Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7890
For: Tax Refund

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JUL 2 2 2016
4:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by CE Luzon Geothermal Power Company, Inc., as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in

[1] Sec. 7. *Jurisdiction.* – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
x x x x x x

relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

Petitioner seeks the refund or issuance of tax credit certificate (TCC) in the total amount of ₱10,895,847.59, allegedly representing its unutilized input value-added tax (VAT) paid on its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods attributable to its zero-rated sales to the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the four quarters of calendar year (CY) 2007. *C*

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[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* –The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x x x
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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> x x x x x x

Initially, this case was dismissed for lack of jurisdiction arising from the premature filing of the Petition for Review, but it was subsequently remanded to the Court of Tax Appeals (CTA) Special Second Division for further proceedings and determination of the validity of petitioner's claim.

The undisputed facts, previously summarized by the former CTA Second Division, are hereunder adopted as follows:

> "Petitioner CE Luzon Geothermal Power Company, Inc. is a corporation duly organized and existing under Philippine laws, with its principal place of business at Ormoc City, Leyte. It is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer, with Taxpayer's Identification No. (TIN) 003-924-356-000.
>
> Petitioner is engaged in the business of power generation through geothermal energy and the subsequent sale thereof to PNOC-EDC pursuant to an Energy Conversion Agreement (ECA). It is accredited and certified as such by the Department of Energy (DOE) as evidenced by its DOE Certificate of Accreditation (OSAC 94-12) issued on June 15, 1994.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner filed with the BIR its Original Quarterly VAT Returns for the first to fourth quarters of 2007 on the following dates:

Taxable Quarter	Date of Filing of Original Return
First	April 23, 2007
Second	July 25, 2007

Third	October 25, 2007
Fourth	January 24, 2008

On February 12, 2009, petitioner filed an administrative claim for the refund or issuance of a tax credit certificate (TCC) for its unutilized input VAT with the Large Taxpayers Audit and Investigation Division I of the Bureau of Internal Revenue, in the total amount of P10,895,847.59 for the four quarters of the year 2007.

Due to respondent's inaction and in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for the refund/issuance of a tax credit certificate, petitioner filed with this Court a Petition for Review on March 30, 2009, docketed as CTA Case No. 7890.

On May 8, 2009, respondent filed her Answer interposing the following defenses:

> '4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 5. The amount of P10,895,847.59 being claimed by petitioner as alleged unutilized input VAT on domestic purchases of non-capital and services, services rendered by non-residents, importation of non-capital and domestic purchases of capital goods which are attributable to its zero-rated sales from the period first quarter to the 4th quarter of the year 2007 is not properly documented.
>
> 6. Petitioner must prove that it has complied with the provisions of Section 112 (A) and (D) of the National Internal Revenue Code of 1997 (1997 Tax Code) on the

prescriptive period for claiming tax refund/credit.

7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition sine qua non prior to the filing of judicial claim**. Further, Section 112 (D) of the 1997 Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.

In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal**

Revenue v. Manila Jockey Club, Inc., 98 Phil. 670).

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and** as such; they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211**).

SPECIAL AND AFFIRMATIVE DEFENSE

The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of the petitioner to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

'SEC. 112. *Refunds or Tax Credits of Input Tax.* —

xxx xxx xxx

(D) *Period within which refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**

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

As stated in the petition, petitioner filed the administrative claim for refund with respondent on February 12, 2009. Subsequently, on March 30, 2009, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction.'

On June 5, 2009, petitioner filed its Reply (Re: Respondent's Answer dated 8 May 2009).

On August 27, 2009, this Court commissioned Ms. Annalyn B. Artuz as an Independent Certified Public Accountant (CPA) upon motion of petitioner, pursuant to Rules 12 and 13 of the Revised Rules of the Court of Tax Appeals.

During trial, petitioner presented as witnesses the Court-commissioned Independent CPA, Ms. Annalyn B. Artuz, and petitioner's Head of Tax Services, Ms. Leilah Yasmin E. Alpad. Thereafter, on July 23, 2010, petitioner filed its Formal Offer of Evidence submitting Exhibits 'A' to 'R', and 'T' to 'Y', inclusive of sub-markings; which this Court admitted in the Resolutions dated September 3, 2010 and November 17, 2010. On September 23, 2010, petitioner filed its Supplemental Formal Offer of Evidence submitting Exhibits 'R-6-L-2Q-00498' to 'R-

6-L-2Q-00838'; which this Court admitted in the Resolution dated November 17, 2010.

The documentary evidence formally offered are as follows:

Exhibits	Description
A	Amended Articles of Incorporation of CE Luzon Geothermal Power Company, Inc. (Petitioner) duly registered with the Securities and Exchange Commission under SEC Reg. No. AS094-004356
B	Certificate of Accreditation (OSAC 94-12) of Petitioner issued by the Department of Energy (DOE) on June 15, 1994
C	Certificate of Registration of Petitioner issued by the Bureau of Internal Revenue (BIR)
D	Energy Conversion Agreement between Petitioner and PNOC-EDC (180 MW Power Plant-Mahanagdong Agreement between PNOC-EDC and CE Philippines Ltd. and California Energy Company, Inc. dated September 18, 1993)
E	Petitioner's unamended Quarterly VAT Return for the 1st Quarter of calendar year (CY) 2007 filed on April 23, 2007 via the BIR's electronic filing and payment system (EFPS)
E-1	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on April 30, 2007 via the BIR's EFPS
E-2	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on July 31, 2007 via the BIR's EFPS
E-3	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
F	Petitioner's unamended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on July 25, 2007 via the BIR's EFPS

F-1	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on July 30, 2007 via the BIR's EFPS
F-2	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
G	Petitioner's unamended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on October 25, 2007 via the BIR's EFPS
G-1	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on December 13, 2007 via the BIR's EFPS
G-2	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
H	Petitioner's unamended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on January 24, 2008 via the BIR's EFPS
H-1	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on January 30, 2008 via the BIR's EFPS
H-2	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on February 22, 2008 via the BIR's EFPS
H-3	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2007 filed on January 20, 2009 via the BIR's EFPS
I	Petitioner's Amended Quarterly VAT Return for the 1st Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
J	Petitioner's Amended Quarterly VAT Return for the 2nd Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
K	Petitioner's Amended Quarterly VAT Return for the 3rd Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS
L	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2008 filed on February 24, 2009 via the BIR's EFPS

L-1	Petitioner's Amended Quarterly VAT Return for the 4th Quarter of CY 2008 filed on June 22, 2009 via the BIR's EFPS
M	Petitioner's administrative claim for refund of or issuance of a tax credit certificate (TCC) for its unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 dated February 11, 2009 and filed with the BIR National Office, Large Taxpayers Audit and Investigation Division I (BIR LTAID I) on February 12, 2009
M-1	Signature of Ms. Trinity S. Gatuz on page 2 of Petitioner's administrative claim
N	Petitioner's Amended Quarterly VAT Return for the 4th quarter of CY 2006 filed on July 31, 2007
O	Petitioner's administrative claim for refund of its unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2006 dated September 10, 2007 and filed with the BIR LTAID I on September 11, 2007
P	Independent CPA Report on Claims of CE Luzon Geothermal Power Company, Inc. for Refund or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value-Added Tax on Purchases Attributable to Zero-Rated Sales of Generated Power Pursuant to R.A. No. 9136 or the EPIRA Law, Court of Tax Appeals Case No. 7738 dated November 10, 2008
Q	Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated July 29, 2009
Q-1	Signature of Ms. Leilah Yasmin E. Alpad
R	Independent CPA Report on Claim for Refund of or Issuance of Tax Credit Certificate (TCC) Representing Unutilized Input Value Added Tax (VAT) on Domestic Purchases of Non-capital Goods and Services, Importation of Non-Capital Goods and Services Rendered by Non-Residents Attributable to Zero-Rated Sales of Generated Power Pursuant to Republic Act (RA) No. 9136 or the Electric Power Industry Reform

	Act (EPIRA) Law of 2001 for the Period from January 1 to December 31, 2007, Court of Tax Appeals Case No. 7890 dated September 26, 2009
R-1	Summary of Sales Invoices of Petitioner for CY 2007
R-2.1 to R-2.8	Sales Invoices of Petitioner issued to PNOC-EDC for CY 2007
R-3	Summary of Official Receipts issued by petitioner to PNOC-EDC for CY 2007
R-4.1 to R-4.27	Official Receipts of Petitioner issued to PNOC-EDC for CY 2007
R-5-1Q.1 to R-5-1Q.3	Schedule of Petitioner's Input VAT for CY 2007
R-5-2Q.1 to R-5-2Q.3	
R-5-3Q.1 to R-5-3Q.2	
R-5-4Q.1 to R-5-4Q.2	
R-6-L-1Q.00001 to R-6-L-1Q.01026	Documents Supporting Petitioner's Claim for Input Tax Credits for the Calendar Year 2007
R-6-L-2Q.00001 to R-6-L-2Q.00497	
R-6-L-3Q.00001 to R-6-L-3Q.00447	
R-6-L-4Q.00001 to R-6-L-4Q.00089	
R-7-1Q.1 to R-7-1Q.9	Petitioner's Trial Balance for CY 2007
R-7-2Q.1 to R-7-2Q.10	
R-7-3Q.1 to R-7-3Q.10	

R-7-4Q.1 to R-7-4Q.10	
R-7-1.1 to R-7-1.53	Petitioner's General Ledger for CY 2007
R-7-2.1 to R-7-2.12	
R-8.1 to R-8.3	Petitioner's Final Amended Quarterly VAT Return for the 1st Quarter of CY 2007
R-9	Signature of Ms. Annalyn B. Artuz
T	Sworn Statement of Ms. Annalyn B. Artuz to Questions Propounded by Atty. Cielito May T. Velasquez dated October 14, 2009
T-1	Signature of Ms. Annalyn B. Artuz
U	Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated November 13, 2009
U-1	Signature of Ms. Leilah Yasmin E. Alpad
V	Petitioner's Monthly Remittance Return of Value Added Tax and Other Percentage Taxes Withheld for the Month of September filed on October 10, 2007 via the BIR's EFPS
W	Petitioner's Monthly Remittance Return of Value Added Tax and Other Percentage Taxes Withheld for the Month of November filed on December 09, 2007 via the BIR's EFPS
X	Certificate of Completion (05-10-GXT13348-13367) of Petitioner issued by the Energy Regulatory Commission (ERC) on October 5, 2005
Y	Supplemental Sworn Statement of Ms. Leilah Yasmin E. Alpad to Questions Propounded by Atty. Cielito May T. Velasquez dated May 14, 2010
Y-1	Signature of Ms. Leilah Yasmin E. Alpad

As to respondent, upon oral motion of petitioner's counsel, the right of respondent to present evidence was deemed waived due to the absence of respondent's counsel, Atty. Leo D. Mauricio, during the March 21, 2011 hearing for the initial presentation of respondent's evidence and considering that this case was reset for the last time during the hearing on February 14, 2011.

Thus, the Court directed petitioner to file its Memorandum within thirty (30) days from March 21, 2011; while respondent was given a period of twenty (20) days to file her Memorandum from receipt of the Resolution dated March 21, 2011.

The case was submitted for decision on April 27, 2011, taking into consideration petitioner's Memorandum filed on April 19, 2011 and the Report dated April 26, 2011 of the Records Division that no memorandum has been filed by respondent."[3]

The CTA Second Division rendered a Decision[4] on December 29, 2011, dismissing the instant Petition for Review for lack of jurisdiction. The Decision was anchored on the Court's findings that the petition was filed without awaiting the expiration of the 120-day period within which respondent may grant or deny petitioner's claim; hence, this Court did not acquire jurisdiction. The dispositive portion of the Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."[5]

On January 20, 2012, petitioner filed a Motion for Reconsideration (Re: Resolution dated December 29,

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[3] Division Docket, pp. 851-862.
[4] *Ibid.*, pp. 850-872.
[5] *Ibid.*, p. 872.

2011)[6], but was denied in the Resolution[7] promulgated on March 30, 2012.

On May 3, 2012, the denial of the said Motion for Reconsideration led to the filing of a Petition for Review[8] with the CTA *En Banc*, docketed as CTA EB No. 893.

The CTA *En Banc* rendered its Decision[9] in favor of petitioner on June 19, 2013. The CTA *En Banc* reversed and set aside the Resolution dated March 30, 2012, and the Decision dated December 29, 2011 promulgated by the CTA Second Division, with an order to remand the case to this Court for further proceedings, the pertinent portions of the Court's Decision are as follows:

> "Under the foregoing, taxpayers who did not wait for the lapse of the 120-day period are still considered to have filed their petitions on time and not penalized for having filed their judicial claims prematurely.
>
> In the instant case, petitioner clearly filed its petition for review before the expiration of the 120-day period. But considering that the judicial claim was filed on March 30, 2009, it is clearly within the period of exception established by the *San Roque* case, which is from December 10, 2003 to October 6, 2010. Thus even though petitioner's judicial claim is premature, the same is not treated as dismissible by virtue of the exception provided by the *San Roque* case.
>
> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. The Resolution dated March 30, 2012, and the Decision dated December 29, 2011 promulgated by the Second Division of this Court, which dismissed the Petition for Review

[6] *Ibid.*, pp. 873-921.
[7] *Ibid.*, pp. 926-931.
[8] *Ibid.*, pp. 940-995.
[9] *Ibid.*, pp. 1138-1144.

> docketed as C.T.A. Case No. 7890, are **REVERSED** and **SET ASIDE**.
>
> Accordingly, C.T.A. Case No. 7890 is hereby **REMANDED** to the court of origin for further proceedings."[10]

Aggrieved by the said decision, respondent filed a Motion for Reconsideration (Re: Decision Promulgated 19 June 2013)[11] on July 11, 2013; which was denied in the Resolution[12] dated October 23, 2013 for lack of merit.

Thus, respondent elevated the case to the Supreme Court via Petition for Review on Certiorari[13] docketed as G.R. No. 209804. The said petition was denied by the Supreme Court First Division on February 12, 2014.[14] Likewise, respondent's Motion for Reconsideration (*Of the Honorable Court's Resolution dated February 12, 2014)*[15] was denied on June 18, 2014. The Supreme Court's Resolution reads: [16]

> "Acting on petitioner's motion for reconsideration of the Resolution dated February 12, 2014 which denied the petition for review on certiorari, and considering that there is no substantial argument to warrant a modification of this Court's resolution, the Court resolves to ***DENY*** reconsideration with ***FINALITY***.
>
> ***NO FURTHER*** pleadings or motions shall be entertained herein.
>
> Let an ***ENTRY*** of judgment in this case be made in due course."

[10] *Ibid.*, pp. 1142-1143.
[11] *Ibid.*, pp. 1157-1164.
[12] *Ibid.*, pp. 1174-1177.
[13] *Ibid.*, pp. 1181-1201.
[14] *Ibid.*, p. 1208.
[15] *Ibid.*, pp. 1209-1217.
[16] *Ibid.*, p. 1219.

On March 2, 2015, the CTA Special Second Division received an Entry of Judgment[17] issued by the Supreme Court, stating that on August 29, 2014, the Resolution dated February 12, 2014 has already become final and executory.[18]

In view of the finality of the Supreme Court's Resolution dated February 12, 2014, this case was declared submitted for decision on August 13, 2015 upon petitioner's manifestation that it is adopting its Memorandum filed on April 19, 2011, and upon respondent's filing of her Memorandum[19] on August 10, 2015.[20]

The stipulated issues for this Court's resolution are as follows:[21]

1. Whether or not petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱10,895,847.59 is substantiated by documentary evidence in the form of invoices and official receipts;

2. Whether or not petitioner's unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱10,895,847.59 was applied or credited against any output VAT of the petitioner in the subsequent quarter or quarters;

3. Whether or not petitioner is entitled to a refund of and/or issuance of a TCC for its unutilized input VAT amounting to ₱10,895,847.59, which input VAT: (i) arose from petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods; and (ii) are all

[17] *Ibid.*, p. 1223.
[18] Resolution dated March 23, 2015, Division Docket, pp. 1230-1232.
[19] Division Docket, pp. 1251-1272.
[20] Resolution dated August 13, 2015, Division Docket, p. 1274.
[21] Joint Stipulation of Facts and Issues (JSFI), Division Docket, pp. 247-253.

attributable to petitioner's zero-rated sales of generated power to EDC; and

4. Whether or not this Honorable Court has jurisdiction to act on the instant Petition for Review.[22]

The above-enumerated issues can be summarized as follows:

> Whether or not petitioner is entitled to a refund or issuance of TCC for its alleged unutilized input VAT payments amounting to ₱10,895,847.59, arising from its domestic purchases of non-capital goods and services, services rendered by non-residents, and importation of non-capital goods attributable to its zero-rated sales for the four taxable quarters of 2007.

Paragraphs (A) and (C) of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide the requirements for the issuance of a tax credit certificate or refund of input tax due or paid attributable to the taxpayer's zero-rated sales or effectively zero-rated sales, to wit:

> "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)

[22] *Ibid.*, p. 252.

and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

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

Pursuant to the afore-quoted provisions, and as laid down by the Supreme Court in a number of cases[23], a

[23] *Commissioner of Internal Revenue vs. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015; *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner*

taxpayer may claim a refund or tax credit certificate for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. said input taxes were not applied against any output VAT liability; and
6. the claim was filed within the prescriptive period.

Timeliness of the filing of the administrative and judicial claims

As a rule, in a claim for refund of unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales, the two (2)-year prescriptive period under Section 112(A) of the NIRC of 1997 applies only to administrative claims and not to judicial claims. Accordingly, once the administrative claim is filed within the two (2)-year prescriptive period, the taxpayer-claimant must wait for the lapse of the 120-day period and, thereafter, it has a 30-day period within which to file its judicial claim before the CTA.[24]

However, by virtue of the doctrine of equitable estoppel, the general rule admits an exception. The Supreme Court recognized BIR Ruling No. DA-489-03, a general interpretative rule, as a valid exception to the strict compliance with the 120+30-day prescriptive period. All taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on **December 10, 2003 up to its reversal on October 6, 2010**, as enunciated in the consolidated cases of *Commissioner of Internal Revenue vs.* c

of Internal Revenue, G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

[24] *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue,* G.R. No. Nos. 200841-42, August 26, 2015.

San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal Revenue, and *Philex Mining Corporation vs. Commissioner of Internal Revenue* (*San Roque* case)[25].

In a more recent case of *Cargill Philippines, Inc. vs. Commissioner of Internal Revenue*[26], the Supreme Court reiterated the window period as an exception to the general rule, citing the *San Roque* case, as follows:

> "Nevertheless, the Court, in the case of *CIR v. San Roque Power Corporation* (*San Roque*), recognized an exception to the mandatory and jurisdictional nature of the 120-day period. *San Roque* enunciated that BIR Ruling No. DA-489-03 dated December 10, 2003, which expressly declared that the 'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of petition for review,' provided a valid claim for equitable *estoppel* under Section 246 of the NIRC.
>
> In the more recent case of *Taganito Mining Corporation v. CIR*, the Court reconciled the pronouncements in *Aichi* and *San Roque*, holding that from **December 10, 2003 to October 6, 2010** which refers to the interregnum when BIR Ruling No. DA-489-03 was issued until the date of promulgation of *Aichi*, taxpayer-claimants need not observe the stringent 120-day period; but before and after said window period, the mandatory and jurisdictional nature of the 120-day period remained in force, *viz.*:
>
> > Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **<u>during the period December 10, 2003</u>** (when BIR Ruling No. DA-489-03 was issued) **<u>to October 6, 2010</u>** (when the *Aichi* case was promulgated), **<u>taxpayers-claimants need not observe the 120-day period</u>** before it could file a judicial claim for refund of

[25] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[26] G.R. No. 203774, March 11, 2015.

> excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.,* December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim**. (Emphases and underscoring supplied)"

Here, records show that petitioner's administrative and judicial claims were filed on February 12, 2009 and March 30, 2009, respectively, or during the period of effectivity of BIR Ruling No. DA-489-03 and, thus, fell within the window period stated in *San Roque*, *i.e.*, when taxpayer-claimants need not wait for the expiration of the 120-day period before seeking judicial relief.

Considering the foregoing, petitioner's claim was allowed to proceed despite being premature. The Court shall now determine petitioner's compliance with the other requisites.

Petitioner is a VAT-registered entity and had zero-rated sales during the subject periods

Petitioner complied with the first requisite considering that it is a VAT-registered taxpayer with BIR Certificate of Registration No. 8RC0000017026[27] and Taxpayer Identification No. 003-924-356-000.

On the second requisite, petitioner claims that its sales of electricity, as a power generation company, qualify for VAT zero-rating in accordance with Section 6 of Republic Act (RA) No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA), which states:

> "Section 6. *Generation Sector.* – xxx
>
> xxx xxx xxx

[27] Exhibit "C", Division Docket, p. 412.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated."

Notwithstanding the repeal of the above-cited provision of RA No. 9136, petitioner's sale of generated power continued to be VAT zero-rated under Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, to wit:

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

xxx xxx xxx

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

xxx xxx xxx

(7) Sale of power or fuel generated through 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."

Further, Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, implementing the foregoing provision, qualified the applicability of such zero-rating as follows:

"SECTION 4.108-5. *Zero-Rated Sale of Services*. –

xxx xxx xxx

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

xxx xxx xxx

> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however*, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

In order to qualify for VAT zero-rating, petitioner must be able to prove that (a) it is a generation company; and (b) it derives sales from power generation.

Based on its Certificate of Registration[28] with the BIR, petitioner is engaged in the generation, collection, and distribution of electricity.

Records also indicate that petitioner owns and operates a 180-megawatt power plant facility located in Mahanagdong, Leyte, which has been accredited by the Department of Energy (DOE) as a Block Power Production Facility (BPPF) since June 15, 1994[29]. Likewise, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance (COC) as a generation company pursuant to the Implementing Rules and Regulations of RA No. 9136. Accordingly, the ERC issued the COC[30] to petitioner as a generation company. As such, it is clear that petitioner is engaged in the business of power generation.

The Court shall now determine the existence of petitioner's zero-rated sales.

[28] Exhibit "C", Division Docket, p. 412.
[29] Exhibit "B", Division Docket, p. 411.
[30] Exhibit "X", Division Docket, p. 747.

In its Quarterly VAT Returns for the four quarters of CY 2007, petitioner declared zero-rated sales in the total amount of ₱2,879,806,717.70, as follows:

CY 2007	ZERO-RATED SALES
1st Quarter[31]	₱ 874,348,735.90
2nd Quarter[32]	1,019,881,720.95
3rd Quarter[33]	985,576,260.85
4th Quarter[34]	0
Total	**₱2,879,806,717.70**

In support of the foregoing, petitioner submitted in evidence its sales invoices[35] and official receipts (ORs)[36] issued to its sole customer, Philippine National Oil Corporation–Energy Development Corporation (PNOC-EDC), during periods of the subject claim.

However, the Court finds a marked discrepancy in the total amount of ₱198,902,390.73, between the total zero-rated sales of ₱2,680,904,326.97[37], as reflected in the official receipts issued by petitioner to PNOC-EDC, and the total zero-rated sales of ₱2,879,806,717.70, as declared by petitioner in its Quarterly VAT Returns for CY 2007.

The Court-commissioned Independent CPA, Ms. Annalyn B. Artuz, explained in her Independent CPA Report[38] that the difference is composed of withholding taxes and application of payment against collection for settlement agreement in relation to the turnover of the power plant to EDC, accounted for as follows:

Difference per Quarterly VAT Returns and Summary of ORs	₱198,902,390.73
Less: Withholding Taxes	57,576,550.96
Application of Payment against collection for	141,325,800.00

[31] Exhibit "E", Division Docket, pp. 413-414.
[32] Exhibit "F", Division Docket, pp. 421-422.
[33] Exhibit "G", Division Docket, pp. 427-428.
[34] Exhibit "H", Division Docket, pp. 433-434.
[35] Exhibits "R-2.1" to "R-2.8".
[36] Exhibits "R-4.1" to "R-4.27".
[37] Summarized as per Exhibit "R-3".
[38] Exhibit "R", p. 8.

settlement agreement in relation to the turnover of the power plant to EDC (Exhibit "R-4.27") ($3,059,000.00 x ₱46.20)	
Rounding off Difference	39.77
Unaccounted Difference	**0**

Consequently, petitioner's sale of electricity to PNOC-EDC in the aggregate amount of ₱2,879,806,717.70 qualifies for VAT zero-rating.

Input VAT paid or incurred are attributable to zero-rated sales

In its Quarterly VAT Returns for the four quarters of CY 2007, petitioner declared input VAT on its domestic purchases of goods other than capital goods and services, importation of goods other than capital goods, and services rendered by non-residents in the aggregate amount of ₱10,895,847.59, broken down as follows:

	1st qtr 2007[39]	2nd qtr 2007[40]	3rd qtr 2007[41]	4th qtr 2007[42]	Total
Domestic Purchases of Goods other than Capital Goods	₱ 705,172.45	₱ 862,709.73	₱ 581,053.04	₱ 83,969.71	₱ 2,232,904.93
Importation of Goods other than Capital Goods	532,250.00	552,004.00	208,444.00	140,391.47	1,433,089.47
Domestic Purchases of Services	2,530,846.73	2,204,683.14	2,102,690.95	284,062.79	7,122,283.61
Services Rendered by Non-residents	-	-	100,411.88	7,157.70	107,569.58
TOTAL	**₱3,768,269.18**	**₱3,619,396.87**	**₱2,992,599.87**	**₱515,581.67**	**₱10,895,847.59**

Petitioner submitted various suppliers' invoices, ORs, Import Entry and Internal Revenue Declarations (IEIRD), Bureau of Customs ORs and BIR Form No. 1600[43] in support of its claimed unutilized input taxes.

Upon perusal of the said documents, the Independent CPA summarized her findings as follows:

[39] Exhibit "E-3", Division Docket, pp. 419-420.
[40] Exhibit "F-2", Division Docket, pp. 425-426.
[41] Exhibit "G-2", Division Docket, pp. 431-432.
[42] Exhibit "H-3", Division Docket, pp. 439-440.
[43] Exhibits "R-6-L-1Q.00001" to "R-6-L-1Q.01026", "R-6-L-2Q.00001" to "R-6-L-2Q.00838", "R-6-L-3Q.00001" to "R-6-L-3Q.00447", "R-6-L-4Q.00001" to "R-6-L-2Q.00089", "V", and "W".

FINDINGS	Annex	Amount	
I. Properly Substantiated Input VAT			
1. Domestic purchases of goods and services properly supported by VAT Invoices and VAT ORs	2-1Q-1	₱ 2,755,292.49	
	2-2Q-1	2,694,558.91	
	2-3Q-1	2,170,903.00	
	2-4Q-1	183,525.62	₱ 7,804,280.02
2. Importation of goods and services properly supported by IEIRDs/BOC ORs/BIR Form 1600	2-1Q-2	358,680.00	
	2-2Q-2	260,530.00	
	2-3Q-2	258,431.88	
	2-4Q-2	140,391.47	1,018,033.35
3. Domestic purchases of goods properly supported by VAT invoices not dated within the VAT taxable quarter but within the VAT taxable year. We ascertained that the input VAT on purchases of goods were not claimed twice during the taxable year	2-2Q-3	10,251.43	
	2-4Q-3	(165.00)	10,086.43
4. Domestic purchases of services properly supported by VAT ORs not dated within the VAT taxable quarter but within the VAT taxable year. We ascertained that the input VAT on purchases of services were not claimed twice during the taxable year	2-1Q-3	2,287.43	
	2-2Q-4	503.14	2,790.57
5. Importation of goods supported by original BOC ORs and/ or Land Bank of the Philippines (LBP) ORs only	2-1Q-4	173,570.00	
	2-2Q-5	191,838.00	365,408.00
6. Domestic purchases of goods/services properly supported by VAT invoices/VAT ORs with countersigned changes in the company's TIN and/ or address duly supported by authorization letters from suppliers, signed by their officers, allowing their representatives to make the necessary corrections in the documents and countersign the changes made	2-1Q-5	192,059.11	
	2-2Q-6	25,737.29	
	2-3Q-3	178,847.43	
	2-4Q-4	10,339.42	406,983.25
Total Input VAT properly substantiated			***9,607,581.62***
II. For Consideration of the Honorable Court			
1. Domestic purchases of goods/services supported by VAT invoices/VAT ORs with countersigned changes. We have ascertained from the additional supporting documentation (i.e. VAT ORs for goods/VAT invoices for services) that input VAT was passed on to the petitioner	2-1Q-6	65,900.71	
	2-2Q-7	95,404.73	
	2-3Q-4	36,692.81	
	2-4Q-5	15,600.17	213,598.42
2. Domestic purchases of goods/services supported by VAT invoices/VAT ORs with	2-1Q-7	10,229.74	212,134.74
	2-2Q-8	4,648.30	

countersigned changes in the company's name and/or TIN	2-3Q-5	163,139.06	
	2-4Q-6	34,117.64	
3. Domestic purchases of goods/services supported by VAT invoices/VAT ORs issued in the company's name with TIN and /or address changed/added on the supporting document but without countersign. We have ascertained from the additional supporting documentation (i.e. VAT ORs for goods/VAT invoices for services) that the TIN and/or address is correctly indicated	2-1Q-8	9,289.29	
	2-2Q-9	432.86	9,722.15
Total			***435,455.31***
III. Other Findings			
1. Domestic purchases of goods supported by documents other than VAT Invoices	2-1Q-9	448.88	
	2-2Q-10	458.74	907.62
2. Domestic purchases of services supported by documents other than VAT ORs	2-1Q-10	17,588.06	
	2-2Q-11	76.81	
	2-3Q-6	128.18	
	2-4Q-7	314.57	18,107.62
3. Domestic purchases of goods supported by VAT invoices but not an original copy	2-1Q-11	20,164.32	
	2-2Q-12	43,284.69	63,449.01
4. Domestic purchases of services supported by VAT ORs but not an original copy	2-1Q-12	81.96	
	2-2Q-13	1,071.43	
	2-3Q-7	33.75	
	2-4Q-8	31,979.69	33,166.83
5. Domestic purchases of goods supported by certified true copy of VAT Invoices	2-4Q-9		938.57
6. Domestic purchases of goods supported by VAT invoices not issued in the name of the company	2-1Q-13	759.65	
	2-2Q-14	35,060.92	
	2-3Q-8	285.88	36,106.45
7. Domestic purchases of services supported by VAT ORs not issued in the name of the company	2-1Q-14	14,279.11	
	2-2Q-15	16.58	
	2-3Q-9	32,460.65	
	2-4Q-10	13,319.42	60,075.76
8. Domestic purchases of goods supported by tape receipts without/not issued in the name of the company	2-1Q-15	4,335.75	
	2-2Q-16	1,746.29	6,082.04
9. Importation of goods supported by documents not issued in the name of the company	2-2Q-17	70,332.00	
	2-3Q-10	16,550.00	86,882.00
10. Domestic purchases of goods supported by TIN-V invoices	2-1Q-16	4,500.52	
	2-2Q-18	1,047.85	
	2-3Q-11	951.22	6,499.59
11. Domestic purchases of services supported by TIN-V ORs	2-2Q-19		1,620.00
12. Domestic purchases of goods supported	2-1Q-17	15,086.84	

by VAT invoices not dated within the VAT taxable year	2-2Q-20	2,631.70	17,718.54
13. Domestic purchases of services supported by VAT ORs not dated within the VAT taxable year	2-1Q-18	3,603.84	
	2-2Q-21	912.00	4,515.84
14. Domestic purchases of goods supported by VAT invoices with changes in the name and/or TIN of the company without countersign	2-2Q-22	5,769.90	
	2-3Q-12	2,930.95	8,700.85
15. Domestic purchases of services supported by VAT ORs with changes in the name and/or TIN of the company without countersign	2-2Q-23		432.00
16. Domestic purchases of goods supported by TIN # tape receipts only	2-1Q-19	740.22	
	2-2Q-24	151.79	892.01
17. Domestic purchases of goods supported by TIN-NON VAT invoices	2-3Q-13		23,571.43
18. Domestic purchases of services supported by TIN-NV/NON VAT ORs; stamped handwritten TIN-VAT/VAT registered ORs	2-2Q-25	24,139.67	
	2-4Q-11	25,118.68	49,258.35
19. Domestic purchases of goods supported by VAT invoices issued in the company's name but without or with wrong company's TIN and/or address	2-1Q-20	6,129.08	
	2-2Q-26	16,983.62	
	2-3Q-14	1,719.29	24,831.99
20. Domestic purchases of services supported by VAT ORs issued in the company's name but without or with wrong company's TIN and/or address	2-1Q-21	78,552.11	
	2-2Q-27	31,300.42	
	2-3Q-15	24,670.21	
	2-4Q-12	6,990.15	141,512.89
21. Domestic purchases of goods supported by VAT invoices issued in the company's name with TIN and/or address changed/added on the VAT invoices but without countersign	2-1Q-22	2,619.51	
	2-2Q-28	6,654.65	
	2-3Q-16	7,306.11	16,580.27
22. Domestic purchases of services supported by VAT ORs issued in the company's name with TIN and/ or address changed/added on the VAT ORs but without countersign	2-1Q-22	15,203.45	
	2-2Q-29	14,176.82	
	2-3Q-17	847.50	
	2-4Q-13	450.67	30,678.44
23. Domestic purchases of goods supported by tape receipts with handwritten company's name, TIN and address	2-2Q-30		103.71
24. Domestic purchases of services supported by tape receipts without/not in the company's name and/ or TIN	2-2Q-31		274.50
25. Domestic purchases of goods supported by VAT invoices but without invoice date	2-2Q-32		278.57
26. Domestic purchases of goods supported by VAT ORs but without OR date	2-2Q-33		865.58
27. Domestic purchases of goods/services	2-1Q-24	2,060.69	

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supported by VAT invoices/VAT ORs wherein VAT was not shown separately	2-2Q-34	13,868.13	47,148.83
	2-3Q-18	276.00	
	2-4Q-14	30,944.01	
28. Importation of goods supported by IEIRDs/BOC ORs not dated within the VAT taxable year	2-2Q-35		29,304.00
29. Overclaimed input VAT on domestic purchases/importation of goods/services due to erroneous computation (i.e. arithmetical error)	2-1Q-25	1.16	
	2-2Q-36	70.61	
	2-3Q-19	33,874.55	
	2-4Q-15	1,569.64	35,515.96
30. Effects of forex on foreign currency denominated purchases of goods and services - overstatement	2-2Q-37	1,125.49	
	2-3Q-20	175.98	
	2-4Q-16	548.84	1,850.31
31. Supporting documents not available for verification	2-1Q-26	14,805.26	
	2-2Q-38	31,733.74	
	2-3Q-21	38,803.99	
	2-4Q-17	19,598.11	104,941.10
Total			***852,810.66***
Grand Total			**₱10,895,847.59**

Based on the foregoing, the input VAT of ₱852,810.66 *(under item III. Other Findings)* shall be disallowed outright for not being properly substantiated by supporting documents prescribed under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-2005, as amended.

In addition, petitioner's input VAT claim in the total amount of ₱498,571.41 should be disallowed for failure to meet the substantiation requirements prescribed under the aforesaid laws and regulations, detailed as follows:

Supplier	Exhibit	Amount
1. Supported by exhibits which were denied admission by the Court		
Codilla's Petron Super Service Station	R-6-L-1Q.00251	₱ 568.35
Protective Systems Technologies	R-6-L-1Q.00761	922.09
Zi-Tech Asia (Pilipinas), Inc.	R-6-L-1Q.00911	22,572.00
Elecman Auto Industrial Electrical Supply and Services	R-6-L-2Q.00300	2,991.83
Minco Products Asia Pacific Pte. Ltd.	R-6-L-3Q.00440-a & b	8,598.00
sub-total		***35,652.27***
2. Supported by invoices/ORs the VAT amount was not separately indicated		
Canon Marketing (Philippines) Inc.	R-6-L-1Q-00119	480.00
Codilla's Petron Super Service	R-6-L-1Q-00178	164.22
Codilla's Petron Super Service	R-6-L-1Q-00183	137.24

Codilla's Petron Super Service	R-6-L-1Q-00183	134.98
Gaisano Ormoc	R-6-L-1Q-00455-C	243.27
Isla Lipana and Co.	R-6-L-1Q-00541	20,700.00
Isla Lipana and Co.	R-6-L-1Q-00543	20,700.00
Isla Lipana and Co.	R-6-L-1Q-00545	102,216.72
Makati Shangrila	R-6-L-1Q-00586	1,108.50
Ormoc Fitness Gym	R-6-L-1Q-00681	423.21
Phil. Long Distance Company	R-6-L-1Q-00727	9,871.44
Phil. Long Distance Company	R-6-L-1Q-00728	9,871.44
Serv-Well Drugstore	R-6-L-1Q-00800-B	323.51
Airfrieght 2100, Inc.	R-6-L-1Q-00038	3,056.67
Airfrieght 2100, Inc.	R-6-L-1Q-00054	327.62
Airfrieght 2100, Inc.	R-6-L-1Q-00058	1,893.85
Airfrieght 2100, Inc.	R-6-L-1Q-00020	29.19
Airfrieght 2100, Inc.	R-6-L-1Q-00026	1,408.01
Airfrieght 2100, Inc.	R-6-L-1Q-00028	583.18
Airfrieght 2100, Inc.	R-6-L-1Q-00010	3,043.75
ASB Realty Corp.	R-6-L-2Q-00073	703.87
Libsales Industrial Parts & Gen. Merchandising	R-6-L-2Q-00415	5,142.86
Airfrieght 2100, Inc.	R-6-L-2Q-00004	366.60
Salvador, Guevara & Associates	R-6-L-2Q-00575	7,416.00
Salvador, Guevara & Associates	R-6-L-2Q-00577	9,678.00
Master Automated Systems, Inc.	R-6-L-3Q-00255	3,759.65
All Recognition Gift	R-6-L-3Q-00014	2,828.57
Cerilles Enterprises	R-6-L-3Q-00059	78,419.79
sub-total		***285,032.14***
3. Supported by invoices/ORs without signature of the issuer		
Cebu Termite Control	R-6-L-1Q-00136	766.07
Cebu Termite Control	R-6-L-1Q-00138	767.07
Cebu Termite Control	R-6-L-1Q-00140	910.71
Cebu Termite Control	R-6-L-1Q-00142	910.71
Williams Commercial Company, Inc.	R-6-L-1Q-00883	3,006.54
Williams Commercial Company, Inc.	R-6-L-1Q-00884	1,364.25
Williams Commercial Company, Inc.	R-6-L-1Q-00885	398.19
Williams Commercial Company, Inc.	R-6-L-1Q-00887	443.57
Williams Commercial Company, Inc.	R-6-L-1Q-00888	3,994.82
Williams Commercial Company, Inc.	R-6-L-1Q-00890	926.79
Williams Commercial Company, Inc.	R-6-L-1Q-00890-A	1,224.00
Williams Commercial Company, Inc.	R-6-L-1Q-00892	11,003.52
Cebu Termite Control	R-6-L-2Q-00109	910.71
Cebu Termite Control	R-6-L-2Q-00111	766.07
Clarean Trading Philippines	R-6-L-2Q-00129	799.02
Clarean Trading Philippines	R-6-L-2Q-00131	321.43
DCV Industrial Controls	R-6-L-2Q-00248	12,895.62
Williams Commercial Company, Inc.	R-6-L-2Q-00714	4,058.89
Williams Commercial Company, Inc.	R-6-L-2Q-00715	629.46
Williams Commercial Company, Inc.	R-6-L-2Q-00725-A	8,725.07
Cebu Termite Control	R-6-L-3Q-00054	910.71
sub-total		***55,733.22***
4. Supported by invoices/ORs stamped with "zero-rated sales"		

Crest Sun Industrial Products, Inc.	R-6-L-2Q-00239	723.75
sub-total		***723.75***
5. Supporting invoices/ORs cannot be found from the records of the case		
Degalen Corp.	R-6-L-2Q-00254-A	225.00
F.J.V. Zapanta Enterprises	R-6-L-2Q-00345-A	385.71
Zi-TechAsia (Pilipinas) Inc.	R-6-L-1Q-00912	12,852.00
SPX Cooling	R-6-L-3Q-00440-C & D	65,342.00
sub-total		***78,804.71***
6. Without supporting ORs/invoices		
Petron Corporation	Annex-2-2Q-7	36,626.80
United Bearing Industrial Corp.	Annex-2-2Q-7	1,637.79
United Bearing Industrial Corp.	Annex-2-2Q-7	4,360.73
sub-total		***42,625.32***
TOTAL		**₱ 498,571.41**

Therefore, petitioner's valid input VAT claim amounts only to ₱9,544,465.52, computed as follows:

Amount of Input VAT Claim		₱ 10,895,847.59
Less: Disallowances		
per ICPA Report	₱852,810.66	
per this Court's Findings	498,571.41	1,351,382.07
Substantiated input VAT		**₱9,544,465.52**

Since petitioner's sales for the four quarters of CY 2007 were all zero-rated, the substantiated input VAT of ₱9,544,465.52 is entirely attributable thereto.

Input VAT payments were not applied against any output VAT liability

A perusal of petitioner's Quarterly VAT Returns for CY 2007 shows that it has no output VAT liability against which the substantiated input VAT of ₱9,544,465.52 may be applied or credited. Even though the claimed input VAT was carried over by petitioner to the succeeding four quarters of CY 2008[44], the same remained unutilized as petitioner had no output VAT liability for the said period. Moreover, the substantiated input VAT of ₱9,544,465.52 formed part of the ₱10,895,847.59 input VAT deducted as "VAT Refund/TCC ℒ

[44] Line 20A of Exhibits "I", "J", "K", and "L-1", Division Docket, pp. 441-450.

claimed"[45] from the total available input tax of ₱12,632,770.05 in the Quarterly VAT Return for the fourth quarter of CY 2008. Consequently, the claimed input taxes for the four quarters of CY 2007 could not have been carried over or utilized in the succeeding first quarter of 2009.

In sum, the Court finds that petitioner sufficiently established its entitlement to a refund/tax credit of its unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2007 in the reduced amount of ₱9,544,465.52.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **NINE MILLION FIVE HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SIXTY-FIVE PESOS AND 52/100 (₱9,544,465.52)**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of calendar year 2007.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[45] Line 23D of Exhibit "L-1", Division Docket, p. 450.

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice