REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8253

Members:
UY, *Chairperson, and*
FABON-VICTORINO, *JJ.*

Promulgated:
OCT 24 2013 ; 1:30 p.m.

x -- x

DECISION

UY, *J.*:

This Petition for Review is filed by Total (Philippines) Corporation, petitioner, on March 31, 2011, praying that judgment be rendered by this Court, ordering the Commissioner of Internal Revenue (CIR), respondent, to refund or issue tax credit certificate in its favor in the total amount of ₱ 111,100,273.80, allegedly representing unutilized input value-added tax (VAT) related to VAT zero-rated sales for the taxable period from January 1, 2009 to December 31, 2009.

THE FACTS

Petitioner Total (Philippines) Corporation is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at Penthouse, Philplans Corporate Center 1012 Triangle Drive, North Bonifacio, Bonifacio

Global City, 1634 Taguig City.[1] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. 005-145-964-000.[2]

Respondent CIR is sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.[3]

For the year 2009, petitioner filed its Quarterly VAT Returns at the following dates,[4] to wit:

Period Covered	Original Return	First Amendment	Second Amendment	Third Amendment	Fourth Amendment
1st Quarter	April 24, 2009	August 24, 2009	February 5, 2010	April 19, 2010	April 30, 2010
2nd Quarter	July 23, 2009	August 24, 2009	February 5, 2010	April 19, 2010	April 30, 2010
3rd Quarter	October 26, 2009	February 5, 2010	April 19, 2010	April 30, 2010	--
4th Quarter	January 26, 2010	February 5, 2010	April 19, 2010	April 30, 2010	--

On November 26, 2010, petitioner filed its application for tax credit certificate/refund for the unutilized input VAT attributable to zero-rated sales for 2009 in the amount of ₱ 111,100,273.80, along with all supporting documents, with the Large Taxpayers Excise Audit Division II of the BIR.[5]

Subsequently, on March 31, 2011, petitioner filed the instant judicial claim for refund or issuance of tax credit certificate.

On June 10, 2011, respondent filed her Answer,[6] interposing the following special and affirmative defenses, viz:

> "7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 101.
[2] Exhibit "C", Docket, p. 324.
[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 102.
[4] Exhibits "V" to "MM", Docket, pp. 363 to 398.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 102; Exhibit "D-1", Docket, p. 328.
[6] Docket, pp. 63 to 69.

8. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.

9. Petitioner must prove that the same alleged VAT input taxes was not utilized against any output tax liability.

10. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997.

11. Petitioner must prove compliance with the following:

    a) Registration requirements of a value-added taxpayer under the pertinent provision of the NIRC of 1997, as amended and its implementing regulations;

    b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of 1997, as amended; Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);

    c) Petitioner must prove the submission of complete documents in support of the administrative claim for refund pursuant to Section 112(c) of the 1997 NIRC, as amended, and its implementing rules, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 112(c) of the NIRC of 1997, as amended;

12. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated sales.

13. Petitioner must prove that the claim was filed within the period prescribed by law.

14. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

15. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

16. Applications for refund/credit of input VAT with the BIR must comply with the appropriate Revenue Regulations and Revenue memorandum orders.

17. Thus, as cited in the case of ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION VS. CIR (G.R. NO. 159490, February 18, 2008.), 'Atlas mere allegations of the figures in its amended VAT return for the first quarter of 1993 as well as in its petition before the CTA are not sufficient proof of the amount of its refund entitlement. They do not even constitute evidence adverse to CIR against whom they are being presented. While Atlas indeed submitted several documents, still, the CTA could not ascertain from them the veracity of the figures as the documents presented by Atlas were not sufficient to prove its action for tax credit or refund. Atlas has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Neither can we ascertain the veracity of Atlas alleged input VAT taxes which are refundable nor the alleged actual export sales indicated in the amended VAT return. Clearly, it would not be proper to allow Atlas to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the taxpayer. It is thus academic whether compliance with the documentary requirements of RR 3-88 is necessary. Suffice it to say that a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. It has not been disputed that RR 3-88 has been duly promulgated pursuant to the rule-making power of the Secretary of Finance upon the recommendation of the CIR. As aptly held by the courts a quo, citing Eslao, these RRs or administrative issuances have the force of law and are entitled to great weight.'"

On August 25, 2011, the parties submitted their Joint Stipulation of Facts and Issues,[7] which the Court approved in the Resolution dated September 2, 2011.[8]

During trial, although both parties were given the opportunity to present evidence to support their claims or defenses, it was only petitioner that presented and offered its documentary and testimonial evidence. On the other hand, respondent's counsel manifested during the hearing held on October 25, 2012, that there is no report of investigation, and that she will no longer present evidence.[9] Thereafter, the parties were granted a period of thirty (30) days from said date to file their respective memorandum.[10]

On January 2, 2013, this case was submitted for decision, taking into consideration respondent's Memorandum[11] filed on December 14, 2012, and petitioner's Memorandum[12] filed on December 21, 2013.[13]

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[14] for this Court's resolution, to wit:

> "A.
> WHETHER OR NOT PETITIONER'S EXPORT SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE ZERO-RATED SALES.
>
> B.
> WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE TAXABLE YEAR 2009 ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE

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[7] Docket, pp. 101 to 107.
[8] Docket, p. 111.
[9] Minutes of the hearing held on October 25, 2012, Docket, p. 488. Resolution dated November 14, 2012, Docket, p. 490.
[10] Resolution dated November 14, 2012, Docket, p. 490.
[11] Docket, pp. 501 to 516.
[12] Docket, pp. 518 to 529.
[13] Resolution dated January 2, 2013, Docket, p. 532.
[14] ISSUES, JSFI, Docket, pp. 102 to 103.

GOODS AND SERVICES AND IMPORTATION OF GOODS, IN THE AMOUNT OF ONE HUNDRED ELEVEN MILLION ONE HUNDRED TWO THOUSAND TWO HUNDRED SEVENTY THREE PESOS AND EIGHTY CENTAVOS (Php 111,102,273.80) IS PROPERLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

C.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE TAXABLE YEAR 2009 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

D.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE TAXABLE YEAR 2009 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

E.

WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

F.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE TAXABLE YEAR 2009 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

We summarize the foregoing issues into one general issue as follows: whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the total amount of

₱ 111,100,273.80, representing excess and unutilized input VAT for the four (4) quarters of taxable year 2009.

Petitioner's arguments:

Petitioner argues that it is entitled to a refund and/or issuance of tax credit certificate for the unutilized creditable input VAT for 2009 that are allocated to its zero-rated sales and sales to companies located in special economic zone/Freeport zones on the ground that said sales are subject to 0% VAT, as provided for in Section 106 of the NIRC.

In support thereof, petitioner cites the cases of Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils), Inc.[15] and Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue[16], wherein the Supreme Court held in the Atlas case that:

> "Export processing zones are to be managed as a separate customs territory from the rest of the Philippines, and thus, for tax purposes, are effectively considered as foreign territory. For this reason, <u>sales by persons from the Philippine customs territory to those inside the export processing zones are already taxed as exports."</u> (underscoring supplied). "

Thus, for its sales to companies located in special economic zones and Freeport zones, petitioner, as a VAT-registered taxpayer, is allegedly subject to 0% output VAT. Petitioner claims that the portion of input VAT allocated to such zero-rated sales, if not utilized or applied against output taxes, may be refunded or credited, pursuant to Section 112 of the NIRC.

According to petitioner, its unutilized creditable input VAT for 2009 that are allocated to its zero-rated sales and sales to companies located in special economic zone/Freeport zones are properly substantiated by invoices and official receipts in accordance with the substantiation requirements mentioned under Section 4.110-8 of Revenue Regulation No. 16-05. Furthermore, petitioner contends

[15] G.R. No. 150154, August 9, 2005.
[16] G.R. Nos. 141104 and148763, June 8, 2007.

that the excess input VAT for 2009 that are allocated to its zero-rated sales were not utilized in the succeeding taxable quarter(s) or applied against any output VAT liability of petitioner.

Lastly, petitioner points out that the administrative and judicial claims for refund or issuance of tax credit certificate were filed on time.

Respondent's counter-arguments:

Respondent, on the other hand, claims that petitioner is not entitled to a tax refund in the amount of ₱ 111,100,273.80 due to its supposed failure to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998[17]. Allegedly, the instant claim for refund does not involve the refund of erroneously or illegally collected taxes wherein the taxpayer has the discretion to submit the documents it deems will prove its case. Applications for tax refund/credit of input VAT with the BIR must allegedly comply with the appropriate Revenue Regulations and Revenue Memorandum Orders. Thus, petitioner's omission to submit legally mandated documents is fatal to its claim for refund.

Moreover, respondent contends that the instant judicial claim for refund was filed prematurely because the 120 day period given to the Commissioner of Internal Revenue to act on a refund claim under Section 112 of the NIRC will commence to run only after the submission of complete documents by petitioner as required under Revenue Memorandum Order No. 53-98. Consequently, petitioner's failure to submit the complete documents holds the running of the said 120 day period. Thus, the filing of the instant Petition for Review on March 31, 2011 is allegedly premature.

Lastly, respondent maintains that petitioner failed to exhaust administrative remedies prior to the filing of the instant Petition for Review. While it is true that petitioner filed an administrative claim for refund, the same was not pursued in its full extent as required under the doctrine of administrative remedies. Respondent was not able to examine and evaluate petitioner's claim for tax refund/credit because of petitioner's alleged failure to submit complete documents that are legally mandated. Thus, it cannot allegedly be said that petitioner

[17] SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

availed of the remedies in the administrative level before resorting to this Court's intervention.

THE COURT'S RULING

Although petitioner was able to submit supporting documents relative to its refund claim, the Court however finds that not all the legal requisites for the refund of unutilized or excess input VAT have been fully complied with by petitioner in this case.

Respondent judicially admitted that petitioner submitted "all supporting documents" at the administrative level.

The contention of respondent to the effect that petitioner failed to submit complete documents required under RMO No. 53-98 is inconsistent with her explicit admissions in the Joint Stipulation of Facts and Issues (JSFI) as follows:

> "3. Petitioner filed its application for tax credit certificate/refund for the unutilized VAT input taxes attributable to zero rated sales for 2009 in the amount of One Hundred Eleven Million One Hundred Thousand Two Hundred Seventy Three Pesos and Eighty Centavos (Php 111,102,273.80) **along with all supporting documents** on November 26, 2010 with the Large Taxpayers Excise Audit Division II of the Bureau of Internal Revenue."[18] *(Emphasis supplied)*

It must be emphasized that the JSFI was executed and submitted by petitioner and respondent themselves.[19] The approval of the JSFI by this Court marked the termination of the pre-trial process in this case.[20]

The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such

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[18] Docket, p. 102.
[19] Docket, pp. 101 to 107.
[20] Resolution dated September 2, 2011, Docket, p. 111.

admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[21] Correspondingly, respondent cannot escape the binding effect of the above-quoted judicial admission.

Proper interpretation of the term "complete documents" under Section 112(C) of the NIRC of 1997.

Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended Republic Act No. (RA) 9337, provides as follows:

> "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 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."

The contention of the respondent that the law requires the submission of complete documents in support of the application filed with the BIR before the 120-day period shall apply, and before the

21 *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. 157594, March 9, 2010.

taxpayer could avail of judicial remedies as provided for in the law, deserves scant consideration. This issue boils down to the proper interpretation of the term *"complete documents"* under the above-quoted Section 112(C).

In *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[22] the Supreme Court ruled:

> "The term 'relevant supporting documents' should be understood as **those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer.** The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphasis supplied)*

Admittedly, the foregoing ruling refers to the interpretation of the term *"relevant supporting documents"* under Section 228 of the NIRC of 1997 referring to tax assessments. However, We find no reason not to apply the same doctrine in the interpretation of *"complete documents"* under Section 112(C) of the same Code. This must be so because of the following reasons:

1. if the determination of the completeness of the documents depends on the BIR, the concerned taxpayer will also be at the mercy thereof; and

2. it has been held that the respondent ought to know the tax records of all taxpayers.[23] Thus, the Commissioner can easily decide whether or not to grant the concerned taxpayer's administrative claim for refund or tax credit certificate. In this connection, nothing in RMO No. 53-98 mandates that the list of documents therein stated, insofar as the VAT is concerned, should be submitted in connection with an application for refund or tax credit certificate under the said Section 112, upon the filing thereof. Furthermore, said RMO is explicit, in its subject and objective, that it provides a checklist of documents to be submitted *"upon Audit"*, and that it was issued to "(i)*dentify the*

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[22] G.R. No. 172045-46, July 16, 2009

[23] See the cases of *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.* (G.R. No. 122480, April 12, 2000), and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation* (G.R. No. 180042, February 8, 2010).

> *documents **to be required from a taxpayer during audit***'[24], respectively. In this case, it was not shown that an audit was ever conducted by the BIR in connection with petitioner's application for refund or tax credit certificate. This is manifested by the lack of BIR Records transmitted to this Court, and by the absence of any report of investigation or "status report" concerning petitioner's administrative claim for refund or tax credit certificate[25]. But even if We are to assume that an audit was made, it was never established that the respondent ever required petitioner to submit the documents stated in the said RMO.

Accordingly, the term "complete documents" under Section 112(C) of the NIRC of 1997, as amended by RA 9337, should be understood as those documents necessary to support the application for refund or tax credit certificate as determined by the taxpayer. Thus, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opt not to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, as amended by RA 9337, then the reckoning date of the 120-day period should be from the filing of the said application.

In the instant case, considering that petitioner's administrative claim for refund, along with all the supporting documents, was filed on November 26, 2010, the 120-day period enunciated under Section 112(C) ended on March 26, 2011. Petitioner, therefore, had thirty (30) days thereafter or until April 25, 2011 within which to appeal its claim before this Court. Having done so on March 31, 2011, petitioner's judicial claim for refund was timely made.

Requisites for the refund of unutilized/excess input VAT.

Section 112(A) of the NIRC of 1997, as amended RA 9337, provides as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –

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[24] Emphasis supplied
[25] Transcript of Stenographic Notes: Hearing held on October 25, 2012, p. 3; Minutes of the hearing held on October 25, 2012, Docket, p. 488; Resolution dated November 14, 2012, Docket, p. 490.

> (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 transi3.tional 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 volume of sales: xxx"

Based on the foregoing, the requisites for the refund or issuance of tax credits of unutilized/excess input VAT are the following:

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.[26]

Anent the first requisite, petitioner was able to prove that it is a VAT-registered person.[27]

[26] *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011.

As for the second requisite, on the basis the uncontroverted evidence of petitioner vis-à-vis the report of the Court-commissioned independent Certified Public Accountant (CPA)[28], We find that petitioner established that it is engaged in sales which are zero-rated or effectively zero-rated.

With regard to the third requisite, the present claim covers the four (4) taxable quarters of 2009 which respectively closed on March 31, 2009; June 30, 2009; September 30, 2009 and December 31, 2009. Counting two years from the said dates, petitioner had until March 31, 2011; June 30, 2011; September 30, 2011 and December 31, 2011, respectively, within which to file its administrative claim for tax credit certificate/refund. Thus, considering that petitioner's administrative claim covering the said four (4) quarters was filed on November 26, 2010,[29] the same was timely made, in accordance with Section 112(A) of the NIRC of 1997, as amended by RA 9337.

Finally, We look into petitioner's compliance with the last requisite, *i.e.*, 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.

In its 2009 amended Quarterly VAT Returns respectively filed on April 30, 2010,[30] petitioner reflected the following:

Year 2009	**1st Quarter**	**2nd Quarter**
Exhibits	**Z**	**EE**
Vatable Sales/Receipt – Private	₱ 4,090,765,097.11	₱ 4,796,258,630.09
Sale to Government	9,630,567.80	11,641,127.16
Zero Rated Sales/Receipts	205,816,522.48	253,231,620.91
Exempt Sales/Receipts	-	-
Total Sales/Receipts	**₱ 4,306,212,187.39**	**₱ 5,061,131,378.16**
Output Tax Due	**₱ 492,047,479.79**	**₱ 576,947,970.87**
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Quarter	₱ 132,031,599.36	₱ 154,561,505.28[31]
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	13,273,422.42	13,049,067.62

[27] Exhibit "C", Docket, p. 324.
[28] Exhibit "KKKK", at pp. 4 to 5.
[29] Par. 3, Summary of Admitted Facts, JSFI, Docket. p. 102
[30] Exhibits "Z", "EE", "II", and "MM", Docket, pp. 371 to 372, 381 to 382, 389 to 390, and 397 to 398, respectively.
[31] Overstated by ₱ 7.02.

Current Transactions:		
Purchases of Capital Goods not exceeding P1Million	105,990.83	-
Purchases of Capital Goods exceeding P1Million	697,237.60	1,335,099.84
Domestic Purchases of Goods Other than Capital Goods	100,896,109.61	65,520,765.85
Importation of Goods Other than Capital Goods	408,267,343.42	446,124,975.93
Domestic Purchase of Services	27,617,043.00	18,890,694.37
Total Available Input Tax	**₱ 682,888,746.24**	**₱ 699,482,108.88**
Less: Deductions from Input Tax		
Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	₱ 13,049,067.62	₱ 13,393,875.20
Input Tax on Sale to Gov't closed to expense	526,024.66	405,654.72
Input Tax allocable to Exempt Sales	-	-
VAT Refund/TCC claimed	22,704,675.90	23,594,720.61
Total	**₱ 36,279,768.18**	**₱ 37,394,250.53**
Total Allowable Input Tax	**₱ 646,608,978.06**	**₱ 662,087,858.35**
Net VAT Payable	**₱ (154,561,498.26)**	**₱ (85,139,887.47)**
Less: Tax Credits/Payments		
VAT withheld on Sales to Government	-	-
Tax Still Payable (Overpayment)	**₱ (154,561,498.26)**	**₱ (85,139,887.47)**

Year 2009	**3rd Quarter**	**4th Quarter**
Exhibits	**II**	**MM**
Vatable Sales/Receipt – Private	₱ 4,339,747,056.13	₱ 4,864,292,449.37
Sale to Government	15,933,122.86	12,432,220.92
Zero Rated Sales/Receipts	296,152,860.89	313,672,677.63
Exempt Sales/Receipts	-	-
Total Sales/Receipts	**₱ 4,651,833,039.88**	**₱ 5,190,397,347.92**
Output Tax Due	**₱ 522,681,621.47**	**₱ 585,206,960.43**
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Quarter	₱ 85,139,893.59[32]	₱ 413,945.60[33]
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	13,393,875.20	13,273,878.66
Current Transactions:		
Purchases of Capital Goods not exceeding P1Million	-	-
Purchases of Capital Goods exceeding P1Million	913,483.12	2,775,056.12
Domestic Purchases of Goods Other than Capital Goods	44,529,775.95	35,524,219.57
Importation of Goods Other than Capital Goods	392,939,467.50	559,379,105.00
Domestic Purchase of Services	26,531,845.44	35,995,143.05
Total Available Input Tax	**₱ 563,448,340.80**	**₱ 647,361,348.00**
Less: Deductions from Input Tax		
Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	₱ 13,273,878.66	₱ 14,926,980.81
Input Tax on Sale to Gov't closed to expense	473,083.39	632,271.88
Input Tax allocable to Exempt Sales	-	-

[32] Overstated by ₱ 6.12.
[33] Overstated by ₱ 5.67.

VAT Refund/TCC claimed	26,605,817.34	38,195,059.97
Total	**₱ 40,352,779.39**	**₱ 53,754,312.66**
Total Allowable Input Tax	**₱ 523,095,561.41**	**₱ 593,607,035.34**
Net VAT Payable	**₱ (413,939.93)**	**₱ (8,400,074.91)**
Less: Tax Credits/Payments		
VAT withheld on Sales to Government	-	-
Tax Still Payable (Overpayment)	**₱ (413,939.93)**	**₱ (8,400,074.91)**

In summary, as indicated in the Returns, petitioner's total allowable input VAT arising from its domestic purchases of capital goods not exceeding ₱ 1Million, domestic purchases of goods other than capital goods, importation of goods other than capital goods, domestic purchases of services and amortization of input VAT on purchases of capital goods exceeding ₱ 1Million for the four quarters of 2009 amounted to ₱ 2,166,389,797.82, broken down as follows:

Period Covered	Input VAT
1st Quarter	₱ 537,808,079.27
2nd Quarter	531,526,728.41
3rd Quarter	465,034,568.55
4th Quarter	632,020,421.59
TOTAL	₱ 2,166,389,797.82

These amounts per quarter are further broken down as follows:

Year 2007	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	₱ 13,273,422.42	₱ 13,049,067.62	₱ 13,393,875.20	₱ 13,273,878.66
Add: Input Tax on Capital Goods exceeding ₱1Million Purchased this quarter	697,237.60	1,335,099.84	913,483.12	2,775,056.12
Total Unamortized Input Tax on Capital Goods exceeding ₱1Million	₱ 13,970,660.02	₱ 14,384,167.46	₱ 14,307,358.32	₱ 16,048,934.78
Less: Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period	13,049,067.62	13,393,875.20	13,273,878.66	14,926,980.81
Amortization of Input Tax on Capital Goods exceeding ₱1Million	₱ 921,592.40	₱ 990,292.26	₱ 1,033,479.66	₱ 1,121,953.97
Add: Input Tax on:				
Purchase of Capital Goods not exceeding ₱1Million	105,990.83	-	-	-
Domestic Purchases of Goods Other than Capital Goods	100,896,109.61	65,520,765.85	44,529,775.95	35,524,219.57

Importation of Goods other than Capital Goods	408,267,343.42	446,124,975.93	392,939,467.50	559,379,105.00
Domestic Purchase of Services	27,617,043.00	18,890,694.37	26,531,845.44	35,995,143.05
Total Input Tax	**₱ 537,808,079.27**	**₱ 531,526,728.41**	**₱ 465,034,568.55**	**₱ 632,020,421.59**

Based on the foregoing amounts of input VAT, petitioner computed the input VAT allocable to its declared zero-rated sales for the year 2009 as follows[34]:

Year 2009	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
Zero-Rated Sales	₱ 205,816,522.48	₱ 253,231,620.91	₱ 296,152,860.89	₱ 313,672,677.63
Total Sales	4,306,212,187.39	5,061,131,378.16	4,651,832,992.64[35]	5,190,397,347.92
Zero-Rated Sales/Total Sales	4.779525799%	5.003458752%	6.366369157%	6.04332687%
Multiply by Input Tax	x 537,808,079.23	x 531,526,728.41	x 465,034,568.54	x 632,020,421.59
Refundable Claims	**₱ 25,704,675.90**	**₱ 26,594,720.61**	**₱ 29,605,817.34**	**₱ 38,195,059.97**

However, notwithstanding the respective amount of the refundable claims for taxable year 2009, as shown above (totaling ₱ 120,100,273.82), petitioner is just claiming the amounts of ₱ 22,704,675.90; ₱ 23,594,720.61; ₱ 26,605,817.34 and ₱ 38,195,059.97 for the first, second, third and fourth quarters, respectively, which in petitioner's computation totals ₱ 111,100,273.80[36].

Parenthetically, it can be easily discerned that the respective computation of the refund claims per quarter by petitioner is in accordance with the provisions of the aforequoted Section 112(A), to wit: *"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 volume of sales".*

Thus, for purposes of the fourth requisite for the refund or issuance of tax credits of input VAT, the attribution of the input VAT to

[34] Exhibit "D", Docket, p. 326.
[35] This amount is not found on petitioner's amended Quarterly VAT Return for the 3rd quarter of 2009 (Exhibit "II"), but on the original and amended Quarterly VAT Returns of petitioner for the same quarter filed on October 26, 2009 and February 5, 2010, respectively (Exhibits "FF" and "GG", Docket, pp. 383 to 386), with a minor difference of ₱ 0.02 and ₱ 0.04, respectively.
[36] There is an ₱ 0.02 excess if the amounts of the four (4) quarters are added.

the zero-rated or effective zero-rated sales of petitioner need not be direct.

To prove that it actually incurred the input VAT in the total amount of ₱ 2,166,389,797.82 upon which the claimed refund of ₱ 111,100,273.80 was computed, petitioner presented its Summary Lists of Purchases[37], Summary Lists of Importations[38] and the related Import Entry and Internal Revenue Declarations (IEIRDs) and/or Bureau of Customs Form 38-A[39], suppliers' invoices and/or official receipts[40].

Upon verification of the aforesaid documents, however, the Court-commissioned independent CPA summarized his findings as follows[41]:

Summary of Findings			Exhibit	Amounts	
No Exceptions:					
	Local goods and services		FFFF-5	₱ 317,906,239.30	
	Importations		FFFF-1	1,652,225,259.76	₱ 1,970,131,499.06
Exceptions Noted:					
	a.	Supporting documents were not yet provided:			
		Local goods and services	FFFF-7	₱ 26,314,164.55	
		Importations	FFFF-3	143,314,034.73	
	b.	Without appropriate supporting documents			
		Importations	FFFF-2	11,171,597.36	
	c.	Supporting documents were dated outside the period of claim:			
		Local goods and services	FFFF-6	220,659.73	
	d.	Supporting documents that did not show the amount of Input VAT on the face of the documents	FFFF-8	440,949.30	
	e.	Supporting documents without petitioner's TIN	FFFF-9	8,571,770.56	
	f.	Supporting documents not in the name of petitioner	FFFF-4	6,119,131.77	196,152,308.00
				Total	**₱ 2,166,283,807.06**

[37] Exhibits "AAAA-2", "AAA-2-A" to "AAAA-2-C", "BBBB-2", "BBBB-2-A" to "BBBB-2-C", "CCCC-2", "CCCC-2-A" to "CCCC-2-C", "DDDD-2", and "DDDD-2-A" to "DDDD-2-C".

[38] Exhibits "AAAA-3", "AAAA-3-A" to "AAAA-3-C", "BBBB-3", "BBBB-3-A" to "BBBB-3-C", "CCCC-3", "CCCC-3-A" to "CCCC-3-C", "DDDD-3", and "DDDD-3-A" to "DDDD-3-C".

[39] Exhibits "FFFF-1.1" to "FFFF-1.190", and "FFFF-2.1" to "FFFF-2.3".

[40] Exhibits "FFFF-4.1" to "FFFF-4.336", "FFFF-5.1" to "FFFF-5.2239", "FFFF-6.1" to "FFFF-6.17", "FFFF-8.1" to "FFFF-8.80", and "FFFF-9.1" to "FFFF-9.789".

[41] Exhibit "KKKK", at p. 14.

The total amount of ₱ 196,152,308.00 input VAT excepted by the ICPA should be disallowed for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of the Revenue Regulations (RR) No.16-2005, as amended.

In addition, it should be noted that there is a discrepancy in the amount of ₱ 105,990.76 between the total allowable input VAT declared in petitioner's Quarterly VAT Returns in the amount of ₱ 2,166,389,797.82 and the input VAT examined by the Court-commissioned independent CPA, Enrico Pizarro, in the amount of ₱ 2,166,283,807.06. Upon verification, the Court found that the discrepancy of ₱ 105,990.76 pertains to petitioner's declared input VAT on capital goods not exceeding ₱ 1 million for the first quarter of 2009.[42] For also being unsubstantiated, the input taxes of ₱ 105,990.76 shall likewise be disallowed.

Apropos, although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements under the VAT law must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims.[43]

Therefore, out of petitioner's declared total allowable input tax of ₱ 2,166,389,797.82, only the amount of ₱ 1,970,131,499.06, as computed below, represents petitioner's valid input VAT:

Total Input VAT per Returns	₱ 2,166,389,797.82
Less : Disallowances	
Not properly substantiated input VAT per ICPA's report	196,152,308.00
Discrepancy between the input VAT per returns *vis-à-vis* the input VAT examined by the ICPA	105,990.76
Total Disallowances	₱ 196,258,298.76
Valid Input VAT	**₱ 1,970,131,499.06**

At this point, We take into consideration the output VAT reported by petitioner in its Quarterly VAT Returns for the year 2009

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[42] In the Quarterly VAT Returns for the first quarter of 2009 (Exhibits "V" to "Z", Docket, pp. 363 to 372), the amount shown is ₱ 105,990.83.

[43] Refer to *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

and compare the same with the foregoing substantiated input VAT, to wit:

Output VAT		
1st Quarter	₱ 492,047,479.79	
2nd Quarter	576,947,970.87	
3rd Quarter	522,681,621.47	
4th Quarter	585,206,960.43	₱ 2,176,884,032.56
Less: Valid Input VAT		1,970,131,499.06
Output VAT Still Due		**₱ 206,752,533.50**

As shown above, petitioner's claimed input VAT for the year 2009 are not enough to cover its output VAT for the same year. While petitioner reflected in its amended Quarterly VAT Return for the first quarter of 2009, the amount of ₱ 132,031,599.36[44] as *"Input Tax Carried Over from Previous Period"*, the Court found that petitioner failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input VAT carry-over of ₱ 132,031,599.36 cannot be validly applied against petitioner's output VAT pursuant to Section 110(A) in relation to Section 110(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:
>
> xxx xxx xxx
>
> (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."

Nevertheless, even granting that the input VAT carry-over in the amount of ₱ 132,031,599.36 was properly substantiated by VAT

[44] Exhibit "Z", line 20A, Docket, p. 371.

invoices or official receipts, it is still not enough to cover the above-computed output VAT still due of ₱ 206,752,533.50.

Considering that there is no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, as amended by RA 9337, the instant claim must be denied.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Special First Division.

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