,606.20 | ₱ 2,092,150.77 | ₱ 2,184,959.21 | ₱ 1,836,490.61 | ₱ 8,533,206.79 |
| Less: Input Tax on Purchase of Capital Goods exceeding ₱1M deferred for the succeeding period *(Line 23A)* | 2,092,150.77 | 1,764,695.36 | 1,836,490.61 | 1,494,695.34 | 7,188,032.08 |
| **Amortized Input Tax on Purchases of Capital Goods exceeding 1M** | **₱ 327,455.43** | **₱ 327,455.41** | **₱ 348,468.60** | **₱ 341,795.27** | **₱ 1,345,174.71** |
| Add: Input Tax on Current Purchases | | | | | |
| Purchase of Capital Goods not exceeding ₱1M *(Line 21B)* | ₱ 8,567.14 | ₱ 7,719.64 | ₱ 58,113.69 | ₱ 32,331.23 | ₱ 106,731.70 |
| Domestic Purchases of goods other than Capital Goods *(Line 21F)* | 32,195,399.88 | 26,692,932.73 | 29,448,771.67 | 15,290,207.62 | 103,627,311.90 |

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[51] Petition for Review, Docket CTA Case No. 8450 (Vol. I), pp. 18 to 19.
[52] Petition for Review, Docket CTA Case No. 8512, pp. 22 to 23.
[53] Petition for Review, Docket CTA Case No. 8547, pp. 17 to 18.
[54] Petition for Review, Docket CTA Case No. 8596, pp. 18 to 19.

| | | | | | |
|---|---|---|---|---|---|
| Importation of Goods other than Capital Goods *(Line 21H)* | 9,572,557.00 | 10,966,818.00 | 9,598,019.00 | 33,876,223.00 | 64,013,617.00 |
| Domestic Purchase of Services *(Line 21J)* | 3,668,175.05 | 9,225,245.26 | 4,611,892.57 | 20,986,630.70 | 38,491,943.58 |
| **Total Input tax on Current Purchases** | **₱45,444,699.07** | **₱46,892,715.63** | **₱43,716,796.93** | **₱70,185,392.55** | **₱206,239,604.18** |
| **Total Input Tax for the period** | **₱45,772,154.50** | **₱47,220,171.04** | **₱44,065,265.53** | **₱70,527,187.82** | **₱207,584,778.89** |

Petitioner asserts that a portion of these input taxes incurred on purchases were attributable to its zero-rated sales/receipts, and such input taxes were neither fully utilized in the same quarter nor used against its output taxes in the subsequent periods.

In support of its reported input VAT, petitioner submitted various invoices and official receipts (ORs)[55], and Import Entry and Internal Revenue Declarations (IEIRDs)[56]. Upon examination of these documents, the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Joseph Cedric V. Calica, noted the following exceptions:

| | **Exhibit** | **1st Qtr** | **2nd Qtr** | **3rd Qtr** | **4th Qtr** | **Total** |
|---|---|---|---|---|---|---|
| Domestic Purchases of Goods and Services | | | | | | |
| No valid supporting documents | FFF-1 | ₱ 312,822.94 | ₱ 142,815.37 | ₱ 325,194.82 | ₱ 253,802.54 | ₱ 1,034,635.67 |
| Supporting documents are not in the period covered by the claim | FFF-2 | 1,139,713.95 | 93,434.70 | - | - | 1,233,148.64 |
| VAT not separately shown in the documents | FFF-3 | 430,683.63 | 404,489.86 | 351,149.40 | 158,481.86 | 1,344,804.75 |
| Incomplete or no address | FFF-4 | - | 423.21 | 6,570.86 | - | 6,994.07 |
| TIN of the supplier indicate NON-VAT | FFF-5 | 950.28 | - | 297.45 | - | 1,247.73 |
| No sales invoices/official receipts submitted by the petitioner | FFF-6 | 224,762.17 | 3,801,379.60 | 964,168.91 | 1,363,004.73 | 6,353,315.41 |
| subtotal | | ₱ 2,108,932.97 | ₱ 4,442,542.74 | ₱ 1,647,381.44 | ₱ 1,775,289.13 | ₱ 9,974,146.28 |
| Importation of Goods and Services | | | | | | |
| Not in the period covered by the claim | FFF-7 | ₱ 2,842,698.00 | - | - | - | ₱ 2,842,698.00 |
| **Total Exceptions by ICPA** | | **₱4,951,630.97** | **₱4,442,542.74** | **₱1,647,381.44** | **₱1,775,289.13** | **₱12,816,844.28** |

The Court subscribes to the above findings of the ICPA on the input VAT disallowances in the amount of ₱12,816,844.28 for not being properly substantiated by VAT invoices or receipts, as prescribed under Sections 110(A) and 113(A) and (B), and 237 of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05.

[55] Exhibits "BBB-1" to "BBB-4578", except Exhibits "BBB-3226" and "BBB-3825" which were denied admission

[56] Exhibits "CCC-1" to "CCC-51"

In addition, the input VAT in the aggregate amount of ₱69,838,126.09, broken down hereunder, shall likewise be disallowed for failure to meet the substantiation requirements prescribed under the aforesaid VAT law and regulations:

| Exhibit | Invoice/ OR No. | Supplier | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr |
|---|---|---|---|---|---|---|
| ***1. Domestic purchases of goods and services supported by invoices/ORs wherein the input VAT amounts were not separately indicated*** | | | | | | |
| BBB-2454 | 380 | A.S. MAPUTI CONSTRUCTION AND ENGINEERING, SERVICE | ₱ 33,942.86 | | | |
| BBB-2877 | 777 | AC MORENO HAULING SERVICES | | ₱ 4,687.50 | | |
| BBB-1980 | 1137 | RBER INDUSTRIAL & TRADING CORPORATION | | | ₱ 10,602.73 | |
| BBB-3134 | 613868 | TELECOMMUNICATIONS MANAGEMENT AND SERVICES, INC. | | | 1,539.32 | |
| BBB-3186 | 614456 | TELECOMMUNICATIONS MANAGEMENT AND SERVICES, INC. | | | 1,589.75 | |
| BBB-3191 | 7777 | UNITED REBUILDERS INC | | | 1,203.60 | |
| BBB-3192 | 5659 | HISPEED INDUSTRIAL CORP | | | 3,535.71 | |
| BBB-3194 | 11544 | HL TRACTOR PARTS | | | 704.79 | |
| BBB-3218 | not visible | TELECOMMUNICATIONS MANAGEMENT AND SERVICES INC | | | 1,871.76 | |
| BBB-3317 | 100446 | ATLAS COPCO (PHILIPPINES) INC | | | 7,348.05 | |
| BBB-3324 | 0793 | MZJT MARKETING | | | 91,810.93 | |
| BBB-3361 | 543412 | TELECOMMUNICATIONS MANAGEMENT AND SERVICES, INC. | | | 1,723.61 | |
| BBB-4430 | 0022 | AS MAPUTI MANPOWER SERVICES | | | | 16,317.34 |
| BBB-4439 | 0024 | AS MAPUTI MANPOWER SERVICES | | | | 17,949.85 |
| BBB-4546 | 0728 | DELUXE SALES & IND. CO. | | | | 3,342.86 |
| BBB-4576 | 616250 | TELECOMMUNICATIONS MANAGEMENT AND SERVICES INC | | | | 1,670.52 |
| | | ***subtotal*** | ***₱ 33,942.86*** | ***₱ 4,687.50*** | ***₱ 121,930.25*** | ***₱ 39,280.57*** |
| ***2. Domestic purchases of goods and services supported by NON-VAT/TIN-V invoices/ORs*** | | | | | | |
| BBB-68 | 52763 | HL TRACTOR PARTS | ₱ 1,735.50 | | | |
| BBB-69 | 52762 | HL TRACTOR PARTS | 653.57 | | | |
| BBB-113 | 53292 | HL TRACTOR PARTS | 193.93 | | | |
| BBB-284 | 52068 | HL TRACTOR PARTS | 1,447.50 | | | |
| BBB-289 | 52048 | HL TRACTOR PARTS | 1,178.57 | | | |
| BBB-338 | 52806 | HL TRACTOR PARTS | 60.00 | | | |
| BBB-601 | 52909 | HL TRACTOR PARTS | 20,357.14 | | | |
| BBB-828 | 52876 | HL TRACTOR PARTS | 10,937.14 | | | |
| BBB-2516 | 5960 | NATIONAL GRID CORPORATION OF THE PHILIPPINES | 28,328.17 | | | |
| BBB-765 | 52900 | HL TRACTOR PARTS | | ₱ 919.29 | | |
| BBB-956 | 0106 | MARNO TRADING | | 1,928.57 | | |
| BBB-957 | 0105 | MARNO TRADING | | 940.03 | | |
| BBB-975 | 53182 | HL TRACTOR PARTS | | 567.86 | | |
| BBB-983 | 0119 | MARNO TRADING | | 6,857.14 | | |
| BBB-1062 | 53176 | HL TRACTOR PARTS | | 1,714.29 | | |
| BBB-1068 | 53148 | HL TRACTOR PARTS | | 552.86 | | |
| BBB-1102 | 53461 | HL TRACTOR PARTS | | 578.57 | | |
| BBB-2667 | 01498 | ALAS CUSTOMS BROKERAGE | | 3,038.85 | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| BBB-2670 | 1499 | ALAS CUSTOMS BROKERAGE | | 980.01 | | |
| BBB-2672 | 01505 | ALAS CUSTOMS BROKERAGE | | 3,125.91 | | |
| BBB-2881 | 2316 | DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION | | 231,518.13 | | |
| BBB-2882 | 2384 | DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION | | 1,511,234.77 | | |
| BBB-2923 | 6145 | NATIONAL GRID CORPORATION OF THE PHILIPPINES | | 22,045.21 | | |
| BBB-2946 | 01496 | ALAS CUSTOMS BROKERAGE | | 474.07 | | |
| BBB-2947 | 01497 | ALAS CUSTOMS BROKERAGE | | 1,235.14 | | |
| BBB-2959 | 2313 | DAKAY CONSTRUCTION AND DEVELOPMENT CORPORATION | | 569,582.68 | | |
| BBB-1519 | 19424 | PNOC EXPLORATION CORPORATION | | | ₱ 458,680.78 | |
| BBB-2411 | 0121 | MARNO TRADING | | | 1,109.76 | |
| BBB-2412 | 0118 | MARNO TRADING | | | 1,031.16 | |
| BBB-3015 | 1519 | ALAS CUSTOMS BROKERAGE | | | 2,921.72 | |
| BBB-3016 | 1520 | ALAS CUSTOMS BROKERAGE | | | 3,002.23 | |
| BBB-3017 | 1521 | ALAS CUSTOMS BROKERAGE | | | 3,116.32 | |
| BBB-3034 | 1526 | ALAS CUSTOMS BROKERAGE | | | 460.91 | |
| BBB-3267 | 01536 | ALAS CUSTOMS BROKERAGE | | | 3,164.59 | |
| BBB-3268 | 01533 | ALAS CUSTOMS BROKERAGE | | | 5,384.22 | |
| BBB-3270 | 01535 | ALAS CUSTOMS BROKERAGE | | | 3,123.57 | |
| BBB-3272 | 01534 | ALAS CUSTOMS BROKERAGE | | | 3,245.38 | |
| BBB-3307 | 01538 | ALAS CUSTOMS BROKERAGE | | | 3,179.43 | |
| BBB-3312 | 01539 | ALAS CUSTOMS BROKERAGE | | | 382.72 | |
| BBB-4233 | 01518 | ALAS CUSTOMS BROKERAGE | | | | ₱ 1,009.95 |
| BBB-4242 | 01530 | ALAS CUSTOMS BROKERAGE | | | | 432.04 |
| BBB-4243 | 01531 | ALAS CUSTOMS BROKERAGE | | | | 444.82 |
| BBB-4247 | 01537 | ALAS CUSTOMS BROKERAGE | | | | 1,369.08 |
| BBB-4260 | 01542 | ALAS CUSTOMS BROKERAGE | | | | 543.94 |
| BBB-4261 | 01540 | ALAS CUSTOMS BROKERAGE | | | | 918.32 |
| BBB-4262 | 01541 | ALAS CUSTOMS BROKERAGE | | | | 569.73 |
| BBB-4301 | 01554 | ALAS CUSTOMS BROKERAGE | | | | 1,542.14 |
| BBB-4446 | 00313 | ALAS CUSTOMS BROKERAGE | | | | 3,838.22 |
| BBB-4447 | 01565 | ALAS CUSTOMS BROKERAGE | | | | 566.34 |
| BBB-4448 | 00314 | ALAS CUSTOMS BROKERAGE | | | | 571.10 |
| BBB-4451 | 01566 | ALAS CUSTOMS BROKERAGE | | | | 524.18 |
| | | ***subtotal*** | ***₱ 64,891.52*** | ***₱ 2,357,293.38*** | ***₱ 488,802.79*** | ***₱ 12,329.86*** |
| ***3. Domestic purchases of goods and services supported by unreadable invoices/ORs*** | | | | | | |
| BBB-272 | 28082 | PHILCOPY CORPORATION | ₱ 1,281.00 | | | |
| BBB-2640 | 915005 | U-FREIGHT PHILS., INC. | 2,336.39 | | | |
| | | ***subtotal*** | ***₱ 3,617.39*** | - | - | - |
| ***4. Domestic purchases of goods and services supported by invoices/ORs dated outside the period of claim or with no year indicated*** | | | | | | |
| BBB-3436 | 67940 | SYCIP, GORRES, VELAYO & CO. | ₱ 13,134.12 | | | |
| BBB-264 | CI1577 | MAPECON PHILS., INC. dated 2009 | 1,166.79 | | | |
| BBB-274 | 14-000005074 | W & L TRADING CORPORATION dated 2009 | 783.58 | | | |
| BBB-275 | 14-000005163 | W & L TRADING CORPORATION dated 2009 | 2,237.45 | | | |
| BBB-354 | 20291 | MABUHAY VINYL CORPORATION | 17,005.71 | | | |
| BBB-386 | 025987 | SELLCHEM CORPORATION | 21,085.71 | | | |
| BBB-526 | SNG/0790863 | AFC Fertilizer & Chemicals, Inc. | 5,379.84 | | | |
| BBB-555 | 3503 | YUMPIL INDUSTRIES, INC. | 691.20 | | | |
| BBB-556 | 3505 | YUMPIL INDUSTRIES, INC. | 199.20 | | | |
| BBB-557 | 25104 | UNITED REBUILDERS, INC. | 2,220.00 | | | |
| BBB-558 | 3502 | YUMPIL INDUSTRIES, INC. | 2,084.16 | | | |
| BBB-614 | 13803 | RM INDUSTRIAL SALES | 326.40 | | | |
| BBB-615 | 14125 | RM INDUSTRIAL SALES | 1,428.00 | | | |
| BBB-616 | 14126 | RM INDUSTRIAL SALES | 545.25 | | | |
| BBB-622 | 11611 | V AND U ENTERPRISES | 3,193.93 | | | |
| BBB-646 | 62499 | FSP GROUP INC | 1,441.07 | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| BBB-647 | 373076 | THINKINGTOOLS INCORPORATED | 1,392.32 | | | |
| BBB-648 | 372743 | THINKINGTOOLS INCORPORATED | 619.29 | | | |
| BBB-649 | 18779 A | UNIWELL TECHNOLOGIES CORPORATION | 4,920.00 | | | |
| BBB-650 | 138597 | WILLIAMS COMMERCIAL COMPANY INCORPORATED | 816.00 | | | |
| BBB-651 | 138779 | WILLIAMS COMMERCIAL COMPANY INCORPORATED | 989.08 | | | |
| BBB-2548 | 141554 | GROUND-AIR LOGISTIC CORP | 12.43 | | | |
| BBB-2566 | TOS1015835 | TOYOTA CEBU CITY, INC. | 2,642.66 | | | |
| BBB-749 | 0056 | MARNO TRADING | | ₱ 475.71 | | |
| BBB-750 | 0050 | MARNO TRADING | | 2,041.07 | | |
| BBB-751 | 0052 | MARNO TRADING | | 804.00 | | |
| BBB-752 | 0051 | MARNO TRADING | | 1,281.43 | | |
| BBB-753 | 6435 | MZJT MARKETING | | 1,469.52 | | |
| BBB-754 | 6476 | MZJT MARKETING | | 2,065.54 | | |
| BBB-755 | 23326 | DEGALEN CORPORATION | | 399.12 | | |
| BBB-756 | 23378 | DEGALEN CORPORATION | | 364.32 | | |
| BBB-757 | 23392 | DEGALEN CORPORATION | | 612.00 | | |
| BBB-758 | 23411 | DEGALEN CORPORATION | | 499.20 | | |
| BBB-759 | 0073 | MARNO TRADING | | 501.43 | | |
| BBB-760 | 0081 | MARNO TRADING | | 557.14 | | |
| BBB-761 | 6535 | MZJT MARKETING | | 1,789.92 | | |
| BBB-762 | 6482 | MZJT MARKETING | | 164.61 | | |
| BBB-763 | 1022 | RBER INDUSTRIAL AND TRADING CORPORATION | | 2,121.43 | | |
| BBB-764 | 1037 | RBER INDUSTRIAL AND TRADING CORPORATION | | 2,110.20 | | |
| BBB-797 | 97604 | UNITED AUTOMART | | 276.00 | | |
| BBB-798 | 98544 | UNITED AUTOMART | | 978.60 | | |
| BBB-799 | 98577 | UNITED AUTOMART | | 804.00 | | |
| BBB-800 | 98565 | UNITED AUTOMART | | 384.00 | | |
| BBB-801 | 99189 | UNITED AUTOMART | | 979.20 | | |
| BBB-802 | 99190 | UNITED AUTOMART | | 2,694.60 | | |
| BBB-806 | 99187 | UNITED AUTOMART | | 613.20 | | |
| BBB-856 | 0300 | AIRSERVE INDUSTRIAL, INC. | | 37,109.57 | | |
| BBB-879 | 30340 | ASSISTCO ENERGY AND INDUSTRIAL CORPORATION | | 23,973.21 | | |
| BBB-880 | 30341 | ASSISTCO ENERGY AND INDUSTRIAL CORPORATION | | 21,428.57 | | |
| BBB-890 | 104403 | BES PACIFIC HARDWARE AND INDUSTRIAL SUPPLY INC | | 315.00 | | |
| BBB-891 | 110014 | RS COMPONENTS LIMITED | | 1,801.20 | | |
| BBB-892 | 67044 | SPECIALIZED BOLT CENTER MERCANTILE & ENGINEERING | | 324.64 | | |
| BBB-893 | 67046 | SPECIALIZED BOLT CENTER MERCANTILE & ENGINEERING | | 537.59 | | |
| BBB-894 | 67045 | SPECIALIZED BOLT CENTER MERCANTILE & ENGINEERING | | 721.61 | | |
| BBB-916 | 161507 | FOTOLINE EXPRESS INC. | | 8,222.94 | | |
| BBB-930 | 218443 | YANA CHEMODITIES, INC. | | 388.80 | | |
| BBB-1096 | 475444 | CORD CHEMICALS, INC. | | 2,081.32 | | |
| BBB-1117 | 1775192288 | PILIPINAS SHELL PETROLEUM CORPORATION | | 21,549.89 | | |
| BBB-2958 | 418061 | PHILIPPINE CHARTER INSURANCE CORPORATION | | 139,302.41 | | |
| BBB-4493 | 0092 | CEBU ENERGY DEVELOPMENT CORPORATION | | | | ₱ 9,759,790.40 |
| BBB-4572 | 0007 | TOLEDO HOLDINGS CORPORATION | | | | 286,510.68 |
| | | ***subtotal*** | ***₱ 84,314.19*** | ***₱ 281,742.99*** | - | ***₱ 10,046,301.08*** |
| ***5. Domestic purchases of goods supported by invoices without supplier's VAT Reg. TIN or with supplier's TIN but without the word "VAT"*** | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| BBB-603 | 13844 | NFF INDUSTRIAL CORPORATION | ₱ 38,571.43 | | | |
| BBB-874 | 53493 | HL TRACTOR PARTS | | ₱ 289.29 | | |
| BBB-993 | 0102 | MARNO TRADING | | 1,671.43 | | |
| BBB-1514 | 13898 | NFF INDUSTRIAL CORPORATION | | | ₱ 120,000.00 | |
| BBB-1763 | 16874 | TRI-J MARKETING INC. | | | 1,404.00 | |
| BBB-1912 | 0135 | MARNO TRADING | | | 1,928.57 | |
| BBB-2413 | 229443 | CEBU TRISTAR CORPORATION | | | 3,972.60 | |
| BBB-2414 | 229346 | CEBU TRISTAR CORPORATION | | | 313.20 | |
| BBB-4033 | 048 | ELASCO INTERNATIONAL CORPORATION | | | | ₱ 5,703.00 |
| BBB-4061 | 0026209 | DEGALEN CORPORATION | | | | 10,758.00 |
| BBB-4077 | 33231 | PHILCOPY CORPORATION | | | | 5,089.29 |
| BBB-4079 | 15741 | RM INDUSTRIAL SALES | | | | 1,425.60 |
| | | ***subtotal*** | ***₱ 38,571.43*** | ***₱ 1,960.72*** | ***₱ 127,618.37*** | ***₱ 22,975.89*** |
| ***6. Domestic purchase of goods supported by invoice but the amounts were not indicated therein*** | | | | | | |
| BBB-3995 | VYPI0X0053 | YOKOGAWA PHILIPPINES INCORPORATED | | | | ₱ 15,794.16 |
| | | ***subtotal*** | - | - | - | ***₱ 15,794.16*** |
| ***7. Domestic purchases of services supported by VAT ORs but with notation "Not valid as source of input VAT'*** | | | | | | |
| BBB-2940 | 15485 | NFF INDUSTRIAL CORPORATION | | ₱ 7,200.00 | | |
| BBB-3302 | 0857 | ELASCO INTERNATIONAL CORPORATION | | | ₱ 5,100.00 | |
| | | ***subtotal*** | - | ***₱ 7,200.00*** | ***₱ 5,100.00*** | - |
| ***8. Domestic purchases of services supported by documents other than VAT ORs*** | | | | | | |
| BBB-2455 | 0415 | ASEA BROWN BOVERI, INC. | ₱ 23,914.29 | | | |
| BBB-3222 | 0401 00068 BDO 00683 | NATIONAL GRID CORPORATION OF THE PHILIPPINES | | | ₱ 3,473.14 | |
| | | ***subtotal*** | ***₱ 23,914.29*** | - | ***₱ 3,473.14*** | - |
| ***9. Domestic purchases of services not supported by ORs*** | | | | | | |
| - | - | RUREX FABRICATION AND TRADING CO INC | ₱ 1,478.57 | | | |
| - | - | SMART COMMUNICATIONS, INC. | 107.04 | | | |
| - | - | TURBO ENGINE RECOVERY, INC., | 14,785.71 | | | |
| - | - | ALAS CUSTOMS BROKERAGE | 410.39 | | | |
| - | - | HI-SPEED INDUSTRIAL CORP. | | | ₱ 857.14 | |
| | | ***subtotal*** | ***₱ 16,781.71*** | - | ***₱ 857.14*** | - |
| ***10. Exhibit reference does not refer to the amount claimed*** | | | | | | |
| BBB-815 | 218190 | YANA CHEMODITIES, INC. | ₱ 1,296.00 | | | |
| | | ***subtotal*** | ***₱ 1,296.00*** | - | - | - |
| ***11. Overclaimed input VAT on domestic purchase of service*** | | | | | | |
| BBB-4284 | 2964714 | CEBU PORT AUTHORITY (103,913.87 per sched. less 60,030.42 per OR) | | | | ₱ 43,883.42 |
| | | ***subtotal*** | - | - | - | ***₱ 43,883.42*** |
| ***12. Exhibit was denied admission by the Court per Resolution dated October 8, 2014*** | | | | | | |
| BBB-3226 | | AVESTRONICS INDUSTRIAL SALES & SERVICES, INC. | | | ₱ 4,858.44 | |
| | | ***subtotal*** | - | - | ***₱ 4,858.44*** | - |
| ***13. Importation of goods supported by IEIRD but without machine validation*** | | | | | | |
| CCC-12 | 10370392 | I AND N INTERNATIONAL CORP | ₱ 22,445.00 | | | |
| CCC-13 | 102814004 | PM CONTROL SYSTEM PTE LTD | 107,152.00 | | | |
| CCC-14 | 102813961 | MAN DISEL SAS | 802,273.00 | | | |
| CCC-15 | 103813821 | I AND N INTERNATIONAL CORP | 49,833.00 | | | |
| CCC-16 | 104522092 | TECHNOMARINE CO LTD | 561,944.00 | | | |
| CCC-19 | 104984582 | MITSUBISHI CORPORATION | | ₱ 461,599.00 | | |
| CCC-20 | 104522241 | FUJI TRADING CO LTD | | 101,015.00 | | |
| CCC-21 | 104984512 | FUJI TRADING CO LTD | | 703,729.00 | | |
| CCC-22 | 104984546 | EASTERN ENERGY RESOURCES FZE | | 2,486,778.00 | | |
| CCC-23 | 104984616 | EASTERN ENERGY RESOURCES FZE | | 2,323,132.00 | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| CCC-24 | 104984756 | EASTERN ENERGY RESOURCES FZE | | 2,496,606.00 | | |
| CCC-25 | 104984747 | EASTERN ENERGY RESOURCES FZE | | 2,393,959.00 | | |
| CCC-26 | 17175445 | EASTERN ENERGY RESOURCES FZE | | | ₱ 2,539,536.00 | |
| CCC-27 | 107336083 | EASTERN ENERGY RESOURCES FZE | | | 2,503,151.00 | |
| CCC-28 | 108861103 | I & N INTERNATIONAL CORP | | | 34,221.00 | |
| CCC-29 | 107336092 | HOLCIM TRADING PTE LTD | | | 4,521,111.00 | |
| CCC-30 | SN 107336047 | Chris Marine AB | | | | ₱ 48,183.00 |
| CCC-31 | SN 108999913 | Eastern Energy Resources Fze | | | | 2,343,144.00 |
| CCC-32 | SN 108999947 | Eastern Energy Resources Fze | | | | 2,426,488.00 |
| CCC-33 | SN 108861207 | Eastern Energy Resources Fze | | | | 2,540,278.00 |
| CCC-34 | SN 108861137 | Eastern Energy Resources Fze | | | | 2,553,446.00 |
| CCC-35 | SN 107336257 | Eastern Energy Resources Fze | | | | 2,611,779.00 |
| CCC-36 | SN-108999825 | Eon Far East Limited | | | | 5,588,062.00 |
| CCC-37 | SN-108999807 | Fuji Trading Co Ltd | | | | 238,927.00 |
| CCC-38 | SN-108861024 | I and N International Corp | | | | 9,033.00 |
| CCC-39 | SN-108861173 | I and N International Corp | | | | 29,612.00 |
| CCC-40 | SN-108999782 | I and N International Corp | | | | 48,638.00 |
| CCC-41 | SN-108999764 | I and N International Corp | | | | 59,378.00 |
| CCC-42 | SN 108999877 | PT Insani Baraperkasa | | | | 3,138,963.00 |
| CCC-43 | SN 108999886 | Sun Machinery & Trading Inc | | | | 81,092.00 |
| CCC-44 | SN 107336144 | Sun Machinery & Trading Inc | | | | 393,027.00 |
| CCC-45 | SN 108861234 | Technomarine Co Ltd | | | | 175,625.00 |
| CCC-46 | SN 111872241 | Eastern Energy Resources Fze | | | | 2,240,191.00 |
| CCC-47 | SN 111872223 | Yashima and Co Ltd | | | | 6,763,191.00 |
| CCC-48 | SN 101683294 | I and N International Corp | | | | 6,523.00 |
| CCC-49 | SN-108999931 | I and N International Corp | | | | 31,038.00 |
| CCC-50 | SN 108861191 | Sun Machinery & Trading Inc | | | | 178,775.00 |
| CCC-51 | SN 108999895 | Eastern Energy Resources Fze | | | | 2,370,830.00 |
| | | ***subtotal*** | ***₱1,543,647.00*** | ***₱ 10,966,818.00*** | ***₱ 9,598,019.00*** | ***33,876,223.00*** |
| | | **Total per quarter** | **1,810,976.39** | **13,619,702.59** | **10,350,659.13** | **₱ 44,056,787.98** |
| **Grand Total** | | | | | | **₱ 69,838,126.09** |

Meanwhile, Section 110(A) of the NIRC of 1997, as amended, and implemented by Section 4.110-3 of RR No. 16-2005, provides that the input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1,000,000.00, the claim for input tax should be spread over sixty (60) months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed ₱1,000,000.00, the total input taxes shall be allowed as credit/refund in the month of acquisition.

However, petitioner failed to provide documents in support of its purchases of capital goods exceeding ₱1,000,000.00 from previous period, nor did the latter identify which among the substantiated domestic purchases of goods and services pertained to the current purchases of capital goods exceeding ₱1,000,000.00. Hence, the amortized input VAT relating thereto in the amount of ₱1,345,174.71 shall also be disallowed.

Therefore, out of petitioner's reported input VAT of ₱207,584,778.89 for CY 2010, only the amount of ₱123,584,633.81 represents petitioner's valid input VAT, computed as follows:

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr | Total |
|---|---|---|---|---|---|
| Input tax per Returns | ₱ 45,772,154.50 | ₱ 47,220,171.04 | ₱ 44,065,265.53 | ₱ 70,527,187.82 | ₱ 207,584,778.89 |
| Less: Disallowances | | | | | |
| Per ICPA's findings | 4,951,630.97 | 4,442,542.74 | 1,647,381.44 | 1,775,289.13 | 12,816,844.28 |
| Per Court's further verification | 1,810,976.39 | 13,619,702.59 | 10,350,659.13 | 44,056,787.98 | 69,838,126.09 |
| Unsupported Amortized Input VAT on purchase of capital goods exceeding ₱1M | 327,455.43 | 327,455.41 | 348,468.60 | 341,795.27 | 1,345,174.71 |
| *Total Disallowances* | *₱ 7,090,062.79* | *₱ 18,389,700.74* | *₱ 12,346,509.17* | *₱ 46,173,872.38* | *₱ 84,000,145.08* |
| **Valid Input VAT** | **₱ 38,682,091.71** | **₱ 28,830,470.30** | **₱ 31,718,756.36** | **₱ 24,353,315.44** | **₱ 123,584,633.81** |

However, considering that petitioner is engaged both in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, as well as exempt sales, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the valid input VAT proportionately on the basis of the volume of its sales. Thus:

| | 1st Qtr 2010 | 2nd Qtr 2010 | 3rd Qtr 2010 | 4th Qtr 2010 | Total |
|---|---|---|---|---|---|
| Zero-Rated Sale ***(A)*** | ₱ 403,664,957.64 | ₱ 378,881,751.80 | ₱ 489,216,287.95 | ₱ 523,898,827.74 | ₱ 1,795,661,825.13 |
| VAT Sales ***(B)*** | 323,285,336.68 | 254,653,568.27 | 269,413,258.33 | 164,996,139.32 | 1,012,348,302.60 |
| Sale to Government ***(C)*** | 12,567,124.40 | 15,843,946.40 | 19,426,859.00 | 15,062,327.60 | 62,900,257.40 |
| Exempt Sales ***(D)*** | 1,217,768.43 | 678,481.14 | 1,715,904.62 | 1,576,163.82 | 5,188,318.01 |
| **Total Sales *(E)*** | **₱ 740,735,187.15** | **₱ 650,057,747.61** | **₱ 779,772,309.90** | **₱ 705,533,458.48** | **₱2,876,098,703.14** |

| | 1st Qtr 2010 | 2nd Qtr 2010 | 3rd Qtr 2010 | 4th Qtr 2010 | Total |
|---|---|---|---|---|---|
| Substantiated Input VAT ***(F)*** | ₱ 38,682,091.71 | ₱ 28,830,470.30 | ₱ 31,718,756.36 | ₱ 24,353,315.44 | ₱ 123,584,633.81 |
| *Allocation:* | | | | | |
| Zero-Rated Sale ***[G=(A/E x F)]*** | ₱ 21,079,874.67 | ₱ 16,803,644.19 | ₱ 19,899,824.66 | ₱ 18,083,725.52 | ₱ 75,867,069.05 |
| VAT Sales ***[H=(B/E x F)]*** | 16,882,353.18 | 11,294,046.05 | 10,958,908.64 | 5,695,269.27 | 44,830,577.14 |
| Sale to Government ***(C/E x F)*** | 656,270.51 | 702,689.00 | 790,225.30 | 519,915.27 | 2,669,100.07 |
| Exempt Sales ***(D/E x F)*** | 63,593.35 | 30,091.07 | 69,797.76 | 54,405.38 | 217,887.55 |
| **Total** | **₱ 38,682,091.71** | **₱ 28,830,470.30** | **₱ 31,718,756.36** | **₱ 24,353,315.44** | **₱ 123,584,633.81** |

Since petitioner's input VAT allocated to VATable sales in the respective amounts of ₱16,882,353.18, ₱11,294,046.05, ₱10,958,908.64 and ₱5,695,269.27 for the first, second, third and fourth quarters of CY 2010 is not enough to cover its output VAT liability in the amounts of ₱38,794,240.40, ₱30,558,428.19, ₱32,329,591.00 and ₱19,799,536.72 for the first, second, third and fourth quarters of CY 2010, respectively, the substantiated input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT of ₱21,911,887.22, ₱19,264,382.14, ₱21,370,682.36 and ₱14,104,267.45 for the first, second, third and fourth quarters of CY 2010, respectively.

Apparently, petitioner has no excess input VAT for the first, second and third quarters of CY 2010. While, for the fourth quarter of CY 2010, petitioner has excess input VAT of ₱3,979,458.07 which can be attributed to the entire amount of ₱523,898,827.74 zero-rated sales declared by petitioner in its Quarterly VAT Return for the fourth quarter of the same year, to wit:

| | **1st Qtr 2010** | **2nd Qtr 2010** | **3rd Qtr 2010** | **4th Qtr 2010** |
|---|---|---|---|---|
| Output tax on VAT Sales | ₱ 38,794,240.40 | ₱ 30,558,428.19 | ₱ 32,329,591.00 | ₱ 19,799,536.72 |
| Less: Input VAT allocated to VAT Sales ***(H)*** | 16,882,353.18 | 11,294,046.05 | 10,958,908.64 | 5,695,269.27 |
| Remaining output tax | ₱ 21,911,887.22 | ₱ 19,264,382.14 | ₱ 21,370,682.36 | ₱ 14,104,267.45 |
| Less: Input VAT allocated to zero-rated sales ***(G)*** | 21,079,874.67 | 16,803,644.19 | 19,899,824.66 | 18,083,725.52 |
| **Output tax still due/(Excess Input VAT)** | **₱ 832,012.55** | **₱ 2,460,737.95** | **₱ 1,470,857.70** | **₱ (3,979,458.07)** |

***Petitioner had zero-rated or effectively zero-rated sales for the fourth quarter of taxable year 2010***

Petitioner is duly registered with the Securities and Exchange Commission (SEC) and is engaged in the business of acquiring, owning, rehabilitating, maintaining and operating coal-fired and oil-fired electrical generation facilities.[57] As a generation company, petitioner has been granted by the Energy Regulatory Commission (ERC) with the authority to operate its generation facilities, under Certificate of Compliance No. 09-11-GXT 61-0066.[58]

Petitioner asserts that it is engaged in zero-rated sales as it sells and supplies electric power to Philippine Economic Zone Authority (PEZA) registered enterprise, Board of Investments (BOI) registered enterprise, and other entities whose purchases from local suppliers are entitled to VAT zero-rating.

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[57] Exhibits "A" and "B".
[58] Exhibits "C" to "C-1".

For the fourth quarter of CY 2010, petitioner has allegedly sold and supplied electric power to Balamban Enerzone Corporation (BEC), a VAT-registered entity duly registered with the PEZA[59], and Carmen Copper Corporation (CCC), a VAT-registered entity duly registered with the BOI[60].

Accordingly, the transactions of PEZA and BOI-registered entities with local suppliers of goods and services, such as herein petitioner, qualifiled for VAT zero-rating pursuant to Sections 106(A)(2)(a)(5) and 108(B)(3) of the NIRC of 1997, as amended, which explicitly provide:

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

[59] Exhibits "H" to "H-6" and "I".
[60] Exhibits "G-1" to "G-3".

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;"

Furthermore, pertinent provisions of Revenue Regulations (RR) No. 16-2005, as amended, state:

"**SEC. 4.106-5.** ***Zero-Rated Sales of Goods or Properties.*** – x x x

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

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

xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided*, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.

xxx xxx xxx

(c) **'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'.** – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."

"**SEC. 4.108-5.** ***Zero-Rated Sale of Services.*** –

(a) **In general.** – A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.

(b) **Transactions Subject to Zero Percent (0%) VAT Rate.** – The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT 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;"

Based on the foregoing, petitioner's sales of services to BEC and CCC, which are entities duly registered with PEZA and BOI, respectively, are subject to zero percent (0%) VAT rate pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

To prove that petitioner had zero-rated sales for the said fourth quarter of CY 2010, petitioner presented various sales invoices and official receipts (OR)[61] issued to BEC and CCC.

Upon examination of the supporting invoices and ORs, the Court finds that the amount of ₱13,589,501.31 representing petitioner's sales to BEC and CCC, are not covered by VAT zero-rated ORs, thus, shall be denied VAT zero-rating, to wit:

| Exhibit | OR No. | Amount per schedule[62] | Amount per OR | Amount Disallowed |
|---|---|---|---|---|
| EEE-208 | 2273 | ₱ 18,302,479.34 | ₱ 12,726,717.57 | ₱ 5,575,761.77 |
| EEE-232 | 2285 | 137,912,255.16 | 129,898,515.62 | 8,013,739.54 |
| **Total** | | | | **₱ 13,589,501.31** |

Likewise, petitioner asserts that during the same period, it sold and supplied electric power to a VAT-registered entity, Cebu Electric Cooperative III (CEBECO III), whose electric power was ultimately distributed to BEC and CCC. Allegedly, portions of petitioner's energy fee billing to CEBECO III were pass through charges and directly attributable to BEC and CCC. Thus, petioner is also of the considered view that its sales to CEBECO III are, likewise, considered as zero-rated sales following Revenue Memorandum Circular (RMC) No. 61-05 dated October 27, 2005.

However, the Court does not subscribe to petitioner's postulation that its sales to CEBECO III are subject to zero-rating since the latter is a non-PEZA-registered nor a BOI-registered entity. Consequently, petitioner's sales to CEBECO III for the fourth quarter of CY 2010 in the total amount of ₱34,689,126.77 shall likewise be disallowed, to wit:

| Exhibit No. | OR No. | OR Date | Amount |
|---|---|---|---|
| EEE-210 | 2494 | 27-Oct-10 | ₱ 12,168,778.25 |
| EEE-217 | 2498 | 19-Nov-10 | 11,593,201.97 |
| EEE-229 | 2511 | 22-Dec-10 | 10,927,146.55 |
| **Total** | | | **₱ 34,689,126.77** |

Thus, out of the total declared zero-rated sales of ₱523,898,827.74 for the fourth quarter of CY 2010, only the amount

[61] Exhibits "EEE-178" to "EEE-242"
[62] Exhibit "EEE"

of ₱475,620,199.66 represents petitioner's valid zero-rated sales, as computed below:

| | | |
|---|---|---|
| Zero-Rated Sales per Returns | | ₱ 523,898,827.74 |
| Less: Disallowances on: | | |
| Sales to BEC & CCC | 13,589,501.31 | |
| Sales to CEBECO III | 34,689,126.77 | 48,278,628.08 |
| **Valid Zero-Rated Sales** | | **₱ 475,620,199.66** |

***Petitioner is entitled to a partial refund of its excess input VAT attributable to valid zero-rated sales***

As earlier discussed, petitioner has no excess input VAT for the first, second and third quarters of CY 2010. While, for the fourth quarter of CY 2010, petitioner has excess input VAT of ₱3,979,458.07 which can be attributed to the entire amount of ₱523,898,827.74 zero-rated sales declared by petitioner in its Quarterly VAT Return for the fourth quarter of the same year. However, only the input VAT of ₱3,612,740.75 is attributable to the valid zero-rated sales of ₱475,620,199.66, as computed below:

| | | |
|---|---|---|
| Excess Input Tax attributable to zero-rated sales | ₱ | 3,979,458.07 |
| Divided by Declared Zero-Rated Sales | ₱ | 523,898,827.74 |
| Multiply by Valid Zero-Rated Sales | ₱ | 475,620,199.66 |
| **Refundable Input VAT attributable to Zero-Rated Sales** | **₱** | **3,612,740.75** |

Although the claimed input VAT was carried-over by petitioner in its Quarterly VAT Return for the first quarter of 2011 until the third quarter of 2012[63], the same remained unutilized since it was deducted in the third Quarterly VAT Return of 2012, as "VAT Refund/TCC claimed"[64] from the total available input tax of ₱174,303,476.48[65]. Thus, the claimed input taxes for the fourth quarter of CY 2010 could not have been carried-over/utilized in the succeeding fourth quarter of 2012.

**WHEREFORE**, premises considered, the Petitions for Review docketed as CTA Case Nos. 8450, 8512, and 8547 covering petitioner's

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[63] Exhibits "R", "U", "W", "Y", "AA", "JJ", "MM".
[64] Exhibit "MM", Line 23D.
[65] Exhibit "MM", Line 22.

claims for refund for the first, second and third quarters, respectively, are **denied** for lack of merit.

On the other hand, the Petition for Review docketed as CTA Case No. 8596 is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund the amount of **₱3,612,740.75** in favor of petitioner representing the latter's excess input VAT attributable to zero-rated sales/receipts for the fourth quarter of CY 2010.

**SO ORDERED**.

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

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

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Acting Presiding Justice