21-000222-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10543

OCEANAGOLD (PHILIPPINES), INC.,
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
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
BIR Road, Diliman, Quezon City

LAYUG CELICIOUS-SY & VILLAPANDO
Unit 503, 5th Floor, The Linden Suites
37 San Miguel Ave., Ortigas Center
1600 Pasig City

GREETINGS:

You are hereby notified by these presents that on **November 29, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 5, 2024.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10543**

Members:

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

Promulgated:
NOV 2 9 2024, 3:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] filed by petitioner OceanaGold (Philippines), Inc., (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the

---

[1] Filed on 31 May 2021, Division Docket, Volume I, pp. 6-36.

[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.

[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,

Court of Tax Appeals (**RRCTA**), seeking to appeal respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) total denial of its administrative claim for refund or issuance of tax credit certificate (**TCC**) in the amount of ₱133,671,461.36. The amount claimed represents excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the first (1st) to fourth (4th) quarters of calendar year (**CY**) 2019.

PARTIES OF THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines, with principal place of business at the 2nd Floor, Carlos J. Valdez Building, 108 Aguirre St., Legaspi Village, 1229 Makati City.[4]

Respondent, on the other hand, is the duly appointed CIR empowered to perform the duties of his or her office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at Room 703 Litigation Division, Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City, where he or she may be served summons and other legal processes of the Court.[5]

FACTS OF THE CASE

For the 1st to 4th quarters of CY 2019, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q) through the BIR's Electronic Filing and Payment System (**eFPS**) as follows[6]:

CY 2019	Return	Date Filed
1st Quarter	Original[7]	April 25, 2019
	Amended[8]	February 20, 2020

or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 See Paragraph 1, Petition for Review, supra at note 1, p. 6.

5 See Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 991.

6 See Par. 11, Petition for Review, supra at note 1, p. 8.

7 Exhibit "P-16", Division Docket, Volume III, pp. 1186-1187.

8 Exhibit "P-16.1", id., pp. 1188-1189.

	Amended[9]	April 23, 2020
	Amended[10]	February 17, 2021
2nd Quarter	Original[11]	July 25, 2019
	Amended[12]	February 20, 2020
	Amended[13]	April 24, 2020
	Amended[14]	February 17, 2021
3rd Quarter	Original[15]	October 24, 2019
	Amended[16]	February 20, 2020
	Amended[17]	April 24, 2020
	Amended[18]	February 17, 2021
4th Quarter	Original[19]	January 24, 2020
	Amended[20]	February 20, 2020
	Amended[21]	April 24, 2020
	Amended[22]	June 8, 2020

In the Final Amended Quarterly VAT Returns for the four (4) quarters[23], petitioner declared a total sales amount of ₱8,060,466,313.75, which included zero-rated sales in the amount of ₱8,056,614,140.75, as shown below:

Period	Vatable Sales	Zero-Rated Sales	Total Sales
First Quarter	₱2,838,780.08	₱3,505,635,937.88	₱3,508,474,717.96
Second Quarter	299,107.17	2,761,295,687.61	2,761,594,794.78
Third Quarter	714,285.75	1,788,950,665.30	1,789,664,951.05
Fourth Quarter	-	731,849.96	731,849.96
Total	**₱3,852,173.00**	**₱8,056,614,140.75**	**₱8,060,466,313.75**

For the same period, petitioner claimed to have accumulated excess input tax in the total amount of ₱134,133,722.12, out of which the

---

9 Exhibit "P-16.2", id., pp. 1190-1191.
10 Exhibit "P-16.3", id., pp. 1192-1193.
11 Exhibit "P-17", id., pp. 1194-1195.
12 Exhibit "P-17.1", id., pp. 1196-1197.
13 Exhibit "P-17.2", id., pp. 1198-1199.
14 Exhibit "P-17.3", id., pp. 1200-1201.
15 Exhibit "P-18", id., pp. 1202-1203.
16 Exhibit "P-18.1", id., pp. 1204-1205.
17 Exhibit "P-18.2", id., pp. 1206-1207.
18 Exhibit "P-18.3", id., pp. 1208-1209.
19 Exhibit "P-19", id., pp. 1210-1211.
20 Exhibit "P-19.1", id., pp. 1212-1213.
21 Exhibit "P-19.2", id., pp. 1214-11215.
22 Exhibit "P-19.3", id., pp. 1216-11217.
23 Exhibits "P-16.3", "P-17.3", "P-18.3" and "P-19.3", id., pp. 1192-1193, 1200-1201, 1208-1209 and 1216-1217, respectively.

amount of ₱133,671,461.36 is the subject of the present petition, as shown on the following tabulation[24]:

	1st Quarter[25]	2nd Quarter[26]	3rd Quarter[27]	4th Quarter[28]	Total
Input Tax on Purchase of Capital Goods exceeding ₱1Million					
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱205,689,959.99	₱187,692,580.86	₱170,056,741.57	₱159,977,284.09	₱723,416,566.51
Input Tax on Current Purchase of Capital Goods exceeding ₱1Million	493,279.00	891,695.00	8,753,350.00	2,457,030.00	12,595,354.00
Total	**₱206,183,238.99**	**₱188,584,275.86**	**₱178,810,091.57**	**₱162,434,314.09**	**₱736,011,920.51**
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	187,692,580.86	170,056,741.57	159,977,284.09	143,339,697.87	661,066,304.39
Amortized Input Tax on Purchases of Capital Goods exceeding ₱1Million	₱18,490,658.13	₱18,527,534.29	₱18,832,807.48	₱19,094,616.22	₱74,945,616.12
Input Tax on Importation of Goods Other than Capital Goods	22,597,694.00	23,821,543.00	11,179,231.00	1,589,638.00	59,188,106.00
Total Input Taxes for the period	**₱41,088,352.13**	**₱42,349,077.29**	**₱30,012,038.48**	**₱20,684,254.22**	**₱134,133,722.12**
Less: Output Tax	340,653.61	35,892.86	85,714.29	-	462,260.76
Amount of claim for refund	**₱40,747,698.52**	**₱42,313,184.43**	**₱29,926,324.19**	**₱20,684,254.22**	**₱133,671,461.36**

24 See Par. 13, Petition for Review, supra at note 1, pp. 9-10.
25 Supra at note 10.
26 Supra at note 14.
27 Supra at note 18.
28 Supra at note 22.

On 30 April 2021, petitioner filed with the BIR VAT Credit Audit Division (**VCAD**) an administrative claim for the refund of unutilized input VAT attributable to zero-rated sales for the 1st to 4th quarters of CY 2019 in the total amount of ₱133,671,461.36.[29] On 05 May 2021, respondent informed petitioner that the documents it submitted are incomplete and noncompliant with the Checklist of Mandatory Requirements on Claims for VAT Refund (**Checklist**).[30] On 07 May 2021, petitioner submitted the lacking documents except for the Delinquency Verification Certificate (**DVC**) issued by the Large Taxpayers Collection Enforcement Division (**LTCED**) dated 01 March 2021. The DVC stated that petitioner has a tax liability amounting to ₱221,136,013.14 with Assessment No. XE-2013-00001 ([Final Decision on Disputed Assessment] FDDA dated 10/16/2017) and with Court of Tax Appeals (**CTA**) Case No. 9736 which was still under the pre-trial proceedings before the CTA.[31]

On 11 May 2021, petitioner refiled its administrative claim dated 10 May 2021 with the VCAD.[32] However, respondent allegedly refused to accept petitioner's submission on the ground that it did not transmit a DVC without remarks of delinquency. Consequently, petitioner filed the claim *via* registered mail on even date.[33]

On 18 June 2021, petitioner received the BIR Letter dated 02 June 2021, issued by the VCAD Chief, Amelita A. Escober (**VCAD Chief Escober**).[34] The Letter stated that, in accordance with the requirements set forth in Revenue Memorandum Order (**RMO**) No. 47-2020[35], VCAD is barred from accepting the application due to petitioner's failure to present a DVC without remarks of delinquency.

---

29 A-73, Judicial Affidavit of Hesther T. Bahiwag dated 28 May 2021, Division Docket, Volume I, p. 277; See Par. 1, Statement of Facts and Material Proceedings, Respondent's Memorandum dated 25 July 2023, Division Docket, Volume IV, p. 1692.

30 Exhibit "P-38", id., Volume II, p. 710; See Par. 2, Statement of Facts and Material Proceedings, Respondent's Memorandum dated 25 July 2023, Division Docket, Volume IV, p. 1692.

31 Exhibits "P-37" and "P-38", id., Volume II, pp. 709-710.

32 See Par. 23, Petition for Review, p. 13.

33 TSN dated 16 May 2022, p. 9.

34 Exhibit "P-42", Division Docket, Volume III, pp. 1343-1344.

35 Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit/ Refund Except Those Under the Authority and Jurisdiction of the Legal Group.

Meanwhile, on 31 May 2021, petitioner filed its judicial claim with the CTA[36] and it was raffled to the Court's Second Division.

On 07 June 2021, summons was issued to respondent, directing him or her to file an Answer within thirty (30) days from the date of receipt thereof.[37]

On 19 July 2021, respondent filed a "Motion for Extension of Time to File Answer".[38] In its Order dated 28 July 2021[39], the Court granted the said motion and thereby extended respondent's deadline to file an Answer until 20 August 2021.

Respondent's Answer was eventually filed on 26 October 2021.[40]

In his or her Answer, respondent interposed that: (1) there was no inaction or decision by the BIR that is appealable to the CTA; and, (2) petitioner is not entitled to the refund claimed.[41]

Subsequently, the Pre-Trial Conference was set on 26 January 2022.[42] However, pursuant to Memorandum Order 10-2022, the previously set Pre-Trial Conference was reset to 28 March 2022.[43] The Pre-Trial Brief for petitioner was filed on 23 March 2022[44] while respondent's Pre-Trial Brief was filed on 25 March 2022.[45] The Pre-Trial Conference proceeded on 28 March 2022.[46]

The parties' Joint Stipulation of Facts and Issues[47] (**JSFI**) was filed on 27 April 2022, which was approved in the Pre-Trial Order issued on 10 May 2022.[48]

---

36 Supra at note 1.
37 Division Docket, Volume II, p. 885.
38 Id., pp. 911-914.
39 Id., p. 916.
40 Id., pp. 917-923.
41 Id.
42 Notice of Pre-Trial Conference dated 07 December 2021, id., pp. 925-926.
43 Notice of Resetting dated 16 February 2022, id., p. 927.
44 Id., pp. 928-947.
45 Id., Volume III, pp. 948-950.
46 See Order dated 28 March 2022, id., p. 954.
47 Id., pp. 991-1002.
48 Id., pp. 1009-1015.

In the trial that ensued subsequently, petitioner presented the following witnesses who all testified *via* their respective judicial affidavits: Hesther T. Bahiwag (**Bahiwag**), Dorelyn Casono-Rosbero (**Casono-Rosbero**)[49], and the Court-commissioned Independent Certified Public Accountant (**ICPA**), Madonna Mia S. Dayego (**Dayego**).[50]

On the witness stand, Bahiwag, petitioner's Financial Accounting Superintendent, declared *via* her Judicial Affidavit dated 28 May 2021[51] and Supplemental Judicial Affidavit dated 11 May 2022[52] that: (1) petitioner is engaged in zero-rated sale of minerals such as gold and copper; (2) the consideration for the zero-rated sale of minerals is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**); (3) petitioner incurred or paid input taxes on its importation of goods (other than capital goods) and purchases of capital goods, attributable to said zero-rated sales; (4) petitioner's unutilized input taxes attributable to sales subject to VAT zero-rating for the 1st to 4th quarters of CY 2019 is in the aggregate amount ₱133,671,461.36; (5) petitioner's unutilized input VAT has not been applied against output taxes during and in the succeeding quarters; (6) prior to the filing of this case, petitioner, as a direct exporter, filed with the VCAD of the BIR an administrative claim for the refund of unutilized input VAT attributable to zero-rated sales for the for the 1st to 4th quarters of CY 2019; and, (7) VCAD refused to accept and process, and hence, denied the Administrative Claim.

In her cross-examination[53], Bahiwag clarified that: (1) petitioner initially submitted documents in support of its administrative claim for refund on 30 April 2021; (2) it subsequently attempted to personally file the administrative claim on 11 May 2021 but the VCAD refused to accept it; (3) as a result, petitioner was compelled to file the refund claim *via* the registered mail on even date; and, (4) CTA Case No. 9736, which is referenced in petitioner's DVC, remains pending as of 16 May 2022. No redirect examination was conducted.[54]

---

49 See Order dated 16 May 2022, id., pp. 1033-1034.
50 See Order dated 18 July 2022, id., pp. 1049-1050.
51 Exhibit "P-47", id., Volume I, pp. 259-282.
52 Exhibit "P-47-4", id., Volume III, pp. 1020-1023.
53 Supra at note 33, pp. 8-10.
54 Id., p. 9.

Upon the completion of Bahiwag's testimony, petitioner presented Casono-Rosbero, petitioner's Customs Broker and Operations Manager at Antrak Philippines Transport Solutions Corporation (**Antrak**). In her Judicial Affidavit dated 08 June 2021[55], she testified that: (1) petitioner's customs broker uses only value-added service provides (**VASP**) duly-accredited by the BOC to process and secure its importation documents necessary for clearance and release of its various imported goods or merchandise; and, (2) petitioner's importation documents are original computer printouts from the VASP duly-accredited by the BOC. No cross-examination was conducted.[56]

ICPA Dayego also took the witness stand where she testified through her Judicial Affidavit, dated 13 July 2022[57], that: (1) she is the Court-commissioned ICPA; (2) as such, she prepared the ICPA Report dated 30 June 2022[58] (which she submitted to the Court on 18 July 2022) enclosing the audit procedures performed and the findings of the verification, and a USB[59] containing the scanned copies of the documents examined; and, (3) out of the total claim of ₱133,671,461.36, petitioner only properly supported ₱133,623,623.76 with relevant documents.

During the cross-examination, while ICPA Dayego confirmed that the documents she identified in her Judicial Affidavit are those that petitioner had submitted, she could not confirm whether they are the same documents forwarded to the BIR.[60] No redirect examination was conducted.[61]

Following the comparison and re-marking of petitioner's exhibits during the Commissioner's Hearing on 14 November 2022[62], petitioner filed on 18 November 2022 its "Compliance and Formal Offer of Evidence with Manifestation [On Offer of Provisionally Marked Exhibit P-40 as Original under Rule 130 of the Revised Rules on Evidence]"[63]

---

55 Exhibit "P-47-5", Division Docket, Volume II, pp. 890-898.
56 Supra at note 33, p. 12.
57 Exhibit "P-80", Division Docket, Volume III, pp. 1040-1047.
58 Exhibit "P-81", USB.
59 Exhibit "P-81-2".
60 TSN dated 18 July 2022, pp. 10-11.
61 Id., p. 11.
62 Division Docket, Volume IV, pp. 1367-1369.
63 Id., pp. 1371-1406.

(**FOE**), in compliance with the Court's Resolution dated 13 October 2022.[64] With respondent's "Comment (on Petitioner's [FOE] with Manifestation)"[65] filed on 21 November 2022, petitioner's FOE was submitted for resolution on 05 January 2023.[66]

On 03 February 2023, the Court issued a Resolution admitting petitioner's formally offered exhibits, except Exhibit "P-40"[67] for petitioner's failure to submit the original for comparison.[68]

In the Resolution issued on 29 May 2023, the present case was transferred to this Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[69]

In light of respondent's earlier Manifestation[70] filed on 11 October 2022 stating that he or she would no longer be presenting any witness, the Court granted the parties 30 days from notice within which to file their respective memoranda.[71] Respondent filed his or her Memorandum[72] on 31 July 2023 while petitioner filed its Memorandum[73] on 04 August 2023. The present case was thereafter submitted for decision on 09 August 2023.[74]

ISSUE

As can be gleaned from the parties' JSFI[75], the issue for this Court's resolution is –

---

64 Id., Volume III, p. 1364.
65 Id., Volume IV, pp. 1668-1670.
66 See Resolution dated 05 January 2023, id., pp. 1673-1674.
67 VCAD Revised Checklist (May 7, 2020).
68 Division Docket, Volume IV, pp. 1676-1679.
69 Id., p. 1680.
70 Id., Volume III, pp. 1359-1361.
71 See Resolution dated 23 June 2023, id., Volume IV. p. 1683.
72 Id., pp. 1692-1699.
73 Id., pp. 1693-1712.
74 See Minute Resolution dated 09 August 2023, id., pp. 1716-1717.
75 See supra at note 47.

WHETHER PETITIONER OCEANAGOLD (PHILIPPINES), INC. IS ENTITLED TO A REFUND OF ITS ALLEGED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ARISING FROM IMPORTATION OF GOODS (OTHER THAN CAPITAL GOODS) AND PURCHASES OF CAPITAL GOODS ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALES OF SERVICES FOR THE FIRST (1^{ST}), SECOND (2^{ND}), THIRD (3^{RD}) AND FOURTH (4^{TH}) QUARTERS OF CALENDAR YEAR (CY) 2019 IN THE AMOUNT OF ₱133,671,461.36.

ARGUMENTS

Petitioner mainly argues that it timely filed its administrative claim and the instant judicial claim for refund on 31 May 2021, and that it is entitled to a refund of its unutilized input taxes attributable to sales subject to zero percent (0%) VAT for the 1^{st} to 4^{th} quarters of CY 2019. In particular, it asserts that respondent's refusal to accept and process the claim constitutes a denial that is appealable to this Court.

Conversely, respondent contends that this Court lacks jurisdiction over the instant case, as there is no decision or inaction on the part of respondent that is appealable before this Court. Respondent counters that pursuant to RMO No. 47-2020[76], he or she is barred from accepting the application due to petitioner's failure to present a DVC without remarks of delinquency. Furthermore, absent a proper application, there is no basis for a decision or inaction that could be deemed appealable before this Court. Consequently, petitioner could not be entitled to the refund claimed.

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 partly meritorious.

Petitioner anchors its claim on Sections 110(B)[77], 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by

---

76 Supra at note 35.
77 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"

RA 10963 or Tax Reform for Acceleration and Inclusion (**TRAIN**), which are all 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-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.[78]
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[79] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

Applying the foregoing principle, the Court will proceed to determine whether petitioner complied with the aforementioned requisites. However, since both parties put forth the issue of jurisdiction, We shall first determine the third *(3^{rd}) requisite.*

---

[78] Emphasis supplied and italics in the original text.

[79] G.R. No. 234445, 15 July 2020; Citations omitted.

<u>THIRD (3RD) REQUISITE:</u>
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES ARE MADE.

In accordance with Section 112(A) and (C)[80] of the NIRC of 1997, as amended by TRAIN, 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 the 1st, 2nd, 3rd and 4th quarters of CY 2019. Counting two (2) years from the respective close of the said quarters, the last day for the filing of the administrative claim for the said four (4) quarters, *vis-à-vis* the date of filing of the administrative claim by petitioner, pursuant to Section 112(A) of the NIRC of 1997, as amended, are shown below, *viz*:

Quarter (CY 2019)	Close of taxable quarter	Last day for filing an administrative claim	Date of filing of claim for refund
1st Quarter	31 March 2019	11 May 2021[81]	11 May 2021[82]
2nd Quarter	30 June 2019	30 June 2021	
3rd Quarter	30 September 2019	30 September 2021	
4th Quarter	31 December 2019	31 December 2021	

However, respondent argues that petitioner's failure to submit a DVC without remarks of delinquency is tantamount to *non-filing* pursuant to RMO No. 47-2020.[83]

We disagree.

RMO No. 47-2020[84] states:

---

80 Supra at pp. 11-12.
81 Following the extensions provided under Revenue Memorandum Circular (RMC) Nos. 39-2021 and 45-2021.
82 Supra at note 33.
83 Supra at note 35.
84 Supra at note 35; Emphasis and underscoring supplied.

...

4. One of the documentary requirements is the Delinquency Verification Certificate (DVC) prescribed in Revenue Memorandum Circular No. 64-2019 (Annex "B") showing that the taxpayer has no outstanding (final and executory) tax liabilities as defined under Section II (1) of Revenue Memorandum Order No. 11-2014. Hence, the application shall not be accepted if such tax liabilities appear on the DVC, except for outstanding VAT liability which may be deducted from the approved BIR portion of the claim.

Applications where the **DVC shows <u>delinquent accounts</u> other than VAT shall <u>not be received</u>**. The claimant has to settle first the tax liabilities so that a DVC with no tax liabilities can be issued by the concerned DVC-issuing office. If the delinquent accounts pertain to VAT liability and the amount is lower than the amount of claim on local purchases, the application shall be accepted.[85]

...

Anent thereto, RMO No. 11-14[86] defines delinquent accounts as follows:

II. DEFINITIONS OF TERMS. — ...

...

1. Accounts Receivable/**Delinquent Account** (AR/DA) — refers to the amount of tax due from a taxpayer who **failed to pay** the same within the time prescribed for its payment.

This unpaid amount may arise from:

a. self-assessed tax liability, as defined under Item II.20 hereof; or
b. **deficiency assessment issued by the Bureau, which became <u>final and executory</u>** due to any of the following applicable instances:

b.1 Failure to file a request for reinvestigation/ reconsideration within thirty (30) days from receipt of the Final Assessment Notice (FAN);

[85] Emphasis and underscoring supplied.
[86] Policies, Guidelines and Procedures in the Periodic Clean-Up of Accounts Receivable/Delinquent Accounts.

> b.2 Failure to submit documents in support of the request for reinvestigation within sixty (60) days from filing of the request;
>
> b.3 **Failure to appeal to the Court of Tax Appeals (CTA)** within thirty (30) days from receipt of the decision denying the request for reinvestigation/reconsideration or in case of inaction on the part of the Bureau, from the lapse of the one hundred eighty (180) days from the submission of the required documents;
>
> b.4 Failure to appeal CTA's decision on the case with the higher court as a result of which the decision became final and executory; and
>
> b.5 Decision/Resolution by the CTA/Supreme Court (SC) in favor of the BIR which became final and executory.[87]
>
> ...

Revenue Memorandum Circular (**RMC**) No. 64-19[88] further clarifies, to wit:

> II. CLARIFICATIONS
>
> ...
>
> Based on the foregoing definition of AR/DA in RMO No. 11-2014, "open stop-filer cases" and deficiency tax assessments which are timely protested, subject of reconsideration/re-investigation, or **pending appeal with the Appellate Division or CTA/SC shall not be considered as AR/DA and, therefore, <u>existence of which shall not prevent the processing of VAT refund</u>**.[89]
>
> ...

A careful review of petitioner's DVC[90] (which was submitted to respondent) reveals that at the time petitioner submitted the supporting documents to respondent's VCAD, the deficiency tax assessment (Assessment No. XE-2013-00001) was still pending before the CTA, docketed as CTA Case No. 9736. Specifically, the case was still

---

[87] Emphasis and underscoring supplied.

[88] Clarifying the Issuance of Delinquency Verification Certificate for Claims for Value-Added Tax (VAT) Credit/Refund Pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as Amended.

[89] Emphasis and underscoring supplied.

[90] Supra at note 31.

in pre-trial proceedings at the time. Clearly, it had not yet ripened into a delinquent account, which would have otherwise barred petitioner's application for VAT refund in accordance with RMO NO. 47-2020.[91] Thus, respondent's refusal to accept and process petitioner's application for refund on the ground that its DVC shows an ongoing tax case is without basis.

Even assuming *arguendo* that petitioner failed to submit the required DVC, such lapse is not fatal. Jurisprudence is clear in stating that for purposes of Section 112(C)[92] of the NIRC of 1997, as amended, the completeness of the documents to support a claim for refund rests with the taxpayer and not with the BIR.[93] Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.[94] Here, when petitioner personally filed its administrative claim for refund on 11 May 2021, such filing is deemed complete for all intents and purposes. Thus, contrary to respondent's insistence, petitioner's administrative claim is deemed filed as of that date (regardless of respondent's refusal to accept it).

As to the timeliness of petitioner's judicial claim, respondent's unjust refusal to accept petitioner's complete administrative claim effectively constitutes an outright denial of its claim. Accordingly, petitioner had thirty (30) days thereafter, or until <u>10 June 2021</u> within which to file the judicial claim. As the present *Petition for Review* was filed on <u>31 May 2021</u>[95], the same was also timely filed. Such being the case, the Court finds that petitioner satisfied the above-stated *3rd requisite*.

<u>FIRST (1ST) REQUISITE:</u>
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

---

91 Supra at note 35.
92 Supra at pp. 11-12.
93 See *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, 01 February 2023, citing *Team Sual Corporation (formerly Mirant Sual Corporation) v. Commissioner of Internal of Internal Revenue,* G.R. Nos. 201225-26, 201132 & 201133, 18 April 2018.
94 Id.
95 Supra at note 1.

Indisputably, petitioner is a VAT-registered taxpayer with TIN 004-870-171-000, as evidenced by its BIR Certificate of Registration Number OCN 8RC0000048136 dated 28 February 2014.[96] Thus, petitioner complied with the *1st requisite.*

SECOND (2ND) REQUISITE:
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The *2nd requisite* requires 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) and (3)[97], and 108(B)(1) and (2)[98] 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.

---

96 Exhibit "P-4", Division Docket, Volume III, p. 1147.

97 **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);

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

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

...

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

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

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

Relative to the 2*nd requisite*, petitioner maintains that during the 1st, 2nd, 3rd and 4th quarters of CY 2019, it generated export sales of gold, silver and copper to its foreign customers Trafigura Pte. Ltd. and Perth Mint Australia. It also maintains that these export sales were paid for in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

To qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following essential elements must be present:

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

The *first* essential element is undisputed.

As for the *second* essential element, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[99], respectively provide:

> ...
> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> 1. **A VAT invoice for every sale, barter or exchange of goods or properties**; and
>
> 2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

1. A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

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

    (b) If the sale is exempt from value-added tax, the term '**VAT-exempt sale**' shall be written or printed prominently on the invoice or receipt;

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

    (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the **breakdown** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and **zero-rated** components of the sale.[100]

...

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

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

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

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

    Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other

[100] Emphasis and italics in the original text.

than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

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

1. A statement that the seller is a VAT-registered person, followed by his TIN;
2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

    a. The amount of tax shall be shown as a separate item in the invoice or receipt;
    b. If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
    c. If the sale is subject to zero percent (0%) VAT, the term "**zero-rated sale**" shall be **written** or **printed prominently** on the invoice or receipt;
    d. If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the **break-down** of the sale price between its taxable, exempt and **zero-rated** components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.[101]

...

From the above provisions, any VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present the following documents: (1) Sales invoice as proof of sale of goods showing prominently the term "zero-rated sale"; and, (2) Bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

101 Emphasis supplied and italics in the original text.

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz*:

> ...
> **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. ...
> ...
>
> **SEC. 238.** *Printing of Receipts or* ***Sales*** *or* ***Commercial Invoices***. — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or **sales or commercial invoices** shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.[102]
> ...

To summarize the foregoing requirements, the following information should be reflected in the VAT invoice:

1. A statement that the seller is a VAT-registered person, followed by its TIN;

2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT, provided that: (a) the amount of tax shall be shown as a separate item in the invoice or receipt; (b) if the sale is exempt from VAT, the term "VAT exempt sale" shall be

102 Emphasis supplied and italics in the original text.

written or printed prominently on the invoice or receipt; (c) if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt; or, (d) if the sale involves goods, properties or services, some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale;

3. In the case of sales in the amount of one thousand pesos (₱1,000.00) or more, where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client;

4. Date of transaction; and,

5. Quantity, unit cost and description of merchandise or nature of service.

Corollarily, RMC No. 42-03[103] expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax, as follows:

...

Q-13: *Should penalty be imposed on TCC application for failure of claimant to comply with certain* ***invoicing requirements,*** *(e.g., sales invoices must bear the TIN of the seller)?*

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result [in] the disallowance of the claim for input tax by the purchaser-claimant.

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

> If the claim for refund/TCC is based **on the existence of zero-rated sales by the taxpayer** but **it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied** considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.[104]

...

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.

In the 1st, 2nd, 3rd and 4th quarters of CY 2019, petitioner reported the total sales of ₱8,060,466,313.75 as shown below[105]:

Period	Vatable Sales	Zero-Rated Sales	Total Sales
First Quarter	₱2,838,780.08	₱3,505,635,937.88	₱3,508,474,717.96
Second Quarter	299,107.17	2,761,295,687.61	2,761,594,794.78
Third Quarter	714,285.75	1,788,950,665.30	1,789,664,951.05
Fourth Quarter	-	731,849.96	731,849.96
Total	**₱3,852,173.00**	**₱8,056,614,140.75**	**₱8,060,466,313.75**

Petitioner incurred the aforesaid declared zero-rated sales from the shipments of gold and copper to its foreign clients, Trafigura Pte. Ltd. and Western Australian Mint, pursuant to the respective Offtake Agreement[106], Amendment and Restatement Deed for Offtake Agreement[107] and Refining Agreement.[108]

104 Italics in the original text, emphasis and underscoring supplied.
105 Supra at p. 3.
106 Exhibit "P-25", Division Docket, Volume II, pp. 515-546.
107 Exhibit "P-25.1", id., pp. 547-596.
108 Exhibit "P-26", id., pp. 597-644.

To prove these sales, petitioner submitted the Schedule for Zero-Rated Sale of Goods for taxable year (**TY**) 2019[109], Summary of Comparison of Zero-Rated Sale of Goods *per* General Ledger (**GL**)-Net Sales Traced to Permit to Export (**PTE**), Single Administrative Document (**SAD**), Airway Bills (**AB**), Bills of Lading (**BL**), Provisional Invoices (**PI**) and Sales Invoices (**SI**) and GL-Net Sales for [CY] 2019[110], and the related ABs and BLs[111], and PIs and SIs.[112], which were all examined by the ICPA.

A perusal of the said documents and schedules reveals that out of the declared zero-rated sales of ₱8,056,614,140.75, only the amount of ₱7,772,943,902.17 (equivalent to $149,607,864.32), as detailed below, were duly supported by VAT zero-rated invoices and were actually shipped from the Philippines to foreign countries:

Shipment No.	BL/AB		Invoice			Conversion Rate	Amount (in PHP)
	Exhibit No.	Doc. No.	Exhibit No.	Date Issued	Amount (in USD)		
Shipment 66	"P-55-3-1"	B/L WT-72N-66	"P-55-4-1" "P-55-4-2"	01/23/2019	(826,259.94)	52.4679	(43,352,123.91)
Shipment 67	"P-55-3-2"	B/L SS-158-67	"P-55-4-3"	01/24/2019	31,368,288.64	52.4679	1,645,828,231.53
			"P-55-4-4"	04/30/2019	1,498,906.50	52.1122	78,111,315.31
					32,867,195.14		*1,723,939,546.84*
Shipment 68	"P-55-3-3"	B/L SP-XY1904-68	"P-55-4-5"	03/26/2019	29,599,445.75	52.4134	1,551,407,589.87
			"P-55-4-6"	06/04/2019	(2,614,477.46)	51.8029	(135,437,514.41)
					26,984,968.29		*1,415,970,075.46*
Shipment 69	"P-55-3-4"	B/L SS-165-69	"P-55-4-7"	06/02/2019	33,275,381.89	51.8029	1,723,761,280.51
			"P-55-4-8"	08/15/2019	(230,233.61)	52.0547	(11,984,741.50)
					33,045,148.28		*1,711,776,539.01*
Shipment 70	"P-55-3-5"	JS-QY1909-70	"P-55-4-9"	07/23/2019	33,641,693.83	51.1851	1,721,953,462.86
			"P-55-4-10"	09/24/2019	1,543,063.33	51.1851	78,981,850.85
					35,184,757.16		*1,800,935,313.71*
Dore 49	"P-55-3-7"	AWB 160-0156 8534	"P-55-4-11"	02/25/2019	6,739,826.90	52.1901	351,752,239.89
			"P-55-4-12"	06/26/2019	8,737.94	51.8029	452,650.63
					6,748,564.84		*352,204,890.52*
Dore 50	"P-55-3-8"	AWB 160-0310 7510	"P-55-4-13"	04/04/2019	5,724,698.70	52.1118	298,324,353.71
			"P-55-4-14"	06/26/2019	7,195.99	52.1118	374,995.99
					5,731,894.69		*298,699,349.70*
Dore 51	"P-55-3-9"	AWB 160-0482 4665	"P-55-4-15"	05/02/2019	4,503,918.50	52.1118	234,707,300.09
			"P-55-4-16"	06/26/2019	5,688.70	52.1118	296,448.40
					4,509,607.20		*235,003,748.49*
Dore 52	"P-55-3-10"	AWB 160-	"P-55-4-17"	06/10/2019	5,355,743.10	51.8029	277,443,024.23

109 Exhibit "P-51", USB
110 Exhibit "P-55", id.
111 Exhibits "P-55-3-1" to "P-55-3-11", id.
112 Exhibits "P-55-4-1" to "P-55-4-20", id.

		0649 2430	"P-55-4-18"	06/26/2019	6,245.56	51.8029	323,538.12
					5,361,988.66		277,766,562.35
Total					149,607,864.32		₱7,772,943,902.17

On the other hand, the following sales amounting to ₱283,670,238.58 (₱8,056,614,140.75 less ₱7,772,943,902.17) shall be denied VAT zero-rating for the following reasons:

1. Not supported by VAT zero-rated invoice					
Shipment No.	Exhibit No.	Document No.	Sales in Foreign Currency	Conversion Rate	Sales (in PHP)
Dore 48	"P-55-3-6"	AWB 160-7931 0770	5,147.92	51.8029	266,677.18
				Subtotal	***266,677.18***
2. Shipment details cannot be verified due to unreadable AB					
Shipment No.	Exhibit No.	Document No.	Sales in Foreign Currency	Conversion Rate	Sales (in PHP)
Dore 53	"P-55-3-11"	AWB 160-0840 4336	5,456,673.40	51.8029	282,671,506.47
			14,209.52	51.5042	731,849.96
			5,470,882.92		283,403,356.43
				Subtotal	***283,403,356.43***
3. Rounding off differences upon conversion between peso amount of sales per Schedule of Zero-Rated Sale of Goods[113] and peso amount of sales per actual computation					
Shipment No.	Exhibit No.	Document No.	Sales in PHP *per* schedule	Sales in PHP *per* actual computation (see table above)	Difference (in PHP)
Shipment 70	"P-55-4-9"	PI 0000509	1,721,953,551.87	1,721,953,462.86	
	"P-55-4-10"	SI 0000511	78,981,854.93	78,981,850.85	
			1,800,935,406.80	*1,800,935,313.71*	93.09
Dore 49	"P-55-4-11"	PI 0000564	351,752,239.89	351,752,239.89	
	"P-55-4-12"	SI 0000561	452,650.63	452,650.63	
			352,204,890.53	*352,204,890.52*	0.01
Dore 50	"P-55-4-13"	PI 0000565	298,324,420.66	298,324,353.71	
	"P-55-4-14"	SI 0000562	374,996.08	374,995.99	
			298,699,416.74	*298,699,349.70*	67.04
Dore 51	"P-55-4-15"	PI 0000566	234,707,318.30	234,707,300.09	
	"P-55-4-16"	SI 0000563	296,474.51	296,448.40	
			235,003,792.81	*235,003,748.49*	44.32
Dore 52	"P-55-4-17"	PI 0000567	277,443,024.23	277,443,024.23	
	"P-55-4-18"	SI 0000564	323,538.12	323,538.12	
			277,766,562.36	*277,766,562.35*	0.01
				subtotal	***204.47***
Unaccounted amount[114]					**0.50**
				Total	**₱283,670,238.58**

[113] Exhibit "P-51", id.
[114] ICPA Report, p. 10, id.

Thus, only the direct export sales of goods worth ₱7,772,943,902.17 (equivalent to $149,607,864.32) complied with the *second* essential element for VAT zero-rating, *i.e.*, there was sale and actual shipment of goods from the Philippines to a foreign country.

The dissent is of the view that different types of sales transactions impose distinct imprinting requirements. Specifically, Section 113(B)(2)(c)[115] of the NIRC of 1997, as amended, governs purely VAT zero-rated sales transactions, wherein it is required that the term "zero-rated sale" is written or imprinted prominently. On the other hand, Section 113(B)(2)(d)[116] of the NIRC of 1997, as amended, governs mixed-sale transactions wherein only a breakdown of the sale between its taxable, exempt and zero-rated components is enough.

In the instant case, since petitioner is purely engaged in VAT zero-rated sales, a 'breakdown' is not enough, the term "zero-rated sale" must also be prominently imprinted or written.

We beg to differ.

Subsections (a), (b), and (c) of Section 113(B)(2)[117] of the NIRC of 1997, as amended, apply to pure transactions, whereas subsection (d) of the same Section[118] applies to mixed-sale transactions. Should a seller be engaged in mixed-sale transactions, he or she or it is required to comply with subsection (d) only, and thus show the breakdown of sales to distinguish the taxable, exempt and the zero-rated components thereof. Nothing in subsection (d) requires the seller to again indicate the amount of tax or again print the term "exempt" or "zero-rated" on the same invoice (as this would be a redundant exercise). It is sufficient that a breakdown is presented to clearly segregate the sales.

Conversely, should a seller be engaged in pure transactions, then he or she is required to comply with either subsections (a), (b), or (c) only, thus, show the amount of tax as a separate item, or imprint the

[115] Supra at p. 19.
[116] Id.
[117] Id.
[118] Id.

term "exempt" or "zero-rated" whichever is applicable to the pure transaction. Such seller is not necessarily required to comply with subsection (d). It suffices that the applicable term or amount of tax is prominently imprinted or indicated to clearly distinguish the sale reflected on the invoice. Simply stated, as long as the sale transaction type – whether subject to 12% or 0% VAT or exempt – can be readily identified, the imprinting requirement is satisfied. This aligns with the purpose of the imprinting requirement, *i.e.*, to prevent buyers from falsely claiming input VAT from their purchases when no VAT was actually paid to the prejudice of the State[119], without imposing undue burden on taxpayers.

Anent the *third and last* essential element for VAT zero-rating, *i.e.*, the sale was paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, petitioner presented the Schedule of Inward Remittances of Zero-Rated Sale for [CY] 2019[120], the related Inward Remittances Transaction Details,[121] Bank Statement of Account[122] and Certificate of Inward Remittance.[123]

A scrutiny of the above proffered documents shows that out of the substantiated zero-rated sales of $149,607,864.32 (with peso equivalent of ₱7,772,943,902.17), the amount of $22,202,263.28 has no corresponding proof of inward remittance, to wit:

<table>
<tr><th rowspan="2">Shipment No.</th><th colspan="5">Sales Invoice</th><th colspan="2">Inward Remittance</th><th rowspan="2">Difference (in USD)</th></tr>
<tr><th>Exh. No.</th><th>Gross Amount (in USD)</th><th colspan="2">Deductions (in USD)</th><th>Net Amount (in USD)</th><th>Exh. No.</th><th>Gross Amount Remitted (in USD)</th></tr>
<tr><td>Shipment 66</td><td>"P-55-4-1"; "P-55-4-2"</td><td>(826,259.94)</td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td rowspan="2">Shipment 67</td><td rowspan="2">"P-55-4-4"</td><td rowspan="2">32,867,195.14</td><td>Treatment & Refining Charges</td><td>1,101,785.25</td><td rowspan="2">31,307,490.95</td><td>"P-57-1-2"; "P-57-2-1 (3/3)"; "P-57-3-1 (7/8)"</td><td>4,632,639.35</td><td rowspan="2">22,202,263.28</td></tr>
<tr><td>Insurance & Freight</td><td>292,246.58</td><td>"P-57-1-3"; "P-57-2-5 (1/3)"; "P-57-3-1 (7/8)"</td><td>4,472,588.32</td></tr>
</table>

119 See *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, 08 February 2010.

120 Exhibit "P-56", USB.

121 Exhibits "P-57-1-1" to "P-57-1-28", id.

122 Exhibits "P-57-2-1" to "P-57-2-9", id.

123 Exhibit "P-57-3-1", id.

			Advance Payment Interest, etc.	165,672.36				
				1,559,704.19			9,105,227.67	
			Treatment & Refining Charges	1,030,458.58		"P-57-1-4"; "P-57-2-2 (1/2)"; "P-57-3-1 (7/8)"	4,924,560.00	
			Insurance & Freight	277,902.43		"P-57-1-5"; "P-57-2-2 (2/2)"; "P-57-3-1 (7/8)"	8,270,048.10	
			Advance Payment Interest, etc.	126,832.74		"P-57-1-6"; "P-57-2-3 (2/2)"; "P-57-3-1 (7/8)"	10,327,161.59	
						"P-57-1-7"; "P-57-2-4 (1/2)"; "P-57-3-1 (7/8)"	1,817,062.04	
						"P-57-1-8"; "P-57-2-6 (1/3)"; "P-57-3-1 (7/8)"	210,942.81	
Shipment 68	"P-55-4-6"	26,984,968.29		1,435,193.75	25,549,774.54		25,549,774.54	-
			Treatment & Refining Charges	1,172,442.82		"P-57-1-9"; "P-57-2-3 (2/2)"; "P-57-3-1 (7/8)"	8,998,782.53	
			Insurance & Freight	294,940.88		"P-57-1-10"; "P-57-2-4 (2/2)"; "P-57-3-1 (7/8)"	6,632,958.88	
			Advance Payment Interest, etc.	190,440.89		"P-57-1-11"; "P-57-2-5 (2/3)"; "P-57-3-1 (7/8)"	12,561,146.55	
						"P-57-1-12"; "P-57-2-6 (1/3)"; "P-57-3-1 (7/8)"	280,601.72	
						"P-57-1-13"; "P-57-2-8 (1/2)"; "P-57-3-1 (8/8)"	2,913,834.01	
Shipment 69	"P-55-4-8"	33,045,148.28		1,657,824.59	31,387,323.69		31,387,323.69	-
			Treatment & Refining Charges	1,119,656.64		"P-57-1-14"; "P-57-2-6 (2/3)"; "P-57-3-1 (7/8)"	5,934,760.79	
			Insurance & Freight	296,680.60		"P-57-1-15"; "P-57-2-7 (1/2)"; "P-57-3-1 (8/8)"	22,345,369.23	
Shipment 70	"P-55-4-10"	35,184,757.16	Advance Payment Interest, etc.	116,931.41	33,651,488.51	"P-57-1-16"; "P-57-2-8 (1/2)"; "P-57-3-1	623,173.89	-

						(8/8)"		
						"P-57-1-17"; "P-57-2-9 (1/2)"; "P-57-3-1 (8/8)"	4,748,184.60	
				1,533,268.65			33,651,488.51	
						"P-57-1-19"; "P-57-2-2 (2/2)"; "P-57-3-1 (7/8)"	6,402,736.90	
						"P-57-1-20"; "P-57-2-3 (1/2)"; "P-57-3-1 (7/8)"	337,090.00	
						"P-57-1-26"; "P-57-2-7 (1/2)"; "P-57-3-1 (8/8)"	8,737.94[124]	
Dore 49	"P-55-4-12"	6,748,564.84		-	6,748,564.84		6,748,564.84	-
						"P-57-1-21"; "P-57-2-3 (2/2)"; "P-57-3-1 (7/8)"	5,724,698.70	
						"P-57-1-26"; "P-57-2-7 (1/2)"; "P-57-3-1 (8/8)"	7,195.99[125]	
Dore 50	"P-55-4-14"	5,731,894.69		-	5,731,894.69		5,731,894.69	-
						"P-57-1-22"; "P-57-2-5 (1/3)"; "P-57-3-1 (7/8)"	4,209,493.20	
						"P-57-1-23"; "P-57-2-5 (2/3)"; "P-57-3-1 (7/8)"	294,425.30	
						"P-57-1-26"; "P-57-2-7 (1/2)"; "P-57-3-1 (8/8)"	5,688.70[126]	
Dore 51	"P-55-4-16"	4,509,607.20		-	4,509,607.20		4,509,607.20	-
						"P-57-1-24"; "P-57-2-6 (2/3)"; "P-57-3-1 (7/8)"	5,092,907.10	
Dore 52	"P-55-4-18"	5,361,988.66		-	5,361,988.66	"P-57-1-25"; "P-57-2-6 (2/3)"; "P-57-3-1 (8/8)"	262,836.00	-

124 Forms part of the total amount of $33,012.89 that was inwardly remitted on 28 June 2019 *per* Exhibit "P-57-3-1 (8/8)".

125 Id.

126 Id.

						"P-57-1-26"; "P-57-2-7 (1/2)"; "P-57-3-1 (8/8)"	6,245.56[127]	
							5,361,988.66	
Total		149,607,864.32			144,248,133.08		$122,045,869.80	$22,202,263.28

The peso equivalent of the said amount of $22,202,263.28 is ₱1,164,546,452.88, computed using the average foreign exchange rate used by petitioner for Shipment 67 *per* the Schedule for Zero-Rated Sale of Goods[128] as follows:

Substantiated zero-rated sales without inward remittance (in USD)		$22,202,263.28
Multiplied by Average foreign exchange rate used by petitioner for Shipment 67:		
Amount in PHP	₱1,723,939,546.84	
Divided by Amount in foreign currency (USD)	32,867,195.14	52.4517
Substantiated zero-rated sales *without* inward remittance (in PHP)		**₱1,164,546,452.88**

Hence, only the substantiated export sales of ₱6,608,397,449.29[129] were paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations and satisfactorily complied with the *third and last* essential element for VAT zero-rating.

In fine, and for purposes of compliance with the 2*nd* *requisite*, only the amount of ₱6,608,397,449.29 represents petitioner's valid zero-rated sales for CY 2019 pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

---

127 Id.

128 Exhibit "P-51", USB.

129 Computed as follows: Total substantiated export sales of ₱7,772,943,902.17 less sales without inward remittance of ₱1,164,546,452.88 = valid and substantiated export sales of ₱6,608,397,449.29

FOURTH (4TH) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite*, the following conditions must concur:

a. 1st **condition**: the input taxes are due or paid;

b. 2nd **condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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;

c. 3rd **condition**: the input taxes are not transitional input taxes; and,

d. 4th **condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with the ***3rd*** and ***4th conditions*** as its input taxes do not appear to be transitional input taxes since they operate to benefit only newly VAT-registered persons. Also, petitioner is deemed to have complied with the same after it was established that petitioner deducted the input VAT claim of ₱133,671,461.36 as a "VAT Refund/TCC Claimed" (line 23D) in its Amended VAT Return for the 4th quarter of CY 2020[130] preventing thus the carry-over of the said amount unto the succeeding taxable quarters.

As to the ***1st condition***, petitioner claims that for CY 2019, it had a total allowable input tax of ₱134,133,722.12, out of which the amount

[130] Exhibit "P-33.4", Division Docket, Volume III, p. 1305.

of ₱133,671,461.36 is the subject of the present petition, as shown on the following tabulation[131]:

	1st Quarter[132]	2nd Quarter[133]	3rd Quarter[134]	4th Quarter[135]	Total
Input Tax on Purchase of Capital Goods exceeding ₱1Million					
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱205,689,959.99	₱187,692,580.86	₱170,056,741.57	₱159,977,284.09	₱723,416,566.51
Input Tax on Current Purchase of Capital Goods exceeding ₱1Million	493,279.00	891,695.00	8,753,350.00	2,457,030.00	12,595,354.00
Total	**₱206,183,238.99**	**₱188,584,275.86**	**₱178,810,091.57**	**₱162,434,314.09**	**₱736,011,920.51**
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	187,692,580.86	170,056,741.57	159,977,284.09	143,339,697.87	661,066,304.39
Amortized Input Tax on Purchases of Capital Goods exceeding ₱1Million	₱18,490,658.13	₱18,527,534.29	₱18,832,807.48	₱19,094,616.22	₱74,945,616.12
Input Tax on Importation of Goods Other than Capital Goods	22,597,694.00	23,821,543.00	11,179,231.00	1,589,638.00	59,188,106.00
Total Input Taxes for the period	**₱41,088,352.13**	**₱42,349,077.29**	**₱30,012,038.48**	**₱20,684,254.22**	**₱134,133,722.12**
Less: Output Tax	340,653.61	35,892.86	85,714.29	-	462,260.76
Amount of claim for refund	**₱40,747,698.52**	**₱42,313,184.43**	**₱29,926,324.19**	**₱20,684,254.22**	**₱133,671,461.36**

131 Supra at p. 4.
132 Supra at note 10.
133 Supra at note 14.
134 Supra at note 18.
135 Supra at note 22.

To support its reported input VAT of ₱134,133,722.12, petitioner submitted its Schedule of Importations Other than Capital Goods for TY 2019[136], Schedule of Amortization of Input Tax Deferred on Capital Goods Exceeding ₱1Million for TY 2019[137], various SADs[138] and Statements of Settlement of Duties and Taxes (**SSDTs**)[139] and SI.[140]

For purposes of satisfying the aforesaid condition, it is of crucial importance that petitioner provides documents to support its declaration that the input VAT claimed during the subject period was actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

> ...
> **SEC. 110**. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax**:
>
> a. Purchase or importation of goods:
>
> i. For sale; or
> ii. For conversion into or intended to form part of a finished product for sale including packaging materials; or
> iii. For use as supplies in the course of business; or
> iv. For use as materials supplied in the sale of service; or
> v. For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> b. Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

---

136 Exhibit "P-64", USB.
137 Exhibit "P-72", id.
138 Exhibits "P-68-1-1" to "P-68-1-657" and "P-75-1-1" to "P-75-1-661", id.
139 Exhibits "P-68-2-1" to "P-68-2-657" and "P-75-2-1" to "P-75-2-661", id.
140 Exhibit "P-75-3-662", id.

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

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

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, further,* That the amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized. *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or free.[141]

...

Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 13-2018[142], implement the above provisions. They read:

...

SEC. 4.110-1. ***Credits For Input Tax.*** — *'Input tax'* means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

---

141 Emphasis supplied and italics in the original text.

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

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

a. Purchase or importation of goods
   1. For sale; or
   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
   3. For use as supplies in the course of business; or
   4. For use as raw materials supplied in the sale of services; or
   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

b. Purchase of real properties for which a VAT has actually been paid;
c. Purchase of services in which a VAT has actually been paid;
d. Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;
e. Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
f. Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
g. Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

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

a. To the importer upon payment of VAT prior to the release of goods from customs custody;
b. To the purchaser of the domestic goods or properties upon consummation of the sale; or
c. To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

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

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

...

(c) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[143]

...

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

...

SEC. 4.110-8. ***Substantiation of Input Tax Credits***. —

a. Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:**

[143] Emphasis supplied and italics in the original text.

1. For the importation of goods — import entry or other equivalent document **showing actual payment of VAT on the imported goods.**
2. For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
3. For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
4. For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.[144]

...

The documents also need to comply with the invoicing requirements[145] provided under Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005, as amended.

A perusal of the submitted documents and verification of the ICPA's Summary of Comparison of Importation Other than Capital Goods per GL-Input VAT Receivable PHP Traced to Importation Documents[146] shows that the total input tax on importation of goods other than capital goods in the amount of ₱59,188,106.00 were duly substantiated by SADs and SSDTs, except for ₱21,924.00 which was not supported by original printout of SSDT[147] and is only supported by an Assessment Notice.[148] In addition, a scrutiny of the ICPA's Summary of Comparison of Capital Goods Exceeding ₱1 Million Traced to Importation Documents[149] and the related supporting documents reveals that out of the ₱74,945,616.12 amortized input tax on purchases of capital goods exceeding ₱1 Million, the amount of ₱25,913.60 shall be

---

144 Emphasis supplied and italics in the original text.
145 Supra at pp. 18-21.
146 Exhibit "P-68", USB.
147 ICPA, p. 19, id.
148 Exhibit "P-68-2-99", id.
149 Exhibit "P-75", id.

disallowed since its supporting SSDT with Receipt No. 288541[150] does not indicate any VAT payment thereon.

Consequently, out of the declared input VAT of ₱134,133,722.12, only the amount of ₱134,085,884.52 pertain to petitioner's valid input VAT due or paid for CY 2019, in compliance with the *1st* ***condition***, computed as follows:

Total Available Input VAT for CY 2019	₱134,133,722.12
Less: Not supported by original print-out of SSDTs	21,924.00
Supported by original print-out of SSDTs but no VAT payment indicated	25,913.60
Total Available Valid Input VAT for CY 2019	**₱134,085,884.52**

As for the *2nd* ***condition***, since petitioner had both zero-rated and VATable sales in CY 2019 and the corresponding input VAT cannot be directly and entirely attributed to any of these sales, the input VAT shall be proportionately allocated on the basis of sales volume, to wit:

Total Declared Zero-Rated Sales *per* VAT Returns	₱ 8,056,614,140.75
Divided by Reported Total Declared Sales *per* VAT Returns	8,060,466,313.75
Multiplied by Total Declared Input VAT	134,133,722.12
Declared Input VAT allocated to Declared Zero-Rated Sales	**₱134,069,618.35**

Total Decaled 12% VATable Sales *per* VAT Returns	₱3,852,173.00
Divided by Reported Total Declared Sales *per* VAT Returns	8,060,466,313.75
Multiplied by Total Declared Input VAT	134,133,722.12
Declared Input VAT allocated to Declared 12% VATable Sales	**₱64,103.77**

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[151] (**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

150 Exhibit "P-75-2-450", id.
151 G.R. No. 215159, 05 July 2022; Citation omitted, italics and emphasis in the original text and supplied, and underscoring supplied.

from VATable sales, and claim for refund or issuance of a 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 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 first 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 credited its output VAT of ₱462,260.76 against its "Declared Input VAT" of ₱134,133,722.12 and applied for refund the remaining "Excess Input VAT" of ₱133,671,461.36. Clearly, petitioner has chosen the first option.

Since petitioner's declared input VAT allocated to 12% VATable sales in the amount of ₱64,103.77, as determined earlier, is not enough to cover the output VAT due of ₱462,260.76, the declared input VAT attributable to declared zero-rated sales in the amount of ₱134,069,618.35 shall then be utilized against the output VAT still due of ₱398,156.99, resulting in an excess input VAT attributable to declared zero-rated sales in the amount of ₱133,671,461.36, computed as follows:

Output VAT	₱462,260.76
Less: Declared Input VAT allocated to Declared 12% VATable Sales	64,103.77
Output VAT still due	**₱398,156.99**

Declared Input VAT attributable to Declared Zero-Rated Sales	₱134,069,618.35
Output VAT still due	398,156.99
Excess Input VAT attributable to Declared Zero-Rated Sales	**₱133,671,461.36**

However, as discussed earlier, not all of petitioner's input VAT is valid. Thus, this Court determines whether the valid input VAT of petitioner is sufficient to cover its excess input VAT attributable to declared zero-rated sales, *viz:*

Excess Input VAT attributable to Declared Zero-Rated Sales (A)	₱ 133,671,461.36
Total Available Valid and Substantiated Input VAT (B)	134,085,884.52
Valid Available Input VAT attributable to Declared Zero-Rated Sales (A or B, whichever is lower)	**₱133,671,461.36**

Meanwhile, in relation to its zero-rated sales, considering that petitioner was able to properly substantiate only the amount of ₱6,608,397,449.29 out of its total declared zero-rated sales of ₱8,056,614,140.75, only the valid input VAT of ₱109,637,332.61 is attributable to the said valid zero-rated sales of ₱6,608,397,449.29, as computed below:

Valid Zero-Rated Sales	₱6,608,397,449.29
Divided by Declared Zero-Rated Sales	8,056,614,140.75
Multiplied by Valid Input VAT attributable to Declared Zero-Rated Sales	133,671,461.36
Total Refundable Amount	**₱109,643,347.55**

It is well established that claims for tax refund, like tax exemptions, are construed *strictissimi juris* against the taxpayer. However, when the claim for refund has a clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the refund.[152]

WHEREFORE, premises considered, the instant Petition for Review filed on 31 May 2021 by petitioner OceanaGold (Philippines), Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **ONE HUNDRED NINE MILLION SIX HUNDRED FORTY-THREE THOUSAND THREE HUNDRED FORTY-SEVEN PESOS and 55/100** (**₱109,643,347.55**) in favor of petitioner OceanaGold (Philippines), Inc., representing its unutilized excess input Value-Added Tax for the four (4) taxable quarters of CY 2019 which is attributable to its zero-rated sales for the same period.

---

152 *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*, supra at note 147; citing *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, 25 November 2009; *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 180043, 14 July 2009.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(*With due respect, please see Dissenting Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

First Division

OCEANAGOLD (PHILIPPINES), INC., Petitioner,	**CTA Case No. 10543**
	Present:
	DEL ROSARIO, *P.J. & Chairperson*, **BACORRO-VILLENA,** and **CUI-DAVID,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 2 9 2024; 3:30PM

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia*. I submit that petitioner's claim for refund of input value-added tax (VAT) attributable to zero-rated sales must be denied for petitioner's failure to comply with the invoicing requirements under Section 113(B)(2)(c) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 113(B)(2)(c) and (d) of the NIRC of 1997, as amended, reads:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> x x x
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information **shall** be indicated in the VAT invoice or VAT official receipt:

x x x

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:

x x x

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

(d) If the sale involved goods, properties or services some of which are **subject to and some of which are VAT zero-rated or VAT exempt**, the invoice or receipt shall clearly indicate the **break-down** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. x x x" (*Boldfacing supplied*)

The above provision is implemented by Section 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended, which reads:

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

x x x

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

x x x

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

x x x

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

(d) If the sale involves goods, properties or services some of which are **subject to and some of which are VAT zero-rated or VAT-exempt**, the invoice or receipt shall clearly indicate the **break-down** of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale." (*Boldfacing supplied*)

From the foregoing, it is a requirement that for any VAT invoice or official receipt evidencing a zero-rated transaction, the term **"zero-rated sale" should be written or printed prominently thereon**. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[1]

The Supreme Court has settled, in a number of cases,[2] that the writing or imprinting of the term "zero-rated sale" on the VAT invoice or official receipt is **indispensable** for a valid claim for refund of unutilized input tax. Such requirement was traced by the Supreme Court from Section 4.108-1 of RR No. 7-95, which has been incorporated in Section 113(B)(2)(c) of the NIRC of 1997, as amended, by virtue of the amendments introduced by RA No. 9337, which confirms the validity of the imprinting requirement on VAT invoices or official receipts, *viz*:[3]

> "**RR 7-95, which took effect on 1 January 1996, proceeds from the rule-making authority granted to the Secretary of Finance** by the NIRC for the efficient enforcement of the same Tax Code and its amendments. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, we ruled that this provision is 'reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services.' Moreover, we have held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue* that **the subsequent incorporation of Section 4.108-1 of RR 7-95 in Section 113 (B)(2)(c) of R.A. 9337 actually confirmed the validity of the imprinting requirement on VAT invoices or official receipts – a case falling under the principle of legislative approval of administrative interpretation by reenactment.**" (*Boldfacing supplied*)

Revenue Memorandum Circular No. 42-2003 provides that if the refund claim is based on the existence of zero-rated sales but the taxpayer fails to comply with the invoicing requirements, such claim should be **denied**, *viz*.:

---

[1] *Commissioner of Internal Revenue vs. Philex Mining Corporation*, G.R. No. 230016, November 23, 2020.

[2] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010; *Hitachi Global Storage Technologies Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010; *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010; *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[3] *Western Mindanao Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

> "Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?
>
> A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> **If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its <u>claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales</u>**. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer." (*Boldfacing and underscoring supplied*)

A scrutiny of **all of the sales invoices** submitted by petitioner reveals that the words **"zero-rated sale" were not separately written or imprinted prominently thereon**. What appears on record are VAT invoices form that are exclusively intended for <u>mixed</u> transactions, that is -- for sales subject to VAT and some which are VAT zero-rated or VAT exempt. In other words, notwithstanding the fact that petitioner indicated in the breakdown of the VAT invoices the amount pertaining to the "zero-rated sale", such however **did not in any way cure its failure to comply with the imprinting requirement**. The information necessary to be indicated in the **"breakdown"** ***and*** **the writing or imprinting of "zero-rated sales"** on the VAT sales invoices are requirements governed by **<u>separate provisions</u>** of the NIRC of 1997, as amended; that is, **Paragraph (d)** of Section 113(B)(2), which requires the breakdown of sales in mixed transactions involving VATable, VAT-exempt or VAT zero-rated goods, properties, or services *and* **Paragraph (c)** of <u>Section 113(B)(2)</u>, which provides for the imprinting requirement in case of sale subject to zero percent (0%) VAT.

Verily, when the transaction involves a purely VAT zero-rated sale, the VAT sales invoice should prominently bear the phrase "zero-rated sale" in accordance with Paragraph (c) of Section 113(B)(2) of the NIRC of 1997, as amended. However, when the transaction is mixed, *i.e.,* a combination of VATable, VAT-exempt or VAT zero-rate sales, the breakdown requirement under Paragraph (d) of Section 113(B)(2) may apply. **In the case at bar, all of petitioner's VAT**

OM

invoices pertain to purely VAT zero-rated sales, yet the imprinting of the required phrase "zero-rated sale" remained lacking.

If the breakdown format is intended by law to be sufficient in all types of transactions- whether **mixed transactions or purely "zero-rated sales" transactions**, then the law does not make sense in crafting **separate provisions**, one, in requiring the use of "breakdown format", and another, mandating a separate format that requires imprinting of "zero-rated sale" in purely VAT zero-rated sale transactions.

Section 113 of the NIRC of 1997, as amended, in both its previous form under Republic Act (RA) No. 9337, which is applicable to this case, and present form as introduced by RA No. 11976, otherwise known as "Ease of Paying Taxes Act", requires the use of two (2) formats, that is, either the use of invoices bearing prominently the phrase "zero-rated sale" **or** the use of invoices bearing the "breakdown format" **(depending upon the nature or type of sale involved)**. Section 113 of the NIRC of 1997, as amended by RA No. 9337 and RA No. 11976 read as follows:

RA No. 9337	**RA No. 11976**
SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* – (A) *Invoicing Requirements.* - A VAT-registered person shall issue: (1) A VAT invoice for every sale, barter or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. (B) *Information Contained in the **VAT Invoice or VAT Official Receipt**.* — The following information shall be indicated in the VAT invoice or VAT official receipt: (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); (2) The total amount which the purchaser pays or is obligated to pay to the seller with the	Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons.- (A) Invoicing Requirement. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services. (B) Information Contained in the VAT Invoice. - The following information shall be indicated in the **VAT invoice**: (1) A statement that the seller is a VAT-registered person, followed by the seller's Taxpayer Identification Number; (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That: (a) The amount of the tax shall be shown as a

OM

indication that such amount includes the value-added tax: *Provided*, That: (a) The amount of the tax shall be shown as a separate item in the invoice or receipt; (b) If the sale is **exempt** from value-added tax, the **term 'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt; (c) If the sale is subject **to zero percent (0%)** value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the <u>break-down</u> of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt**: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. xxx	separate item in the invoice; (b) If the sale is **exempt** from value-added tax, the term **'VAT-exempt sale'** shall be written or printed on the invoice; (c) If the sale is subject to **zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed on the invoice**; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice shall clearly indicate the <u>breakdown</u> of the sale price between its taxable, exempt, and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: *Provided,* That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale. xxx

Interestingly, the Ease of Paying Taxes Act,[4] **has retained specific but separate provisions on the type of sales subject to imprinting "zero-rated sale" and those that are subject to "breakdown format"**, albeit with a minor modification on the imprinting requirement, *i.e.*, the omission of the word "prominently" to qualify the requirement. The retention of both requirements supports the interpretation that the **format requiring the imprinting of "zero-**

[4] RA No. 11976.

rated sales" is indeed separate and distinct from the format requiring "breakdown" for mixed transactions.

In numerous VAT refund cases, this Court had allowed erasures and corrections in invoices or official receipts as long as they are made by an authorized signatory. Such treatment of allowing erasures and corrections in invoices or official receipts, especially on the parts where the types and amounts of sales are shown, creates a risk that ill-intentioned taxpayers may manipulate zero-rated sale transactions who make use of the "breakdown format" without "zero-rated sale" separately and prominently written in the official receipts by altering such invoices or receipts to appear as VATable transactions, thus eventually allowing them to be entitled to input tax credits. **To prevent such abuse, which cannot simply be discounted, the requirement of stamping or imprinting the term "zero-rated sales" in receipts involving purely zero-rated sale transaction is and should be implemented. This measure ensures that alterations cannot easily convert zero-rated sales into VATable sales, and thus prevent the evil, i.e., the use of credits against output tax liability, or worse, refund of taxes not actually incurred or paid.**

ALL TOLD, I *VOTE* to DENY the Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice