REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

CBK POWER COMPANY LIMITED,	**CTA Case No. 10137**
Petitioner,	*Members:*
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 10 2023 ; 11:00 AM

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on July 26, 2019 by petitioner CBK Power Company Limited against respondent Commissioner of Internal Revenue, praying that judgment be rendered ordering respondent to grant petitioner's claim for cash refund/value-added tax (VAT) refund of its unutilized or excess creditable input taxes in the amount of ₱10,327,699.76 arising from petitioner's domestic purchases of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, and domestic purchases of capital goods exceeding ₱1 million, attributable to petitioner's zero-rated sales of electricity to the National Power Corporation (NPC) for the period January 1, 2017 to March 31, 2017.

THE PARTIES

Petitioner CBK Power Company Limited is a partnership duly organized and existing under and by virtue of the laws of the Philippines with principal office at the NPC-CBK Compound, Purok 6,

[1] CTA Docket Vol. I, pp. 10-39.

National Highway, Brgy. San Juan, Kalayaan 4015, Laguna.[2] It is registered with the Securities and Exchange Commission (SEC) with Registration Number A200004027. As a special purpose entity, its sole purpose is to engage in all aspects of (a) design, financing, construction, testing, commissioning, operation, maintenance, management and ownership of the Kalayaan II pumped-storage hydroelectric power plant, the New Caliraya Spillway, and other assets to be located in the Province of Laguna, and, (b) the rehabilitation, upgrade, expansion, testing, commissioning, operation, maintenance and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax dentification Number (TIN) No. 205-760-474-00000.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested with authority to act as such, including *inter alia,* the power to decide, approve and grant tax refund/credit, with office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City where he may be served with summons and other court processes.[5]

THE FACTS

On November 6, 1998, NPC entered into a Build-Rehabilitate-Operate-Transfer Agreement (BROT Agreement) with Industrias Metalurgicas Pescarmona, S.A. (IMPSA), a corporation duly organized and existing under the laws of Argentina, whereby IMPSA shall undertake to finance, design, build, rehabilitate, upgrade, expand, commission, test, operate, maintain and manage the Caliraya, Botocan and Kalayaan hydroelectric power plant complex under the terms and conditions set forth in the BROT Agreement.[6]

On September 20, 2000, pursuant to its primary business purpose, petitioner through the Second Accession Undertaking became a party to the BROT Agreement together with NPC, IMPSA and CBK Power Corporation.[7] By virtue of the Second Accession Undertaking, petitioner shall assume and undertake the responsibility

[2] Exhibit "P-11", CTA Docket Vol. III, pp. 1581-1582.
[3] Exhibit "P-12", CTA Docket Vol. III, pp. 1583-1601.
[4] Exhibit "P-13", CTA Docket Vol. III, p. 1602.
[5] Par. 1, Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. II, pp. 1050-1051.
[6] Exhibit "P-8", CTA Docket Vol. III, pp. 1364-1446.
[7] Exhibit "P-9", CTA Docket Vol. III, pp. 1447-1452.

to rehabilitate, construct, operate, and maintain the Caliraya, Botocan, and Kalayaan hydroelectric power plants and other civil structures for the purpose of generating electricity for NPC. In consideration thereof, NPC shall pay petitioner Capital Recovery Fees, Operation and Maintenance Fees and other amounts specified in the BROT Agreement.[8]

On August 18, 2000, petitioner entered into an agreement with IMPSA Construction Corporation, designated as a Turnkey Contract,[9] whereby IMPSA Construction Corporation as Contractor represented itself to be technically and financially capable of undertaking the design, engineering, procurement, supply of all plant and materials, rehabilitation, construction, commissioning, testing, completion and handover of the power plants, together with the civil structures, access roads and other works as specified in the BROT Agreement among petitioner, NPC and IMPSA, on a fixed price, turnkey basis.

On March 29, 2019, petitioner filed through its Chief Financial Officer, Mr. Fernando J. De La Paz, an administrative claim for refund of even date together with its Application for Tax Credits/Refunds (BIR Form No. 1914) with the BIR Large Taxpayers Service, Revenue District Office No. 121,[10] for the cash refund of unutilized or excess creditable input taxes in the amount of ₱11,400,720.71, arising from petitioner's domestic purchases of goods other than capital goods, importations of goods other than capital goods, domestic purchases of services, payments of services rendered by non-residents, and local purchases and importation of capital goods exceeding ₱1 million, attributable to zero-rated sales of electricity to NPC for the period January 1, 2017 to March 31, 2017, pursuant to Sections 108(B)(7), and 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, and BIR Ruling No. DA-146-2006 dated March 17, 2006.[11] On the same date,[12] petitioner likewise submitted a Sworn Certification[13] executed by Mr. De La Paz, attesting to the completeness of the documents submitted and a signed BIR Revised Checklist of Mandatory Requirements for VAT Refund.[14]

On June 28, 2019, petitioner received the Letter dated April 26, 2019 from respondent, signed by Ms. Teresita M. Dizon, OIC -

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[8] Q13 and A13, Judicial Affidavit of Mr. Fernando J. De La Paz, CTA Docket Vol. II, p. 707; Exhibits "P-8" and "P-9", CTA Docket Vol. III, pp. 1364-1446 and 1447-1452.
[9] Exhibit "P-10", CTA Docket Vol. III, pp. 1453-1580.
[10] Par. 2, Facts Admitted, JSFI, CTA Docket Vol. II, p. 1051.
[11] Exhibits "P-1" and "P-2", CTA Docket Vol. III, pp. 1336-1357 and 1458.
[12] Par. 3, Facts Admitted, JSFI, CTA Docket Vol. II, p. 1051.
[13] Exhibit "P-3", CTA Docket Vol. III, p. 1359.
[14] Exhibit "P-4", CTA Docket Vol. III, p. 1360.

Assistant Commissioner (ACIR), Large Taxpayers Service, wherein, out of the total input VAT refund claim of ₱11,400,720.71, she recommended the issuance of a refund in the amount of ₱1,073,020.95, and disallowed the amount of ₱10,327,699.76.[15]

On July 26, 2019 petitioner filed the present Petition for Review.[16]

On October 30, 2019, within the extended period,[17] respondent filed his Answer,[18] raising the following Special and Administrative Defenses: (i) petitioner is not entitled to refund of its alleged unutilized input VAT; (ii) petitioner is a renewable energy (RE) developer entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power; (iii) petitioner is not the proper party to seek the refund; and, (iv) the burden of proof is upon petitioner to establish its right to the claimed refund.

Petitioner's Pre-Trial Brief[19] was filed on December 10, 2019 while Respondent's Pre-Trial Brief[20] was filed on December 11, 2019. The Pre-Trial Conference was held on September 24, 2020.[21]

On October 12, 2020, the parties filed their Joint Stipulation of Facts and Issues[22] which was approved by the Court in the Resolution dated October 26, 2020 thereby terminating the Pre-Trial.[23]

Upon motion[24] of petitioner, the Court commissioned Ms. Myra Celeste O. Dabalos, as Independent Certified Public Accountant (ICPA), on November 24, 2020.[25]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Fernando J. De La

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[15] Exhibit "P-18", CTA Docket Vol. III, p. 1612.
[16] CTA Docket Vol. I, p. 10.
[17] Order dated October 11, 2019, CTA Docket Vol. II, p. 611.
[18] CTA Docket Vol. II, pp. 614-621.
[19] CTA Docket Vol. II, pp. 636-654.
[20] CTA Docket Vol. II, pp. 655-658.
[21] Order dated September 24, 2020, CTA Docket Vol. II, pp. 1044-1046.
[22] CTA Docket Vol. II, pp. 1050-1062.
[23] CTA Docket Vol. II, p.1083.
[24] CTA Docket Vol. II, pp. 1063-1067.
[25] CTA Docket Vol. II, pp. 1093-1096.

Paz,[26] petitioner's Chief Financial Officer; and, Ms. Myra Celeste O. Dabalos,[27] the Court-commissioned ICPA.

On January 26, 2021, petitioner filed its Formal Offer of Evidence.[28]

On January 29, 2021, the Court issued the Pre-Trial Order.[29]

In the Resolution dated May 19, 2021,[30] petitioner's exhibits were admitted in evidence, except Exhibits "P-22" and "P-99" as these exhibits were not used in this case as stated in petitioner's Formal Offer of Evidence. In the same Resolution, petitioner was deemed to have rested its case.

Thereafter, respondent presented his lone witness, Revenue Officer Katherine Mary D. Reyes.[31]

On October 27, 2021, respondent filed his Formal Offer of Evidence.[32] In the Resolution dated March 18, 2022, the Court admitted all of respondent's formally offered evidence, and respondent was deemed to have rested his case.[33]

Petitioner filed its Memorandum[34] on April 12, 2022, while respondent filed on May 11, 2022 his Manifestation[35] that he will no longer file a memorandum and will instead adopt the arguments raised in his Answer.

On June 3, 2022, the case was submitted for decision.[36]

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[26] Exhibit "P-21", Judicial Affidavit of Mr. Fernando J. De La Paz, CTA Docket Vol. II, pp. 707-738; and Minutes of Hearing dated January 19, 2021, CTA Docket Vol. III, pp. 1258-1258-B.
[27] Exhibit "P-253", Judicial Affidavit of Court Commissioned Independent Certified Public Accountant Myra Celeste O. Dabalos, CTA Docket Vol. III, pp. 1176-1201; and Minutes of Hearing dated January 19, 2021, CTA Docket Vol. III, pp. 1258-1258-B.
[28] CTA Docket Vol. III, pp. 1259-1335.
[29] CTA Docket Vol. IV, pp. 1755-1773.
[30] CTA Docket Vol. IV, pp. 1780-1782.
[31] Exhibit "R-5", Judicial Affidavit of Revenue Officer Katherine Mary D. Reyes, CTA Docket Vol. II, pp. 664-670; and Order dated July 29, 2021, CTA Docket Vol. IV, pp. 1786-1787.
[32] CTA Docket Vol. IV, pp. 1792-1795.
[33] CTA Docket Vol. IV, pp. 1809-1810.
[34] CTA Docket Vol. IV, pp. 1811-1850.
[35] CTA Docket Vol. IV, pp. 1856-1858.
[36] CTA Docket Vol. IV, p. 1861.

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ISSUE

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to the issuance of a cash refund/VAT refund of its alleged unutilized or excess creditable input taxes in the amount of ₱10,327,699.76 arising from petitioner's domestic purchases of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, and domestic purchases of capital goods exceeding ₱1 million, all attributable to its zero-rated sales of electricity to NPC for the period of January 1, 2017 to March 31, 2017, pursuant to Sections 108(B)(7), 112(A) and 112(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337 and BIR Ruling No. DA-146-2006 dated March 17, 2006.[37]

PARTIES' ARGUMENTS

Petitioner argues that: (i) it is neither registered with the Department of Energy (DOE) under RA No. 9513[38] or the Renewable Energy Act of 2008, nor has it availed of the fiscal incentives under said law; and, (ii) it has complied with the legal requirements in order to be entitled to claim a cash refund/VAT refund of its unutilized or excess creditable input taxes attributable to zero-rated sales for the period January 1, 2017 to March 31, 2017 pursuant to Sections 108(B)(7), 112(A) and 112(C) of the NIRC of 1997, as amended.[39]

On the other hand, respondent counter-argues that: (i) petitioner is not entitled to refund of alleged unutilized input VAT; (ii) petitioner is an RE developer entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power; (iii) petitioner is not the proper party to seek the refund; and, (iv) the burden of proof is upon petitioner to establish its right to the claimed refund.[40]

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[37] I. Issues to be Tried or Resolved, JSFI, CTA Docket Vol. II, p. 1051.
[38] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, December 16, 2008.
[39] Memorandum, CTA Docket Vol. IV, pp. 1811-1850.
[40] Answer, CTA Docket Vol. II, pp. 614-621.

THE COURT'S RULING

The Petition for Review was timely filed and the Court has jurisdiction over the present case

Section 112 (A) and (C) of the NIRC of 1997, as amended, provides for the legal basis to claim for refund of input VAT attributable to zero-rated or effectively zero-rated sales, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the CIR thereon, *viz.*:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> "(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 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.
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> **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." *(Emphasis supplied)*

Pursuant to Section 112(A) of NIRC of 1997, as amended, the administrative claim for refund of excess and unutilized input tax must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the period January 1, 2017 to March 31, 2017 or the first quarter of petitioner's taxable year 2017. Counting two (2) years from the close of the taxable quarter on March 31, 2017, petitioner had until March 31, 2019 within which to file an administrative claim for refund. Thus, petitioner's administrative claim for refund for the said quarter was seasonably filed on March 29, 2019.[41]

Section 112(C) of the NIRC of 1997, as amended, speaks of two (2) important periods:

(1) the 90-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund; and,

(2) the 30-day period, counted from receipt of the decision, which refers to the period for filing a judicial claim with the CTA.

Complementing Section 112(C) of the NIRC of 1997, as amended, is Section 7(a)(1) and (2) of RA No. 1125,[42] as amended by RA No. 9282,[43] which vests exclusive appellate jurisdiction to the CTA to review by appeal the decision or inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

"Sec. 7. Jurisdiction. – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other

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[41] Exhibits "P-1" and "P-2", CTA Docket Vol. III, pp. 1336-1357 and 1458.
[42] An Act Creating the Court of Tax Appeals.
[43] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

> matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> 2. **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which cases the inaction shall be deemed a denial**[.]" (*Emphasis supplied*)

The above-cited provision categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within thirty (30) days after receipt of such decision or after the expiration of the period fixed by law for action.

Petitioner timely filed its administrative claim for refund on March 29, 2019. Counting ninety (90) days therefrom, respondent had until June 27, 2019 within which to act on the claim. Records show that the respondent denied the claim in a Letter dated April 26, 2019, which was received by petitioner's representative on June 28, 2019.[44] Thus, counting thirty (30) days from June 28, 2019, petitioner had until July 28, 2019 to file its judicial claim with the CTA.

Petitioner timely filed its Petition for Review on July 26, 2019. Thus, the Court has acquired jurisdiction to take cognizance of the present case.

The Court shall now proceed to discuss the merits of petitioner's refund claim.

In order to be entitled to refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:[45]

1. The administrative and judicial claims were seasonably filed;

2. The taxpayer-claimant must be VAT-registered;

3. There must be zero-rated or effectively zero-rated sales;

4. Input taxes were incurred or paid;

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[44] Exhibit "P-18", CTA Docket Vol. III, p. 1612.
[45] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009, in relation to Section 112 of the NIRC of 1997, as amended.

5. Such input taxes are attributable to zero-rated or effectively zero-rated sales, or if not directly or entirely attributable, the input taxes shall be allocated proportionately on the basis of volume of sales;

6. The input taxes are not transitional input taxes; and,

7. The input taxes were not applied against any output VAT liability.

First Requisite: The administrative and judicial claims were filed on time

As aforediscussed, petitioner's administrative claim for refund and judicial claim for refund were filed on time on March 29, 2019[46] and July 26, 2019, respectively. Hence, the first requisite was complied with.

Second Requisite: Petitioner is a VAT-registered entity

Petitioner is registered with the BIR as a VAT-registered entity with filing start date of April 10, 2000, and with registered office address at NPC-CBK Compound, Purok 6, National Highway, San Juan (POB), Kalayaan, Laguna, bearing Tax Identification Number 205-760-474-00000 as stated in its Certificate of Registration[47] with OCN No. 8RC0001649021E issued by the BIR. Hence, the second requisite was complied with.

Third Requisite: Petitioner had zero-rated sales during the subject period

Petitioner claims that during the first (1st) quarter of CY 2017, it engaged in sales of electricity, generated through hydroelectric power, to NPC. The sales are claimed to be transactions subject to zero percent (0%) VAT in accordance with Section 108(B)(7) of the NIRC of 1997, as amended, *viz.*:

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[46] Exhibits "P-1" and "P-2", CTA Docket Vol. III, pp. 1336-1357 and 1458.
[47] Exhibit "P-13", CTA Docket, Vol. III, p. 1602.

> "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:
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> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels**." *(Emphases supplied)*

In BIR Ruling No. DA-146-2006 dated March 17, 2006,[48] the BIR confirmed that the sale of petitioner to NPC of electricity generated through hydropower is subject to zero percent (0%) VAT under Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337. Pertinent portion of the said Ruling reads:

> "From the foregoing circumstances, there is no dispute that CBK is primarily organized to engage in power generation business, specifically in hydropower generation, i.e., generating/supplying electric power generated through hydropower, a renewable source of energy. This is fortified by the Certificate of Compliance issued by the Energy Regulatory Commission (ERC) that CBK is indeed a hydropower generation company. **Thus, the billings of CBK for its sale of electricity to NPC, designated under the BROT Agreement as Capital Recovery Fees and O&M Fees, are subject to zero percent (0%) VAT.**
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> xxx xxx xxx
>
> WHEREFORE, *in view of the foregoing*, this Office holds that the **billings of CBK, an entity engaged in hydropower generation, to NPC for the sale of electricity generated through hydropower are subject to VAT at zero percent (0%) under Section 108(B)(7) of R.A. 9337.** Accordingly, CBK need not apply for any prior approval or confirmation with the BIR as required under Section 4.108-6 of Revenue Regulations No. 16-2005." *(Emphases supplied)*

Pursuant to Section 108(B)(7) of the NIRC of 1997, as amended, and the aforesaid BIR Ruling, the sale by petitioner of electricity generated through hydropower to NPC is qualified for VAT zero-rating.

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[48] Exhibit "P-17", CTA Docket, Vol. III, pp. 1606-1611.

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The Court shall proceed to determine whether petitioner has complied with the invoicing requirements under Section 113(A), (B) of the NIRC of 1997, as amended, which provides that a VAT taxpayer shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) Invoicing Requirements. - A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B*) Information Contained in the VAT Invoice or VAT Official Receipt*. -The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (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;
>
> (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component of the sale.
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> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
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> (4) In the case of sales in the amount of One thousand pesos (₱1,000.00) or more where the sale or transfers is made to a VAT-

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registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer, or client."

Section 113(A), (B) of the NIRC of 1997, as amended, is implemented by Section 4.113-1 of RR No. 16-05, which reads:

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

(A) A VAT-registered person shall issue:

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

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

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 Receipts 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 obliged 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;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable,

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> exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts of the taxable, exempt, and zero-rated components of the sale.
>
> (3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In its Amended 1st Quarter VAT Return for CY 2017,[49] petitioner reported total sales of ₱698,943,104.10 which included zero-rated sales amounting to ₱698,183,110.56, as shown below:

Vatable Sales	₱ 759,993.54[50]
Zero-rated Sales	698,183,110.56[51]
Total Sales	**₱ 698,943,104.10**

It bears noting that the reported zero-rated sales represent petitioner's sales of electricity generated through hydropower to NPC under BROT Agreement[52] and Second Accession Undertaking[53] while the VATable sales pertain to the penalties imposed by petitioner on its suppliers.

To support its zero-rated sales, petitioner submitted its Schedule of Zero-Rated Sale of Services,[54] General Ledgers for Capital Recovery Fee,[55] Fixed Operating and Maintenance Fee,[56] and Service Fee;[57] Official Receipts[58]; and Invoices (Power Bill).[59]

Upon verification, the Court noted that petitioner's total amount of zero-rated sales per invoices and official receipts is ₱929,535,916.50 whereas its total zero-rated sales per VAT return only amounted to ₱698,183,110.54. As shown below, zero-rated sales amounting to ₱45,395,023.85 were earned and declared during the period December 25 to 31, 2016. This should be deducted from the

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[49] Exhibit "P-108".
[50] Exhibit "P-108-1-a".
[51] Exhibit "P-108-1-b".
[52] Exhibit "P-8", inclusive of sub-markings, CTA Docket, Vol. III, pp. 1364-1446.
[53] Exhibit "P-9", inclusive of sub-markings, CTA Docket, Vol. III, pp.1447-1452.
[54] Exhibit "P-123".
[55] Exhibits "P-126-1" to "P-126-9".
[56] Exhibits "P-126-10" to "P-126-18".
[57] Exhibits "P-127-1" to "P-127-3".
[58] Exhibits "P-125-1" to "P-125-304".
[59] Exhibits "P-123-1" to "P-123-81".

amount of ₱929,535,916.50 as these sales were properly declared in December 2016. With respect to sales made on March 25, 2017 to April 25, 2017, a portion of such sales amounting to ₱185,957,782.10 representing those earned from April 1 to 25, 2017 was accrued only in the subsequent quarter. Thus, such amount was likewise deducted from the amount of ₱929,535,916.50. After effecting the foregoing deductions, the total amount of adjusted sales per invoices and official receipts tallied with the zero-rated sales declared per the Amended 1st Quarter VAT Return for CY 2017. Hence, petitioner was able to prove and substantiate its zero-rated sales for the 1st quarter of CY 2017 amounting to ₱698,183,110.54, as shown below:

Exhibit No.	Invoice (Power Bill) No.	Exhibit No.	OR No.	Amount (in Pesos) [A]	Sales/Revenue		Sales/Revenue declared in VAT Return [D] D = A-B-C
					December 25 to 31, 2016 [B]	April 1 to 25, 2017 [C]	
P-123-1	1000002276	P-125-24	2000002394	₱39,468,945.90	₱7,879,526.16		₱31,589,419.74
P-123-3	1000002278	P-125-25	2000002395	39,468,945.90	7,879,526.16		31,589,419.74
P-123-5	1000002280	P-125-26	2000002396	39,891,990.70	7,585,420.92		32,306,569.77
P-123-7	1000002282	P-125-27	2000002397	39,900,300.50	7,965,641.20		31,934,659.30
P-123-9	1000002284	P-125-28	2000002398	4,233,510.79	845,172.38		3,388,338.41
P-123-11	1000002286	P-125-29	2000002399	4,206,729.45	839,825.49		3,366,903.96
P-123-13	1000002288	P-125-30	2000002400	2,351,431.48	469,436.35		1,881,995.12
P-123-15	1000002290	P-125-31	2000002401	2,383,005.04	475,739.85		1,907,265.19
P-123-17	1000002292	P-125-32	2000002402	174,715.05	34,880.07		139,834.98
P-123-19	1000002294	P-125-33	2000002403	13,388,539.98	2,648,494.52		10,740,045.46
P-123-20	1000002295	P-125-34	2000002404	13,388,539.98	2,648,494.52		10,740,045.46
P-123-21	1000002296	P-125-35	2000002405	13,532,043.91	2,549,638.82		10,982,405.09
P-123-22	1000002297	P-125-36	2000002406	13,534,862.82	2,677,439.81		10,857,423.01
P-123-23	1000002298	P-125-37	2000002407	1,436,079.16	284,082.34		1,151,996.82
P-123-24	1000002299	P-125-38	2000002408	1,426,994.49	282,285.23		1,144,709.26
P-123-25	1000002300	P-125-39	2000002409	797,645.68	157,788.69		639,856.99
P-123-26	1000002301	P-125-40	2000002410	808,356.00	159,907.39		648,448.61
P-123-27	1000002302	P-125-41	2000002411	59,266.31	11,723.94		47,542.37
P-123-28	1000002303	P-125-51	2000002421	39,789,863.85			39,789,863.85
P-123-29	1000002304	P-125-60	2000002430	13,666,885.32			13,666,885.32
P-123-30	1000002305	P-125-52	2000002422	39,789,863.85			39,789,863.85
P-123-31	1000002306	P-125-61	2000002431	13,666,885.32			13,666,885.32

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P-123-32	100000 2307	P-125-53	200000 2423	40,216,348.38			40,216,348.38
P-123-33	100000 2308	P-125-62	200000 2432	13,813,372.67			13,813,372.67
P-123-34	100000 2309	P-125-54	200000 2424	40,224,725.75			40,224,725.75
P-123-35	100000 2310	P-125-63	200000 2433	13,816,250.18			13,816,250.18
P-123-36	100000 2311	P-125-55	200000 2425	4,267,933.04			4,267,933.04
P-123-37	100000 2312	P-125-64	200000 2434	1,465,934.99			1,465,934.99
P-123-38	100000 2313	P-125-56	200000 2426	4,240,933.94			4,240,933.94
P-123-39	100000 2314	P-125-65	200000 2435	1,456,661.45			1,456,661.45
P-123-40	100000 2315	P-125-57	200000 2427	2,370,550.72			2,370,550.72
P-123-41	100000 2316	P-125-66	200000 2436	814,228.59			814,228.59
P-123-42	100000 2317	P-125-58	200000 2428	2,402,381.01			2,402,381.01
P-123-43	100000 2318	P-125-67	200000 2437	825,161.58			825,161.58
P-123-44	100000 2319	P-125-59	200000 2429	176,135.64			176,135.64
P-123-45	100000 2320	P-125-68	200000 2438	60,498.45			60,498.45
P-123-46	100000 2321	P-125-94	200000 2443	39,877,026.75			39,877,026.75
P-123-47	100000 2322	P-125-79	200000 2452	13,695,997.37			13,695,997.37
P-123-48	100000 2323	P-125-71	200000 2444	39,877,026.75			39,877,026.75
P-123-49	100000 2324	P-125-80	200000 2453	13,695,997.37			13,695,997.37
P-123-50	100000 2325	P-125-72	200000 2445	40,270,806.79			40,270,806.79
P-123-51	100000 2326	P-125-81	200000 2454	13,831,243.47			13,831,243.47
P-123-52	100000 2327	P-125-73	200000 2446	40,312,841.25			40,312,841.25
P-123-53	100000 2328	P-125-82	200000 2455	13,845,680.40			13,845,680.40
P-123-45	100000 2320	P-125-68	200000 2438	60,498.45			60,498.45
P-123-46	100000 2321	P-125-94	200000 2443	39,877,026.75			39,877,026.75
P-123-47	100000 2322	P-125-79	200000 2452	13,695,997.37			13,695,997.37
P-123-48	100000 2323	P-125-71	200000 2444	39,877,026.75			39,877,026.75
P-123-49	100000 2324	P-125-80	200000 2453	13,695,997.37			13,695,997.37
P-123-50	100000 2325	P-125-72	200000 2445	40,270,806.79			40,270,806.79
P-123-51	100000 2326	P-125-81	200000 2454	13,831,243.47			13,831,243.47
P-123-52	100000 2327	P-125-73	200000 2446	40,312,841.25			40,312,841.25
P-123-53	100000 2328	P-125-82	200000 2455	13,845,680.40			13,845,680.40
P-123-54	100000 2329	P-125-74	200000 2447	4,268,547.88			4,268,547.88
P-123-55	100000 2330	P-125-83	200000 2456	1,466,057.65			1,466,057.65

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P-123-56	1000002331	P-125-75	2000002448	4,240,663.30			4,240,663.30
P-123-57	1000002332	P-125-84	2000002457	1,456,480.48			1,456,480.48
P-123-58	1000002333	P-125-76	2000002449	2,379,350.90			2,379,350.90
P-123-59	1000002334	P-125-85	2000002458	817,201.92			817,201.92
P-123-60	1000002335	P-125-77	2000002450	2,402,872.81			2,402,872.81
P-123-61	1000002336	P-125-86	2000002459	825,280.76			825,280.76
P-132-62	1000002337	P-125-78	2000002451	178,866.12			178,866.12
P-123-63	1000002338	P-125-87	2000002460	61,432.69			61,432.69
P-123-64	1000002339	P-125-90	2000002463	39,746,282.40		₱31,797,025.92	7,949,256.48
P-123-65	1000002340	P125-102	2000002472	13,600,212.39		10,867,542.72	2,732,669.67
P-123-66	1000002341	P-125-91	2000002464	39,746,282.40		31,797,025.92	7,949,256.48
P-123-67	1000002342	P125-103	2000002473	13,600,212.39		10,867,542.72	2,732,669.67
P-123-68	1000002343	P125-95	2000002465	40,138,771.36		32,111,016.99	8,027,754.37
P-123-69	1000002344	P125-104	2000002474	13,734,512.63		10,974,858.22	2,759,654.41
P-123-70	1000002345	P125-96	2000002466	40,180,668.00		32,144,534.40	8,036,133.60
P-123-71	1000002346	P125-105	2000002475	13,748,848.59		10,986,313.68	2,762,534.91
P-123-72	1000002347	P125-97	2000002467	4,254,552.64		3,403,641.91	850,910.73
P-123-73	1000002348	P125-106	2000002476	1,455,804.56		1,163,292.00	292,512.56
P-123-74	1000002349	P125-98	2000002468	4,226,759.49		3,381,407.49	845,352.00
P-123-75	1000002350	P125-107	2000002477	1,446,294.37		1,155,692.68	290,601.69
P-123-76	1000002351	P125-99	2000002469	2,371,549.75		1,897,239.80	474,309.95
P-123-77	1000002352	P125-108	2000002478	811,486.70		648,435.93	163,050.77
P-123-78	1000002353	P125-100	2000002470	2,394,994.54		1,915,995.63	478,998.91
P-123-79	1000002354	P125-109	2000002479	819,509.04		654,846.35	164,662.69
P-123-80	1000002355	P125-101	2000002471	178,279.68		142,623.94	35,655.73
P-123-81	1000002356	P125-110	2000002480	61,003.05		48,745.80	12,257.25
Total				**₱929,535,916.50**	**₱45,395,023.85**	**₱185,957,782.10**	**₱698,183,110.54**[60]

Upon careful examination of the submitted supporting official receipts, the Court finds the same to be compliant with the requirements set forth in Section 113(A), (B) of the NIRC of 1997, as amended, and Section 4.113-1 of RR No. 16-05. Thus, petitioner has sufficiently complied with the third requisite. In fine, the valid zero-rated sales amounted to ₱698,183,110.54.

[60] The difference of ₱0.02 from the amount stated in Exhibit "P-108-1-b" was due to rounding off.

Fourth and Fifth Requisites: Petitioner incurred/paid input taxes attributable to zero-rated sales

Respondent argues that pursuant to Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513, petitioner as an RE developer is entitled to zero-rated VAT on its local purchases of goods, properties and services needed for the development, construction and installation of its plant facilities as well as the whole process of exploring and developing renewable energy sources up to its conversion into power. As such, no output tax should be shifted to or passed on to RE developers. Conversely, no input tax shall be paid by RE developers on its transactions. There being no input tax to be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate (TCC) covering input VAT from its local purchases.[61]

Sections 25 and 26 of RA No. 9513 require that **RE developer should register with the DOE and secure a certification from the Renewable Energy Management Bureau (REMB) before RE developers can avail of tax incentives therein, *i.e.* VAT zero-rating of their purchases** of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities. Thus, before RE developers can avail of the fiscal incentives, they must first qualify under a certification process administered by the REMB.[62]

To prove that petitioner has availed of the fiscal incentives granted under Section 15(g) of RA No. 9513, respondent must establish by evidence that petitioner is an RE developer registered with the DOE and certified by REMB.

Notably, petitioner submitted Certifications[63] issued by the DOE to prove its assertion that it is not registered with, has no pending application for registration with the DOE, and has not availed of incentives under RA No. 9513 otherwise known as the "Renewable Energy Act of 2008".

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[61] Respondent's Answer, CTA Docket, Vol. II, pp. 616-617.
[62] *Commissioner of Internal Revenue vs. CBK Power Company Limited,* CTA EB No. 1861 (CTA Case Nos. 8246 & 8302), October 25, 2019.
[63] Exhibits "P-5" to "P-7", CTA Docket, Vol. III, pp. 1361-1363; Exhibits "P-19"and "P-20", CTA Docket, Vol. III, pp. 1613-1614.

Moreover, petitioner submitted its Certificates of Compliance (COC) as a generation company authorized to operate generation facilities pursuant to RA 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA) issued by the Energy Regulatory Commission, to wit:

1. COC No. 19-07-M-0049AL for Kalayaan I and II Pump Storage Power Plant;[64]
2. COC No. 19-07-M-0049BL for Caliraya Hydroelectric Power Plant;[65] and,
3. COC No. 19-07-M-0049CL for Botocan Hydroelectric Power Plant.[66]

Records show that petitioner is a generation company as evidenced by its COCs under EPIRA, not under RA No. 9513 ("Renewable Energy Act of 2008"). Moreover, no proof was submitted to show that petitioner is registered as an RE developer with the DOE, or that it was issued a certificate by the REMB in order to qualify for the availment of fiscal incentive under Section 15(g) of RA No. 9513 in relation to Sections 25 and 26 of RA No. 9513.

In *Commissioner of Internal Revenue vs. Team Energy Corporation (Formerly Mirant Pagbilao Corporation),*[67] the Supreme Court held that the requirements of the EPIRA must be complied with only if the claim for refund is based on EPIRA. Applying this by analogy, the requirements of RA No. 9513 must be complied only if the claim for refund is based on RA No. 9513.

A perusal of petitioner's VAT refund claim, however, shows that it is anchored on Section 108(B)(7) of the NIRC of 1997, as amended, and not on RA No. 9513. Thus, there was no need to prove compliance with the requirements of VAT refund claim under RA No. 9513.

Based on the foregoing discussion, petitioner's input taxes on its local purchases may thus be the subject of a claim for VAT refund or issuance of TCC, subject to submission of supporting documents that will prove that the input taxes claimed for the period January 1, 2017 to March 31, 2017 were actually due or paid, pursuant to Section 110(A) of the NIRC of 1997, as amended.

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[64] Exhibit "P-14", CTA Docket, Vol. III, p. 1603.
[65] Exhibit "P-15", CTA Docket, Vol. III, p. 1604.
[66] Exhibit "P-16", CTA Docket, Vol. III, p. 1605.
[67] G.R. No. 230412, March 27, 2019.

Section 110(A) of the NIRC of 1997, as amended, reads:

"SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

Relatedly, Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended, state:

> "**SECTION 4.110-1.** ***Credits for Input Tax.*** — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.
>
> It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.
>
> Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:
>
> (a) Purchase or importation of goods
>
> (1) For sale; or
>
> (2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or
>
> (3) For use as supplies in the course of business; or
>
> (4) For use as raw materials supplied in the sale of services; or
>
> (5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,
>
> (b) Purchase of real properties for which a VAT has actually been paid;
>
> (c) Purchase of services in which a VAT has actually been paid;
>
> (d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;
>
> (e) Transitional input tax allowed under Sec. 4.111(a) of these Regulations;
>
> (f) Presumptive input tax allowed under Sec. 4.111(b) of these Regulations;
>
> (g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations."

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SECTION 4.110-2. ***Persons Who Can Avail of the Input Tax Credit.*** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SECTION 4.110-3. ***Claim for Input Tax on Depreciable Goods.*** — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One Million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than P1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Moreover, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

"**SECTION 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.

(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property — public instrument *i.e.*, deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

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(c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value-Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."

Based on the foregoing provisions, in order for the input tax to be creditable against the output tax, it must be properly evidenced by VAT invoices for domestic purchases of goods or properties and by VAT official receipts (ORs) for lease or use of properties and purchase of services.

In addition, said supporting documents (*i.e.* VAT invoices or ORs) must comply with Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, and as implemented by Section 4.113-1 (A) and (B) of RR No. 16-05, as amended.

In its Amended 1st Quarter VAT Return for CY 2017, petitioner allegedly paid or incurred creditable input taxes in the total amount of ₱11,491,919.92 on its domestic purchases of goods other than capital goods, importation of goods other than capital goods, domestic purchases of services, payments for services rendered by non-residents, and local purchases and importation of capital goods exceeding ₱1 Million. Out of the total alleged creditable input taxes paid or incurred by petitioner, the output tax due in the amount of ₱91,199.21 was deducted. The remaining balance of ₱11,400,720.71 was the subject of petitioner's administrative claim for VAT refund or issuance of TCC filed on March 29, 2019.

To summarize, petitioner's unutilized creditable input tax in the amount of ₱11,400,720.71 for the 1st quarter of CY 2017 is itemized below:

Input tax on domestic purchases of goods other than capital goods	₱ 889,642.84
Amortization of Input tax on capital goods exceeding 1M	308,341.81
Input tax on importation other than capital goods	1,081,604.50
Input tax on domestic purchase of services	8,630,415.00
Input tax on services rendered by non-residents	581,915.77

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Total creditable input tax	**₱ 11,491,919.92**
Less: Output Tax	91,199.21
Unutilized creditable input tax	**₱ 11,400,720.71**

As aforesaid, on June 28, 2019, Ms. Teresita M. Dizon, OIC-ACIR, Large Taxpayer Division, granted petitioner's claim for VAT refund or issuance of TCC but in the reduced amount of ₱1,073,020.95,[68] which represents petitioner's **input taxes on importation of goods**. The remaining amount of ₱10,327,699.76[69] is the subject of the present judicial claim for refund.

To prove that petitioner incurred or paid the input taxes for the 1st quarter of CY 2017, petitioner offered in evidence various invoices, ORs, BIR Forms 1600 and other documents which were examined by the ICPA.

As indicated in the ICPA Report, the ICPA disallowed the total amount of ₱16,367.12, as summarized below, for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

Exhibit Ref.	Description	Input VAT
P-134-3	Overclaimed input tax due to foreign exchange rate used	₱ 545.58
P-134-6	Input tax on purchase goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) not issued in the name of the Petitioner	720.93
P-134-7	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) but the VAT was not separately indicated	130.71
P-134-8	Input tax on purchase of goods and services supported by a VAT Invoice (for goods) or a VAT OR (for services) issued in the Petitioner's name but without the Petitioner's TIN and/or address	3,431.64
P-134-9	Input tax on purchase of services supported by documents other than a VAT OR	1,617.84
P-134-10	Input tax on purchase of goods supported by VAT invoice. However, the sentence "This document is not valid for claiming input tax" is printed in the VAT invoice.	244.29
P-134-11	Input tax on purchase of goods supported by documents other than a VAT Invoice	342.86
P-134-12	Input tax on purchase of service supported by a VAT OR and purchase of goods supported by a VAT Invoice but not an original copy	9,333.27
Total		**₱ 16,367.12**

[68] Exhibit "R-4", BIR Records, Folder 1, p. 266.
[69] ₱11,400,720.71 less ₱1,073,020.95.

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The Court agrees with the foregoing observations of the ICPA and sustains the disallowance of the amount of ₱16,367.12.

In addition to the ICPA's disallowance, the Court, upon further verification, finds it proper to disallow the following input taxes in the total amount of ₱173,057.50:

Exhibit No.	Invoice No.	Date	OR No.	Date	Supplier	Input VAT
1) Input tax on domestic purchase of goods supported by Billing Statement with note: "Not Valid for Claiming Input Taxes" and dated December 15, 2016 which is outside the scope of claim for VAT refund						
P-122-1-218 to P-122-1-219	Billing Statement No. 0001167	15 December 2016	8275	17 January 2017	Questronix Corporation	₱168,000.00
2) Input tax on domestic purchase of goods supported by VAT Invoice but input tax not separately indicated						
P-122-1-41	0022464	05 January 2017	-	-	Rustan Supercenters, Inc.	16.47
3) Input tax on domestic purchase of services supported by Provisional Receipt with note: "Not Valid for Claiming Input Taxes"						
P-122-3-503 to P-122-3-504	Booking Confirmation No. 26682	27 March 2017	002922	30 March 2017	Coral Way City Hotel Corporation	441.03
4) Input tax on domestic purchase of services supported by VAT OR but with wrong TIN						
P-122-2-378 to P-122-2-383	364721	8 February 2017	0300021	24 January 2017	Fuji Xerox Philippines, Inc.	4,600.00[70]
Total						**₱173,057.50**

Hence, only the total amount of ₱10,138,275.14, as computed below, is duly substantiated pursuant to Section 110(A) and 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05, as amended:

Adjusted Claimed Input Tax		₱ 10,327,699.76
Less: Disallowances		
1. Exceptions/disallowances noted by the ICPA		

[70] Only the amortized Input VAT.

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a. Exhibit "P-134-3"	₱ 545.58	
b. Exhibit "P-134-6"	720.93	
c. Exhibit "P-134-7"	130.71	
d. Exhibit "P-134-8"	3,431.64	
e. Exhibit "P-134-9"	1,617.84	
f. Exhibit "P-134-10"	244.29	
g. Exhibit "P-134-11"	342.86	
h. Exhibit "P-134-12"	9,333.27	16,367.12
2. Disallowances found by the Court		173,057.50
Substantiated input taxes attributable to zero-rated sales		**₱ 10,138,275.14**

Sixth Requisite: Petitioner's input taxes are not transitional input taxes

The above input VAT does not appear to be transitional input taxes as provided under Section 111(A) of the NIRC of 1997, as amended, which states that:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* —
>
> *(A) Transitional Input Tax Credits.* — **A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person** shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax." *(Emphasis supplied)*

As the Supreme Court explained, "the 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."[71]

Since there is no showing that the above-stated input VAT are transitional input VAT, petitioner has complied with the sixth requisite for the grant of an input VAT refund.

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[71] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 158885 & 170680, October 2, 2009.

Seventh Requisite: Petitioner has unutilized input taxes available for refund

In *Chevron Holdings, Inc. (formerly: Caltex Asia Limited) vs. Commissioner of Internal Revenue (Chevron),*[72] the Supreme Court pronounced that:

> "Xxx, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence." *(Emphasis supplied)*

In other words, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or,

2. Refund all of the input taxes attributable to zero-rated sales.

In the present case, petitioner effectively opted to avail of the first option. To offset its output tax liability of ₱91,199.21, petitioner used all of its input taxes attributable to VATable sales amounting to ₱12,495.70 and a portion of its input taxes attributable to zero-rated sales amounting to ₱78,703.51, as shown below:

Particulars	Total	Input VAT allocation	
		VATable Sales	Zero-rated Sales
Total Available Input VAT	₱ 11,491,919.92	₱ 12,495.70	₱ 11,479,424.22

[72] G.R. No. 215159, July 5, 2022.

Less: Output VAT	91,199.21	12,495.70	78,703.51
Input VAT Claimed for Refund	11,400,720.71	-	11,400,720.71
Less: Refund of Input VAT Granted by the BIR			1,073,020.95
Net Input VAT Claimed for Refund per Petition			**₱ 10,327,699.76**

Based on the foregoing, petitioner is claiming the amount of ₱10,327,699.76 which represents the net available input tax after deducting the amount of output tax liability of ₱91,199.21 and the refund of input tax granted by the BIR amounting to ₱1,073,020.95 from the total available input tax of ₱11,479,424.22. Essentially, the amount of ₱10,327,699.76 already reflects the balance of input tax attributable to zero-rated sales which may be refunded. Thus, by claiming only the amount of ₱10,327,699.76, petitioner has effectively availed of the first option, *i.e.,* the taxpayer may charge a portion of its input taxes attributable to zero-rated sales to the output tax liability, and refund the balance, if any.

As discussed above, the input VAT per claim amounting to ₱10,327,699.76 shall be reduced by the disallowances per ICPA and per the Court's evaluation amounting to a total of ₱189,424.62. Hence, the valid input VAT attributable to zero-rated sales amounted to ₱10,138,275.14, as computed below:

Input VAT per claim	₱ 10,327,699.76
Less: Disallowances	
Per ICPA	16,367.12
Per Court's evaluation	173,057.50
Valid input VAT attributable to zero-rated sales	**₱ 10,138,275.14**

Since petitioner's valid input VAT of ₱10,138,275.14 already pertains to input taxes attributable to zero-rated sales and petitioner has substantiated all of its total reported zero-rated sales, then the entire amount of ₱10,138,275.14 shall be considered refundable, as shown below:

Valid zero-rated sales	₱ 698,183,110.54[73]
Divided by **total reported zero-rated sales**	698,183,110.56
Multiplied by valid input taxes attributable to zero-rated sales	10,138,275.14
Input tax attributable to zero-rated sales	₱ 10,138,275.14

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of ₱10,138,275.14,

[73] The difference of ₱0.02 was due to rounding off.

representing its unutilized input VAT attributable to its valid zero-rated sales for the first quarter of CY 2017.

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱10,138,275.14**, representing its unutilized input VAT attributable to its valid zero-rated sales for the first quarter of CY 2017.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
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.

ROMAN G. DEL ROSARIO
Presiding Justice