REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TOLEDO POWER COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8403

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 16 2015 3:30 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1] filed on December 28, 2011, petitioner Toledo Power Company prays for refund or issuance of tax credit certificate of the amount of ₱24,412,203.00, allegedly representing its unutilized input value-added tax (VAT) for the fourth (4^{th}) quarter of taxable year 2009.

Petitioner is a partnership duly organized and existing under Philippine laws, with principal office located at Sangi, Toledo City, Cebu.[2] It is registered with and authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. 003-883-626-000 per BIR Certificate of Registration No. 2RC0000074406.[3]

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[1] Docket, pp. 6-23
[2] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, docket, p. 131
[3] Exhibit "D"

Respondent, on the other hand, is the Commissioner of Internal Revenue with authority to act on and approve claims for refund or tax credit as provided by law. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

Petitioner avers that it filed its Quarterly VAT Return for the 4th quarter of 2009 on January 26, 2010.[4] It also filed Quarterly VAT Returns[5] for the first (1st) to fourth (4th) quarters of 2010 and 2011.

During the 4th quarter of taxable year 2009, petitioner reported the following transactions in its VAT return:

	SALES/RECEIPTS	**OUTPUT TAX**
VATable Sales/Receipts	₱237,742,036.53	₱28,529,044.38
Sales to Government	13,572,156.80	1,628,658.82
Zero-rated sales/receipts	374,355,255.19	
Exempt sales/receipts	986,198.90	
TOTAL	₱626,655,647.42	

In the same quarter, petitioner allegedly incurred the following input taxes, which were likewise reported in its VAT return, thus:

	PURCHASES	**INPUT TAXES**
VATable purchases for the quarter	₱448,941,390.26	₱53,872,966.83
Input tax on purchases of capital goods amortized during the quarter		327,455.38
Total input taxes for the quarter		₱54,200,422.21

Petitioner avers that a portion of the above input taxes are attributable to its zero-rated sales/receipts. This portion of the input taxes amounting to ₱24,412,203.00 were not fully utilized in the same quarter and were not used against its output taxes in the subsequent periods.

On August 26, 2011, petitioner filed with the BIR Revenue District Office No. 123 an administrative claim for VAT refund or issuance of tax credit certificate in the amount

[4] Exhibits "J" and "K"
[5] Exhibits "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", and "X"

of ₱24,412,203.00.[6] However, respondent failed to act on the said claim prompting petitioner to file the instant Petition for Review before the Court on December 28, 2011.

In her Answer[7] filed on January 24, 2012, respondent argued that the subject claim for refund is still undergoing administrative routinary investigation/examination by the BIR; that the claimed amount of ₱24,412,203.00 was not properly documented; that petitioner failed to submit complete documents in the administrative level; and that the burden of proof to establish the right to refund/credit is upon petitioner.

On March 6, 2012, the parties filed their *Joint Stipulation of Facts and Issues*[8] upon which the Pre-Trial Order,[9] issued on March 20, 2012, was based.

During the trial, petitioner presented two (2) witnesses, namely: Reymonda Aida B. Obrero and Joseph Cedric V. Calica.

In her Judicial Affidavit, **Reymonda Aida B. Obrero**[10] declared that she is the Senior Accounting Manager of Global Business Power Corporation, a holding company with management and control of various power generation facilities, one of which is petitioner. She testified that petitioner duly filed with the BIR its administrative claim for refund of unutilized input VAT amounting to ₱24,412,203.00 for the 4th quarter of taxable year 2009, along with all the supporting documents.

The Court-commissioned Independent Certified Public Accountant (ICPA) **Joseph Cedric V. Calica**[11] also executed a Judicial Affidavit in which he explained that petitioner is engaged in zero-rated sales as it sells and supplies electric power to entities located in economic zones or to Board of

[6]Exhibits "E" and "F"
[7]Answer, docket, pp. 95-105
[8] Docket, pp. 130-138
[9]Docket, pp. 141-148.
[10]Exhibit "Y"
[11]Exhibit "ZZZ"

Investments (BOI)-registered entities. He considered petitioner's sales to CEBECO III as zero-rated because portions of its energy fee billing to CEBECO III were pass-through charges directly attributable to Balamban Enerzone Corporation (BEC) and Carmen Copper Corporation (CCC), which are zero-rated entities. And based on his findings, the amount that is due for refund to petitioner, as supported by documents, is ₱23,783,426.50.

After petitioner rested, as appearing in the Resolutions dated October 14, 2013[12] and January 22, 2014[13], counsel for respondent manifested that no evidence would be presented for respondent in the absence of the final report from the examiner of the case.[14]

On May 2, 2014, the case was deemed submitted for decision with respondent filing of her *Memorandum*[15] on March 24, 2014, and petitioner, on April 25, 2014[16].

THE ISSUES

The parties submitted the following issues[17]for the Court's resolution:

1. Whether or not the Court of Tax Appeals has jurisdiction over the instant Petition for Review;

2. Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of ₱24,412,203.00 allegedly representing its unutilized input VAT for the 4th quarter of 2009; and

[12]Docket,pp. 2033-2034
[13]Docket, pp. 2065-2066
[14] Minutes of the Hearing, docket, p. 2067
[15]Docket, pp. 2072-2084
[16]Docket, pp. 2091-2110
[17]Stipulated Issues, Pre-trial Order, docket, p. 145

3. Whether or not the denial by inaction of petitioner's administrative application for refund was proper.

which can be narrowed down into one main issue, to wit:

> WHETHER PETITIONER IS ENTITLED TO REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE TOTAL AMOUNT OF ₱24,412,203.00, REPRESENTING ITS ALLEGED UNUTILIZED INPUT VAT FOR THE 4th QUARTER OF 2009.

THE COURT'S RULING

Petitioner anchors its claim for refund on Section 108(B)(3) in relation to Section112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, hereby quoted for ready reference:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

> "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 BangkoSentral 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."

Thus, to be entitled to a refund or tax credit of unutilized input taxes attributable to zero-rated or effectively zero-rated sales, the following must be satisfied:

1. that there must be zero-rated or effectively zero-rated sales;

2. input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated sales or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability; and

5. that the claim for refund was filed within the two-year prescriptive period.

To merit determination of the case, the Petition for Review must be seasonably filed with this Court.

Based on Section 112(A) and as expounded in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (Aichi),[18] a VAT-registered person, such as petitioner, may within two (2) years from the close of the taxable quarter when the relevant sales were made, apply with respondent a claim for refund/tax credit of creditable input tax attributable to such sales.

The present case pertains to a claim for refund/tax credit of input VAT for the fourth quarter of taxable year 2009. Hence, petitioner's administrative claim for refund/tax credit was seasonably filed with respondent on August 26, 2011.

As to petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, is instructive, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents

[18] G.R. No. 184823, October 06, 2010.

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

In fine, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the decision or from inaction of respondent, as in this case, after the lapse of the one hundred twenty (120)-day period.

Per record, the 120-day period ended on December 24, 2011 counting from the filing of petitioner's administrative claim on August 26, 2011. From December 24, 2011, petitioner had 30 days or until January 23, 2012, within which to file its judicial claim before the Court. Therefore, the instant Petition for Review was as well filed on time on December 28, 2011.

The Court shall now proceed on the merits of petitioner's claim for refund of its alleged unutilized input tax for the 4th quarter of 2009.

It is undisputed that petitioner is a VAT-registered entity engaged in zero-rated sales as it sells and supplies electric power to entities located in economic zones or to BOI-registered entities.

In its VAT Return[19] for the 4th quarter of 2009, it shows that petitioner had a total sales/receipts of ₱626,655,647.42 and an output tax of ₱30,157,703.20, broken down as follows:

w/

[19] Exhibit "K"

	Sales/Receipts	Output Tax
VATable Sales/Receipt – Private	₱ 237,742,036.53	₱ 28,529,044.38
Sale to Government	13,572,156.80	1,628,658.82
Zero-Rated Sales/Receipts	374,355,255.19	
Exempt Sales/Receipts	986,198.90	
Total Sales/Receipts	**₱626,655,647.42**	**₱30,157,703.20**

For the same quarter, petitioner reported input taxes in the aggregate amount of ₱54,200,422.21. Out of this amount, only the amount of ₱24,412,203.00 is the subject of the present Petition for Review, detailed as follows:[20]

Input Taxes on	**Exhibit**	**Common Input Taxes (Exhibit "K")**	**Input Taxes Allocated to Zero-Rated Sales (using the allocation rate of 59.74%[21])**
Domestic Purchases			
Domestic Purchases of Goods Other than Capital Goods		₱ 34,717,864.55	₱ 20,739,963.16
Domestic Purchase of Services		4,871,550.71	2,910,195.76
Purchase of Capital Goods not exceeding ₱1Million		164,216.57	98,100.67
	BBB	*39,753,631.83*[22]	*23,748,259.59*
Importation of Goods Other than Capital Goods	CCC	14,119,335.00	8,434,691.81
Purchases of Capital Goods Amortized During the Quarter		327,455.38[23]	195,617.23
Less: Excess Input Tax Applied to Output Tax Due			7,966,365.63
Total		**₱54,200,422.21**	**₱24,412,203.00**

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

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[20] Exhibit "AAA"
[21] Exhibit "DDD"
[22] ₱39,753,631.87 per Exhibit "BBB", ₱.04 difference due to rounding-off
[23]

Input tax deferred on capital goods exceeding ₱1M from previous quarter	₱2,747,061.58
Less: Input tax on purchases of capital goods exceeding ₱1M deferred for the succeeding period	2,419,606.20
Amortized input tax on purchases of capital goods exceeding P1M	**₱327,455.38**

w/

To prove its claim, petitioner offered as evidence its suppliers' invoices and official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), and BOC official receipts.[24]

When the foregoing documents were verified, the ICPA noted several exceptions, summarized below:

Exceptions	**Amount**	**Exhibit**
Company Name Not Properly Indicated in the Supporting Documents	₱ 910,597.14	FFF-1
No Valid Supporting Documents	22,066.35	FFF-2
No Date Indicated in the Supporting Documents	77.68	FFF-3
No Sales Invoices/Official Receipts Submitted by Petitioner	94,994.42	FFF-4
No BOC IEIRD/Official Receipts Submitted by Petitioner	24,811.00	FFF-5
Total	**₱1,052,546.58**	

The Court finds the ICPA Report to be in order, except for Exhibit "FFF-1". In this regard, only the input tax paid to Calderon Davide Trinidad Tolentino and Castillo Law in the amount of ₱3,600.00 should have been disallowed since the company name indicated in the official receipt was not that of petitioner. Thus, the disallowances per ICPA's findings are adjusted to ₱145,549.45, computed as follows:

Exceptions	**Disallowed Input Tax**	**Exhibit**
Company Name Not Properly Indicated in the Supporting Documents	₱ 3,600.00	FFF-1
No Valid Supporting Documents	22,066.35	FFF-2
No Date Indicated in the Supporting Documents	77.68	FFF-3
No Sales Invoices/Official Receipts Submitted by Petitioner	94,994.42	FFF-4
No BOC IEIRD/Official Receipts Submitted by Petitioner	24,811.00	FFF-5
Disallowances per ICPA Findings	**₱145,549.45**	

Likewise, the Court finds that the input VAT in the aggregate amount of ₱38,437,707.15 must be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or official receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations (RR) No. 16-05, as

[24]Exhibits "BBB-1" to "BBB-1204" and "CCC-1" to "CCC-13"

amended. Sections 110(A) and 113(A) and (B) mandate as follows:

> "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:
>
> xxxxxx xxx
>
> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.*–
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> > (1)A VAT invoice for every sale, barter or exchange of goods or properties; and
> >
> > (2)A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B)*Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> > (1)A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
> >
> > (2)The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

w/

(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.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name,

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

The amount of ₱38,437,707.15 is broken down as follows:

Exceptions	Disallowed Input Tax	Remarks
Domestic Purchases of Goods	₱ 33,407,171.07	Annex A
Domestic Purchases of Services	1,115,249.70	
Importation of Goods Other than Capital Goods	3,587,831.00	
Purchases of Capital Goods Amortized during the Quarter	327,455.38	No supporting documents
Additional Disallowances per Court'sVerification	**₱38,437,707.15**	

Proceeding therefrom, the Court finds that the properly substantiated input taxes of petitioner only amount to ₱15,617,165.61, as computed below:

Input VAT on Domestic Purchases of Goods and Services	₱39,753,631.83	
Input VAT on Importation of Goods Other than the Capital Goods	14,119,335.00	
Amortization of Input VAT on Capital Goods Exceeding 1Million	327,455.38	₱ 54,200,422.21
Less: Disallowances		
Per Independent CPA's Findings	145,549.45	
Per Court's Verification	38,437,707.15	38,583,256.60
Properly Substantiated Input VAT		**₱15,617,165.61**

Comparing the output taxes reported by petitioner in its Quarterly VAT Return for the fourth quarter of 2009 with its properly substantiated input taxes, it appears that petitioner still has an output tax due, to wit:

Output Tax	₱ 30,157,703.20
Less: Properly Substantiated Input Tax	15,617,165.61
Output Tax Still Due	**₱14,540,537.59**

Evidently, petitioner's properly substantiated input taxes for the fourth quarter of 2009 are not sufficient to offset its output taxes for the same quarter. While petitioner reported in its VAT Return an input tax carried over from previous quarter in the amount of

₱71,351,532.80[25], petitioner failed to present VAT invoices or official receipts to prove the existence of such amount. Hence, the input tax carry-over of ₱71,351,532.80 cannot be applied against petitioner's output tax pursuant to Section 110(A) and (B) of the NIRC of 1997, as amended, which states:

> "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:
>
> xxxxxxxxx
>
> (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: xxx"

There being no excess input VAT which may be the subject of a claim for refund/tax credit under Section 112 of the NIRC of 1997, as amended, petitioner's refund claim must be denied.

WHEREFORE, the instant *Petition for Review* filed by petitioner Toledo Power Company is hereby **DENIED**, for lack of merit.

SO ORDERED.

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[25]Exhibit "K", line 20A

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

Ma. Belen S. L.

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice