REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIR DRILLING ASSOCIATES PTE. LTD., *Petitioner*,	**CTA CASE NO. 10399**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: JAN 04 2024 4:20 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed by petitioner Air Drilling Associates Pte. Ltd. on November 16, 2020, praying for the Court to render judgment ordering respondent Commissioner of Internal Revenue (CIR) to refund or issue a tax credit certificate in the amount of ₱1,298,232.52, allegedly representing petitioner's unutilized creditable input value-added tax (VAT) attributable to its zero-rated sales for the period January 1, 2018 to March 31, 2018 of taxable year (TY) 2018.

THE PARTIES

Petitioner Air Drilling Associates Pte. Ltd. is a foreign company organized and existing under the laws of the Republic of Singapore and was duly licensed by the Philippine Securities and Exchange Commission to establish a branch office in the Philippines to pursue geothermal aerated drilling services and related opportunities therein.[2] It is VAT-registered under the Bureau of Internal Revenue (BIR) Certificate of Registration

[1] Docket – Vol. I, pp. 10-17.
[2] Exhibit "P-2", Docket – Vol. II, pp. 523 to 574.

(COR) No. OCN 9RC0000652585E dated August 31, 2016, with Tax Identification Number (TIN) 251-156-0254-000.[3]

Respondent, on the other hand, is the duly appointed Commissioner of the BIR vested under the appropriate laws with authority to carry out the functions, duties, and responsibilities of said office, including the power to grant tax refunds and issue tax credit certificates, under the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules, and regulations.[4]

THE FACTS

Petitioner avers that in the course of its business as a contractor of aerated drilling services, it incurred input VAT on its domestic purchases of goods and services, importation of goods, and services rendered by non-residents.[5]

During the first (1st) quarter of TY 2018, it entered numerous transactions, which included, among others, rendering aerated drilling services to Energy Development Corporation (EDC), where it accumulated unutilized creditable input VAT attributable to its zero-rated sales amounting to ₱1,298,232.52.[6]

On April 25, 2018, petitioner filed its Quarterly VAT Return for the 1st Quarter of TY 2018 and an Amended Quarterly VAT Return for the same period on September 21, 2018.

Allegedly, the above-mentioned creditable input VAT was not credited against petitioner's output VAT liability in the succeeding quarters.[7]

Thus, on July 15, 2020, petitioner filed with the BIR a letter dated July 14, 2020, requesting the refund of the total amount of ₱1,298,232.52,[8] allegedly representing unutilized input VAT credits arising from its local purchases of goods and services, purchases of services rendered by non-residents and

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[3] Par. 4, Facts Admitted, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 357; Exhibit "P-1", Docket – Vol. II, p. 522.
[4] Par. 1, Facts Admitted, JSFI, Docket – Vol. I, p. 356.
[5] Par. 8, Statement of Allegations, *Petition for Review*, Docket – Vol. 1., p. 12.
[6] Pars. 9 and 11, Statement of Allegations, *Petition for Review*, Docket – Vol. 1, p. 12.
[7] Par. 12, Statement of Allegations, *Petition for Review*, Docket – Vol. 1., p. 12.
[8] Exhibit "P-13", Docket – Vol. II, pp. 770 to 777.

importation of non-capital goods attributable to its zero-rated sale of service to the EDC for the 1st Quarter of TY 2018.

However, petitioner's administrative claim for a refund was denied through a letter[9] dated September 29, 2020, issued by Regional Director Maridur Rosario.

Aggrieved, petitioner elevated its claim before the Court via the instant *Petition for Review* filed on November 16, 2020.

In his *Answer*[10] filed through registered mail on February 3, 2021, respondent interposed, among others, that the Court must take note of the observations/findings of the BIR in denying petitioner's administrative claim for refund, to wit:

1. You erroneously filled out your VAT Return for the 1st Quarter of taxable year 2018 by placing the amount of P1,077.019.54 on Creditable VAT Withheld (Item No. 26B, Part II) instead of placing the same on Services Rendered by Non-residents (Item No. 21L, Part II).

2. The Mandatory Requirements on Claims for VAT Refund enumerated in the Revised Checklist of Mandatory Requirements (Annex 'A.1') for claims filed pursuant to Sec. 112 (A) of the Tax Code, as amended pursuant to Revenue Memorandum Circular (RMC) No. 47-2019 have not been complied with as you failed to file your Approved Application for Zero-Rating on your effectively zero-rated transactions.

3. You failed to register with the Department of Energy (DOE) as duly accredited and certified contractor of aerated drilling service supplier of Energy Development Corporation. As held in the case of Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc., CTA En Banc Case No. 2094, July 21, 2020, the taxpayer-claimant must register with the DOE as duly accredited and certified contractor of a Renewable Energy Developer.

4. Verification of your official receipts (OR/sales invoices (SI) on purchases disclosed that OR/SI with input tax amounting to ₱120,464.11 were not compliant with the invoicing requirements mandated by Sec. 113 of the NIRC, as amended as some of your suppliers failed to indicate your registered business name in the business style.

Schedule 1: **SUPPLIER**	**INPUT TAX**	**REMARKS**
LHI Real Estate Corporation	₱15,433.32	No business style
LHI Real Estate Corporation	₱1,596.00	No business style
LHI Real Estate Corporation	₱1,162.54	No business style
LHI Rcal Estate Corporation	₱420.00	No business style
LHI Real Estate Corporation	₱1,051.85	No business style
LHI Real Estate Corporation	₱420.00	No business style

[9] Exhibit "P-14", Docket – Vol. II, pp. 778 to 779; Exhibit "R-5", BIR Records, pp. 533 to 535. Refer also to par. 3, Facts Admitted, JSFI, Docket – Vol. I, p. 357.
[10] Docket – Vol. I, pp. 249 to 261.

LHI Real Estate Corporation	₱15,433.32	No business style
LHI Real Estate Corporation	₱1,596.00	No business style
LHI Real Estate Corporation	₱1,173.59	No business style
LHI Real Estate Corporation	₱420.00	No business style
LHI Real Estate Corporation	₱15,433.32	No business style
LHI Real Estate Corporation	₱1,596.00	No business style
Prodril Supply Company Inc.	₱12,196.56	No business style
Prodril Supply Company Inc.	₱12,488.16	No business style
Prodril Supply Company Inc.	₱12,489.12	No business style
PLDT Inc.	₱27,554.33	No business style
TOTAL	**₱120,464.11**	No business style

5. Reconciliation of your Purchases Claimed vs. Purchases per Audit Information, Tax Exemption and Incentives Division (AITEID) resulted to a discrepancy amounting to ₱74,895.50 which was considered as overclaimed input tax, hence disallowed.

Petitioner submits that in a claim for tax refund or credit, the taxpayer must prove not only entitlement to the grant of the claim under substantive law. It must also satisfy all the documentary and evidentiary requirements for an administrative claim for a refund or credit.

After the *Pre-Trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[11] on July 14, 2021, based on which a *Pre-Trial Order*[12] was issued on September 6, 2021.

The trial ensued, during which petitioner presented its witnesses: (1) Ms. Rosebelle Liu, its Branch Office Manager, and (2) Atty. Adan T. Delamide, the court-commissioned Independent Certified Public Accountant (ICPA).

By way of a *Judicial Affidavit*,[13] **Ms. Rosebelle Liu (Ms. Liu)** testified that as petitioner's Office Manager, she is responsible for (i) supervising the filing of returns and payment of taxes with the BIR, (ii) ensuring that petitioner complies with the tax laws and regulations; (iii) supervising the preparation of official receipts, as well as the collection of billing statements issued by petitioner to its clients; and (iv) ensuring that invoices or official receipts issued by suppliers are paid in accordance with the purchase orders issued by petitioner's Purchasing Department. She also added that she has custody of petitioner's financial documents and all related governmental documents, including tax returns, financial statements, and all tax matters.

[11] Docket – Vol. I, pp. 356 to 362.
[12] Docket – Vol. I, pp. 394 to 399.
[13] Exhibits "P-17", Docket – Vol. II, pp. 795 to 802; Minutes of the hearing held on, and Order dated, May 18, 2022, Docket – Vol. I, pp. 457 to 459.

Ms. Liu declared that the instant case involves petitioner's claim for a refund of its input VAT attributable to its zero-rated sales for the 1st Quarter of TY 2018 for ₱1,298,232.52. According to her, during the 1st Quarter of TY 2018, petitioner entered into numerous transactions, which included, among others, rendering aerated drilling services to EDC, which she understands are subject to VAT at a zero percent rate since EDC is engaged in renewable energy.

Ms. Liu further declared that after petitioner filed its 1st Quarter and Amended 1st Quarter VAT Returns for taxable year 2018, petitioner filed an administrative claim for refund with the BIR relative to its zero-rated sales for the 1st Quarter of TY 2018. However, the same was denied through a letter dated September 29, 2020, which petitioner received on October 15, 2020.

ICPA Adan Delamide (ICPA Delamide), also by way of *Judicial Affidavit,*[14] testified that he is the ICPA commissioned by the Court in the instant case to perform the duties and responsibilities of an ICPA under Rule 13 of the Revised Rules of the Court of Tax Appeals.

Pursuant to his commission, ICPA Delamide declared that they completed their examination of petitioner's voluminous documents and filed their *Final Report* with the Court on May 26, 2022. According to him, the *Final Report* contained the result of the procedures performed on the documents supporting petitioner's position concerning its claim for refund of excess and unutilized input VAT for the 1st Quarter of TY 2018.

ICPA Delamide concluded that based on the procedures they performed, they believe that petitioner's claim for refund should be granted but in the reduced amount of ₱1,285,467.49.

There being no more witness to present, and upon the instance of petitioner's counsel, petitioner was granted thirty (30) days from June 23, 2022, or until July 23, 2022, to file its Formal Offer of Evidence (FOE), copy furnished respondent's counsel by personal service. Respondent was also given thirty (30) days from receipt of petitioner's FOE to file his comment.[15]

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[14] Exhibit "P-90" (previously marked as Exhibit "P-17"), Docket – Vol. I, pp. 477 to 485; Minutes of the hearing held on, and Order dated, June 23, 2022, Docket – Vol. I, pp. 487 to 489.
[15] Order dated June 23, 2022, Docket – Vol. 1, pp. 488-489.

On July 8, 2022, petitioner filed a *Motion for Extension of Time to File Formal Offer of Evidence and Correction of Exhibit Marking*,[16] which the Court granted in a Resolution[17] dated July 19, 2022. In the same Resolution, petitioner was given a non-extendible period of five (5) days from August 8, 2022, or until August 13, 2022, to file its FOE. Respondent was likewise given the same period from receipt of petitioner's FOE to file his comment thereto.

On August 12, 2022, petitioner filed its *Formal Offer of Evidence*.[18] Respondent, however, failed to file his comment despite the opportunity granted.[19]

In the Resolution[20] dated September 29, 2022, the Court admitted petitioner's offered exhibits, *except* for Exhibit "P-8-1-2", for not being found in the records.

On his turn to present evidence, respondent presented Revenue Officer (RO) Camille D. Bugayong as his lone witness.

RO **Camille D. Bugayong** testified[21] that being a BIR RO, her primary duties and responsibilities include, among others, the review and evaluation of all audit/verification reports, including claims for tax credit/refund of internal revenue taxes of taxpayer, if any, for a particular period involved, including the duty to review the application for administrative tax refund falling under the jurisdiction of Revenue Region No. 8A – Makati City.

According to her, after the filing of petitioner's administrative claim for refund with the Revenue District Office No. 47 – East Makati, a Tax Verification Notice dated July 17, 2020, was issued authorizing the conduct of examination/investigation on petitioner's alleged unutilized input VAT incurred during the 1st Quarter of TY 2018.

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[16] Docket – Vol. I, pp. 491-493.
[17] Docket – Vol. I, p.495.
[18] Docket – Vol. II, pp. 501 to 519.
[19] Records Verification dated September 16, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 822.
[20] Docket – Vol. II, pp. 824 to 825.
[21] Exhibit "R-6", Docket – Vol. I, pp. 369 to 377; Minutes of the hearing held on, and Order dated, October 12, 2022, Docket Vol. II, pp. 826 to 828.

She declared that the BIR issued a *Memorandum of Assignment* dated September 16, 2020, authorizing her to review/evaluate petitioner's administrative tax refund relative to its alleged unutilized input VAT incurred during the 1st Quarter of TY 2018.

On September 22, 2020, she prepared a *Memorandum* recommending the denial of petitioner's administrative claim for refund of alleged unutilized input VAT incurred during the 1st Quarter of TY 2018.

A Letter of Denial dated September 29, 2020, signed by Regional Director Maridur V. Rosario, was issued to petitioner.

There being no other witness to present, respondent rested his case and formally offered his documentary evidence via a *Formal Offer of Evidence*[22] filed on October 21, 2022, which the Court all admitted in the Resolution[23] dated November 28, 2022. In the same Resolution, the parties were given thirty (30) days from notice to file their respective memoranda.

With the filing of petitioner's *Memorandum*[24] on December 29, 2022, and respondent's *Memorandum*[25] on January 11, 2023, the instant case was submitted for decision on January 17, 2023.[26]

Hence, this Decision.

THE ISSUE

The parties have agreed that the sole issue[27] to be resolved by the Court is:

> **"WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ITS ALLEGED UNUTILIZED INPUT VAT ALLEGEDLY ACQUIRED DURING THE 1ST QUARTER OF TAXABLE YEAR 2018 AMOUNTING TO PHP1,298,232.52."**

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[22] Docket – Vol. II, pp. 829 to 832.
[23] Docket – Vol. II, pp. 839 to 840.
[24] Docket – Vol. II, pp. 841 to 867.
[25] Docket – Vol. II, pp. 868 to 882.
[26] Resolution dated January 17, 2023, Docket – Vol. II, p. 886.
[27] Issue, JSFI, Docket – Vol. I, p. 182.

Petitioner's Arguments:

Petitioner argues that it has complied with the governing rules and regulations with regard to recovery of taxes collected/received within the periods provided in Section 112 of the NIRC of 1997, as amended; that it is a VAT-registered entity; that it established rendering services subject to VAT zero-rate and substantiated the present claim with relevant supporting documents; that it substantiated its input VAT paid/incurred during the 1st Quarter of TY 2018, which are all attributable to its VAT zero-rated sales; and that its input VAT acquired during the 1st Quarter of TY 2018 were not applied against any output VAT in the succeeding periods.

Respondent's Arguments:

Respondent contends that petitioner's alleged input tax credit of ₱1,077,019.54 arising from its payment of services rendered by non-resident (Air Drilling Associates, Inc. [USA]) must be denied for its failure to properly substantiate said input tax credit and considering that Air Drilling Associates, Inc. (USA) is a related parent company; that the Court must uphold the observations/finding of the BIR in denying the administrative tax refund; that petitioner erroneously filled out its VAT Return for the 1st Quarter of taxable year 2018; that petitioner failed to file its approved application for zero-rating on its effectively zero-rated transactions; that petitioner is not registered with the Department of Energy (DOE); that it must comply with specific procedural and documentary requirements; that it must ensure that its input VAT claimed is properly documented; and that claims for refund are construed strictly against the claimant, since the same partake the nature of exemption from taxation and as such, they are looked upon with disfavor.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

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Respondent's denial of petitioner's administrative claim is not proper.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (the "*Pilipinas Total Gas* case"),[28] the Supreme Court said:

> "At this stage, a review of **the nature of a judicial claim before the CTA** is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[29] it was ruled –
>
> > x x x **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim.** Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. **Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.** Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful**

[28] G.R. No. 207112, December 8, 2015.
[29] G.R. No. 145526, March 16, 2007.

> **administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA." *(Boldfacing and underscoring added)*

Based on the foregoing jurisprudential pronouncements, when a judicial claim for refund or tax credit before this Court is an appeal of an unsuccessful administrative claim, the taxpayer must convince the Court that respondent had no reason to deny its claim. Thus, it becomes imperative for the taxpayer to show this Court that it is entitled under substantive law to its claim for refund or tax credit and satisfied all the documentary and evidentiary requirements for an administrative claim.[30]

In other words, there are two (2) matters which must be shown before this Court upon appeal of an unsuccessful administrative claim, to wit: *first*, all documentary and evidentiary requirements for an administrative claim were satisfied at the BIR level, and *second*, the taxpayer's entitlement to the claim for refund or tax credit under substantive law. The *first* matter involves a review of whether respondent has basis in fact and/or in law for his denial of the administrative claim, and this entails the exercise of the appellate jurisdiction of this Court, while the *second* matter to be proved entails a determination of petitioner's compliance with the requisites established by law.

More significantly, the *first* matter concerns the proper exercise of this Court's appellate jurisdiction as conferred by law. Relative thereto, it must be remembered that appellate jurisdiction is the authority of a court higher in rank **to re-examine** the final order or judgment of a lower court that tried the case now elevated for judicial review.[31] The *second* matter to be proved is in accord with the principle that cases filed in this Court are litigated *de novo*.

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[30] Refer *to Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207112, December 8, 2015.
[31] *Garcia, et al. vs. De Jesus, et al., et seq.*, G.R. Nos. 88158 and 97108-09, March 4, 1992.

Thus, the task of this Court is to determine, in the main, whether petitioner has sufficiently shown these two (2) matters.

Consistent with the pronouncement of the High Court in the *Pilipinas Total Gas* case, petitioner must convince this Court that respondent had no reason to deny its refund claim.

The letter dated September 29, 2020, issued by the BIR[32] denying petitioner's administrative claim, states:

> "This refers to your application for Value-Added Tax (VAT) refund representing unutilized input taxes on local purchases of goods and services and payments for services rendered by non-residents amounting to **₱1,298,232.52,** covering the aforesaid period, attributable to zero-rated sales pursuant to *Section 112(A) in relation to Section 110(B),* both of *National Internal Revenue Code (NIRC) of 1997, as amended,* filed at the Regional District Office (RDO) No. 47 – East Makati City on July 14, 2020 and covered by Tax Verification Notice No. TVN2009-000042 dated July 17, 2020.
>
> Evaluation and verification of the documents submitted in support of your application disclosed that following observations/findings, which are vital in rendering the final decision thereto, to wit:
>
> 1. You **erroneously filled out your VAT Return** for the 1st Quarter of taxable year 2018 placing the amount of ₱1,077,019.54 on Creditable VAT Withheld *(Item No. 26B, Part II)* instead of placing the same on Service Rendered by Non-residents *(Item No. 21L, Part II).*
>
> 2. The **Mandatory Requirements on Claims for VAT Refund** enumerated in the *Revised Checklist of Mandatory Requirements (Annex 'A.1')* for claims filed pursuant to *Sec. 112 (A) of the Tax Code, as amended* pursuant to *Revenue Memorandum Circular (RMC) No. 47-2019* **have not been complied** with as you **failed to file your Approved Application for Zero-Rating on your effectively zero-rated transactions.**
>
> 3. You **failed to register with the Department of Energy (DOE) as duly accredited and certified contractor of aerated drilling service supplier of Energy Development Corporation**. As held in the case of ***Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.,*** *CTA En Banc Case No. 2094, July 21, 2020,* the taxpayer-claimant must register with the DOE as duly accredited and certified contractor of a Renewable Energy Developer.

[32] Exhibit "P-14", Docket – Vol. II, pp. 778 to 779.

4. Verification of your official receipts(OR/sales invoices(SI) on purchases disclosed that OR/SI with input tax amounting to ₱120,464.11 were not compliant with the invoicing requirements mandated by *Sec. 113 of the NIRC, as amended* as some of your suppliers failed to indicate your registered business name in the business style.

Schedule I:

SUPPLIER	**INPUT TAX**	**REMARKS**
LHI Real Estate Corporation	₱ 15,433.32	No business style
LHI Real Estate Corporation	1,596.00	No business style
LHI Real Estate Corporation	1,162.54	No business style
LHI Real Estate Corporation	420.00	No business style
LHI Real Estate Corporation	1,051.85	No business style
LHI Real Estate Corporation	420.00	No business style
LHI Real Estate Corporation	15,433.32	No business style
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Prodril Supply Company Inc.	12,196.56	No business style
Prodril Supply Company Inc.	12,488.16	No business style
Prodril Supply Company Inc.	12,489.12	No business style
PLDT Inc.	27,554.33	No business style
TOTAL	**₱ 120,464.11**	

5. Reconciliation of your **Purchases Claimed vs Purchases per Audit Information, Tax Exemption and Incentives Division (AITEID)** resulted to a discrepancy amounting to **P74,895.50** which was considered as **overclaimed input tax**, hence disallowed. *(Refer to Annex A)*

In view thereof, we regret to inform that the processing of your application for VAT refund for the period **January 1, 2018 to March 31, 2018** in the amount of **Php1,298,232.52** is hereby **DENIED** for lack of legal and factual basis.

However, your Company has the judicial remedy to appeal with the Court of Tax Appeal within thirty (30) days upon receipt of the herein decision on the subject administrative claim pursuant to the provisions of *Section 4.112-1(d) of RR No. 13-2018* in relation to *Section 112(C) of the Tax Code*, as amended."

The merits of each ground are discussed as follows:

1. *Erroneously filled out VAT Return - ₱1,077,019.54.*

The Court disagrees with respondent's position that petitioner's claim for refund should be denied on the ground that it erroneously filled out its VAT Return for the 1st Quarter of TY 2018 by placing the amount of ₱1,077,019.54 on the portion of the *Creditable VAT Withheld* (Item No. 26B, Part II), instead of putting the same on *Services Rendered by Non-Residents* (Item No. 21L, Part II).[33]

For one, such an error appears to be a mere oversight on the part of petitioner since the subject letter-application for refund[34] has clearly stated that such amount pertains to input taxes sourced from *"Services Rendered by Non-residents."* Pertinent portions of the said letter are herein quoted for ready reference:

> "**3. The claim must be filed within two years after the close of the taxable quarter when such sales were made**
>
> The Company has accumulated input VAT from 1 January 2018 to 31 March 2018. The breakdown of such accumulated input VAT is as follows:

Sources of Input VAT	**Amount of Input VAT (in PHP)**
Purchases of Capital Goods Exceeding ₱1 Million	-
Purchase of Capital Goods Not Exceeding ₱1 Million	-
Local Purchases of Goods Other Than Capital Goods	1,910.24
Local Purchases of Services	219,302.74
Services Rendered by Non-residents	**1,077,019.54**
Total Excess Input VAT	**1,298,232.52"**

[Emphasis and underscoring supplied]

Second, the amount of ₱1,077,019.54 is likewise traceable to the *Monthly Remittance Return of Value-Added Taxes and Other Percentage Taxes Withheld* (BIR Form 1600) and other documents submitted by petitioner.

Thus, respondent's denial of petitioner's claim on this ground lacks factual moorings.

2. *Filing of Approved Application for Zero-Rating on the effectively zero-rated transactions.*

[33] Par. 14, Discussion, *Memorandum for Respondent*, Docket – Vol. II, p. 873.
[34] Exhibit "P-13", Docket – Vol. II, p. 774.

Respondent also erred in denying petitioner's claim for refund of the input VAT due to the latter's failure to file the Approved Application for Zero-Rating on its effectively zero-rated transactions.[35] In *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*,[36] the Supreme Court has settled that the scope of BIR regulations additionally requiring an approved prior application for effective zero-rating is not within the statutory authority granted by the legislature, *viz.*:

> "**The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions. The scope of such regulations is not 'within the statutory authority x x x granted by the legislature.**
>
> *First*, **a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than interpret the latter. The courts will not countenance one that overrides the statute it seeks to apply and implement.**
>
> **Other than the general registration of a taxpayer the VAT status of which is aptly determined, no provision under our VAT law requires an additional application to be made for such taxpayer's transactions to be considered effectively zero-rated. An effectively zero-rated transaction does not and cannot become exempt simply because an application therefor was not made or, if made, was denied. To allow the additional requirement is to give unfettered discretion to those officials or agents who, without fluid consideration, are bent on denying a valid application.** Moreover, the State can never be estopped by the omissions, mistakes or errors of its officials or agents.
>
> *Second, grantia argumenti* that such an application is required by law, there is still the presumption of regularity in the performance of official duty. **Respondent's registration carries with it the presumption that, in the absence of contradictory evidence, an application for effective zero rating was also filed and approval thereof given. Besides, it is also presumed that the law has been obeyed by both the administrative officials and the applicant.**
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> *Third*, even though such an application was not made, all the special *laws* we have tackled exempt respondent not only from internal revenue laws but also from the *regulations* issued pursuant thereto. **Leniency in the implementation of the VAT in ecozones is an imperative,**

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[35] Par. 15, Discussion, *Memorandum for Respondent*, Docket – Vol. II, pp. 873 to 874.
[36] G.R. No. 153866, February 11, 2005.

> **precisely to spur economic growth in the country and attain global competitiveness as envisioned in those laws.**
>
> **A VAT-registered status, as well as compliance with the invoicing requirements, is sufficient for the effective zero rating of the transactions of a taxpayer.** The nature of its business and transactions can easily be perused from, as already clearly indicated in, its VAT registration papers and photocopied documents attached thereto. **Hence, its transactions cannot be exempted by its mere failure to apply for their effective zero rating. Otherwise, their VAT exemption would be determined, not by their nature, but by the taxpayer's negligence – a result not at all contemplated. Administrative convenience cannot thwart legislative mandate.**" *[Emphasis supplied]*

Based on the foregoing jurisprudential pronouncements, no prior approved application is required for a transaction to be treated as subject to the 0% VAT rate. As such, denying petitioner's claim for a refund of the input VAT for the latter's failure to file the approved application for zero-rating on its effectively zero-rated transactions cannot be sustained.

3. *Failure to register with the DOE as a duly accredited and certified contractor of aerated drilling service supplier.*

Citing the CTA *En Banc* ruling in *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*,[37] respondent insists that petitioner is not entitled to a tax refund of its sale of services to Renewal Energy (RE) Developers, like EDC, since it did not register with the DOE as a duly accredited and certified contractor of aerated drilling service supplier of EDC.

The Court disagrees.

Section 15 (g), Chapter VII of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008", states:

> "CHAPTER VII
>
> GENERAL INCENTIVES
>
> Section 15. *Incentives for Renewable Energy Projects and Activities.* — RE developers of renewable energy facilities,

[37] CTA *En Banc* Case No. 2094, July 21, 2020.

including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

xxx xxx xxx

(g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors." *[Emphasis supplied]*

It is clear from the foregoing that an RE Developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, as well as for the whole process of exploring and developing renewable energy sources up to its conversion into power, is subject to 0% VAT.

Relative thereto, Section 18 (A), (B), and (C), Rule 5, Part III of the Department Circular (DC) No. DC2009-05-08 prescribes the documents required to avail of VAT zero-rating on RE Developer's local purchases as follows:

"Part III

Incentives for Renewable Energy Projects and Activities

Rule 5

General Incentives and Privileges for Renewable Energy Development

xxx xxx xxx

SECTION 18. *Conditions for Availment of Incentives and Other Privileges.* —

For purposes of entitlement to the incentives and privileges under the Act, existing and new **RE Developers**, and manufacturers, fabricators, and suppliers of locally produced RE equipment **shall register with the DOE**.

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

(1) ***DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract.***

For existing RE projects, the new RE Service/Operating Contract shall preterminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE shall be subject to prior approval by the DOE.

(2) DOE Certificate of Accreditation — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

xxx xxx xxx

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI**.

xxx xxx xxx

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> C. Certificate of Endorsement by the DOE
>
> RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.
>
> xxx xxx xxx

Based on the foregoing provisions, to avail of the incentives under Section 15 (g) of RA No. 9513, among which is VAT-zero rating, an RE Developer must have secured and presented the following documents as prescribed under Section 18 (A) (B) and (C), Rule 5, Part III of the IRR of RA 9513, to wit:

1. DOE Certificate of Registration;

2. Certificate of Registration with the BOI; and

3. Certificate of Endorsement by the DOE.

It is clear from the foregoing provisions of RA No. 9513 and its IRR that an RE Developer's entitlement to the benefit of VAT zero-rating on its sales of renewable energy under Section 15(g) of RA No. 9513, in relation to Section 108(B)(7), NIRC of 1997, as amended, rests upon its compliance with the requirements prescribed in Section 18 (A) (B) and (C), Rule 5, Part III of DOE DO No. DC2009-05-0008, but nowhere in the said law and IRR does it require the seller/supplier/contractor of services to RE Developers to obtain prior registration or accreditation with the DOE. Thus, petitioner needs only to present EDC's DOE Certificate of Registration as an RE Developer, BOI Registration, and DOE Certificate of Endorsement to avail of the zero percent (0%) VAT incentive under RA 9513.

Furthermore, the CTA *En Banc* ruling in *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.* (CE Casecnan case) does not apply to the present case as the party-claimant therein is a registered RE Developer, while petitioner herein is a mere contractor or supplier of services of an RE Developer. Moreover, the facts and circumstances therein are not in all fours with those obtaining in the instant case as to warrant its application herein.

Given the foregoing, the denial of petitioner's claim due to petitioner's failure to register as an accredited and certified contractor of aerated drilling service supplier of EDC does not hold water.

4. *Failure to indicate in the supporting documents petitioner's business style - ₱120,464.11.*

"Business Style" refers to the business name registered with the concerned regulatory body used by the taxpayer other than its registered name or company name, and the same can be found in the Certificate of Registration issued either by the SEC or by the Department of Trade and Industry.[38]

In this case, since petitioner does not carry any business style in its SEC Certificate of Registration,[39] respondent has, therefore, no basis for disallowing the input taxes for ₱120,464.11 due to the failure of the suppliers of petitioner to indicate the latter's business style.

5. *Overclaimed input tax based on the reconciliation of petitioner's Purchases Claimed vs. Purchases per the Audit Information, Tax Exemption and Incentives Division (AITEID) - ₱74,895.50.*

In the instant case, a confirmation with respondent's Audit Information, Tax Exemption and Incentives Division (AITEID) was made as the basis for the denial of input taxes amounting to ₱74,895.50. However, the Court finds no basis to disallow the same as the figures extracted from respondent's database (AITEID data) have not been verified with other externally sourced data to check their veracity. The same was likewise not corroborated with certifications or confirmations from related third-party sources to support its credibility and integrity. Thus, such failure casts doubt on the reliability and correctness of the findings. Consequently, respondent has no basis to disallow the alleged overclaimed input tax in the amount of ₱74,895.50.

[38] Revenue Memorandum Circular No. 055-2019 dated May 21, 2019.
[39] Exhibit "P-2", Docket – Vol. II, pp. 523.

Nevertheless, notwithstanding the foregoing conclusion, the result of petitioner's judicial claim for refund is still subject to petitioner's satisfaction of the *second* matter, as set forth below. In fine, petitioner must still prove its compliance with the requisites under the substantive law for the grant of its refund or tax credit claim as enunciated in the *Pilipinas Total Gas* case.

Requisites for the refund or issuance of a tax credit certificate of input VAT under the law.

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 10963[40], provides, in part, as follows:

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

[40] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

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

Based on the foregoing provision, jurisprudence has laid down specific requisites that the taxpayer-applicant must comply with to successfully obtain a refund or credit of input VAT. Said requisites are classified into distinct categories as follows:

As to the timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[41]

2. In case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of ninety (90) days, the judicial claim must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;

Concerning the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[42]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[43]

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[41] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 182364, August 3, 2010.
[42] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra; San Roque Power Corporation vs. Commissioner of Internal Revenue, supra;* and *AT&T Communications Services Philippines, Inc., supra.*
[43] *Id.*

5. For zero-rated sales under Sections 106(A)(2)(a)(1),(2) and (b); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[44]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[45]

7. The input taxes are due or paid;[46]

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume;[47] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[48]

In addition, in VAT refund/credit claims, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[49] Compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory[50] when filing a claim for input taxes attributable to zero-rated sales.[51] The invoicing and substantiation requirements should be followed because they are the only way to determine the veracity of the taxpayer's claims.[52]

Finally, it must be reiterated that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[53] Thus, it behooves petitioner

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[44] Par. 2, Sec. 4.112-1. (a) of RR No. 16-2005, as further amended by RR No. 13-2018.
[45] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc., supra.*
[46] *Id.*
[47] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[48] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*
[49] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.
[50] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[51] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[52] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[53] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515,

to comply with the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites and requirements is a valid ground to deny the refund claim.

The Court has jurisdiction over the instant Petition.

<u>First and second requisites:</u> Petitioner's administrative and judicial claims for refund or credit were timely filed.

The *first* requisite pertains to the filing of a claim for tax refund or credit of input VAT before the BIR within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st Quarter of TY 2018. Counting two (2) years from the close of the said quarter, the following table indicates the pertinent last day for the filing of an administrative claim, to wit:

2018	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st Quarter	January 1, 2018 to March 31, 2018	March 31, 2018	March 31, 2020

On various dates in 2020, the BIR issued several issuances, extending the statutory deadline for filing applications for VAT refund or credit, among others.[54] Thus, the period for filing VAT refund or credit claims for the calendar year ending March 31, 2018, was extended to July 15, 2020, under Section 2 of Revenue Regulations (RR) No. 16-2020.[55]

Petitioner's administrative claim covering the period was filed with the BIR on July 15, 2020.[56] Hence, the subject claim was timely filed with respondent.

July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[54] Revenue Regulations (RR) No. 7-2020 dated March 27, 2020; RR No. 10-2020 dated April 9, 2020; RR No. 11-2020 dated April 29, 2020, and RR No. 16-2020 dated June 19, 2020.

[55] Sec. 2, RR No. 16-2020 provides:

> "**SECTION 2. Filing Due Dates by Taxpayer-Claimants.** – Filing of Claims for VAT refund for the following taxable quarters shall be until the herein specified due dates:
>
> Calendar Quarter ending March 31, 2018 - **July 15, 2020**
>
> xxx xxx xxx"

[56] Exhibit "P-13", Docket – Vol. II, pp. 770 to 777.

As regards the *second* requisite, the judicial claim must be filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90 days under Section 112(C) of the NIRC of 1997, as amended.

Thus, from the filing of petitioner's administrative claim on July 15, 2020, respondent had ninety (90) days, or until October 13, 2020, to act on the claim.

Records reveal that the BIR, through Regional Director Maridur Rosario, issued the letter denying petitioner's administrative claim on September 29, 2020,[57] which is within 90 days. Petitioner received the letter on October 15, 2020;[58] thus, it had 30 days from October 15, 2020, or until November 14, 2020, to file its judicial claim for refund or credit. Considering that the last day, *i.e.*, November 14, 2020, fell on a Saturday, petitioner had until the next working day—November 16, 2020, to file its judicial claim.

Petitioner filed its judicial claim *via* the instant *Petition for Review* on November 16, 2020,[59] or within the prescribed 30-day period from receipt of the BIR's decision. Correspondingly, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Having settled that the *Petition* was filed in a timely manner, We likewise rule that the Court has the requisite jurisdiction to take cognizance of this case under Section 3(a)(1), Rule 4 of the RRCTA.

Third requisite: Petitioner is a VAT-registered person/entity.

Anent the *third* requisite, it is also undisputed that petitioner is a VAT-registered person/entity, with TIN 251-156-024-000.[60] Thus, petitioner complied with the *third* requisite.

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[57] Exhibit "P-14", Docket – Vol. II, pp. 778 to 779; Exhibit "R-5", BIR Records, pp. 533 to 535. Refer also to par. 3, Facts Admitted, JSFI, Docket – Vol. I, p. 357.
[58] Par. 6, Timeliness of Petition, *Petition for Review*, Docket – Vol. I, p. 11.
[59] Docket – Vol. I, pp. 10 to 20.
[60] Par. 4, Facts Admitted, JSFI, Docket – Vol. I, p. 357; Exhibit "P-1", Docket – Vol. II, p. 522.

Fourth requisite**: Petitioner had zero-rated or effectively zero-rated sales during the 1st Quarter of the taxable year 2018.**

The *fourth* requisite requires the taxpayer to engage in zero-rated or effectively zero-rated sales.

Petitioner claims[61] that during the period January 1, 2018 to March 31, 2018, it accumulated excess or unutilized input VAT in the amount of ₱1,298,232.52, arising from its local purchases of goods and services, purchases of services rendered by non-residents and importation of non-capital goods directly attributable to its sale of services to EDC, an RE Developer. For petitioner, its sale of services to the latter is subject to VAT at zero percent (0%) rate under Section 108(B)(3) of the NIRC of 1997, as amended, and Section 15(G) of RA No. 9513.

A perusal of the *Contracts for Aerated Fluids Drilling Works*[62] by and between petitioner and EDC shows that petitioner undertook to provide EDC with "works and techniques to design and execute the Aerated Fluids Drilling Program for a Geothermal Well, including the Aerated Fluids Drilling Services and the supply of the specified Goods, Consumables or Contractor Personnel."[63] Considering that such aerated fluids drilling works were necessary for EDC's production of geothermal energy, petitioner's sales or receipts derived therefrom in the 1st Quarter of 2018 may qualify for VAT zero-rating.

Moreover, and as intimated, being the contractor of aerated drilling service supplier of EDC, petitioner needs to present EDC's (i) DOE Certificate of Registration as an RE Developer, (ii) BOI Registration, and (iii) DOE Certificate of Endorsement for purposes of availing the zero percent (0%) VAT incentive under RA 9513, under Section 18 (A), (B) and (C), Rule 5, Part III of the DC No. DC2009-05-08.

However, records reveal that only EDC's projects in Tongonan, Leyte and Palinpinon, Negros Oriental were duly supported with the above-mentioned three (3) documents, *viz.*:

[61] Exhibit "P-13", Docket – Vol. II, pp. 770 to 777.
[62] Exhibits "P-12", "P-12-1", "P-12-2", Docket – Vol. II, pp. 627 to 704, 705 to 761, and 762 to 769, respectively.
[63] Recitals and par. 1.87, Exhibit "P-12", Docket – Vol. II, pp. 627 and 636, respectively.

Location of EDC's Projects	DOE Certificate of Registration	Registration with the BOI	Certificate of Endorsement by the DOE
Tongonan, Leyte	GRESC-2009-10-001 dated October 23, 2009[64]	Certificate of Registration No. 2012-024, dated February 6, 2012[65]	Letter of Endorsement dated June 23, 2020, issued by Director Mylene C. Capongcol, Officer-in-Charge, Renewable Energy Management Bureau (Letter of Endorsement dated June 23, 2020)[66]
Palinpinon, Negros Oriental	GRESC-2009-10-002 dated October 23, 2009[67]	Certificate of Registration No. 2014-027 dated February 12, 2014[68]	Letter of Endorsement dated June 23, 2020
Bacon-Manito Sorsogon/Albay	GRESC-2009-10-003 dated October 23, 2009[69]	None	Letter of Endorsement dated June 23, 2020
Kidapawan City, North Cotabato	GRESC-2009-10-004 dated October 23, 2009[70]	None	Letter of Endorsement dated June 23, 2020
Northern Negros, Negros Occidental	GRESC-2009-10-005 dated October 23, 2009[71]	None	None

Based on the foregoing, petitioner failed to establish that EDC's projects in (1) Bacon-Manito Sorsogon/Albay; (2) Kidapawan City, North Cotabato; and (3) Northern Negros, Negros Occidental have been registered with the BOI. Moreover, EDC's project in Northern Negros, Negros Occidental, was not at all mentioned in the Letter of Endorsement dated June 23, 2020, issued by Director Mylene C. Capongcol, Officer-in-Charge of Renewable Energy Management Bureau.[72] Thus, only the sale of services made to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, shall be subject to zero-rating under the law.

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[64] Exhibit "P-9", Docket – Vol. II, p. 605.
[65] Exhibit "P-10", Docket – Vol. II, pp. 610 to 616.
[66] Exhibit "P-11", Docket – Vol. II, pp. 625 to 626.
[67] Exhibit P-9-1", Docket – Vol. II, p. 606.
[68] Exhibit "P-10-1", Docket – Vol. II, pp. 617 to 624.
[69] Exhibit "P-9-2", Docket – Vol. II, p. 607.
[70] Exhibit "P-9-3", Docket – Vol. II, p. 608.
[71] Exhibit "P-9-4", Docket – Vol. II, p. 609.
[72] Exhibit "P-11", Docket – Vol. II, pp. 625 to 626.

Nonetheless, petitioner must still show compliance with the pertinent invoicing requirements, containing the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter, or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the 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.
>
> (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 (₱1,000) 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 foregoing provisions are further implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended, to wit:

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

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

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

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

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

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(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.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices and ORs must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended by R.A. No. 10963, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One hundred pesos (P100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

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. xxx

Simply put, petitioner must issue BIR-registered VAT ORs for the gross receipts derived from its sale of services containing the above-stated information.

In its Quarterly VAT Returns for the 1st Quarter of TY 2018, petitioner declared zero-rated sales/receipts in the total amount of ₱38,458,182.97.[73] In support thereof, petitioner presented the ORs and the related billing invoices, summarized as follows:

Exhibit No.	Date of OR	OR Number	Billing Invoice No.	Amount per OR
"P-80" to "P-80-2"	21 March 2018	0619	0205/0206	₱ 6,477,472.16
"P-81" to "P-81-1"	1 February 2018	0617	0203	16,747,374.34
"P-82" to "P-82-1"	22 February 2018	0618	0204	15,233,336.48
			TOTAL	**₱ 38,458,182.98**

Upon scrutiny, the Court finds that the ORs presented by petitioner complied with the invoicing requirements prescribed by law and regulations.

Nonetheless, as already pointed out, only those services rendered to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, are subject to zero-rating for purposes of the present claim.

As reported by the court-commissioned ICPA, the billing invoices,[74] which supplement the ORs, show that these payments were for the services rendered at the NIGBU site or the Negros Island Geothermal Business Unit of EDC located in Palinpinon, Negros Oriental. The said project site of EDC is duly supported with DOE Certificate of Registration No. GRESC 2009-10-002, dated October 23, 2009, and was earlier determined to have qualified for a VAT zero rating.[75]

[73] Line 17, Exhibit "P-3-1", Docket – Vol. II, p. 577.
[74] Exhibit Nos. "P-80-1", "P-80-2", "P-81-1" and "P-82-1".
[75] Exhibit "P-18", Docket – Vol. I, p. 465 to 466.

Therefore, petitioner has sufficiently proven that its sales of services to EDC during the 1st Quarter of TY 2018 in the said amount of ₱38,458,182.98 is subject to VAT at a zero percent rate.

<u>Fifth requisite</u>: There is no need to comply with the fifth requisite.

The *fifth* requisite is to the effect that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations, but only for zero-rated sales under **Section 106(A)(2)(a)(1), (2) and (b)**, and **108(B)(1) and (2)**, of the NIRC of 1997, as amended. Since the legal basis for petitioner's zero-rated sales is 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA 9513, the present case need not comply with the said *fifth* requisite.

<u>Sixth requisite</u>: The input taxes being claimed are not transitional.

In its Amended Quarterly VAT Returns for the 1st Quarter of TY 2018, [76] petitioner declared a total input VAT of ₱1,298,232.52 from its domestic purchases of goods and services and purchase of services rendered by non-residents, as shown below:

Input tax on domestic purchases of goods other than capital goods	₱ 1,910.24
Input tax on domestic purchases of services	219,302.74
Services Rendered by Non-Residents	1,077,019.54
Total Input VAT during the period	**₱ 1,298,232.52**

The above input taxes do *not* appear to be transitional, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by

[76] Exhibit "P-3-1", Docket – Vol. II, pp. 577 to 578.

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether they previously paid taxes in the acquisitions of their beginning inventory of goods, materials, and supplies. During the transition period from non-VAT to VAT status, the transitional input tax credit alleviates the impact of the VAT on the taxpayer.[77]

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

<u>Seventh requisite</u>: The input taxes being claimed were due or paid.

Anent the *seventh* requisite in claiming a VAT refund, it is of fatal importance that the input taxes claimed for refund are properly supported by appropriate documents to prove that the same are due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "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

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[77] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.

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

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

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

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

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

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

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

The above provisions are implemented by Section 4.110-1, 4.110-2, and 4.110-3 of RR No. 16-2005, as amended by RR-13-2018, which provide as follows:

"SEC. 4.110-1. *Credits for Input Tax.* – xxx

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

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(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;

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

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

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

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

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

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

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

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

Furthermore, Section 4.110-8 of RR No. 16-2005, as amended, provides for the substantiation requirements of input tax credits on purchases of goods, properties, and services, as follows:

"SECTION 4.110-8. *Substantiation of Input Tax Credits.*

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties, or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales,

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or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods- import entry or other equivalent document showing actual payment of VAT on the imported goods.

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

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

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

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

xxx xxx xxx

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

Based on the foregoing provisions, to be entitled to input tax credits, the same must be duly substantiated by supporting documents prescribed under Section 4.110-8 of RR No. 16-2005. Moreover, said documents must likewise comply with the invoicing requirements under the earlier quoted Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

Needless to say, the invoicing requirements for a VAT-registered taxpayer, as provided in the NIRC and revenue regulations, are clear. A VAT-registered taxpayer must comply with all the VAT invoicing requirements to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[78] In addition, the invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of the claim.[79]

To reiterate, petitioner's claim for the excess and unutilized input VAT for the 1st Quarter of taxable year 2018 amounting to ₱1,298,232.52 consists of the following:

	Sources of Input VAT	Amount of Input VAT
A.	Local Purchases of Goods Other Than Capital Goods	₱ 1,910.24
B.	Local Purchases of Services	219,302.74
C.	Services Rendered by Non-residents	1,077,019.54
	Total Excess Input VAT	**₱ 1,298,232.52**

A. Local Purchases of Goods Other Than Capital Goods – ₱1,910.24; and

B. Local Purchases of Services - ₱219,302.74

As ascertained by the ICPA, petitioner's supporting documents for its local purchases of goods and services totaled ₱212,557.86. This is lower than the total input taxes reported in its Quarterly VAT Return of ₱221,212.98.[80] Consequently, the difference of ₱8,655.12 not supported by any document shall be disallowed and be deducted from petitioner's claim.

Moreover, the input VAT amounting to ₱4,109.91, as ascertained by the ICPA, shall also be disallowed for being supported by invalid documents.[81]

Also, upon review of the supporting documents relating to petitioner's local purchases of goods other than capital goods and services, the Court finds that the input VAT amounting to ₱13,803.15 should be disallowed due to the following reasons:

Exhibit No.	Supplier	OR	OR Date	Amount	Input Tax
Nature of services not indicated in the supporting OR					
"P-28"	TDV PEST CONTROL INC.	3332 A	27 January 2018	₱ 1,339.29	₱ 160.71
"P-32"	DEARBORNE GLOBAL BUSINESS SERVICES INC.	0002215	3 January 2018	89.29	10.71
"P-46"	MAC-NELS LINE, INC.	OR20804	8 February 2018	72,571.88	8,708.63
"P-49"	ACE TUBULAR SERVICES LIMITED	2526	8 February 2018	39,954.37	4,794.52
	Sub-total			*₱113,954.83*	*₱13,674.57*
VAT is not shown separately					

[78] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.
[79] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[80] Exhibit "P-18", Docket – Vol. I, p. 466.
[81] Exhibit "P-18", Docket – Vol. I, p. 466.

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P-33	HMC, INC.	0136795	24 January 2018	535.71	64.29
P-34	HMC, INC.	0136794	24 January 2018	535.71	64.29
	Sub-total			*₱1,071.42*	*₱128.58*
TOTAL DISALLOWANCE				**₱115,026.25**	**₱13,803.15**

C. <u>Purchase of Services from Non-residents - ₱1,077.019.54</u>

In support of the input VAT on services rendered by a non-resident, petitioner presented the BIR Form No. 1600 or the *Monthly Remittance Return of Value-Added Taxes and Other Percentage Taxes* for the month of February 2018 duly filed by petitioner with the BIR on March 9, 2018, with the following details:

Exhibit No.	Period Covered	eFPS Filing Reference No.	Date	Tax Base	12% Withholding VAT
"P-78"	February 2018	171800024241151	9 March 2018	**₱8,975,162.80**	**₱ 1,077,019.54**

The same amount was declared by petitioner in its Amended 1st Quarter VAT Return for TY 2018,[82] *albeit* as Creditable VAT Withheld. Petitioner also submitted the *e*FPS Payment Details, where it was disclosed that petitioner paid the BIR the amount of ₱1,077.019.54. Verily, the input VAT of ₱1,077,019.54 represents petitioner's valid input VAT.

In fine, out of the total declared input taxes of ₱1,298,232.52, only the amount of ₱1,271,664.34 represents petitioner's valid input VAT for the 1st Quarter of TY 2018, as computed below:

Input VAT claimed for refund		₱ 1,298,232.52
Less: Disallowances		
Unsupported input VAT	₱ 8,655.12	
Per ICPA findings *(with invalid supporting documents)*	4,109.91	
Disallowed Input VAT per this Court's findings	13,803.15	26,568.18
Valid input VAT		**₱ 1,271,664.34**

<u>Eighth requisite</u>: Petitioner's input taxes claimed are attributable to zero-rated sales.

The *eighth* requisite requires that the input taxes claimed

[82] Line 26B, Exhibit "P-3-1", Docket – Vol. II, p. 578.

are attributable to zero-rated or effectively zero-rated sales. However, the rule is 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 based on sales volume.

In any event, it must be emphasized that the input taxes of taxpayers engaged in purely zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities.[83]

Considering that petitioner had no other type of sales except zero-rated sales, the entire substantiated input VAT of ₱1,271,664.34 is presumably attributable thereto.

***Ninth requisite*: The input taxes have not been applied against output taxes during and in the succeeding quarters.**

Considering that petitioner had no 12% VATable sales for the 1st Quarter of TY 2018, it had no output VAT against which the claimed input VAT of ₱1,298,232.52 may be applied or credited.

Moreover, although the claimed input VAT amount of ₱1,298,232.52, which necessarily includes the substantiated input VAT of ₱1,271,664.34, was carried over by petitioner in the succeeding quarters,[84] the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[85] in its Quarterly VAT Return for the 1st Quarter of TY 2020. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱87,734,520.04[86] as of the end of the 1st Quarter of TY 2020. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarters of taxable year 2020. Verily, petitioner complied with the *ninth* requisite

[83] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 255324 and 255353, April 12, 2023.
[84] Exhibits "P-4-2", "P-5", "P-6-1", "P-7-2", "P-7-4", "P-7-6", "P-7-8" "P-8-1", Docket – Vol. II, pp. 582 to 583, 584 to 585, 587, 591, 593, 596, 600 and 604, respectively.
[85] Exhibit "P-8-1", Line 23D, Docket – Vol. II, p. 604.
[86] Exhibit "P-8-1", Line 29.

for the grant of the input VAT claimed for refund or issuance of tax credit certificate.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Air Drilling Associates Pte. Ltd. the reduced amount of **₱1,271,664.34**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 1st Quarter of taxable year 2018.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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 Division.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice