21-000078-0074

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10464

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DELA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR Main Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. AERON ALDRICH B. HALOS
ATTY. JOEL B. DADULA, CPA
21st Floor, BA Lepanto Building
8747 Paseo De Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 15, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 21, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10464**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
APR 15 2025 2:10PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner Lepanto Consolidated Mining Company (**petitioner/LCMC**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the

---

[1] Filed on 10 February 2021, Division Docket, pp. 6-66, with annexes.

[2] **SEC. 3**. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a **decision**, ruling or the inaction of the **Commissioner of Internal Revenue** on disputed assessments or **claims for refund of internal revenue taxes**, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (Emphasis supplied)

[3] **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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 matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.] (Emphasis supplied)

Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks a refund in the aggregate amount of ₱40,050,944.39, allegedly representing unutilized input value-added tax (**VAT**) attributable to zero-rated sales for the period from 01 January 2018 to 31 December 2018 or the Calendar Year (**CY**) 2018.

PARTIES TO THE CASE

Petitioner is a duly organized and existing domestic corporation engaged in the mining of gold and other precious metals at its mine site in Mankayan, Benguet, with its principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Makati City.[4] It is a VAT-registered[5] and Board of Investments (**BOI**)-registered[6] entity classified as an export producer of gold bullion, copper concentrate, gold and silver.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**), represented by the Litigation Division of the Bureau of Internal Revenue (**BIR**)-National Office, with office address at 7th Floor, Litigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

FACTS OF THE CASE

Petitioner avers that from 01 January 2018 to 31 December 2018, or CY 2018, it exported all or 100% of its total sales, as certified[8] by the BOI pursuant to BIR Revenue Memorandum Order (**RMO**) No. 9-2000.[9] These export sales are purportedly eligible for VAT zero-rating under Section 106(A)(2)(a)(1)[10] of the National Internal Revenue Code (**NIRC**)

---

4 Paragraph 1, II. Stipulation of Facts, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, pp. 162-163; Amended Articles of Incorporation (**AOI**), Exhibit "P-1", USB.

5 See Bureau of Internal Revenue (**BIR**) Certificate of Registration (BIR Form No. 2303) dated 20 July 1998, Exhibit "P-5", USB.

6 See Board of Investments (**BOI**) Certificates of Registration dated 21 November 2006, 05 January 2004 and 14 January 1997, Exhibits "P-3", "P-3a" and "P-3b", respectively, USB.

7 Par. 2, I. Stipulation of Facts, JSFI, Division Docket, p. 163.

8 See BOI Letter and Certification for the Calendar Year (**CY**) 2018, Exhibit "P-4a", USB.

9 Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.

10 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, **a value-added tax equivalent to twelve percent (12%) of the**

of 1997, as amended by Republic Act (**RA**) No. 10963[11], otherwise known as the Tax Reform for Acceleration and Inclusion Act (**TRAIN Law**).

During the period in question, petitioner claims that it had excess input VAT credits arising from its importation of goods other than capital goods, domestic purchases of services, services rendered by non-residents, and the amortization of deferred input taxes on capital goods exceeding ₱1 million, allocable to its zero-rated sales, in the aggregate amount of ₱40,050,944.39, which allegedly had not been applied against output tax as reported in its VAT Returns for the subject period.

Under Section 112(A)[12] of the NIRC of 1997, as amended, a VAT-registered person whose sales are zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund to the extent that such input tax attributable to zero-rated sales has not been applied against the output tax.

---

gross selling price or gross value in money of the goods or properties **sold**, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be **subject to zero percent (0%) rate**:
(a) *Export Sales.* — The term '*export sales*' means:
(1) **The sale and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.] (Emphasis supplied)

11 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

Thus, on 25 August 2020, petitioner filed an "Application for Tax Credits/Refunds (BIR Form No. 1914)"[13] (**administrative claim**) with the BIR-VAT Credit Audit Division (**BIR-VCAD**). In the said administrative claim, petitioner requested a refund amounting to ₱40,050,944.39, allegedly representing excess or unutilized input VAT attributable to zero-rated sales made from 01 January 2018 to 31 December 2018. Along with the application, petitioner also submitted the corresponding "Revised Checklist of Mandatory Requirements on Claims for VAT Refund."[14]

Thereafter, on 11 January 2021[15], petitioner received a copy of the BIR's VAT Refund Notice dated 27 November 2020[16] (**Denial Letter**), duly signed by Maria Luisa I. Belen, Assistant Commissioner of the Assessment Service (**ACIR Belen**), denying petitioner's VAT refund application, as follows:

> ...
>
> This has reference to your claim for value-added tax (VAT) refund covering the period from **January 1 to December 31, 2018** in the aggregate amount of Php40,050,944.39 pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> Please be informed that the processing of the aforementioned claim under Tax Verification Notice No. TVN201800116333 dated August 25, 2020 resulted in NIL amount of input tax allowable from VAT refund since the total deductions exceeded the amount of claim. Please refer to Annex "A" hereof for details.
>
> Tax refunds partake the nature of tax exemptions and are thus, construed *strictissimi juris* against the person or entity claiming the exemption. Therefore, if compliance with the law applicable thereto cannot be ascertained with particularity, there is cause to deny the refund.
>
> In view hereof, we regret to inform that your application for VAT refund for the period **January 1 to December 31, 2018** has been **DENIED** for lack of legal and factual basis.[17]
>
> ...

---

[13] Exhibit "P-6", USB.
[14] Exhibits "P-7" to "P-7a-1", id.
[15] Par. 3, II. Stipulation of Facts, JSFI, Division Docket, p. 163.
[16] Exhibit "R-4", BIR Records, p. 314.
[17] Emphasis and italics in the original text.

PROCEEDINGS BEFORE THE COURT

On 10 February 2021, within thirty (30) days from receipt of the Denial Letter[18], petitioner filed the instant Petition for Review[19], which was raffled to the Second Division[20] and docketed as CTA Case No. 10464. On 15 February 2021, the Court issued Summons[21] to respondent directing him or her to submit an Answer within 30 days from service. Respondent received the said Summons on 19 February 2021.[22]

On 19 March 2021, respondent filed a "Motion for Extension of Time to File Answer"[23], which the Second Division granted in the Order dated 22 March 2021.[24] On 24 May 2021, respondent filed an Answer[25], citing the following special and affirmative defenses: (1) the Court lacks jurisdiction over the instant refund claim covering CY 2018; and (2) petitioner is not entitled to the claim for refund.

On 27 May 2021, the Court issued a Notice of Pre-Trial Conference[26], setting the Pre-Trial Conference on 30 June 2021. Accordingly, on 25 June 2021, the parties filed their Pre-Trial Briefs.[27] Meanwhile, on 02 June 2021, respondent transmitted to the Second Division the present case's BIR Records, consisting of 316 pages in one (1) folder.[28] The Second Division noted the same in the Minute Resolution dated 03 June 2021.[29]

At the scheduled Pre-Trial Conference on 30 June 2021, the Second Division granted the parties a twenty (20)-day period to file their Joint Stipulation of Facts and Issues (**JSFI**).[30] On 27 July 2021, the parties filed a "Joint Motion to Admit Stipulation of Facts and Issues"[31], attaching

---

18 Exhibit "R-4", supra at note 16.
19 Supra at note 1.
20 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena, as Member.
21 Division Docket, p. 67.
22 See Summons dated 15 February 2021, id.
23 Id., pp. 69-71.
24 Id., p. 73.
25 Id., pp. 74-118, with attached Judicial Affidavits.
26 Id., pp. 120-121.
27 Petitioner's Pre-Trial Brief and Respondent's Pre-Trial Brief, id., pp. 127-133 and 144-146, respectively.
28 See Compliance dated 02 June 2021, id., pp. 122-124.
29 Id., p. 126.
30 See Minutes of the Hearing and Order, both dated 30 June 2021, id., pp. 148 and 149, respectively.
31 Id., pp. 159-161.

therewith their JSFI[32], which the Second Division approved and adopted in its Pre-Trial Order[33] of 06 October 2021, thereby terminating the pre-trial.

On 19 July 2021, petitioner filed a "Motion for Extension of Time to File Motion to Commission Independent Certified Public Accountant [**ICPA**]"[34], which the Second Division granted in the Order dated 28 July 2021.[35] In compliance with the Court's directive, on 08 November 2021, petitioner filed its "Motion to Commission [ICPA]"[36], requesting the appointment of Rose Marie S. Nacpil (**Nacpil**) as the ICPA for this case. The Second Division granted the requested commissioning during the 06 December 2021 videoconference hearing.[37]

In the trial that ensued thereafter, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Cherry H. Tan (**Tan**), petitioner's Assistant Vice President (**AVP**) for Purchasing; (2) ICPA Nacpil[38]; and (3) Claude Mark A. Imbat[39] (**Imbat**), petitioner's Chief Accountant.

During the 06 December 2021 videoconference hearing, petitioner presented Tan, who testified through her Judicial Affidavit dated 25 June 2021[40], that: (1) as AVP for Purchasing, she is responsible for procuring and importing all materials and equipment necessary for petitioner's mining operations; (2) petitioner is engaged exclusively in the mining business; (3) in 2018, petitioner imported materials and equipment essential for its mining operations in Mankayan, Benguet, particularly for the production of gold and other metals, which were subsequently exported overseas; (4) petitioner cleared and withdrew the imported items from the Bureau of Customs (**BOC**) after fully paying the duties and taxes, then delivered them to its Inventory Management

32 Id., pp. 162-165.
33 Id., pp. 168-172.
34 Id., pp. 156-158.
35 Id., p. 166.
36 Id., pp. 176-187, with annexes.
37 See Order dated 06 December 2021, id., pp. 191-192.
38 Judicial Affidavit [Of Commissioned Independent Certified Public Accountant, Rose Marie S. Nacpil], id., pp. 337-346; Minutes of the Hearings and Orders dated 28 February 2022, 30 March 2022, and 13 June 2022, id., pp. 298-299, 304-305, and 349-350, respectively.
39 Judicial Affidavit [Of Petitioner's witness, Mr. Claude Mark A. Imbat], id., pp. 215-226; Minutes of the Hearings and Orders dated 28 February 2022 and 13 October 2022, id., pp. 298-299, and 356-358, respectively.
40 See Judicial Affidavit (of Petitioner's witness, Ms. Cherry Tan) dated 25 June 2021, id., pp. 135-142; Order dated 06 December 2021, supra at note 37.

Department (**IMD**) at the mine camp in Mankayan, Benguet; (5) IMD oversees the management and custody of all inventory required for petitioner's mining operations; (6) the imported materials and equipment were recorded in an inventory management system known as Oracle, for which petitioner holds a permit to use a computerized accounting system (**CAS**); and (7) the imported inventory, equipment, and materials were subsequently retrieved and utilized by petitioner's end-users in mining operations, including underground gold ore extraction and the milling or processing of gold ore into gold bars, which were eventually exported.

Respondent did not conduct any cross-examination.[41]

On 03 February 2022, the Second Division received ICPA Nacpil's Report dated 04 February 2022[42], along with a USB. Subsequently, on 30 May 2022, ICPA Nacpil submitted an Amended ICPA Report[43] of even date, also with a USB. After conducting an examination and evaluation of petitioner's additional documents, ICPA Nacpil later submitted a Supplemental ICPA Report dated 22 November 2022[44], accompanied by a USB.

On 28 February 2022, petitioner presented the testimonies of its witnesses, ICPA Nacpil and Imbat.[45] ICPA Nacpil's presentation continued on 30 March 2022[46] for her initial cross-examination, then on 13 June 2022[47], during which she identified her Amended ICPA Report along with the accompanying USB, and later on 04 May 2023[48], when she identified her Supplemental ICPA Report and the USB submitted with it. On the other hand, Imbat's presentation continued on 13 October 2022 for his cross-examination.[49]

---

41 TSN dated 06 December 2021, p. 9.
42 Division Docket, pp. 195-214.
43 Id., pp. 310-335, with a list of exhibits.
44 Id., pp. 362-367.
45 See Minutes of the Hearing and Order, both dated 28 February 2022, id., pp. 298 and 299, respectively.
46 See Minutes of the Hearing and Order, both dated 30 May 2022, id., pp. 304 and 305, respectively.
47 See Minutes of the Hearing and Order, both dated 13 June 2022, id., pp. 349 and 350, respectively.
48 See Minutes of the Hearing and Order, both dated 04 May 2023, id., pp. 388 and 389-390, respectively.
49 See Minutes of the Hearing and Order dated 13 October 2022, id., pp. 356 and 357-358, respectively.

ICPA Nacpil identified her Judicial Affidavits dated 22 February 2022[50], 08 June 2022[51] and 27 April 2023[52], in which she stated the following: (1) she was tasked with evaluating the merits of petitioner's claim for a tax refund on its unutilized input VAT for CY 2018, reviewing and auditing petitioner's supporting documents, and submitting a report thereon; (2) petitioner is entitled to a VAT refund in the total amount initially at ₱35,258,561.42 (*i.e.*, the recommended amount *per* ICPA Report dated 04 February 2022[53]), later reduced to ₱18,483,751.59 (*i.e.*, the recommended amount *per* Amended ICPA Report dated 30 May 2022[54]) and finally adjusted to ₱32,238,919.72 (*i.e.*, the recommended amount *per* Supplemental ICPA Report dated 22 November 2022[55]); (3) in her Amended ICPA Report, she recommended a lower amount due to the non-availability of original inward remittance documents at that time; (4) after filing her Amended ICPA Report, petitioner informed her that it had already secured the original inward remittance documents; and (5) following a review of the additional documents, she submitted a Supplemental ICPA Report to reflect the correct refundable amount based on the original records provided by petitioner.

During her initial cross-examination on 30 March 2022, ICPA Nacpil confirmed that petitioner's administrative claim for a refund was timely filed. She stated that petitioner submitted BIR Forms No. 1914—initially on 14 July 2020 and the remainder on 25 August 2020. However, regarding the examination of supporting documents for the refund claim, ICPA Nacpil admitted that she had only reviewed copies certified solely by petitioner. Consequently, the Court directed her to amend her ICPA Report to exclude amounts supported by copies of documents for which she had not examined the originals.[56]

On 13 June 2022, ICPA Nacpil was cross-examined regarding her Amended ICPA Report. She affirmed that petitioner's refund application for the 1st quarter of CY 2018 was filed on 14 July 2020. She noted that she verified this filing date from the BIR's receiving stamp on the list of documents submitted. She further stated that all of petitioner's sales

---

50 See Judicial Affidavit of Independent Certified Public Accountant (**ICPA**) Rose Marie S. Nacpil (**Nacpil**) dated 22 February 2022, id., pp. 288-297.
51 See Judicial Affidavit of ICPA Nacpil dated 08 June 2022, id., pp. 337-346.
52 See Judicial Affidavit of ICPA Nacpil dated 27 April 2023, id., pp. 378-387.
53 Supra at note 42.
54 Supra at note 43.
55 Exhibit "P-25", supra at note 44.
56 TSN dated 30 March 2022, pp. 6-10.

invoices were stamped as zero-rated, and that the corresponding sales, amounting to ₱2,093,053,707.80, were supported by Bills of Lading (**BLs**). However, when asked whether the total amount of zero-rated sales was reflected in petitioner's Audited Financial Statements (**AFS**), ICPA Nacpil admitted that she had not verified this. Regarding the BDO Unibank, Inc. (**BDO**) Certificate of Inward Remittance, she could not recall whether the remitter's name was indicated therein. She also confirmed that some of petitioner's export sales were supported only by provisional receipts. Finally, ICPA Nacpil noted that there were substantial discrepancies between the amounts reflected in the Input VAT Schedule and the VAT Returns, certain input VAT amounts lacked supporting documents, and no BOC Certification was provided.[57]

In the Resolution dated 16 February 2023[58], this Court granted petitioner's "Motion to Defer Petitioner's Formal Offer of Evidence [FOE] and Admit ICPA's Supplemental Report"[59] after considering the supervening events that led to the discovery and production of additional documents relevant to substantiating the refund claim. It also scheduled the hearing for ICPA Nacpil's testimony on her Supplemental ICPA Report.

In the same Resolution, the Court noted that petitioner was prompted to locate the original copies of supporting documents necessary to address ICPA Nacpil's finding of "unreconciled export sales" amounting to ₱606,504,725.76, as reflected in the Amended ICPA Report. The Court further observed that ICPA Nacpil had significantly reduced the initially recommended refund amount by 47.58%, representing a ₱16,774,809.83 difference (from ₱35,258,561.42 in the Original ICPA Report to ₱18,483,751.59 in the Amended ICPA Report) after revising or amending her report due to the unreconciled export sales. Subsequently, in the Supplemental ICPA Report, the recommended refund amount was increased to ₱32,238,919.72 after taking into account petitioner's additional documents.[60]

On 04 May 2023, ICPA Nacpil was cross-examined regarding her Supplemental ICPA Report. She attested that she had previously filed an Amended ICPA Report because her initial ICPA Report considered

57 TSN dated 13 June 2022, pp. 9-16.
58 Division Docket, pp. 372-374.
59 Id., pp. 360-367, with attached Supplemental ICPA Report.
60 Supra at note 58.

photocopies of the inward remittance documents. Later, when petitioner presented the original documents for her examination, she filed a Supplemental ICPA Report to reflect this development. When asked whether these inward remittance documents were submitted during the administrative proceedings before the BIR, ICPA Nacpil responded that she was not privy to that information, as she had no participation in those proceedings.[61]

Petitioner did not conduct any redirect examination.[62]

As for Imbat, he identified his Judicial Affidavit dated 23 February 2022[63], in which he declared that: (1) petitioner is a domestic corporation engaged in the large-scale mining of gold and other precious metals at its mine site in Mankayan, Benguet; (2) petitioner is not engaged in any other business; (3) as petitioner's Chief Accountant, he oversees and manages all accounting and tax-related concerns, including refund claims, as well as the custody and safekeeping of pertinent documents; (4) petitioner filed its administrative claim with BIR-VCAD on 25 August 2020, as evidenced by the receiving stamp on the submission; (5) petitioner received the BIR's Denial Letter[64] on 11 January 2021; (6) petitioner submitted proof of importations during CY 2018, along with evidence of payment of input VAT, in support of its VAT refund application; and (7) petitioner also submitted documents to substantiate its zero-rated export sales for 2018.

Respondent did not conduct any cross-examination.[65]

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023[66], the present case was transferred to the First Division.[67]

---

61 TSN dated 04 May 2023, pp. 6-8.
62 Id., p. 8.
63 See Judicial Affidavit of Claude Mark A. Imbat dated 23 February 2023, supra at note 39.
64 Exhibit "R-4", supra at note 16.
65 TSN dated 13 October 2022, p. 3.
66 See Notice dated 29 May 2023, Division Docket, p. 396.
67 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.

After petitioner completed its presentation of evidence and the Second Division granted an extension of time to file an FOE[68] (prior to the aforesaid reorganization), petitioner filed its FOE[69] on 31 May 2023, which included one (1) USB containing Exhibits "P-1" to "P-50," inclusive of sub-markings. On 14 June 2023, respondent filed his or her Comment/Opposition[70] thereto. In turn, petitioner filed a Reply[71] on 21 June 2023.

In the Resolution dated 02 August 2023[72], the First Division admitted petitioner's exhibits, *except* for the following: (**a**) Exhibits "P-11" to "P-11c" and "P-11-1" to "P-11c-1"[73], for failure to correspond with the description in the FOE; and (**b**) Exhibits "P-15" to "P-15d-10" and "P-35a" to "P-35fo"[74], for inclusion of documents not covered by the description in the FOE (collectively, "**Denied Exhibits**"). Additionally, the Court noted minor errors in the referencing of exhibits *per* FOE[75]

68 See Resolution dated 22 May 2023, Division Docket, p. 395.
69 Id., pp. 398-403.
70 Id., pp. 408-410.
71 Id., pp. 412-416, with Annex "A".
72 Id., pp. 421-425.
73

Exhibit No.	Description in FOE	Proper Description
"P-11 to P-11c"	Schedule of Exportations and Foreign Currency Remittances.	Reconciliation of Foreign Currency Remittances.
"P-11-1" to "P-11c-1	Reconciliation of Foreign Currency Remittances.	Schedule of Exportations and Foreign Currency Remittances.

74

Exhibit No.	Description in FOE	Proper Description
"P-35a" to "P-35fo"	Commercial Invoices for Importations FY 2018	Commercial Invoices for Importations from April 2017 to December 2018. Note: Some invoices are illegible.

75

Exhibit No. *per* FOE	Exhibit No. *per* Verification	Description in FOE
"P-10" to "P-10d"	"P-10a" to "P-10d"	Schedule of Zero-Rated Export Sales
"P-10a" to "P-10d-1"	"P-10a-1" to "P-10d-1"	Schedule of Taxable Sales
"P-10a-1" to "P-10d-1-az"	"P-10a-1-a" to "P-10d-1-az"	Invoices/ORs of Taxable Sales
"P-36a" to "P-35fn"	"P-36a" to "P-36fn"	Airway Bills/Bills of Lading for Importations FY 2018

and scheduled the initial presentation of respondent's evidence for 19 September 2023.

On 19 September 2023[76], respondent presented his or her witnesses, Revenue Officers (**ROs**) Jonathan G. Simon (**Simon**) and Junelle Aira C. Salamanca (**Salamanca**).

RO Simon testified through his Judicial Affidavit dated 24 May 2021[77], stating the following: (1) he holds the position of RO III and is assigned to the BIR-VCAD; (2) his duties include the verification and evaluation of tax credit or refund cases; (3) he conducted the audit and investigation of petitioner's claim for VAT refund for CY 2018; (4) Tax Verification Notice (**TVN**) No. TVN201800116333 dated 25 August 2020[78] was issued to authorize the investigation and evaluation of petitioner's refund claim; (5) in the Memorandum Report dated 10 November 2020[79], his team recommended the denial of petitioner's refund claim; and (6) the BIR-VCAD head office approved the said recommendation before the entire case docket was forwarded to the Tax Audit Review Division (**TARD**) for further review and evaluation.

During cross-examination, RO Simon affirmed that petitioner is still not entitled to a refund despite having no output VAT (since its sales are zero-rated) against which the input VAT may be offset.[80]

Petitioner did not conduct any redirect examination.[81]

Next, RO Salamanca testified through her Judicial Affidavit dated 21 May 2021[82], stating the following: (1) she holds the position of RO II and is assigned to the TARD; (2) her responsibilities include verifying and evaluating tax credit or refund cases forwarded by the BIR-VCAD and regional offices; (3) she was among those who reviewed and examined the case docket for petitioner's refund claim for CY 2018; (4) her team concurred with the BIR-VCAD's recommendation to deny petitioner's refund claim; (5) aside from the BIR-VCAD's findings, her

76 See Order dated 19 September 2023, Division Docket, pp. 427-429.
77 Exhibit "R-6", id., pp. 89-104, with exhibits.
78 Exhibit "R-1", BIR Records, p. 269.
79 Exhibit "R-2", id., pp. 299-302.
80 TSN dated 19 September 2023, pp. 8-12.
81 Id., p. 12.
82 Exhibit "R-7", Division Docket, pp. 108-118, with exhibits.

team identified additional issues, which were detailed in their Memorandum Report dated 27 November 2020[83]; and (6) ACIR Belen approved her team's recommendation, leading to the issuance of the Denial Letter.[84]

On cross-examination, RO Salamanca admitted that her name does not appear on the TVN and that her authority to examine petitioner's refund claim did not stem from the TVN. Despite this, she added her own findings to petitioner's refund claim.[85]

On redirect examination, RO Salamanca affirmed that she was authorized to review petitioner's refund claim, as it falls within TARD's function to evaluate tax credit or refund cases forwarded by the BIR-VCAD.[86]

Respondent did not conduct any re-cross examination.[87]

On 02 October 2023, respondent filed his or her FOE[88], consisting of Exhibits "R-1" to "R-7-a". Petitioner failed to file a comment thereto despite due notice.[89]

In the Resolution dated 28 February 2024[90], the First Division admitted all of respondent's exhibits and granted both parties a period of 30 days from notice within which to file their respective memoranda.

In compliance with the Court's directive, on 04 April 2024, respondent filed his or her Manifestation[91], therein stating that he or she is adopting the arguments raised in his or her Answer dated 21 May 2021[92] as his or her Memorandum. On the other hand, on 16 April 2024,

---

[83] Exhibit "R-3", BIR Records, pp. 307-308.
[84] Exhibit "R-4", supra at note 16.
[85] TSN dated 19 September 2023, pp. 21-22.
[86] Id., pp. 22-23.
[87] Id., p. 23.
[88] Division Docket, pp. 446-450.
[89] See Records Verification dated 04 January 2024, id., p. 463.
[90] Id., pp. 466-467.
[91] Id., pp. 468-470.
[92] Supra at note 25.

petitioner filed its Memorandum[93], attached to a Motion to Admit[94], which the First Division granted in the interest of justice.[95]

In the Minute Resolution dated 22 April 2024, the First Division considered the instant case submitted for decision.[96]

ISSUES

As the parties so stipulated, the sole issue for this Court's resolution is —

> WHETHER PETITIONER LEPANTO CONSOLIDATED MINING COMPANY IS ENTITLED TO A TAX REFUND OF ITS INPUT VALUE-ADDED TAX (VAT) COVERING THE PERIOD FROM 01 JANUARY 2018 TO 31 DECEMBER 2018, OR THE CALENDAR YEAR (CY) 2018, AMOUNTING TO ₱40,050,944.39. [97]

ARGUMENTS

Petitioner asserts that it is entitled to the subject refund claim, arguing that: (1) it was filed with the BIR within two (2) years after the close of the taxable quarter in which the sales were made; (2) it submitted its judicial claim within 30 days from receipt of respondent's Denial Letter[98]; (3) it is a VAT-registered entity; (4) it is engaged in zero-rated sales, and the proceeds thereof were duly accounted for in compliance with Bangko Sentral ng Pilipinas (**BSP**) rules and regulations; (5) the input tax being claimed for refund is not transitional input tax; (6) the input taxes being claimed have already been paid by petitioner; and (7) petitioner have not applied the input taxes being claimed for refund against its output taxes during the relevant quarter or in succeeding quarters.

---

93 Division Docket, pp. 477-485.
94 Id., pp. 473-475.
95 See Minute Resolution dated 22 April 2024, id., p. 486.
96 Id.
97 Par. 1, III. Issues, JSFI, id., p. 163.
98 Exhibit "R-4", supra at note 16.

As earlier noted, in his or her Answer[99], respondent contends that: (1) this Court lacks jurisdiction over the instant refund claim covering CY 2018; and (2) petitioner is not entitled to the claim for refund.

RULING OF THE COURT

After a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds the instant petition unmeritorious.

Petitioner anchors its claim on Sections 110(B)[100], 112(A) and (C) of the NIRC of 1997, as amended by RA 10963 or the TRAIN Law, which are quoted hereunder:

> ...
> **SEC. 110**. *Tax Credits.* —
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
> ...
>
> **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-

---

99 Supra at note 25.

100 As amended by Republic Act No. 9361, "AN ACT AMENDING SECTION 110(B) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES".

rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

(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.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

...

Based on the foregoing provisions, jurisprudence has laid down certain requisites that a taxpayer-applicant must satisfy to successfully obtain a refund of input VAT. These requisites are categorized as follows:

<u>As to the timeliness of the filing of the administrative and judicial claims:</u>

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made.[101]

2. In case of full or partial denial of the refund claim, or the failure on the part of respondent to act on the said claim

[101] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, 03 August 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007.

within a period of ninety (90) days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 90-day period.[102]

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

3. The taxpayer is a VAT-registered person.[103] Relative thereto, it must be emphasized that registration is an indispensable requirement under our VAT law.[104]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales.[105]

5. For zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2)[106], the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.[107]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes.[108]

7. The input taxes are due or paid.[109]

---

102 *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, 29 March 2023; *Commissioner of Internal Revenue v. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, 01 February 2023; *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, 17 March 2021. [cf: Sections 7(a)(1) and (2), and 11 (first paragraph), Republic Act (**RA**) No. 1125, as amended by RA 9282]

103 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra at note 101; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101.

104 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.

105 Id.

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

107 *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra at note 101; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101.

108 Id.

109 Id.

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.[110]

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[111]

In addition, in claims for VAT refund, applicants must satisfy the substantiation and invoicing requirements under the NIRC of 1997, as amended, and other implementing rules and regulations.[112] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[113] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[114] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[115]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[116]

---

110 *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra at note 101; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101.

111 *AT&T Communications Services Philippines, Inc., v. Commissioner of Internal Revenue*, supra at note 101; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra at note 101; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 101.

112 *Team Energy Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 197663 and 197770, 14 March 2018.

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

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

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

116 *Team Energy Corporation v. Commissioner of Internal Revenue*, supra at note 112.

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[117] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Based on the foregoing, this Court will proceed to determine whether petitioner complied with the aforementioned requisites.

<u>FIRST (1ST) AND SECOND (2ND) REQUISITES:</u>
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND MUST BE TIMELY FILED.

In accordance with Section 112(A)[118] of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized 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 are made.

Petitioner's present claim covers all four (4) quarters of CY 2018. Counting two (2) years from the close of each quarter, the respective deadlines for filing the administrative claim for each quarter are as follows:

Quarter (CY 2018)	Period Covered	Last Day for Filing an Administrative Claim	Filing Date of Administrative Claim
1st Quarter	January to March 2018	31 March 2020 (but was extended until **15 July 2020**)[119]	25 August 2020

[117] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 201665 and 201668, 30 August 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, 29 September 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, 02 July 2014; *Rafael Arsenio S. Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, 30 April 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, 16 March 2007; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

[118] Supra at pp. 15-16.

[119] Pursuant to Section 4(z) of Republic Act (**RA**) No. 11469, as implemented by Section 2, of BIR Revenue Regulations (**RR**) No. 16-2020, filing of claims for VAT refund for calendar quarter ending 31 March 2018 was extended until 15 July 2020.

2nd Quarter	April to June 2018	30 June 2020 (but was extended until **31 August 2020**)[120]	
3rd Quarter	July to September 2018	30 September 2020	
4th Quarter	October to December 2018	31 December 2020	

Although petitioner claims that its administrative claim for the 1st quarter of CY 2018 was filed on 14 July 2020[121], there is no evidence to substantiate this assertion. This Court cannot give credence to ICPA Nacpil's testimony regarding the alleged filing date, as indicated on the BIR's receiving stamp on the list of submitted documents, marked as Exhibit "P-7a". The receiving stamp was affixed to a blank document rather than the tax refund application form (BIR Form No. 1914) itself, rendering it insufficient proof of filing.

Conversely, records confirm that petitioner filed its administrative claim for a refund covering all four (4) quarters of CY 2018 on **25 August 2020**.[122] Thus, since the deadline for filing an administrative claim for the 1st quarter of CY 2018 was extended only until 15 July 2020, petitioner timely filed its administrative claim for the 2nd to 4th quarters of CY 2018, whereas the claim for the 1st quarter must be deemed filed beyond the prescriptive period.

As to the timeliness of the judicial claim, Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, provides that respondent has 90 days from the date of submission of the complete documents, in support of the application for refund or tax credit, within which to grant or deny the claim. Section 112(C) speaks of two (2) periods: (1) the period of 90 days which serves as a waiting period to give time for respondent or the BIR to act on the administrative claim for refund or tax credit; and (2) the period of 30 days which refers to the period for filing a judicial claim with this Court.

Thus, from the filing of petitioner's administrative claim on 25 August 2020, respondent had 90 days, or until **23 November 2020**, to act on the claim. If no action was taken within this period, petitioner

120 Pursuant to Section 4(z) of RA 11469 as implemented by Section 2, of BIR RR No. 16-2020, filing of claims for VAT refund for calendar quarter ending 30 June 2018 was extended until 31 August 2020.

121 Par. 33, Statement of Facts and Proceedings, Petition for Review, supra at note 1, p. 11.

122 Exhibit "P-6", USB.

had 30 days from its expiration, or until **23 December 2020**, to file a judicial claim. It should be noted that due to the COVID-19 pandemic, the 90-day processing period for VAT refund claims, as mandated under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, was **suspended from 11 September 2020 to 19 December 2020**, in accordance with Section 4 of Revenue Regulations (**RR**) No. 27-2020[123], *viz*:

> ...
>
> SEC. 4. *Processing of VAT Refunds.* — The 90-day processing of VAT refund claims pursuant to Section 112(C) of the Tax Code of 1997, as amended, is hereby suspended during the effectivity of R.A. No. 11494 or until the next adjournment of the Eighteenth Congress on December 19, 2020.
>
> ...

Consequently, due to the suspension from 11 September 2020 to 19 December 2020, only sixteen (16) days out of the 90-day processing period had elapsed since petitioner filed its administrative claim filed on 25 August 2020. Respondent could resume processing the claim only within the remaining seventy-four (74) days (90 days minus 16 days) following the suspension period, which *commenced on 20 December 2020 and extended until 04 March 2021.*

In this case, petitioner received a copy of the Denial Letter[124], totally denying the subject refund claim of unutilized input VAT for CY 2018, on **11 January 2021**[125] (within the 90-day processing period, as extended until 04 March 2021). Counting 30 days therefrom, petitioner had until **10 February 2021** to file its judicial claim for refund. Accordingly, the instant Petition for Review was also seasonably filed on **10 February 2021.**[126]

Given the foregoing, this Court finds that petitioner satisfied the above-stated *1st* and *2nd* ***requisites*** relative to the refund claim for the 2nd to 4th quarters of CY 2018.

---

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

124 Exhibit "R-4", supra at note 16.

125 Par. 3, II. Stipulation of Facts, JSFI, Division Docket, p. 163.

126 Supra at note 1.

THIRD (3[RD]) REQUISITE:
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Indisputably, petitioner is a VAT-registered taxpayer with Taxpayer Identification Number (**TIN**) 000-160-247-00000, as evidenced by its BIR Certificate of Registration No. OCN 121RC20210000000029 dated 08 September 2021.[127] Thus, petitioner complied with the ***3rd requisite***.

FOURTH (4[TH]) AND FIFTH (5[TH]) REQUISITES:
PETITIONER MUST BE ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-ATED SALES.

THE CORRESPONDING FOREIGN CURRENCY EXCHANGE PROCEEDS BE DULY ACCOUNTED FOR ACCORDING TO BANGKO SENTRAL NG PILIPINAS (BSP) RULES AND REGULATIONS.

The *4th and 5th* ***requisites*** require that the taxpayer be engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1)[128], and 108(B)(1) and (2)[129] of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

The records of the case show that petitioner was incorporated primarily to engage in the exploration and mining of gold, silver, copper, lead, zinc, and various other ores, metals, minerals, oil, gas, and coal,

---

127 Exhibit "P-5", USB.

128 Supra at note 10.

129 **SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties. —*

...

(A) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

along with their related by-products.[130] Petitioner is also registered with the BOI under multiply certifications, namely: (1) BOI Certificate of Registration No. 2006-144[131], as a New Producer of Copper Concentrate, Gold and Silver; (2) BOI Certificate of Registration No. EP 2004-001[132], as New Export Producer of Gold Bullion; and (3) BOI Certificate of Registration No. EP 96-334[133], as New Producer of Gold Bullion.

Petitioner claims that it is engaged in automatically zero-rated sales, as it exported all or **100%** of its total sales in CY 2018, as evidenced by the BOI-issued Certification.[134]

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

> ...
> SEC. **106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '***export sales***' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.][135]
>
> ...

---

130 Exhibit "P-1", USB.
131 Exhibit "P-3", id.
132 Exhibit "P-3a", id.
133 Exhibit "P-3b", id.
134 Par. 39, Petition for Review, supra at note 1, p. 12; Exhibit "P-4a", USB.
135 Emphasis supplied and italics in the original text.

Based on the foregoing provision, for an export sale to qualify for zero-rating, the following essential elements must be met:

1. The sale was made by a VAT registered person;

2. There was sale and actual shipment of goods from the Philippines to a foreign country; and

3. The sale was paid for in acceptable foreign currency or its equivalent in goods or services and was accounted for in accordance with the rules and regulations of the BSP.

As for the ***1st essential element***, it was already settled that petitioner is a VAT-registered person.

Relative to the ***2nd essential element***, it is incumbent upon the VAT-registered person to have, at the minimum, the following supporting documents:

1. The sales invoice as proof of sale of goods; and

2. The BL or AWB as proof of actual shipment of goods from the Philippines to a foreign country.

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

It is equally important to consider that the VAT zero-rated sales, must be duly supported by VAT zero-rated sales invoices in accordance with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B)[136] of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005[137], as amended. Further, the sales invoices must be duly

---

[136] SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
(A) *Invoicing Requirements.* — ...
(B) *Accounting Requirements.* — ...

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

registered with the BIR, as prescribed under Section 237[138], in relation to Section 238[139] of the NIRC of 1997, as amended.

As indicated in petitioner's Quarterly VAT Returns for the four (4) quarters of CY 2018 filed through the BIR's electronic Filing and Payment System (**eFPS**), petitioner declared total sales amounting to ₱2,119,229,500.04, which included zero-rated sales in the amount of **₱2,093,053,707.46**, broken down as follows:

Exhibit	CY 2018	VATable Sales	Zero-Rated Sales	Total Sales
"P-9"	1st Quarter	₱7,597,933.33	₱424,778,356.21	₱432,376,289.54
"P-9a"	2nd Quarter	8,245,128.08	523,760,840.29	532,005,968.37
"P-9b"	3rd Quarter	6,784,492.92	537,271,745.77	544,056,238.69
"P-9c"	4th Quarter	3,548,238.25	607,242,765.19	610,791,003.44
	Total	**₱26,175,792.58**	**₱2,093,053,707.46**	**₱2,119,229,500.04**

To substantiate its declared zero-rated sales amounting to ₱2,093,053,707.46, petitioner submitted the following documents: "Schedule of Zero-Rated Export Sales"[140], BIR Summary List of Sales (**SLS**)[141], "Summary of Export Declarations in 2018"[142], export declaration documents[143], and the related provisional and final invoices.[144] These documents were examined by ICPA Nacpil.

However, in the Resolution dated 02 August 2023[145], this Court denied admission to the alleged "Schedule of Exportations and Foreign Currency Remittances"[146] and "Reconciliation of Foreign Currency Remittances"[147], for their failure to correspond with the description in

[138] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*
[139] SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.*
[140] Exhibits "P-10a" to "P-10d", USB.
[141] Exhibits "P-30" to "P-30k", id.
[142] Exhibit "P-14", id.
[143] Exhibits "P-14a" to "P-14x", id.
[144] Exhibits "P-12" to "P-12-30" and "P-13" to "P-13-48", respectively, id.
[145] Supra at note 72.
[146] Exhibits "P-11" to "P-11c", USB.
[147] Exhibits "P-11-1" to "P-11c-1", id.

the FOE, and the AWBs covering exports in 2018[148], for inclusion of documents not covered by the description in the FOE.

A perusal of the submitted documents reveals that, out of the total zero-rated sales of ₱1,668,275,352.03 for the 2nd to 4th quarters of CY 2018 *per* "Schedule of Zero-Rated Sale of Goods"[149], a total of ₱995,967,215.64 shall be denied VAT zero-rating for the reasons stated below:

Exhibit No.	Reference	Amount in US$	Amount in Php	Reason for Disallowance
2nd Quarter of CY 2018 (Refer to Exhibit "P-10b")				
"P-12-7"	PI 0418	$1,709,464.86	₱89,128,078.91	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-8"	PI 0385	1,955,531.68	102,068,976.11	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-9"	PI 0390	2,006,700.69	106,481,558.75	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-10"	PI 0429	1,861,207.88	98,761,273.81	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-11"	PI 0382	10,923.54	568,865.01	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-12"	PI 0383	(36,852.62)	(1,921,421.65)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-6"	FI 7388	(88,044.96)	(4,435,176.71)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-7"	FI 7389	(122,469.79)	(6,244,856.98)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-12-13"	PI 0398	(22,868.87)	(1,166,106.49)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-10"	FI 7394	(7,620.53)	(383,876.52)	[[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-11"	FI 7503	(161,039.22)	(8,144,558.32)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-12"	FI 7504	(87,237.43)	(4,543,063.54)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10b").]
"P-13-13"	FI 7400	327,910.70	17,096,608.26	Supported by invoice but without AWB/BL
"P-13-14"	FI 7501	306,698.13	15,990,626.92	Supported by invoice but without AWB/BL
"P-13-15"	FI 7510	32,228.17	1,682,149.39	Supported by invoice but without AWB/BL
"P-13-16"	FI 7509	152,290.80	7,948,818.45	Supported by invoice but without AWB/BL
"P-13-17"	FI 7511	312,998.18	16,336,940.11	Supported by invoice but without AWB/BL
"P-13-18"	FI 7512	339,781.51	17,734,896.05	Supported by invoice but without AWB/BL

148 Exhibits "P-15" to "P-15d-10", id.

149

CY 2018	Zero-Rated Sales				Minor Difference
	Per Schedule		*Per* Quarterly VAT Return		
	Exhibit	Amount	Exhibit	Amount	
2nd Quarter	"P-10b"	₱523,760,841.07	"P-9a"	₱523,760,840.29	₱0.78
3rd Quarter	"P-10c"	537,271,745.41	"P-9b"	537,271,745.77	(0.36)
4th Quarter	"P-10d"	607,242,765.55	"P-9c"	607,242,765.19	0.36
Total		**₱1,668,275,352.03**		₱1,668,275,351.25	₱0.78

Exhibit No.	Reference	Amount in US$	Amount in PhP	Reason for Disallowance
"P-13-19"	FI 7513	13,202.42	689,100.08	Supported by invoice but without AWB/BL
N/A	S 10-18	169,935.20	9,017,271.38	Not supported by invoice and AWB/BL
N/A	S 11-18	166,548.84	8,837,580.87	Not supported by invoice and AWB/BL
N/A	S 12-18	441,790.97	23,442,754.31	Not supported by invoice and AWB/BL
N/A	S S04-18	19,907.95	1,056,375.41	Not supported by invoice and AWB/BL
"P-13-20"	FI 7397	785.54	40,908.35	Supported by invoice but without AWB/BL
"P-13-21"	FI 7398	104,826.93	5,459,072.09	Supported by invoice but without AWB/BL
"P-13-22"	FI 7399	(690.65)	(35,966.76)	[This is an adjustment *per* the *Schedule of Zero-Rated Sale of Goods* (Exhibit "P-10b")]
N/A	ADJUSTMENT	-	6,727,776.39	Not supported by invoice and AWB/BL
N/A	ADJUSTMENT	-	7,670,049.36	Not supported by invoice and AWB/BL
N/A	ADJUSTMENT	-	10,999,774.94	Not supported by invoice and AWB/BL
Subtotal-2nd Quarter		***$9,405,909.92***	***₱520,864,427.98***	
3rd Quarter of CY 2018 (Refer to Exhibit "P-10c")				
"P-12-18"	PI 0397	$1,233,280.34	₱65,897,868.60	The word "zero-rated" was not written or printed prominently in the invoice.
"P-13-23"	FI 7505	(5,206.76)	(271,470.24)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-24"	FI 7506	(81,895.15)	(4,141,847.14)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-25"	FI 7507	(54,277.01)	(2,812,851.97)	[[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-26"	FI 7508	4,205.45	219,006.98	The word "zero-rated" was not written or printed prominently in the invoice.
"P-12-22"	PI 0454	10,170.24	541,809.57	Supported by invoice with "SUPER[C]EDED" marking
"P-13-27"	FI 7524	(236,589.29)	(12,554,137.33)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
N/A	ADJUSTMENT	-	352,983.39	Not supported by invoice and AWB/BL
"P-13-28"	FI 7517	250,985.14	13,410,889.07	Supported by invoice but without AWB/BL
"P-13-29"	FI 7519	208,570.20	11,144,531.72	Supported by invoice but without AWB/BL
"P-13-30"	FI 7520	297,654.50	15,904,573.06	Supported by invoice but without AWB/BL
"P-13-31"	FI 7521	481,446.58	25,648,584.85	Supported by invoice but without AWB/BL
"P-13-32"	FI 7522	274,582.73	14,628,120.11	Supported by invoice but without AWB/BL
"P-13-33"	FI 7525	268,107.45	14,462,251.92	Supported by invoice but without AWB/BL
N/A	S 19-18	376,191.19	20,292,505.32	Not supported by invoice and AWB/BL
N/A	S 20-18	293,590.26	15,836,845.80	Not supported by invoice and AWB/BL
N/A	S S05-18	14,505.10	782,434.03	Not supported by invoice and AWB/BL
"P-13-34"	FI 7514	(3,563.32)	(189,080.32)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-35"	FI 7515	(1,016.05)	(53,914.43)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-36"	FI 7516	(111.59)	(5,921.37)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
"P-13-37"	FI 7518	(1,113.86)	(59,104.97)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
N/A	ADJUSTMENT	-	(11,108,910.57)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
N/A	ADJUSTMENT	-	(14,288,690.12)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10c").]
Subtotal-3rd Quarter		***$3,329,516.15***	***₱153,636,475.96***	

Exhibit No.	Reference	Amount in US$	Amount in PhP	Reason for Disallowance
4th Quarter of CY 2018 (Refer to Exhibit "P-10d")				
"P-12-25"	PI 0465	$4,691,225.15	₱247,551,259.88	Supported by invoice but without AWB/BL
"P-13-39"	FI 7533	(98,455.71)	(5,224,355.24)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10d").]
"P-13-40"	FI 7536	(79,097.50)	(4,226,416.97)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10d").]
"P-13-41"	FI 7531	263,947.55	14,255,543.40	Supported by invoice but without AWB/BL
"P-13-42"	FI 7532	301,073.83	16,260,696.46	Supported by invoice but without AWB/BL
"P-13-43"	FI 7534	167,248.49	9,032,923.72	Supported by invoice but without AWB/BL
"P-13-44"	FI 7535	147,160.86	7,851,602.58	Supported by invoice but without AWB/BL
"P-13-45"	FI 7537	260,832.46	13,774,040.32	Supported by invoice but without AWB/BL
N/A	S 26-18	380,404.21	20,073,549.54	Not supported by invoice and AWB/BL
N/A	S 27-18	48,416.02	2,554,864.88	Not supported by invoice and AWB/BL
"P-13-46"	FI 7527	(3,425.75)	(184,791.96)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10d").]
"P-13-47"	FI 7529	(3,322.32)	(179,212.58)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10d").]
"P-13-48"	FI 7530	(1,360.58)	(73,392.33)	[This is an adjustment *per* the Schedule of Zero-Rated Sale of Goods (Exhibit "P-10d").]
Subtotal-4th Quarter		*$6,074,646.71*	*₱321,466,311.70*	
TOTAL		$18,810,072.78	₱995,967,215.64	

Hence, only the zero-rated export sales of goods amounting to ₱672,308,136.39[150] for the 2nd to 4th quarters of CY 2018 satisfied the ***2nd essential element***, as these sales were duly supported by VAT zero-rated provisional/final invoices and were actually shipped from the Philippines to foreign countries.

Moving to the ***3rd essential element***, and in relation to the ***5th requisite***, petitioner presented "Certificates of Inward Remittances" from UCPB[151] and BDO[152], "Exports with Unaccounted Inward Remittances"[153], "Reconciliation of Inward Remittances" based on Exhibit "P-43"[154], "Summary of Bank Credit Memos"[155], bank credit memos[156], to support that the sales were paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

150 Total zero-rated sales for the 2nd to 4th quarters of CY 2018 *per* "Schedule of Zero-Rated Sale of Goods" in the total amount of ₱1,668,275,352.03 *less* disallowed zero-rated sales of ₱995,967,215.64.
151 Exhibits "P-16-1" to "P-16-2", "P-16-1A" to "P-16-2A" and "P-45", USB.
152 Exhibits "P-17" to "P-17a" and "P-17-1" to "P-17a-1", "P-47", and "P-50" to "P-50-1", id.
153 Exhibit "P-43", id.
154 Exhibit "P-46", id.
155 Exhibit "P-16", id.
156 Exhibits "P-16a" to "P-16l-3-a", id.

However, while the submitted "Certificates of Inward Remittances" indicate certain remittance amounts in US Dollars, the majority of these amounts do not match the sales amounts stated in the supporting provisional/final invoices. It bears stressing that, as previously mentioned, the purported "Schedule of Exportations and Foreign Currency Remittances"[157] and "Reconciliation of Foreign Currency Remittances"[158] were denied admission by this Court for failure to correspond with the description provided in the FOE.[159]

Thus, upon comparing petitioner's ₱672,308,136.39 declared zero-rated sales, which are duly supported by provisional/final invoices and AWBs/BLs for the 2nd to 4th quarters of CY 2018, against the inward remittances *per* bank certifications[160], "Exports With Unaccounted Inward Remittances"[161] and "Reconciliation of Inward Remittances" (based on Exhibit "P-43"[162]), the following transactions, totalling ₱368,699,012.53, remain unverified and, therefore, do not qualify for VAT zero-rating:

Exhibit No.	Reference	Amount in US$	Amount in PhP	Remark/s
2nd Quarter of CY 2018 (Refer to Exhibit "P-10b")				
"P-13-8"	FI 7391	$46,847.36	₱2,407,298.55	*These amounts are unreconciled since the "Schedule of Exportations and Foreign Currency Remittances" (Exhibits "P-11" to "P-11c") and "Reconciliation of Foreign Currency Remittances" (Exhibits "P-11-1" to "P-11c-1") were not admitted.*
"P-13-9"	FI 7393	9,595.94	489,114.54	
Subtotal-2nd Quarter		***$56,443.30***	***₱2,896,413.09***	
3rd Quarter of CY 2018 (Refer to Exhibit "P-10c")				
"P-12-20"	PI 0453	$1,543,818.98	₱82,245,412.34	
Subtotal-3rd Quarter		***$1,543,818.98***	***₱82,245,412.34***	
4th Quarter of CY 2018 (Refer to Exhibit "P-10d")				
"P-12-23"	PI 0456	$1,625,646.64	₱87,799,549.63	*These amounts were cannot be traced to the inward remittances per bank certifications.*
"P-12-24"	PI 0506	1,918,894.25	101,332,967.50	
"P-12-26"	PI 0468	1,720,314.65	90,779,283.60	
"P-12-28"	PI 0457	25,165.53	1,340,668.46	
"P-13-38"	FI 7528	64,647.03	3,374,251.51	
"P-12-29"	PI 0463	(19,802.88)	(1,069,533.60)	
Subtotal-4th Quarter		***$5,334,865.22***	***₱283,557,187.10***	

157 Exhibits "P-11" to "P-11c", supra at note 146.
158 Exhibits "P-11-1" to "P-11c-1", supra at note 147.
159 See Resolution dated 02 August 2023, supra at note 72.
160 Exhibits "P-16-1", "P-16-1A", "P-16-2", "P-16-2A", "P-17", "P-17-1", "P-17a", "P-17a-1", "P-45", "P-47", "P-50" and "P-50-1", supra at notes 151 and 152.
161 Exhibit "P-43", supra at note 153.
162 Exhibit "P-46", supra at note 154.

Total for the 2nd to 4th Quarters of CY 2018	$6,935,127.50	₱368,699,012.53	

As a result, only the amount of ₱303,609,123.86[163] zero-rated sales for the 3rd and 4th quarters of CY 2018, comply with the *3rd* ***essential element***, detailed as follows:

Exhibit No.	Reference	Amount in US$	Amount in Php
3rd Quarter of CY 2018 (Refer to Exhibit "P-10c")			
"P-12-17"	PI 0398	$2,419,521.36	₱129,282,284.78
"P-12-19"	PI 0451	1,109,091.86	59,085,759.73
"P-12-21"	PI 0455	2,095,246.98	113,021,812.60
Subtotal-3rd Quarter		***$5,623,860.20***	***₱301,389,857.11***
4th Quarter of CY 2018 (Refer to Exhibit "P-10d")			
"P-12-27"	PI 0460	$41,141.72	₱2,219,266.75
Subtotal-4th Quarter		***$41,141.72***	***₱2,219,266.75***
Total for the 3rd & 4th Quarters of CY 2018		$5,665,001.92	₱303,609,123.86

In sum, only the amount of **₱303,609,123.86** zero-rated export sales of goods represents petitioner's valid zero-rated sales for the 3rd and 4th quarters of CY 2018. Thus, petitioner complied with the ***4th and 5th* requisites**, but only for the said amount.

SIXTH (6TH) REQUISITE:
THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED DOES NOT APPEAR TO BE TRANSITIONAL INPUT TAXES.

The ***6th requisite*** provides that the claimed input taxes do *not* appear to be transitional input taxes, pursuant to Section 111(A) of the NIRC of 1997, as amended, to wit:

...

SEC. 111. *Transitional/Presumptive Input Tax Credits.* –

(A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-

[163] Declared Zero-Rated Sales of ₱672,308,136.39 less Unverified Zero-Rated Sales of ₱368,699,012.53.

> registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.
>
> ...

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition 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.[164]

In this case, the claimed input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, and thus, petitioner has complied with the ***6th requisite*** for the grant of an input VAT refund.

<u>SEVENTH (7TH) REQUISITE:</u>
THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED MUST BE DUE OR PAID.

Anent the ***7th requisite*** for claiming a VAT refund, it is critically important for petitioner to submit supporting documents proving that the input taxes claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005[165], as amended.

Thus, to establish entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must also comply with the invoicing requirements set forth in Sections 113(A) and (B), 237 and 238 of the

---

164 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, G.R. Nos. 158885 and 170680, 02 April 2009.

165 Supra at note 137.

NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

In its Quarterly VAT Returns for CY 2018, petitioner reported a total input VAT of ₱43,217,039.50, derived from amortized input VAT on purchases of capital goods exceeding ₱1 million, importations of goods other than capital goods, domestic purchase of services and services rendered by nonresidents. Of this total, ₱40,050,944.39 is the subject of the present claim for refund, as detailed below:

Item	Exhibit	"P-9"	"P-9a"	"P-9b"	"P-9c"	Total
	CY 2018	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
Amortization of Capital Goods Exceeding ₱1 Million:						
20B	Input tax deferred on capital goods exceeding ₱1 million from previous period	₱20,698,397.20	₱21,979,528.56	₱22,876,949.60	₱30,553,295.88	₱20,698,397.20
21D	Input tax on purchase of capital goods exceeding ₱1 million	2,859,317.00	2,457,591.00	9,652,131.00	4,189,621.00	19,158,660.00
	Total	*₱23,557,714.20*	*₱24,437,119.56*	*₱32,529,080.60*	*₱34,742,916.88*	*₱39,857,057.20*
23A	*Less:* Input tax on purchases of capital goods exceeding ₱1 million deferred for the succeeding period	21,979,528.56	22,876,949.60	30,553,295.88	32,510,711.67	32,510,711.67
Amortized Input Tax on Capital Goods Exceeding ₱1 million		*₱1,578,185.64*	*₱1,560,169.96*	*₱1,975,784.72*	*₱2,232,205.21*	*₱7,346,345.53*
Current Input Taxes on:						
21H	Importation of goods other than capital goods	₱10,432,087.00	₱9,157,372.00	₱5,777,377.00	₱5,714,131.00	₱31,080,967.00
21J	Domestic purchase of services	74,688.32	52,506.59	53,353.47	53,353.47	233,901.85
21L	Services rendered by non-residents	1,469,548.03	1,190,817.09	1,151,159.41	744,300.59	4,555,825.12
Total Current Input Tax		*₱11,976,323.35*	*₱10,400,695.68*	*₱6,981,889.88*	*₱6,511,785.06*	*₱35,870,693.97*
Total Allowable Input VAT		**₱13,554,508.99**	**₱11,960,865.64**	**₱8,957,674.60**	**₱8,743,990.27**	**₱43,217,039.50**
15B	*Less:* Output tax	911,752.00	989,415.37	814,139.15	425,788.59	3,141,095.11
28D	*Less:* Penalty paid	-	-	25,000.00	-	25,000.00
Amount of Claim		**₱12,642,756.99**	**₱10,971,450.27**	**₱8,118,535.45**	**₱8,318,201.68**	**₱40,050,944.39**

In support of its claim, petitioner presented its "Schedule of Importations"[166], "Schedule of Deferred Input VAT"[167], "Summary List of Importation of Capital Goods in Excess of ₱1 Million supported with

166 Exhibits "P-8" to "P-8c-1", USB.

167 Exhibits "P-9-1" to "P-9c-1", id.

[Single Administrative Document (**SAD**)] and [Statement of Settlement of Duties and Taxes (**SSDT**)]"[168], "Allowable Deferred Input VAT for Current Purchases FY 2018"[169], "Difference in Importation"[170], "Summary Lists of Importation"[171], "Summary Lists of Purchases [**SLP**]"[172], SADs/ Import Entry and Internal Revenue Declarations (**IEIRDs**), BOC Official Receipts[173] (**ORs**), Statements of Settlement of Duties and Taxes[174] (**SSDTs**), AWB/BL[175], billing invoices for domestic purchase of services[176], "Schedule of Income Payments to Non-Residents"[177], BIR Forms No. 1600[178] (Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld) and BIR eFPS payment confirmations[179], all of which were examined by ICPA Nacpil.

As ascertained by the ICPA, only **₱35,388,069.67** in input VAT for CY 2018 was properly substantiated in accordance with the VAT law and regulations, detailed as follows:[180]

CY 2018	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
a. Input tax on importations of goods other than capital goods[181]	₱9,866,746.00	₱9,116,689.00	₱4,769,993.00	₱5,189,234.00	**₱28,942,662.00**
b. Amortized input tax on current purchases of capital goods exceeding ₱1 million current year[182]	142,965.85	183,925.70	644,791.84	917,899.16	**1,889,582.55**
c. Input tax on purchase of services from nonresidents[183]	1,469,548.03	1,190,817.09	1,151,159.41	744,300.59	**4,555,825.12**
Properly Substantiated Input VAT *per*	**₱11,479,259.88**	**₱10,491,431.79**	**₱6,565,944.25**	**₱6,851,433.75**	**₱35,388,069.67**

168 Exhibit "P-20", id.
169 Exhibit "P-20a", id.
170 Exhibit "P-21", id.
171 Exhibits "P-31" to "P-31k", id.
172 Exhibits "P-32" to "P-32k", id.
173 Exhibits "P-18a" to "P-18fi", id.
174 Exhibits "P-19a" to "P-19ft", id.
175 Exhibits "P-36a" to "P-36fn", id.
176 Exhibits "P-37" to "P-37m", id.
177 Exhibit "P-48", id.
178 Exhibits "P-48A" to "P-48L", id.
179 Exhibits "P-48A-1" to "P-48L-1", id.
180 See Supplemental ICPA Report dated 22 November 2022, supra at note 44, p. 366.
181 See Amended ICPA Report dated 30 May 2022, supra at note 43, p. 329; Exhibit "P-42a", USB.
182 See Amended ICPA Report dated 30 May 2022, supra at note 43, p. 327; Exhibits "P-20" and "P-20a", USB.
183 See Supplemental ICPA Report dated 22 November 2022, supra at note 44, p. 364; Exhibits "P-48", "P-48A" to "P-48L" and "P-48A-1" to "P-48L-1", USB.

CY 2018	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Supplemental ICPA Report					

Upon further verification, the input VAT amounting to ₱520,909.00 must be disallowed for the following grounds:

Item	Exhibit	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT on Importation Supported by SAD only, without SSDT.					
CLAYTON EQUIPMENT LIMITED	"P-18dr"	₱57,638.00	₱-	₱-	₱57,638.00
MAANSHAN XINLE WEAR RESISTANTMATE	"P-18es"	-	-	431,280.00	431,280.00
Input VAT on Importation Supported by SSDT with unreadable SAD.					
RELIANCE HEXHAM PTY LIMITED	"P-19fm"	-	-	31,991.00	31,991.00
Total		**₱57,638.00**	**₱-**	**₱463,271.00**	**₱520,909.00**

Hence, for purposes of compliance with the *7th **requisite***, out of the total reported input VAT of ₱43,217,039.50 for CY 2018, only the amount of **₱23,387,900.79** represents petitioner's valid input VAT due or paid for the 2nd to 4th quarters of CY 2018, computed as follows:

CY 2018	2nd Quarter	3rd Quarter	4th Quarter	Total
Properly substantiated Input VAT *per* Supplemental ICPA Report	₱10,491,431.79	₱6,565,944.25	₱6,851,433.75	₱23,908,809.79
Less: Disallowances *per* the Court's further verification	57,638.00	-	463,271.00	520,909.00
Valid Input VAT	**₱10,433,793.79**	**₱6,565,944.25**	**₱6,388,162.75**	**₱23,387,900.79**

<u>EIGHTH (8TH) REQUISITE:</u>
THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED MUST BE ATTRIBUTABLE ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES.

The ***8th requisite*** requires that the input taxes claimed be attributable to zero-rated or effectively zero-rated sales. However, if a taxpayer has a mix of zero-rated or effectively zero-rated sales, taxable sales and exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, they must be proportionally allocated based on sales volume.

Since petitioner's declared input VAT for the 2nd to 4th quarters of CY 2018, totalling ₱29,662,530.51, cannot be directly or entirely attributed to specific sales, it must be proportionally allocated based on the volume of petitioner's sales, as follows:

Type of Sales Transaction *per* VAT Return	2nd Quarter of CY 2018	3rd Quarter of CY 2018	4th Quarter of CY 2018	Total
Vatable Sales	₱8,245,128.08	₱6,784,492.92	₱3,548,238.25	₱18,577,859.25
Zero-Rated Sales	523,760,840.29	537,271,745.77	607,242,765.19	1,668,275,351.25
Total Sales	**₱532,005,968.37**	**₱544,056,238.69**	**₱610,791,003.44**	**₱1,686,853,210.50**
Allocation Factor (Percentage for each type of sales to Total Sales)				
Vatable Sales	1.5498187%	1.2470205%	0.5809251%	
Zero-Rated Sales	98.4501813%	98.7529795%	99.4190749%	
Total	100.0000000%	100.0000000%	100.0000000%	
Allocated Declared Input VAT				
Vatable Sales	₱ 185,371.73	₱ 111,704.04	₱ 50,796.03	₱ 347,871.80
Zero-Rated Sales	11,775,493.91	8,845,970.56	8,693,194.24	29,314,658.71
Total	₱11,960,865.64	₱8,957,674.60	₱ 8,743,990.27	₱ 29,662,530.51

Thus, regarding petitioner's compliance with the ***8th requisite***, only ₱29,314,658.71 of its declared input VAT is attributable to its total declared zero-rated sales for the 2nd to 4th quarters of CY 2018.

NINTH (9TH) REQUISITE:
THE INPUT VALUE-ADDED TAX (VAT) BEING CLAIMED MUST NOT HAVE BEEN APPLIED AGAINST OUTPUT TAXES DURING AND IN THE SUCCEEDING QUARTERS.

Having established that petitioner had input VAT attributable to its zero-rated sales, We now assess whether this amount was not applied against its output VAT liability during and in the succeeding quarters, in relation to the ***9th requisite*** for the successful prosecution of an input VAT refund claim.

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[184] (**Chevron**), the Supreme Court made a definitive declaration that a VAT-registered taxpayer has two (2) options with respect to its input VAT attributable to zero-rated sales, it may: (1) charge the same against output VAT from VATable sales, and claim for refund or issuance of a tax credit certificate (**TCC**) any unutilized or "excess" input VAT; or (2) claim the same for refund or issuance of a TCC in its entirety, *viz*:

> ...
> **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, 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. <u>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.</u>** These procedures find no basis in law and jurisprudence.
> ...

Clearly from the foregoing, a VAT-registered taxpayer has the discretion to decide whether to charge its input VAT attributable to zero-rated sales against output VAT. In this respect, the Court cannot impose its own methods for calculating the refund, such as compelling the crediting of input VAT against output VAT as a condition precedent to the refund or issuance of a TCC. This is especially true when the taxpayer-claimant opts to claim the input VAT attributable to zero-rated sales for a refund or issuance of a TCC in its entirety.

Furthermore, regardless of which option the taxpayer-claimant chooses, the Supreme Court's ruling in *Chevron* clarifies that since the

---

[184] G.R. No. 215159, 05 July 2022; Citation omitted, underscoring supplied, emphasis in the original text and supplied.

taxpayer-claimant is requesting a refund of unutilized or unused input VAT from zero-rated sales (as opposed to the "excess" creditable input VAT from the output VAT), this amount is inherently immediately refundable, given that there is no related output VAT to offset it against. Therefore, the CTA's proper preliminary step in determining the refundable excess and unutilized input VAT attributable to valid zero-rated sales should be computing the ratable portion of the taxpayer-claimant's input VAT allocable to zero-rated sales, assuming the input VAT cannot be directly attributed to zero-rated activities.

It is only when the taxpayer-claimant chooses the 1st option, *i.e.*, to charge the input VAT attributable to zero-rated sales against output VAT from VATable sales and claim for refund or issuance of a TCC any unutilized or "excess" input VAT that the Court may require the offsetting of such ratable portion of the taxpayer-claimant's input VAT attributable to zero-rated sales against "Output VAT Still Due" as a condition precedent to the refund or issuance of a TCC.

In this case, petitioner chose the **1st option** as it credited its output VAT (from regular 12% VATable sales) of ₱3,141,095.11 against its "Total Allowable Input VAT" of ₱43,217,039.50 and applied for refund the remaining "Excess Input VAT" of ₱40,050,944.39 (after deducting penalty paid of ₱25,000.00), as shown below:

Item	Exhibit	"P-9"	"P-9a"	"P-9b"	"P-9c"	Total
	CY 2018	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
Total Allowable Input VAT		**₱13,554,508.99**	**₱11,960,865.64**	**₱8,957,674.60**	**₱8,743,990.27**	**₱43,217,039.50**
15B	*Less:* Output tax	911,752.00	989,415.37	814,139.15	425,788.59	3,141,095.11
28D	*Less:* Penalty paid	-	-	25,000.00	-	25,000.00
Amount of Claim		**₱12,642,756.99**	**₱10,971,450.27**	**₱8,118,535.45**	**₱8,318,201.68**	**₱40,050,944.39**

Since petitioner's "Declared Input VAT Allocated to 12% VATable Sales" for the 2nd to 4th quarters of CY 2018 in the amount of ₱347,871.80, as determined earlier, is not enough to cover the "Output VAT" liability for the 2nd to 4th quarters of CY 2018 in the amount of ₱2,229,343.11[185], the "Declared Input VAT Attributable to Declared Zero-Rated Sales" in the amount of ₱29,314,658.71 shall then be utilized against the "Output VAT Still Due" of ₱1,881,471.31, resulting in an "Excess Input VAT Attributable

185 Sum of Output VAT for the 2nd Quarter of ₱989,415.37, 3rd Quarter of ₱814,139.1 and 4th Quarter of ₱425,788.59.

to Declared Zero-Rated Sales" in the amount of ₱27,433,187.40, computed as follows:

CY 2018	2nd Quarter	3rd Quarter	4th Quarter	Total
Output VAT	₱989,415.37	₱814,139.15	₱425,788.59	₱2,229,343.11
Less: Declared Input VAT allocated to 12% VATable Sales	185,371.73	111,704.04	50,796.03	347,871.80
Output VAT Still Due	**₱804,043.64**	**₱702,435.11**	**₱374,992.56**	**₱1,881,471.31**

Declared Input VAT Attributable to Declared Zero-Rated Sales	₱11,775,493.91	₱8,845,970.56	₱8,693,194.24	₱29,314,658.71
Less: Output VAT Still Due	804,043.64	702,435.11	374,992.56	1,881,471.31
Excess Input VAT Attributable to Declared Zero-Rated Sales	**₱10,971,450.27**	**₱8,143,535.45**	**₱8,318,201.68**	**₱27,433,187.40**

However, as discussed earlier, not all of petitioner's input VAT is valid. Thus, this Court determines whether petitioner's valid input VAT is sufficient to cover its "Excess Input VAT Attributable to Declared Zero-Rated Sales", *viz:*

CY 2018	2nd Quarter	3rd Quarter	4th Quarter	Total
Excess Input VAT attributable to Declared Zero-Rated Sales (A)	₱10,971,450.27	₱8,143,535.45	₱8,318,201.68	₱27,433,187.40
Valid Input Taxes (B)	10,433,793.79	6,565,944.25	6,388,162.75	23,387,900.79
Valid Available Input VAT Attributable to Declared Zero-Rated Sales (A or B, whichever is lower)	**₱10,433,793.79**	**₱6,565,944.25**	**₱6,388,162.75**	**₱23,387,900.79**

Meanwhile, in relation to its zero-rated sales for the 2nd to 4th quarters of CY 2018, considering that petitioner was able to properly substantiate only the amount of ₱303,609,123.86 out of its total declared zero-rated sales of ₱1,668,275,351.25[186] for the 2nd to 4th quarters of CY

[186]

CY 2018	Zero-rated Sales per Quarterly VAT Return	
	Exhibit	Amount
2nd Quarter	"P-9a"	₱ 523,760,840.29
3rd Quarter	"P-9b"	537,271,745.77
4th Quarter	"P-9c"	607,242,765.19
Total		**₱1,668,275,351.25**

2018, only the "Valid Input VAT" of ₱3,706,601.86 is attributable to the said "Valid Zero-Rated Sales" of ₱303,609,123.86, as computed below:

CY 2018	2nd Quarter	3rd Quarter	4th Quarter	Total
Valid Zero-Rated Sales	₱-	₱301,389,857.11	₱2,219,266.75	₱303,609,123.86
Divided by Declared Zero-Rated Sales	523,760,840.29	537,271,745.77	607,242,765.19	1,668,275,351.25
Ratio of Valid Zero-Rated Sales to Declared Zero-Rated Sales	0.0000000%	56.0963534%	0.3654661%	
Multiplied by Valid Input VAT attributable to Declared Zero-Rated Sales	10,433,793.79	6,565,944.25	6,388,162.75	23,387,900.79
Total Refundable Amount	**₱-**	**₱3,683,255.29**	**₱23,346.57**	**₱3,706,601.86**

The subject input VAT refund claim of ₱40,050,944.39 for the CY 2018, which includes the above-computed "Refundable Valid Input VAT" of ₱3,706,601.86, was carried-over by petitioner in its Quarterly VAT Returns.[187] However, this amount was not deducted as "VAT Refund/TCC claimed" in any of the submitted Quarterly VAT Returns. Consequently, the entire refund claim formed part of the "Excess Input VAT" of ₱40,050,944.39[188] as of the end of the 4th quarter of CY 2018, which was carried over to the succeeding quarter. Needless to say, **petitioner failed to prove that the subject input VAT refund claim of ₱40,050,944.39 was <u>not applied</u> against its output VAT liability in the succeeding quarters, relative to the 9th *requisite* for a refund of input VAT under Section 112(A) of the NIRC of 1997, as amended.**

Given these circumstances, the present claim for refund of petitioner's alleged excess and unutilized input VAT for CY 2018 must, perforce, be denied.

In fine, it is the taxpayer-claimant who has the burden of proof to establish the factual basis of his or her claim for tax refund.[189] As such, tax refunds are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the

---

187 Exhibits "P-9" to "P-9c", USB.

188 Exhibit "P-9c", Line 29, USB.

189 *Commissioner of Internal Revenue v. Filminera Resources Corporation*, G.R. No. 236325, 16 September 2020, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 141104 & 148763, 08 June 2007, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, 11 February 2005.

refund.[190] Hence, an applicant for a claim for tax refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[191]

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Lepanto Consolidated Mining Company on 10 February 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

190 *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc. et al.*, G.R. No. 127105, 25 June 1999.

191 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, 25 March 2015 citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, 28 August 2013.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA CASE NO. 10464**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 15 2025, 2:10PM

x- x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the present Petition for Review for lack of merit.

Anent the substantiation of zero-rated sales, I submit that the same must be substantiated by final value-added tax (VAT) sales invoices (and not by provisional sales invoices as stated on pages 28 and 29 of the *ponencia*).

All told, I CONCUR in the result.

ROMAN G. DEL ROSARIO
Presiding Justice