CTA Form No. 8

22-000376-0043

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10944

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. ALBERT C. ARPON
ATTY. CARL FITRI A. HUSSIN
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115-117 Esteban St., Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **December 18, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 19, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10944

Members:

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

Promulgated:

DEC 18 2024, 2:00PM

x- -x

DECISION

CUI-DAVID, J.:

Before the Court is the *Petition for Review*[1] filed by petitioner Air Drilling Associates Pte Ltd. on July 29, 2022, seeking a judgment ordering respondent Commissioner of Internal Revenue to refund or issue a Tax Credit Certificate (TCC) in the amount of ₱2,341,816.67, representing petitioner's alleged unutilized creditable input value-added tax (VAT) attributable to its zero-rated sales covering the period from January 1, 2020, to March 31, 2020, for the taxable year (TY) 2020.

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 (SEC) to establish a branch office in the Philippines to pursue geothermal aerated

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[1] Docket – Vol. I, pp. 6–14.

drilling services and related opportunities therein.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Tax Identification Number (TIN) 251-156-024-00000.[3]

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

THE FACTS AND THE PROCEEDINGS

Petitioner avers that in the course of its business as a contractor providing 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 quarter (1st quarter) of TY 2020, petitioner rendered aerated drilling services to renewable energy (RE) developers, Energy Development Corporation (EDC) and Philippine Geothermal Production Company (PGPC), where it accumulated unutilized creditable input VAT attributable to its zero-rated sales amounting to ₱2,341,816.67.[6]

On April 30, 2020, petitioner filed its Quarterly VAT Return for the 1st quarter of TY 2020 and an Amended Quarterly VAT Return for the same period on March 29, 2022. Allegedly, the aforementioned creditable input VAT was not credited against petitioner's output VAT liabilities in the succeeding quarters.[7]

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2 Docket – Vol. II, pp. 480–531, Exhibits "P-2" and "P-2-1".
3 *Id.* at 479, Exhibit "P-1".
4 Docket – Vol. I, p. 155, *Joint Stipulation of Fac[t]s and Issues* (JSFI), Facts Admitted, par. 1.
5 *Id.* at 8, Petition for Review, *Statement of Allegations*, par. 8.
6 Docket – Vol. II, p. 765–766, *Memorandum for Petitioner*, *Statement of Facts*, pars. 5 and 8.
7 Docket – Vol. I, p. 8. *Petition for Review*, *Statement of Allegations*, par. 12.

On March 30, 2022, petitioner filed a letter of even date with the BIR, requesting a refund of the full amount of ₱2,341,816.67,[8] allegedly representing unutilized input VAT credits arising from its local purchases of goods and services, services rendered by non-residents, and the importation of non-capital goods attributable to its zero-rated sales of services to EDC and PGPC for the 1st quarter of TY 2020.

However, on June 30, 2022, petitioner received a letter[9] dated June 13, 2022, denying its administrative claim for lack of legal and factual basis.

Aggrieved, petitioner elevated the matter to this Court by filing the instant *Petition of Review* on July 29, 2022.

On October 10, 2022, within the extended period granted by the Court,[10] respondent filed a *Respondent's Answer (With Special and Affirmative Defenses) via* registered mail,[11] praying that petitioner's claim for refund be denied for lack of merit. Respondent argued that petitioner failed to substantiate its administrative claim for a VAT refund or credit, citing the following: (a) petitioner failed to comply with the Mandatory Requirements on Claims for VAT Refund pursuant to Revenue Memorandum Circular (RMC) No. 47-2020 when it failed to file its approved Application for Zero-Rating for its effectively zero-rated transactions; (b) petitioner failed to comply with the invoicing requirements under Sections 113 and 237 of the NIRC of 1997, as amended, as some of its suppliers failed to indicate its registered business address name in the business style [sic]; and (c) petitioner's claim for a VAT refund or credit was not fully substantiated by proper documents, such as sales invoices and official receipts, pursuant to Section 113 of the NIRC of 1997, as amended.

Respondent also adds that petitioner failed to show that it was able to secure the necessary Certificate of Endorsement from the Department of Energy (DOE) as required under Section 26, Chapter VII of Republic Act (RA) No. 9513 and Paragraph (C), Section 18, Part III of Rule 5 of the *Implementing Rules and Regulations* (IRR) of RA No. 9513.

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8 Docket – Vol. II, pp. 712–715, Exhibit "P-12"; Exhibit "R-2", BIR Records – Folder I (Exhibit "R-7"), pp. 197–200.

9 Docket – Vol. II, pp. 717–722, Exhibit "P-13".

10 Docket – Vol. I, pp. 41–43, Respondent's *Motion for Extension of Time to File Answer* dated September 5, 2022; 46, Order dated September 14, 2022, respectively.

11 *Id.* at 47–57.

After the *Pre-Trial Conference,* the parties submitted a *Joint Stipulation of Fac[t]s and Issues*[12] on March 8, 2023, based on which a *Pre-Trial Order*[13] was issued on March 28, 2023.

Trial ensued, during which petitioner presented the testimonies of the following witnesses: (1) Ms. Rosebelle Liu,[14] petitioner's Office Manager; and (2) Atty. Adan T. Delamide,[15] the Court-commissioned Independent Certified Public Accountant (ICPA).[16]

On September 8, 2023, petitioner filed its *Formal Offer of Evidence,*[17] which respondent opposed by filing a *Comment (To Petitioner's Offer of Evidence)* on September 21, 2023.[18] In its Resolution dated November 22, 2023,[19] the Court admitted petitioner's exhibits, *except* for Exhibit "P-11," due to the failure to present the original document for comparison.

Respondent, in turn, presented the testimonies of Revenue Officers Ann Melanie A. Basa[20] and Mervin Bryann G. Ledesma.[21] On November 30, 2023, respondent filed his *Formal Offer of Evidence,*[22] which the Court admitted in its Resolution dated January 25, 2024.[23] In the same Resolution, the parties were granted thirty (30) days from notice to file their respective memoranda.

Petitioner filed its *Memorandum* on February 13, 2024,[24] while respondent filed his *Memorandum* on February 20, 2024.[25] With the submission of the parties' memoranda, the instant case was deemed submitted for decision on March 12, 2024.[26]

Hence, this Decision.

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[12] *Id.* at 155–158.
[13] *Id.* at 168–173.
[14] Docket – Vol. I, pp. 199–206, Exhibits "P-14-2"; Docket – Vol. I, pp. 467–468, Order dated August 22, 2023.
[15] Docket – Vol. I, pp. 455–463, Exhibit "P-16"; Docket – Vol. I, pp. 467–468, Order dated August 22, 2023.
[16] Docket – Vol. I, p. 175, *Oath of Commission* dated May 11, 2023; Docket – Vol. I, p. 174 and 176–177, Minutes of the hearing held on, and Order dated, May 11, 2023, respectively.
[17] Docket – Vol. II, pp. 469–478.
[18] *Id.* at 734–736.
[19] *Id.* at 743–744.
[20] Docket – Vol. I, pp. 95–103, Exhibit "R-4"; Docket – Vol. II, pp. 746–747, Order dated November 23, 2023.
[21] Docket – Vol. I, pp. 104–113, Exhibit "R-8"; Docket – Vol. II, pp. 746–747, Order dated November 23, 2023.
[22] Docket – Vol. II, pp. 749–753.
[23] *Id.* at 762–763.
[24] *Id.* at 764–779.
[25] *Id.* at 780–790.
[26] Docket – Vol. II, p. 793, Resolution dated March 12, 2024.

THE ISSUE

The lone issue for resolution, as stipulated by the parties, is:[27]

> "WHETHER PETITIONER, AIR DRILLING ASSOCIATES PTE LTD., IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF P2,341,816.67, ALLEGEDLY REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VAT FROM ITS ALLEGED ZERO-RATED SALES FOR THE FIRST QUARTER OF TAXABLE YEAR 2020."

Petitioner's arguments:

Petitioner asserts that both its administrative and judicial claims for refund were timely filed in accordance with Sections 112 of the NIRC of 1997, as amended; that it is a VAT-registered entity; that it has established that it rendered services subject to VAT zero-rate and substantiated the present claim with relevant supporting documents; that it substantiated its input VAT paid or incurred during the 1st quarter of TY 2020, which are all attributable to its VAT zero-rated sales; that its input VAT acquired during the 1st quarter of TY 2020 were not applied against any output VAT in the succeeding periods; that the submission of an approved application for zero-rating for its effectively zero-rated transactions is not required; and that under RA No. 9513, it is not required to register as a DOE and Board of Investments (BOI) accredited supplier to be entitled to VAT zero-rating on its sales to an RE Developer.

Respondent's Arguments:

Respondent contends that petitioner is not entitled to a refund in the amount of ₱2,341,816.67, representing its alleged excess and unutilized input VAT attributable to its zero-rated sales for the period covering January 1, 2020, to March 31, 2020; that it failed to substantiate its administrative claim for a VAT refund or credit; that it failed to show that the tax subject of this case was erroneously or illegally collected; and that claims for refund are strictly

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[27] Docket – Vol. I, p. 156, JSFI, Issue.

construed against the taxpayer for the same partake the nature of tax exemptions.

THE COURT'S RULING

The instant *Petition for Review* is partly meritorious.

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

Section 112 of the NIRC of 1997, as amended by RA No. 10963,[28] 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.
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> xxx xxx xxx

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

> (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 established certain requisites that a taxpayer-applicant must satisfy to successfully obtain a credit or refund of input VAT. These requisites are classified into specific categories as follows:

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

1. The refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made.[29]

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

<u>Concerning the taxpayer's registration with the BIR:</u>

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[29] *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010 [Per J. Carpio-Morales, Third Division]; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].

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

3. The taxpayer is a VAT-registered person.[31] Relative thereto, it must be emphasized that registration is an indispensable requirement under our VAT law.[32]

<u>In relation to the taxpayer's output VAT</u>:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales.[33]

5. For zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[34] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations.[35]

<u>As regards the taxpayer's input VAT being refunded:</u>

6. The input taxes are not transitional.[36]

7. The input taxes are due or paid.[37]

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.[38]

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[39]

In addition to meeting the aforementioned requisites, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[40] Petitioner's compliance with all the VAT invoicing requirements is necessary for filing a claim for input

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[31] *Supra* note 29.
[32] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005 [Per J. Panganiban, Third Division].
[33] *Id.*
[34] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.
[35] *Supra* note 29.
[36] *Id.*
[37] *Id.*
[38] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009 [Per J. Chico-Nazario, Third Division]; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].
[39] *Supra* note 29.
[40] *Team Energy Corporation (Formerly: Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.) v. Commissioner of Internal Revenue*, G.R. Nos. 197663 & 197770, March 14, 2018 [Per J. Leonen, Third Division].

taxes attributable to zero-rated sales.[41] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[42] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[43]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as a tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates the computation of tax credits, and provides an accurate audit trail or evidence for BIR monitoring purposes.[44]

Finally, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[45] Thus, it behooves petitioner to comply with the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of these requisites or requirements constitutes valid grounds for denying the refund claim.

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41 *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 [Per J. Perlas-Bernabe, Second Division].

42 *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018 [Per J. Martires, Third Division].

43 *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015 [Per J. Reyes, Third Division].

44 *Supra* note 40.

45 *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 201665 & 201668, August 30, 2017 [Per J. Del Castillo, First Division]; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014 [Per J. Leonen, Second Division]; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division]; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008 [Per J. Nachura, Third Division]; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007 [Per J. Corona, First Division]; *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005 [Per J. Carpio-Morales, Third Division].

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 requires that a claim for a tax refund or tax credit of input VAT must be filed with the BIR within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

In this case, the claim pertains to the 1st quarter of TY 2020. Counting 2 years from the close of the said quarter, the last day or deadline for filing the administrative claim is as follows:

2020	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim
1st quarter	January 1, 2020 to March 31, 2020	March 31, 2020	**March 31, 2022**

Considering that petitioner filed its administrative claim with the BIR on March 30, 2022,[46] the claim was filed within the prescribed two-year period.

The *second* requisite necessitates that a judicial claim must be filed within 30 days from the taxpayer's receipt of respondent's decision or after the expiration of the 90-day period prescribed under Section 112(C) of the NIRC of 1997, as amended.

Correspondingly, from filing petitioner's administrative claim on March 30, 2022, respondent had 90 days, or until June 28, 2022, to act on the claim.

In this case, while respondent issued a letter denying petitioner's entire claim for refund within the 90-day period, specifically on June 13, 2022, petitioner received the denial only on June 30, 2022.[47] Such being the case, petitioner had

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[46] Docket – Vol. II, pp. 712–715, Exhibit "P-12"; Exhibit "R-2", BIR Records – Folder 1 (Exhibit "R-7"), pp. 197–200.

[47] Docket – Vol. II, pp. 717–722, Exhibit "P-13".

30 days from that date, or until August 1, 2022,[48] to file an appeal with this Court.

Therefore, the filing of the present *Petition for Review* on July 29, 2022[49] was timely. Accordingly, the Court finds that petitioner has complied with both the *first* and *second* requisites.

Having settled that the *Petition for Review* was timely filed, the Court likewise rules that it has the requisite jurisdiction to take cognizance of this case under Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals.

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

With respect to the *third* requisite, it is undisputed that petitioner is a VAT-registered entity with TIN 251-156-024-00000.[50] Thus, petitioner has satisfied this requisite.

***Fourth requisite*: Petitioner had zero-rated or effectively zero-rated sales during the 1st quarter of TY 2020.**

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

Petitioner asserts that during the period from January 1, 2020, to March 31, 2020, it accumulated excess or unutilized input VAT amounting to ₱2,341,816.67, arising from its local purchases of goods and services, purchases of services rendered by non-residents, and the importation of non-capital goods. These transactions were directly attributable to petitioner's sale of services to EDC and PGPC, both of which are RE Developers; thus, it contends that these sales qualify as zero-rated under Section 108(B)(3) of the NIRC of 1997, as amended, and Section 15(g) of RA No. 9513.[51]

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48 July 30, 2022, the 30th day of the filing period, fell on Saturday.
49 Docket – Vol. I, pp. 6–17.
50 Docket – Vol. II, p. 479, Exhibit "P-1".
51 Docket – Vol. II, pp. 712–715, Exhibit "P-12"; Exhibit "R-2", Folder 1, pp. 197–200; Docket – Vol. II, pp. 772–774, *Memorandum for Petitioner*, pars. 8–13.

Section 15(g) of RA No. 9513 provides incentives to RE Developers. It reads:

CHAPTER VII
GENERAL INCENTIVES

Section 15. *Incentives for Renewable Energy Projects and Activities.* - **RE developers of renewable energy facilities**, 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)

Moreover, Part III, Rule 5, Section 13.G of Department Circular (DC) No. DC2009-05-0008, issued by the DOE, dated May 25, 2009, as part of the IRR of RA No. 9513, provides as follows:

SEC. 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

xxx xxx xxx

G. Zero Percent Value-Added Tax Rate

The following transactions/activities 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:

xxx xxx xxx

(b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers**; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors**. (Emphasis supplied)

Based on the foregoing provisions, all RE Developers are entitled to VAT zero-rating on their purchases of local supply of goods, properties, and services necessary for the development, construction, and installation of plant facilities. The law explicitly declares that VAT zero-rating applies to the whole process of exploring and developing renewable energy sources up to their conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

Moreover, Part III, Rule 5 of the IRR of RA No. 9513, further states the conditions for availing of incentives and other privileges under the said law. Section 18(A), (B), and (C) thereof reads:

SEC. 18. *Conditions for Availment of Incentives and Other Privileges* –

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 pre-terminate 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 projects shall be subject to prior approval by the DOE.

xxx xxx xxx

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

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.

The registration with the BOl shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOl, on the basis of the certification issued by the DOE.

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.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

Mr

xxx xxx xxx.

Notably, the DOE, expressing its contemporaneous interpretation of the conditions for availing of incentives and other privileges of RE Developers under RA No. 9513, issued DC No. DC2021-12-0042, amending Section 18(C) of the IRR of RA No. 9513, to state that, as a rule, RE Developers are ***automatically*** qualified to avail of the incentives under RA No. 9513 upon securing a DOE Certificate of Registration. Furthermore, it clarified that a Certificate of Endorsement is required only for importations made by an RE developer, as follows:

> SEC. 18. *Conditions for Availment of Incentives and Other Privileges –*
>
> xxx xxx xxx
>
> **C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS**
>
> RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS, after securing a Certificate of Registration from the DOE.
>
> RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS, AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS. (Emphasis supplied)

Thus, for a sale transaction to an RE Developer to qualify for VAT zero-rating under RA No. 9513 and its IRR, the following conditions must be met:

1. The RE Developer must be registered with the DOE and BOI;

2. The local sales of goods, properties and services to the RE Developer are needed for the development, construction, and installation of the RE Developer's plant facilities and the whole process of exploration and development of RE sources up to its conversion into power; and,

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3. With regard to the supply of locally-produced RE equipment to an RE Developer, the manufacturer, fabricator, and supplier thereof must also be registered with the DOE and BOI.

Records reveal that only EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, and PGCP's project in Tiwi, Albay were duly registered with the DOE and BOI. Specifically, the following projects were registered:

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[52]	Certificate of Registration No. 2012-024, dated February 6, 2012[53]	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)[54]
Palinpinon, Negros Oriental	GRESC-2009-10-002 dated October 23, 2009[55]	Certificate of Registration No. 2014-027 dated February 12, 2014[56]	Letter of Endorsement dated June 23, 2020
Bacon-Manito Sorsogon/Albay	GRESC-2009-10-003 dated October 23, 2009[57]	None	Letter of Endorsement dated June 23, 2020
Kidapawan City, North Cotabato	GRESC-2009-10-004 dated October 23, 2009[58]	None	Letter of Endorsement dated June 23, 2020
Northern Negros, Negros Occidental	GRESC-2009-10-005 dated October 23, 2009[59]	None	None

[52] Docket – Vol. II, p. 547, Exhibit "P-6".
[53] *Id.* at 552, Exhibit "P-7".
[54] *Id.* at 567–568, Exhibit "P-8".
[55] *Id.* at 548, Exhibit "P-6-1".
[56] *Id.* at 559, Exhibit "P-7-1".
[57] *Id.* at 549, Exhibit "P-6-2".
[58] *Id.* at 550, Exhibit "P-6-3".
[59] *Id.* at 551, Exhibit "P-6-4".

Location of PGPC's Projects	DOE Certificate of Registration	Registration with the BOI[60]	Certificate of Endorsement by the DOE
Tiwi, Albay	GSC 2013-04-044 dated April 25, 2013[61]	Certificate of Registration No. 2014-066 dated April 15, 2014[62]	Letter of Endorsement dated June 24, 2021, issued by Director Mylene C. Capongcol, Officer-in-Charge, Renewable Energy Management Bureau [63]

However, based on the foregoing information, 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, were 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 the Renewable Energy Management Bureau.[64]

Thus, anent the *first* condition, only the sale of services made to EDC's projects in Tongonan, Leyte, and Palinpinon, Negros Oriental, and PGCP's project in Tiwi, Albay qualifies for VAT zero-rating under the law.

Petitioner complied with the *second* condition.

Regarding petitioner's sale of services to EDC, petitioner presented the *Contract for Aerated Fluids Drilling Works,* with *Appendix*[65] it entered into with EDC, which shows that petitioner undertook to provide EDC with "*works and techniques to be undertaken by Contractor to design and execute the Aerated Fluids Drilling Program for a Geothermal Well, including the Aerated Fluids Drilling Services and the supply of the specific Goods, Consumables or Contractor Personnel.*"[66] Given that such aerated fluids drilling works were necessary for the production of geothermal energy by EDC, petitioner's sales or receipts derived from these services

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60 *Id.* at 605, Exhibit "P-172" to "P-175".
61 Exhibit "P-170".
62 Exhibits "P-172" to "P-175".
63 Exhibit "P-171".
64 Docket – Vol. II, pp. 567–568, Exhibit "P-8".
65 *Id.* at 569–711, Exhibits "P-9" and "P-10".
66 *Id.* at 569 and 578, Recitals and par. 1.87, Exhibit "P-9", respectively.

during the 1st quarter of TY 2020 may qualify for VAT zero-rating.

In relation to petitioner's sale of services to PGPC, it is evident in the billing invoices[67] that the description of works was aerated drilling services, including equipment rental and supply of personnel, and correspondingly, petitioner's sale of services to PGPC clearly pertains to the exploration and development of RE sources.

Relative to the *third* condition, it does not apply to petitioner as its sales to EDC and PGPC involve only the sales of services and not the sale of RE equipment.

In fine, petitioner's sales of services to EDC's projects in Tongonan, Leyte and Palinpinon, Negros Oriental, and PGCP's project in Tiwi, Albay, qualify for VAT zero-rating under Section 15(g) of RE Act of 2008.

Nonetheless, petitioner must still comply with the pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which require VAT taxpayers, like petitioner, to issue a VAT official receipt (OR) for every lease of goods or properties, and for every sale, barter, or exchange of services. The OR must contain the required information, as outlined in the provisions, such as:

> 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);

[67] Exhibits "P-21" to "P-23", "P-34", "P-36" to "P-38", "P-40", "P-42" and "P-44", USB.

(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.

Additionally, Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-2005, as amended, further implements these requirements, 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;

(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 peso (₱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.

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The sales invoices and ORs must also be duly registered with the BIR, as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended by RA 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.
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> xxx xxx xxx.

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

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In its amended Quarterly VAT Return (BIR Form No. 2550Q) for the 1st quarter of TY 2020,[68] petitioner declared ₱71,028,584.44 in total sales/receipts, consisting of ₱3,393,820.08 in vatable sales/receipts and ₱67,634,764.36 in zero-rated sales/receipts, as follows:

Particulars	**1st Quarter of taxable year 2020**
Vatable Sales/Receipts	₱ 3,393,820.08
Zero-Rated Sales/Receipts	67,634,764.36
Total Sales/ Receipts	**₱ 71,028,584.44**

In support of the ₱67,634,764.36 declared zero-rated sales/receipts, petitioner presented the ORs and related billing invoices, summarized as follows:

Exhibit No.	**OR Date**	**OR No.**	**Billing Invoice No.**	**Gross Sales**[69]
Energy Development Corporation				
"P-166" to "P-168"	7 January 2020	1020	552/553	₱ 16,477,829.47
"P-27" to "P-28"	29 January 2020	1023	560	10,474,362.19
Total Receipts to EDC				*₱ 26,952,191.66*
Philippine Geothermal Production Company				
"P-20" to "P-23"	16 January 2020	1021	544/554/555	₱ 19,805,052.90
"P-33" to "P-34"	3 February 2020	1025	548	2,184,634.50
"P-35" to "P-38"	3 February 2020	1026	561/562/563	6,812,496.52
"P-39" to "P-40"	2 March 2020	1027	571	50,635.00
"P-41" to "P-42"	2 March 2020	1028	573	2,585,929.45
"P-43" to "P-44"	19 March 2020	1029	572	9,243,824.33
			Total Receipts to PGPC	*₱ 40,682,572.70*
			TOTAL ZERO-RATED RECEIPTS	**₱67,634,764.36**

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

[68] Docket – Vol. II, p. 534, Exhibit "P-3-1".
[69] Grossed-up CWT to OR amount collected.

However, as previously noted, only the services rendered to EDC's projects in Tongonan, Leyte and Palinpinon, Negros Oriental, and PGCP's project in Tiwi, Albay, are subject to VAT zero-rating for the purposes of the present claim.

As reported by the Court-commissioned ICPA, Atty. Adan Delamide of Delamide & Lock, the billing invoices, which supplement the ORs, show that these payments were for services rendered at the Leyte Geothermal Business Unit (LGBU) site of EDC and the Tiwi site of PGPC.[70] These sites are supported by DOE Certificate of Registration No. GRESC 2009-10-001 dated October 23, 2009,[71] and DOE Certificate of Registration No. GSC 2013-04-044[72] dated April 25, 2013, respectively. These certificates confirm that the projects are eligible for VAT zero-rating.

Therefore, petitioner has sufficiently proven that its sales of services during the 1st quarter of TY 2020 in the **entire** amount of ₱67,634,764.36, qualify for VAT zero-rating.

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

The *fifth* requisite requires proof that acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations. However, this requisite applies only to 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 petitioner's zero-rated sales are based on Section 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513, there is no need to comply with the *fifth* requisite in the present case.

<u>Sixth requisite</u>: The claimed input VAT does not appear to be transitional input taxes.

The claimed input VAT does *not* qualify as transitional input taxes, as defined under Section 111(A) of the NIRC of 1997, as amended, to wit:

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70 Docket – Vol. I, p. 185, Exhibit "P-18", par. 9.
71 Docket – Vol. II, p. 547, Exhibit "P-6".
72 Exhibit "P-170", USB.

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 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, regardless of whether they previously paid taxes on the acquisitions of their beginning inventory of goods, materials, and supplies. During the transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[73]

In this case, there is no showing that the claimed input VAT constitutes transitional input VAT. Thus, petitioner has satisfied the *sixth* requisite for the grant of an input VAT refund.

<u>Seventh requisite</u>: Not all of petitioner's claimed input taxes for refund or issuance of tax credit certificate were duly substantiated.

Regarding the *seventh* requisite, it is essential that the input taxes claimed for refund be fully substantiated by appropriate documentation to establish that such taxes are *actually due or paid* in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the

[73] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, April 2, 2008 [Per J. Leonardo-De Castro, *En Banc*].

following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

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

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

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

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

(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 No. 13-2018, which provide as follows:

> SEC. 4.110-1. *Credits for Input Tax.* – x x x
>
> Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:
>
> (a) Purchase or importation of goods
>
> (1) For sale; or
> (2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or
> (3) For use as supplies in the course of business; or
> (4) For use as raw materials supplied in the sale of services; or
> (5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,
>
> (b) Purchase of real properties for which a VAT has actually been paid;
>
> (c) Purchase of services in which a VAT has actually been paid;
>
> (d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;
>
> (e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;
>
> (f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;
>
> (g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.
>
> SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* – The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
>
> (a) To the importer upon payment of VAT prior to the release of goods from customs custody;
>
> (a) To the purchaser of the domestic goods or properties upon consummation of the sale; or

[initials]

(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

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Further, Section 4.110-8 of RR No. 16-2005, as amended, provides for the substantiation requirements for 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, 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, input tax credits must be duly substantiated by supporting documents prescribed under Section 4.110-8 of RR No. 16-2005. Moreover, the required documents must comply with the

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invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

Needless to say, the invoicing requirements for VAT-registered taxpayers, as provided in the NIRC and revenue regulations, are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[74] 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.[75]

Based on petitioner's amended Quarterly VAT Return for the 1st quarter of TY 2020, the subject input VAT claim in the amount of ₱2,341,816.67 arose from petitioner's domestic purchases of goods other than capital goods, domestic purchases of services, and importation of goods other than capital goods, as shown below:[76]

Input tax on domestic purchases of goods other than capital goods	₱ 37,994.42
Input tax on domestic purchases of services	252,124.25
Importation of goods other than capital goods	2,051,698.00
Total Input VAT during the period	**₱2,341,816.67**

A. *Domestic Purchases of Goods Other Than Capital Goods – ₱37,994.42; and*
B. *Domestic Purchases of Services - ₱252,124.25*

To substantiate its input VAT on domestic purchases of goods other than capital goods and services, petitioner presented its suppliers' ORs and invoices.[77]

Upon review, the ICPA noted that input VAT amounting to ₱156.48 was unsupported.[78] Consequently, input taxes not supported by proper documents must be disallowed and deducted from petitioner's claim.

[74] *Microsoft Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011 [Per J. Carpio, Second Division].
[75] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011 [Per J. Mendoza, Second Division].
[76] Docket – Vol. II, p. 534, Exhibit "P-3-1".
[77] Exhibits "P-64" to "P-165", USB.
[78] Docket – Vol. I, p. 185, Exhibit "P-18", par. 12; *See also* Docket – Vol. I, pp. 191–192, Exhibit "P-18", Annex D for details.

Moreover, the ICPA determined that input VAT amounting to ₱88,767.60 must also be disallowed, as it was supported by invalid documents.[79]

Furthermore, upon review of the supporting documents related to petitioner's domestic purchases of goods other than capital goods and services, the Court finds that input VAT amounting to ₱76,876.68 should be disallowed, for failing to meet substantiation requirements. The details of these disallowed amounts are summarized as follows:

Exhibit No.	**Supplier**	**Doc. No.**	**Date**	**Amount**	**Input Tax**
Nature of services cannot be ascertained in the supporting OR					
"P-68"	Ultraman Travel Corporation	68704	7 January 2020	₱ 957.34	₱ 114.88
"P-70"	Responsible Internet Sustainability Effort Inc.	2530	24 January 2020	10,000.00	1,200.00
"P-71"	Welders Trading Laboratories (Phils.), Inc.	17909	21 January 2020	101,019.27	12,122.31
"P-72"	Responsible Internet Sustainability Effort Inc.	2356	7 January 2020	10,000.00	1,200.00
"P-73"	Mac-Nels Line, Inc.	31459	24 January 2020	21,427.60	2,571.31
"P-82"	Ace Tubular Services Limited	3777	7 February 2020	7,933.67	952.04
"P-85"	Mac-Nels Line, Inc.	31769	17 February 2020	21,761.59	2,611.39
"P-98"	Business Process Outsourcing International, Inc.	110055	18 February 2020	69,200.00	8,304.00
"P-99"	Ultraman Travel Corporation	68805	19 February 2020	726.50	87.18
"P-103"	April C. Cerdeño	573	30 March 2020	333,247.00	39,989.64
"P-121"	Business Process Outsourcing International, Inc.	110561	13 March 2020	60,000.00	7,200.00
			Sub-total	*₱636,272.97*	*₱76,352.75*
Supported by sales invoice with incorrect TIN					
"P-77"	Office Warehouse, Inc.	141111	7 January 2020	₱2,669.64	₱ 320.36

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[79] *Id.*

Supported by charge sales invoice with incomplete address					
"P-122"	Manila Oil Seal Company	5766	28 January 2020	₱1,696.43	₱ 203.57
TOTAL DISALLOWANCE				**₱640,639.04**	**₱76,876.68**

C. Importation - ₱2,051,698.00

In support of the input VAT on importation of goods other than capital goods in the aggregate amount of ₱2,051,698.00, petitioner presented (1) Single Administrative Document (SAD) and (2) Statement of Settlement of Duties and Taxes (SSDT), with the following details:

Exhibit No.	SSDT/ Receipt No.	SAD No.	Country of Origin	Supplier	Taxable Amount	Input Tax
"P-48"; "P-49"	R-25227	C-2340	United States	Batam Oilfield Supply Services PTE	₱ 269,775.00	₱ 32,373.00
"P-50"; "P-51"	R-53580	C-35060	Indonesia	PT Air Drilling	377,641.67	45,317.00
"P-52"; "P-53"	R-60528	C-37009	Indonesia	PT Strivechem Indonesia	2,728,416.67	327,410.00
"P-54"; "P-55"	R-78916	C-46869	Indonesia	PT Air Drilling	6,867,008.33	824,041.00
"P-56"; "P-57"	R-78924	C-46814	Indonesia	PT Air Drilling	2,719,025.00	326,283.00
"P-58"; "P-59"	R-112717	C-20841	Indonesia	PT Air Drilling	147,433.33	17,692.00
"P-60"; "P-61"	*R-149522*	*C-57106*	*Indonesia*	*PT Air Drilling*	*3,031,141.67*	*363,737.00*
"P-62"; "P-63"	R-183493	C-40035	Canada	Air Drilling Associates Inc.	957,041.67	114,845.00
				TOTAL	**₱17,097,483.34**	**₱2,051,698.00**

Petitioner declared the same amount in its amended Quarterly VAT Return for the 1st quarter of TY 2020.[80]

However, input VAT of ₱363,737.00, supported by SSDT Receipt Number R-149522 dated June 5, 2020,[81] must be disallowed for being dated outside the applicable period of claim. Verily, the input VAT of ₱1,687,961.00[82] represents petitioner's valid input VAT on the importation of goods other than capital goods.

[80] Docket – Vol. II, p. 534, Exhibit "P-3-1", Line 21H.
[81] Exhibit "P-61", USB.
[82] ₱2,051,698.00 less ₱363,737.00.

In fine, for compliance with the *seventh* requisite, out of the total reported input VAT of ₱2,341,816.67, only the amount of ₱1,812,278.91 represents petitioner's valid input VAT for the 1st quarter of TY 2020, as computed below:

Input VAT claimed for refund		₱ 2,341,816.67
Less: ICPA Disallowances		
Unsupported input VAT	₱ 156.48	
Invalid supporting document	88,767.60	88,924.08
Less: Court's Disallowances		
From purchases of goods and services	₱76,876.68	
From the importation of goods	363,737.00	440,613.68
Valid input VAT		**₱1,812,278.91**

***Eighth requisite:* Only ₱2,229,922.22 of petitioner's input taxes claimed are attributable to its zero-rated sales.**

The *eighth* requisite requires that input taxes claimed must be attributable to zero-rated or effectively zero-rated sales. However, when a taxpayer engages in both zero-rated (or effectively zero-rated) and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to either, the input taxes must be proportionately allocated based on the respective sales volume.

In this case, petitioner engaged in taxable sales subject to 12% VAT amounting to ₱3,393,820.08 and zero-rated sales amounting to ₱67,634,764.36 during the 1st quarter of TY 2020. Since the declared input VAT of ₱2,341,816.67 cannot be directly or entirely attributed to either type of sale, it shall be proportionately allocated based on the volume of sales, under Section 112(A) of the NIRC of 1997, as amended, as follows:

Total Zero-Rated Sales per VAT Returns	₱ 67,634,764.36
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 71,028,584.44
Multiplied by Total Declared Input VAT	₱ 2,341,816.67
Declared input VAT allocated to total zero-rated sales	**₱ 2,229,922.22**

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Total VATable Sales per VAT Returns	₱ 3,393,820.08
Divided by the Reported Total Sales per Quarterly VAT Returns	₱ 71,028,584.44
Multiplied by Total Declared Input VAT	₱ 2,341,816.67
Declared input VAT allocated to VATable sales	**₱ 111,894.45**

Thus, regarding compliance with the *eighth* requisite, only ₱2,229,922.22 of the input VAT represents petitioner's input VAT attributable to its total declared zero-rated sales for the 1st quarter of TY 2020.

<u>Ninth requisite</u>: The input taxes claimed have not been applied against output taxes during and in the succeeding quarters.

Based on petitioner's amended Quarterly VAT Return for the 1st quarter of TY 2020, it incurred an output tax in the aggregate amount of ₱407,258.41. [83] After applying the declared input taxes allocated for VAT-able sales, it still has a net output VAT due of ₱295,363.96, computed as follows:

Output VAT	₱ 407,258.41
Less: Declared input VAT allocated to Vatable Sales	111,894.45
Net output VAT still due	**₱ 295,363.96**

The net output tax due of ₱295,363.96 may be credited against the input tax carried over from the previous period, amounting to ₱87,067,997.41.[84]

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue,*[85] the Supreme Court ruled as follows:

> ...the **input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or 'excess' input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety**. It must be stressed that the remedies of charging

[83] Docket – Vol. II, p. 534, Exhibits "P-3-1", Line 15B.
[84] *Id.* at 534, Exhibits "P-3-1", Line 20A; Line 29, Exhibit "P-169", USB.
[85] G.R. No. 215159, July 5, 2022 [Per J. Lopez, M., *En Banc*].

> the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of 'excess' creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence. (Emphasis supplied)

Based on the above jurisprudential pronouncement, input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, with any unutilized or "excess" input tax being claimed as a refund or for issuance of a tax credit certificate, or (2) claimed for refund or tax credit in its entirety.

In the present case, petitioner opted to claim its input taxes attributable to zero-rated sales for the 1st quarter of TY 2020 <u>in its entirety</u>. Therefore, the Court may not, on its own, deduct the output tax from the claimed input taxes attributable to zero-rated sales.

However, as previously noted, not all petitioner's input taxes are valid. Thus, the Court must determine whether the valid input VAT of petitioner is sufficient to cover its excess input VAT attributable to declared zero-rated sales, *viz:*

Excess input VAT attributable to declared zero-rated sales (A)	₱2,229,922.22
Valid input taxes (B)	₱1,812,278.91
Valid Available Input VAT attributable to Zero-rated Sales (A or B, whichever is lower)	**₱1,812,278.91**

In relation to its zero-rated sales, petitioner fully substantiated its declared zero-rated sales for the 1st quarter of TY 2020 amounting to ₱67,634,764.36. Hence, the valid available input VAT attributable to zero-rated sales is ₱1,812,278.91.

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Although petitioner carried over to the succeeding quarters the claimed input VAT amount of ₱2,341,816.67, which necessarily includes the valid input VAT attributable to zero-rated receipts of ₱1,812,278.91,[86] this amount remained unutilized until it was subsequently deducted as "VAT Refund/TCC claimed"[87] in its Quarterly VAT Return for the 4th quarter of TY 2021. Accordingly, the subject claim no longer forms part of the excess input VAT of ₱106,768,688.44[88] as of the end of the 4th quarter of TY 2021. Such being the case, petitioner has complied with the *ninth* requisite for the grant of the input VAT claimed for refund or issuance of a tax credit certificate pursuant to Section 112(A) of the NIRC of 1997, as amended.

In summary, petitioner has satisfied the legal requisites for the refund or issuance of a tax credit certificate for input VAT. However, the disallowance of unsupported and invalid input taxes necessitates a reduction in the claimed amount, resulting in a valid input VAT claim of **₱1,812,278.91** for the 1st quarter of TY 2020.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱1,812,278.91**, representing its unutilized input VAT attributable to zero-rated sales for the first quarter of taxable year 2020.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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86 Docket - Vol. II, pp. 536, 538, 539, 540, 541, 542, 543 and 545, Exhibits "P-4", "P-4-1", "P-4-2", "P-5", "P-5-1", "P-5-2", "P-5-4", and "P-5-5", respectively.
87 *Id.* at 545, Exhibit "P-5-5", Line 23D.
88 *Id.* at 545, Exhibit "P-5-5", Line 29.

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WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G.DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10944

MEMBERS:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

DEC 18 2024 2:00PM

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DISSENTING OPINION

DEL ROSARIO, P.J.:

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

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

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx

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

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

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

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

xxx xxx xxx

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

xxx xxx xxx

(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:

xxx xxx xxx

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

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

From the foregoing, it is a requirement that for any VAT invoice or official receipt (OR) evidencing a zero-rated transaction, the term **"zero-rated sale" should be written or printed prominently**

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thereon. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit.[1]

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

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

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

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

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

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

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

A-13: **Failure by the supplier to comply with the invoicing requirements** on the documents supporting the sale of goods and services will result to the **disallowance** of the claim for input tax by the purchaser-claimant." (*Boldfacing and underscoring supplied*)

A scrutiny of **all of the ORs** submitted by petitioner reveals that the words **"zero-rated sale" were not separately written or imprinted prominently thereon**. What appears on record are VAT ORs that are exclusively intended for <u>mixed</u> transactions, that is -- for sales subject to VAT and some which are VAT zero-rated or VAT exempt. In other words, notwithstanding the fact that petitioner indicated in the breakdown of the VAT ORs the amount pertaining to the "zero-rated sale", such however **did not in any way cure its failure to comply with the imprinting requirement**.

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

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

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

RA No. 9337	RA No. 11976
SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* – (A) *Invoicing Requirements.* - A VAT-registered person shall issue: (1) A VAT invoice for every sale, barter or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. (B) *Information Contained in the* ***VAT Invoice or VAT Official Receipt.*** — The following information shall be indicated in the VAT invoice or VAT official receipt: xxx xxx xxx (c) If the sale is subject **to zero percent (0%)** value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice or receipt shall clearly indicate the <u>break-down</u> of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt**: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale. xxx	Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons.- (A) Invoicing Requirement. - A VAT-registered person shall issue a VAT invoice for every sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services. (B) Information Contained in the VAT Invoice. - The following information shall be indicated in the **VAT invoice**: xxx xxx xxx (c) If the sale is subject to **zero percent (0%)** value-added tax, the term **'zero-rated sale' shall be written or printed on the invoice**; (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, **the invoice shall clearly indicate the <u>breakdown</u> of the sale price between its taxable, exempt, and zero-rated components**, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice: *Provided,* That the seller may issue separate invoices for the taxable, exempt, and zero-rated components of the sale. xxx

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

[4] RA No. 11976.

the interpretation that the **format requiring the imprinting of "zero-rated sales" is indeed separate and distinct from the format requiring "breakdown" for mixed transactions**.

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

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

ROMAN G. DEL ROSARIO
Presiding Justice