REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MAXIMA MACHINERIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9723

Members:
UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
DEC 03 2020 2:00 p.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

This case involves a *Petition for Review* filed by petitioner Maxima Machineries, Inc. against respondent Commissioner of Internal Revenue on November 24, 2017, praying for the refund or issuance of a tax credit certificate in favor of petitioner in the amount of ₱66,647,287.09, representing unutilized input value-added tax (VAT) allegedly attributable to petitioner's VAT zero-rated sales for the period from April 1, 2015 to September 30, 2015.[1]

THE PARTIES

Petitioner Maxima Machineries, Inc. is a domestic corporation duly organized under and by virtue of the laws of the Philippines with principal business address at 871 Quezon Avenue, Barangay Sta. Cruz, Quezon City.[2] It

[1] Statement of the Case, Pre-Trial Order dated August 7, 2018, Docket – Vol. 2, p. 1047.
[2] Par. A(4), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, p. 994; Exhibits "P-1" and "P-2", Docket – Vol. 3, pp. 1102 to 1116.

is a registered as VAT taxpayer, with Tax Identification Number (TIN) 006-618-023-000.[3]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including acting upon on protests cases and approval of claims for refund or tax credit as provided by law and implementing regulations.[4]

THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On June 30, 2017, petitioner filed before the Bureau of Internal Revenue (BIR) an administrative claim for tax refund/issuance of tax credit certificate in the total amount of ₱66,647,287.09, representing the unutilized input taxes in relation to its VAT zero-rated transactions as declared in its Quarterly VAT Returns for the first and second Quarters of fiscal year ending March 31, 2016.[5]

Appended to the application for the issuance of tax refund which was filed with the BIR is the Affidavit of Mr. Yusuke Yamada, Chief Financial Officer of petitioner, attesting to the completeness of documents submitted in support of the present claim. Mr. Yamada was authorized by petitioner to sign and execute any and all documents for the application of the tax refund. He executed another Sworn Statement to the effect that petitioner has no similar claim filed with other BIR processing/investigating offices.[6]

On October 26, 2017, petitioner received a copy of the letter from the BIR Large Taxpayers Service Regular Large Taxpayers Audit Division, signed by OIC-Assistant Commissioner – Large Taxpayers Service, Ms. Teresita M. Angeles, denying petitioner's administrative claim for tax refund for the periods April 1, 2015 to June 30, 2015, amounting to ₱54,061,574.60, and July 1, 2015 to September 30, 2015, amounting to ₱12,585,712.49. Subsequently, on November 23, 2017, petitioner filed a Letter-Reply in relation to the denial.[7]

THE PROCEEDINGS BEFORE THIS COURT

As already stated, the instant *Petition for Review* was filed on November 24, 2017.[8] The instant case was originally raffled to this Court's First Division.

[3] Exhibit "P-3", Docket - Vol. III, pp. 1118 to 1119.
[4] Par. A(5), JSFI, Docket – Vol. 2, p. 994.
[5] Par. A(1), JSFI, Docket – Vol. 2, p. 993; Exhibit "P-36", Docket – Vol. 3, p. 1229; Exhibit "R-1", *BIR Records*, p. 495.
[6] Par. A(2), JSFI, Docket – Vol. 2, p. 993.
[7] Par. A(3), JSFI, Docket – Vol. 2, p. 994; Exhibits "P-40" and "R-5", *BIR Records* – Folder 1, pp. 517 to 519; Exhibit "P-41", Docket – Vol. 3, pp. 1234 to 1250.
[8] Docket – Vol. 1, pp. 10 to 48.

On February 13, 2018, respondent filed his *Answer.*[9]

On February 23, 2018, the *BIR Records* were submitted by respondent.[10]

The Pre-Trial Conference was set and held on May 17, 2018.[11] *Respondent's Pre-Trial Brief* was filed on May 10, 2018,[12] while the *Pre-Trial Brief for the Petitioner* was received by the Court on May 11, 2018.[13]

On June 1, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[14] In the Resolution dated July 30, 2018,[15] the Court approved the said JSFI, and deemed the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated August 7, 2018 was issued.[16]

The trial of this case then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jenelyn Palayon-Tagao,[17] petitioner's Chief for Government Compliance of the Finance Department; (2) Mr. Yusuke Yamada,[18] petitioner's Chief Financial Officer; and (3) Mr. Conrado M. Briones,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

On August 17, 2018, the Court received the *Report* of the ICPA.[21]

Petitioner filed its *Formal Offer of Evidence* on September 13, 2018.[22] Respondent submitted his *Comment (Re: Formal Offer of Evidence)* on September 21, 2018.[23]

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[9] Docket – Vol. 1, pp. 222 to 232.
[10] Docket – Vol. 1, pp. 239 to 244.
[11] *Notice of Pre-Trial Conference* dated February 20, 2018, Docket – Vol. 1, pp. 234 to 235; Order dated May 17, 2018, Docket – Vol. 2, pp. 963 to 965.
[12] Docket – Vol. 1, pp. 264 to 268.
[13] Docket – Vol. 2, pp. 271 to 287.
[14] Docket – Vol. 2, pp. 993 to 1008.
[15] Docket – Vol. 2, p. 1041.
[16] Docket – Vol. 2, pp. 1047 to 1058.
[17] Exhibit "P-50", Docket – Vol. 2, pp. 293 to 303; Minutes of the hearing held on, and Order dated, July 31, 2018, Docket – Vol. 2, pp. 1036-b to 1036-c, and 1043 to 1044, respectively.
[18] Exhibit "P-49", Docket – Vol. 2, pp. 553 to 574; Minutes of the hearing held on, and Order dated, July 17, 2018, Docket – Vol. 2, pp. 1036 to 1038.
[19] Exhibit "P-121", Docket – Vol. 2, pp. 1065 to 1080; Order dated September 6, 2018, Docket – Vol. 3, pp. 1081 to 1082.
[20] *Oath of Commission* dated June 14, 2018, Docket – Vol. 2, p. 1022; Exhibit "P-48", Docket – Vol. 2, pp. 1012 to 1015; Minutes of the hearing held on, and Order dated, June 14, 2018, Docket – Vol. 2, pp. 1019 to 1021, and 1023 to 1024, respectively.
[21] Exhibit "P-51".
[22] Docket – Vol. 3, pp. 1084 to 1100.
[23] Docket – Vol. 3, pp. 1257 to 1258.

Pursuant to the Court's Order dated September 27, 2018,[24] the instant case was transferred to this Court's Third Division.

In the Resolution dated February 26, 2019,[25] the Court admitted petitioner's Exhibits, but noted certain discrepancies on the description of some of the exhibits, and that certain exhibits are unreadable.

Consequently, petitioner submitted its *Omnibus Motion (Motion for Partial Reconsideration, and Motion for Additional Time to Submit Unreadable Documents)* on March 18, 2019.[26] Likewise, the ICPA submitted on April 3, 2019 the hard copies and soft copies of the unreadable exhibits.[27] Respondent filed his *Opposition (Re: Omnibus Motion dated 18 March 2019)* on April 16, 2019.[28] However, in the Resolution dated June 17, 2019,[29] petitioner's *Omnibus Motion* was granted.

For his part, respondent likewise set forth his documentary and testimonial evidence. As part of testimonial evidence, respondent proffered the sole testimony of Mr. Jan Andre C. Abellera,[30] a Revenue Officer II of the Large Taxpayers Service of the BIR.

Respondent filed his *Formal Offer of Evidence* on September 9, 2019.[31] Petitioner failed to file its comment thereon.[32] The Court then admitted respondent's Exhibits, in the Resolution dated October 23, 2019.[33]

Petitioner's *Memorandum* was filed on November 27, 2019,[34] and respondent's *Memorandum* was submitted on December 2, 2019.[35]

On December 10, 2019, this case was deemed submitted for decision.[36]

THE ISSUES STIPULATED BY THE PARTIES

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[24] Docket – Vol. 3, p. 1260.
[25] Docket – Vol. 3, pp. 1264 to 1266.
[26] Docket – Vol. 3, pp. 1271 to 1276.
[27] Letter dated April 3, 2019, Docket – Vol. 3, p. 1309.
[28] Docket – Vol. 3, pp. 1317 to 1321.
[29] Docket – Vol. 3, pp. 1332 to 1336.
[30] Exhibit "R-7", Docket – Vol. 1, pp. 255 to 263; Minutes of the hearing held on, and Order dated, August 22, 2019, Docket – Vol. 3, pp. 1351 to 1353.
[31] Docket – Vol. 3, pp. 1360 to 1364.
[32] Records Verification Report dated October 2, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 1370.
[33] Docket – Vol. 3, pp. 1374 to 1375.
[34] Docket – Vol. 3, pp. 1376 to 1415.
[35] Docket – Vol. 3, pp. 1418 to 1424.
[36] Resolution dated December 10, 2019, Docket – Vol. 3, p. 1427.

As stipulated by the parties, the issues to be resolved by the Court are the following:[37]

> "WHETHER PETITIONER IS ENTITLED FOR TAX REFUND FOR THE EXCESS UNUTILIZED INPUT VALUE ADDED TAX (VAT) ALLOCABLE AND DIRECTLY ATTRIBUTABLE TO ITS VAT ZERO RATED SALES FOR THE PERIOD FROM APRIL 1, 2015 TO SEPTEMBER 30, 2015 AMOUNTING PHP66,647,287.09."
>
> "WHETHER THE ADMINISTRATIVE DECISION DENYING THE CLAIM FOR REFUND BASED ON EVIDENCE PRESENTED WAS CORRECT."

THE ARGUMENTS OF THE PARTIES

Petitioner contends that its claim for refund should be granted because all the elements necessary, including all the pieces of evidence to support the claim, are present; that respondent's position in denying the administrative claim for refund filed by petitioner is misplaced; that petitioner, being a supplier of goods and services of enterprises registered with the Philippine Economic Zone Authority (PEZA), Bases Conversion and Development Act (BCDA), Clark Development Authority (CDA), and Board of Investment (BOI), should be subject to zero percent in its sales with such entities; that petitioner's indent commission are likewise subject to VAT zero percent (0%); that the input taxes are not transitional input taxes; that petitioner has unutilized and unapplied input tax credits allocable and directly attributable to its VAT zero rated sales for the subject periods; and that petitioner timely filed its administrative claim for tax refund within the two-year prescriptive period.

On the other hand, respondent contends that the instant judicial claim for refund should be denied for petitioner's failure to substantiate the said claim at the administrative level; that it is an established fact that a decision has already been rendered and in such a case, the Supreme Court has held that the duty of the Court is now limited in determining whether the decision is proper; and that the claim for refund should be denied for failure to submit the complete supporting documents.

THE RULING OF THE COURT

The instant *Petition for Review* must be denied.

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[37] Par. B, JSFI, Docket – Vol. 2, p. 994.

Petitioner failed to show that respondent should not have denied its administrative claim in the first place.

Respondent posits that the instant *Petition for Review* should be denied for failure of petitioner to substantiate its claim at the administrative level and the Court is confined only in determining whether the decision is proper; that the claim should be denied for failure to submit the complete supporting documents; and that the Tax Code and Revenue Memorandum Circular No. 54-2014 require the submission of complete documents in support of the application for VAT refund/tax credit certificate.

In the *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* ("*Pilipinas Total Gas* case"),[38] the Supreme Court said:

> "At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*,[39] it was ruled –
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> > x x x **First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> **A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents.** If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but of the taxpayer's failure to substantiate the claim at the administrative level. **When**

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[38] G.R. No. 207112, December 8, 2015.
[39] G.R. No. 145526, March 16, 2007.

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

Based on the foregoing jurisprudential pronouncements of the Supreme Court, it is now settled that as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim; and it is necessary for a petitioner to show this Court not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. It is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, and should not have been denied.

A careful observation of what transpired in the proceedings before this Court would reveal that petitioner presented its case as if its administrative claim was never acted upon or that there was no decision for this Court to review on appeal *per se*. In other words, petitioner presented its case before this Court as if it was an original action, despite that respondent had denied its administrative claim. Petitioner did not specifically assail the reasons or bases why its administrative claim was denied in the first place by respondent. It did not unambiguously argue or prove that the said reasons or bases of respondent were never justified in law.

In the undated letter of respondent, through OIC-Assistant Commissioner Teresita M. Angeles, denying petitioner's administrative claim for tax refund for the periods April 1, 2015 to June 30, 2015, and July 1, 2015 to September 30, 2015, it was found that petitioner failed to submit the certified true copy of the VAT Return, reflecting the deduction of the amount applied for refund/ tax credit certificate from the total input tax carried-over to the succeeding period; that verification of the VAT Returns filed by petitioner revealed that petitioner did not deduct the amount being claimed for refund from the input VAT carried-over to the succeeding period as required under Section 4.110-5 of Revenue Regulations (RR) No. 16-2005; and that based on the schedules and documents submitted pertaining to zero-rated sales, petitioner was unable to show, trace and reconcile that the purported input taxes of machineries sold from the purchases identified for zero-rated sales were actually related to zero-rated sales or was included or was part of the zero-rated sales for the period of claim.[40]

Petitioner failed to show before this Court that respondent should *not* have denied its administrative claim in the first place, since the BIR's findings may be refuted with the documents it submitted vis-à-vis the pertinent legal provisions.

Having failed to show that respondent should not have denied its administrative claim in the first place, the instant *Petition for Review* must already be denied. Nevertheless, even if this Court will ignore the ruling in the *Pilipinas Total Gas* case, the instant judicial claim is still not meritorious.

In order that petitioner may validly claim for refund of its supposed unutilized input VAT for the subject periods, it is imperative that it must likewise prove compliance with certain legal requirements.

Requisites for the grant of the refund or issuance of TCC under the law.

Pursuant to the provisions of Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337[41], jurisprudence has laid down certain requisites which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[42]
2. that 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 120 days from the date of submission of complete documents in support of the application, the

[40] Par. A(3), JSFI, Docket – Vol. 2, p. 994; Exhibits "P-40" and "R-5", *BIR Records* – Folder 1, pp. 517 to 519; Exhibit "P-41", Docket – Vol. 3, pp. 1234 to 1250.

[41] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[43]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[44]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[45]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[46]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[47]
7. the input taxes are due or paid;[48]
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;[49] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[50]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[51]

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[43] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs.Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

[44] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

[51] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of*

Thus, it behooves petitioner to further show compliance with each of the foregoing requisites. But as already intimated, petitioner failed to show full compliance therewith.

Petitioner timely filed its administrative and judicial claims.

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

The instant claim covers the periods of April 1, 2015 to June 30, 2015 and July 1, 2015 to September 30, 2015 or the 1st and 2nd quarters, respectively, of petitioner's fiscal year ending March 31, 2016 (FY 2016). Counting two (2) years from the close of the said quarters, the following table indicates the pertinent last days for the filing of an administrative claim for the said two (2) quarters, to wit:

Period (FY 2016)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**
April 1, 2015 to June 30, 2015	June 30, 2015	June 30, 2017
July 1, 2015 to September 30, 2015	September 30, 2015	September 30, 2017

Considering that petitioner's administrative claim and its *Application for Tax Credits/Refunds* (BIR Form No. 1914) covering the subject quarters, was filed with the BIR on June 30, 2017,[52] the same was timely made within the 2-year prescriptive period.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from the receipt of respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

In this case, on October 26, 2017, petitioner received a copy of undated letter of respondent, through OIC-Assistant Commissioner Teresita M. Angeles, denying petitioner's administrative claim.[53] Thus, petitioner had until November 25, 2017, the last day of the 30-day period, within which to file its judicial claim. Such being the case, petitioner seasonably filed the instant *Petition for Review* on November 24, 2017.[54]

Internal Revenue, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[52] Par. A(1), JSFI, Docket – Vol. 2, p. 993; Exhibit "P-36", Docket – Vol. 3, p. 1229; Exhibit "R-1", *BIR Records*, p. 495.

[53] Par. A(3), JSFI, Docket – Vol. 2, p. 994; Exhibits "P-40" and "R-5", *BIR Records* – Folder 1, pp. 517 to 519.

[54] Docket – Vol. I, p. 10.

Petitioner's registration with the BIR.

As for its compliance with the *third requisite,* petitioner has fulfilled the same by presenting its Certificate of Registration with OCN8RC0000556816 dated June 20, 2016, issued by the BIR with TIN 006-618-023-000, indicating that it is liable to VAT, among other taxes.[55]

Petitioner had zero-rated or effectively zero-rated sales during the 1st and 2nd quarters of FY 2016.

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the Tax Code, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* ("BSP") rules and regulations.

Petitioner maintains that its sales of goods and services to entities registered with the PEZA, SBMA, CDA, and BOI during the period April 1, 2015 to September 30, 2015 or the 1st and 2nd quarters of FY 2016 are subject to zero percent (0%) VAT, pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended. Petitioner also claims that the indent commissions earned from its sale of services to non-resident foreign corporations doing business outside the Philippines for the same period are also subject to VAT at zero percent (0%) rate, pursuant to Section 108(B)(2) of the same Code.

The pertinent provisions of Sections 106(A)(2)(a)(3),(5) and (c) and 108(B)(2) and (3) of the NIRC of 1997, as amended, state:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – x x x
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* –The term '**export sales'** means:
>
> xxx xxx xxx

[55] Exhibit "P-3", Docket - Vol. III, pp. 1118 to 1119.

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and

xxx xxx xxx

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

"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

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Services rendered to persons or entities whose exception under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;"

Relative thereto, Sections 4.106-5 and 4.108.5 of Revenue Regulations No. (RR) 16-2005, as amended by RR No. 04-07, which implement the foregoing provisions, state:

"SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – x x x

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export sales. – *'Export Sales'* shall mean:

xxx xxx xxx

(3) The sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

'Considered export sales under Executive Order No. 226' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided,* further, That *pursuant to EO 226 and other special laws*, *even* without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*; (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227*;** (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and ***Provided, finally,*** **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI**.

xxx xxx xxx

(c) *'Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement'* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* **sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA)** or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., **shall be effectively subject to VAT at zero-rate**." *(Emphasis supplied)*

xxx xxx xxx

'SEC. 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

(2) **Services other than processing, manufacturing or re-packing** rendered to a person engaged in business **conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines** when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects the supply of such services to zero percent (0%) rate**;" *(Emphases supplied)*

Furthermore, the special laws specific to this case are RA No. 7227, as amended by RA No. 9400, otherwise known as *"Bases Conversion and Development Act of 1992"*, and RA No. 7916, as amended, otherwise known as *"The Special Economic Zone Act of 1995"*. The relevant portions of said laws are quoted hereunder, to wit:

RA No. 7227, as amended by RA NO. 9400:

"SEC. 12. *Subic Special Economic Zone.* – xxx

(b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

(c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone.** Xxx." *(Emphasis added)*

"SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ).* – Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, xxx.

The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. xxx.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. xxx.

xxx xxx xxx

Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones." *(Emphasis added)*

Sections 8 and 24 of RA No. 7916, as amended by RA No. 8748:

"SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis added)*

"SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx" *(Emphasis added)*

Since the Ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. The case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[56] is instructive, to wit:

"This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**

[56] G.R. No. 150154, August 9, 2005.

xxx An ECOZONE or a Special Economic Zone has been described as —

xxx [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and **services from the Philippines to a foreign country must be free of VAT**; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.[57] (*Emphases supplied*)

Based on the foregoing, sales of goods and services by a VAT-registered taxpayer, such as herein petitioner, to entities located in Ecozones, as well as to BOI-registered entities whose products are 100% exported, are considered *"export sales"* subject to zero percent (0%) VAT rate pursuant to Sections

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[57] Now at 12% VAT rate.

106(A)(2)(a)(3),(5) and (c) and 108(B)(3)of the NIRC of 1997, as amended and as implemented by Sections 4.106-5 and 4.108.5 of RR No. 16-05, as amended.

To prove that its clients are duly registered with the PEZA, SBMA, CDC, and BOI, petitioner submitted various Certifications issued by such agencies. Likewise, petitioner presented the letter of the PEZA Director General, BGen Charito B. Plaza, dated July 5, 2017[58] addressed to petitioner's Chief Financial Officer, Mr. Yusuke Yamada and Certification issued by the BOI OIC-Executive Director, Atty. Bobby G. Fondevilla, on June 22, 2017[59] confirming the issuance of VAT zero-rating certifications to certain clients of petitioner. Listed below are petitioner's clients for the subject period of claim with the corresponding proof of VAT zero-rating:[60]

Name of Customer	Proof of VAT zero-rating	Exhibit No.	Validity Period
Adnama Mining Resources	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Berong Nickel Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Biglift Properties & Development Corporation	SBMA Certificate of Tax Exemption	"P-7"	March 31, 2015 to March 30, 2016
Cagdianao Mining Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Carmen Copper Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Carrascal Nickel Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Century Peak Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Coral Bay Nickel Corporation	Confirmation Letter from PEZA	"P-4"	for the year 2015
CTP Construction & Mining	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Diamond Star Agro Products, Inc	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Fastech Electronique, Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
FCF Minerals Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Hacorphil Corporation	SBMA Certificate of Tax Exemption	"P-8"	August 31, 2014 to August 30, 2015
Hinatuan Mining Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
House Technology Industries Pte. Ltd	Confirmation Letter from PEZA; PEZA Certificate	"P-4"; "P-104-d"	for the year 2015
Hys-Yacht Phils. Ltd. Co. Inc.	SBMA Certificate of Tax Exemption	"P-9" to "P-10"	July 15, 2014 to July 14, 2016

[58] Exhibit "P-4", Docket - Vol. III, pp. 1120-1123.
[59] Exhibit "P-5", Docket - Vol. III, p. 1124.
[60] Docket – Vol. III, pp. 1120 to 1135 and USB.

Jamjle Properties (Subic) And Development Corporation	SBMA Certificate of Tax Exemption	"P-12"	November 27, 2014 to November 26, 2015
Krominco, Inc.	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Lapanday Diversified Products Corp.	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Majestic Landscape Corporation	Confirmation Letter from PEZA; PEZA Certificate	"P-4"; "P-104-e"	for the year 2015
Marcventures Mining and Development Corp.	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
MM Steel Service Center Corporation (Export)	Confirmation Letter from PEZA	"P-4"	for the year 2015
MM Steel Service Center Corporation– Warehousing Division	Confirmation Letter from PEZA	"P-4"	for the year 2015
Murami Subic Trading Corporation	SBMA Certificate of Tax Exemption	"P-14" to "P-15"	July 30, 2014 to July 29, 2016
Northeast Group of Companies, Inc.	SBMA Certificate of Tax Exemption	"P-13"	March 9, 2015 to March 8, 2016
Phil. Batteries Incorporated	Confirmation Letter from PEZA	"P-4"	for the year 2015
Philippine Associated Smelting & Refining Corp.	Confirmation Letter from PEZA	"P-4"	for the year 2015
Philippine Gold Processing and Refining Corp.	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Philippine Makoto Corporation	Confirmation Letter from PEZA	"P-4"	for the year 2015
Platinum Group Metals Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Ramcar Technology, Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
Rio Tuba Nickel and Mining Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
R-Tech Philippines Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
Scad Services (s) Pte., Ltd. (Phil. Branch)	Confirmation Letter from PEZA	"P-4"	for the year 2015
Shin-Etsu Magnetic Philippines, Inc.	Confirmation Letter from PEZA; PEZA Certificate	"P-4"; "P-104-l"	for the year 2015
Smart Electronics Manufacturing Service Philippines, Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
St. Luke's Medical Center (Global City), Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
Subic Consolidated Projects, Inc.	SBMA Certificate of Tax Exemption	"P-11"	January 4, 2015 to January 3, 2016
Taganito Hpal Nickel Corporation	Confirmation Letter from PEZA	"P-4"	for the year 2015
Taganito Mining Corporation	BOI Certification dated June 22, 2017	"P-5"	for the year 2015
Tailin Abrasives Corporation	SBMA Certificate of Tax Exemption	"P-6"	March 31, 2015 to March 30, 2016
Transcom Worldwode (Philippines), Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015

Unichamp Mineral Philiipines, Inc.	Confirmation Letter from PEZA	"P-4"	for the year 2015
Ushio Philippines, Inc.	Confirmation Letter from PEZA; PEZA Certificate	"P-4"	for the year 2015
Visayas Slaked Lime Corporation	Confirmation Letter from PEZA; PEZA Certificate	"P-4"	for the year 2015
Wu Kong Singapore Pte. Ltd. (Phil. Branch)	Confirmation Letter from PEZA; PEZA Certificate	"P-4"; "P-104-s"	for the year 2015

Thus, petitioner's sales to the aforementioned entities for the period covering the 1st and 2nd quarters of FY 2016 qualify for VAT zero-rating pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated sales invoices [for sales of goods] and official receipts (ORs) [for sales of services] in accordance with Sections 113(A)(1) and (2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1) and (2), (B)(1) and (2)(c) of RR No. 16-2005 which are all quoted hereunder:

"Sec. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.*-

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

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

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

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:

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; xxx

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

"Sec. 4.113-1. *Invoicing Requirements.* –

(A) A VAT-registered person shall issue: -xxx

(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 invoice/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: 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; xxx" *(Emphasis supplied)*

In addition to the above requirements, the invoices and ORs must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: 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."

Anent petitioner's alleged indent commissions from its sale of services to non-resident foreign corporations, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[61]

2) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[62]

[61] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[62] *Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

3) The services fall under any of the categories under Section 108(B)(2),[63] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[64] and

4) The services must be performed in the Philippines[65] by a VAT-registered person.

Relative to the *first* essential element and in relation to the *fifth* requisite for the granting of input VAT refund, petitioner presented the Certifications of Inward Remittances[66] issued by BDO Unibank, Inc. purportedly showing the remittances of its foreign clients/affiliates. Considering that the certifications attest to the fact of payment *"in acceptable foreign currency ... and accounted for in accordance with the rules and regulations of the BSP"*,[67] petitioner is considered to have complied with the above-stated *first* essential element.

Anent the *second* essential element, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a *Certification of Non-Registration of Corporation/Partnership* issued by the Philippine Securities and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The Philippine SEC's *Certification of Non-Registration of Corporation* establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines, while the *certificate/articles of incorporation/association* will prove that the said recipient of the service is indeed foreign. The said documents have been consistently required by this Court, for purposes of the said *second* essential element. In fact, in the very recent case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[68] the Supreme Court affirmed the necessity of presenting the said documents in this wise:

> "The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC[69] status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax

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[63] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.
[64] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.
[65] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.
[66] Exhibits "P-105-a" to "P-105-d".
[67] Refer to *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[68] G.R. No. 234445, July 15, 2020.
[69] That is, "Nonresident Foreign Corporation".

court are in the best position to analyze the documents presented by the parties.

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates [clients] are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines."

In this case, petitioner presented the related Certifications of Non-Registration of Company issued by the Philippine Securities Exchange Commission (SEC) and Consularized Articles of Incorporation,[70] summarized as follows:

Registered Name	SEC Certificate of Non-Registration	Proof of Incorporation in Foreign Country
Marubeni Corporation-Japan	"P-16"	
Marubeni Corporation		"P-17"
Bomag Fayat Group	"P-18"	
Fayat Bomag GmbH & Co.		"P-19"
Hyundai Corporation	"P-20"	"P-21"

Hence, ***only*** Hyundai Corporation is considered as nonresident foreign corporation doing business outside the Philippines, complying with the *second essential element.*

In addition, petitioner's compliance with the *third* and *fourth* essential elements was not established for failure to adduce evidence to prove that the nature of such services was other than *"processing, manufacturing or repacking goods"* and that the same are performed in the Philippines. Hence, petitioner's export sales of services failed to qualify as subject to zero percent (0%) VAT under Section 108(B)(2) of the NIRC of 1997, as amended.

Notably, in its Amended Quarterly VAT Returns for the 1st and 2nd quarters of FY 2016,[71] petitioner reported total sales in the amount of ₱3,201,337,709.63, which included zero-rated sales in the amount of ₱924,347,373.08, to wit:

Particulars	1st Quarter	2nd Quarter	Total
Vatable Sales	₱ 1,231,874,170.67	₱ 1,030,382,576.59	₱ 2,262,256,747.26

[70] Exhibits "P-16" to "P-21", Docket, pp. 1136 to 1208.
[71] Exhibits "P-22" and "P-23", Docket - Vol. 3, pp. 1209 to 1212.

Sale to Government	12,415,957.36	2,317,631.93	14,733,589.29
Zero Rated Sales	573,817,686.51	350,529,686.57	924,347,373.08
Total Sales	**₱1,818,107,814.54**	**₱1,383,229,895.09**	**₱3,201,337,709.63**

In support of its zero-rated sales of ₱924,347,373.08, petitioner presented its Schedule of Zero-Rated Sales[72] and various sales invoices, official receipts (ORs) and other related documents,[73] which were all scrutinized by the Court-commissioned Independent Certified Public Accountant (ICPA), Atty. Conrado M. Briones.

Meanwhile, based on the ICPA's *Report*,[74] the zero-rated sales in the amount of ₱63,405,521.37, as detailed below, shall be denied VAT zero-rating for failure to comply with the above-stated invoicing requirements:

Exhibit No.	Supporting Documents	1st Quarter	2nd Quarter	Total
"P-97"	Zero-rated sale of goods which are properly supported by VAT zero-rated invoice/zero-rated sale of services which are properly supported by VAT zero-rated OR but not dated within the quarter (Out of covered period) (Exhibits "P-97-a" to "P-97-bo")	₱ 5,197,337.06	₱ 10,587,335.09	₱ 15,784,672.15
"P-98"	Zero-rated sale of goods which are properly supported by VAT zero-rated invoice/zero-rated sale of services which are properly supported by VAT zero-rated OR but with manually written dates (Exhibits "P-98-a")	9,553,571.42	-	9,553,571.42
"P-99"	Zero-rated sale of goods supported by documents other than VAT zero-rated invoice (Exhibits "P-99-a" to "P-99-m")	1,769,661.58	1,375,184.00	3,144,845.58
"P-100"	Zero-rated sale of services supported by documents other than VAT zero-rated OR (Exhibits "P-100-a" to "P-100-sm")	4,363,921.98	6,148,390.56	10,512,312.54
"P-101"	Zero-rated sale of goods which are properly supported by VAT zero-rated invoice but without VAT zero-rating stamp (Exhibits "P-101-a" to "P-101-g")	266,104.12	369,472.00	635,576.12
"P-102"	Zero-rated sale of goods which are properly supported by VAT zero-rated invoice but without VAT zero-rating incentive certificate provided (Exhibits "P-102-a")	-	1,705,357.14	1,705,357.14
"P-103"	Without supporting documents presented	10,144,463.29	11,924,723.13	22,069,186.42
	TOTAL	**₱ 31,295,059.45**	**₱ 32,110,461.92**	**₱63,405,521.37**

[72] Exhibit "P-59".
[73] Exhibits "P-92-a" to "P-92-bdh", "P-93-a" to "P-93-gt", "P-94-a" to "P-94-dw", "P-95-a" to "P-95-f", "P-96-a", "P-97-a" to "P-97-bo", "P-98-a", "P-99-a" to "P-99-m", "P-100-a" to "P-100-sm", "P-101-a" to "P-101-g", "P-102-a", "P-103", "P-104-a" to "P-104-ad", "P-105-a" to "P-105-d", and "P-106-a" to "P-106-c".
[74] Exhibit "P-51" (No. 11, pp. 11-12).

In addition, petitioner's claimed zero-rated sales in the amount of ₱147,931,323.97 shall also be denied VAT zero-rating due to the following reasons:

Date[75]	Exhibit No.	Document No.	Customer Name	Amount
1. Sales of goods supported by VAT zero-rated invoices to entities allegedly registered with BCDA but the supporting Clark Development Corporation (CDC) Certificates of registration and tax exemption are mere photocopies of the document. (See Annex II, No. 4, p. 3 of Exhibit "P-51")				
1st Quarter				
04/01/2015	"P-94-bd"	MAP11575A	Trans Asia Construction Devt. Corp.	₱ 15,704.00
04/27/2015	"P-94-be"	HAX42759	Eaglesky Technology Amusement and Gaming Inc.	9,070.00
04/27/2015	"P-94-bf"	HAX42760	Eaglesky Technology Amusement and Gaming Inc.	9,070.00
05/25/2015	"P-94-bg"	HAX40814	Eaglesky Technology Amusement and Gaming Inc.	4,990.00
05/25/2015	"P-94-bh"	HAX40815	Eaglesky Technology Amusement and Gaming Inc.	4,990.00
			Subtotal	*₱ 43,824.00*
2nd Quarter				
07/09/2015	"P-94-dv"	HAX43063	Eaglesky Technology Amusement and Gaming Inc.	₱ 13,180.00
07/09/2015	"P-94-dw"	HAX43064	Eaglesky Technology Amusement and Gaming Inc.	13,180.00
			Subtotal	*₱ 26,360.00*
			TOTAL - No. 1	*₱ 70,184.00*
2. Sales of services, which as stated earlier, failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.				
1st Quarter				
04/28/2015	"P-95-a"	BU4-00373	Marubeni Corporation	₱ 3,807,142.80
06/18/2015	"P-95-b"	BU4-00377	Marubeni Corporation	13,196,202.76
			Subtotal	*₱ 17,003,345.56*
2nd Quarter				
07/09/2015	"P-95-c"	BU4-01463	Marubeni Corporation	₱ 401,438.20
09/16/2015	"P-95-d"	BU4-01506	Hyundai Corporation	228,819.69
09/17/2015	"P-95-e"	BU4-01507	Marubeni Corporation	30,586,094.62
09/21/2015	"P-95-f"	BU4-01511	Marubeni Corporation	86,790,162.24
06/04/2015	"P-96-a"	BU4-00376	Bomag GMBH	1,448,280.00
			Subtotal	*₱ 119,454,794.75*
			TOTAL - No. 2	*₱ 136,458,140.31*
3. Sales of goods supported by VAT zero-rated sales invoices with unreadable details.				
1st Quarter				
Date	**Exhibit No.**	**Invoice No**	**Customer Name**	**Amount**
04/27/2015	"P-92-fw"	MSP12358O	Fcf Minerals Corporation	₱ 350.00
05/04/2015	"P-92-ij"	MSP12180B-2	Phil. Gold Processing & Refining Corp.	7,129.74
05/06/2015	"P-92-il"	MSP12182-83N-1	Berong Nickel Corporation	731,680.00
05/06/2015	"P-92-iu"	MSP12192O	Fcf Minerals Corporation	58.93
05/06/2015	"P-92-ix"	MSP12195B	Phil. Gold Processing & Refining Corp.	19,286.55
05/06/2015	"P-92-jc"	MSP12184-89R-1	Rio Tuba Nickel Mining Corp.	588,761.60
05/06/2015		MSP12184-89R-2	Rio Tuba Nickel Mining Corp.	45,608.00
05/06/2015		MSP12184-89R-3	Rio Tuba Nickel Mining Corp.	2,888.00
05/18/2015	"P-92-lb"	BTNP-07211T	Hinatuan Mining Corporation	66,512.00
06/24/2015	"P-92-vc"	MSP13301-13303R	Rio Tuba Nickel Mining Corp.	281,296.00
06/30/2015	"P-92-xm"	MSP13243R	Rio Tuba Nickel Mining Corp.	450,960.00
06/30/2015	"P-92-xn"	MSP13244R	Rio Tuba Nickel Mining Corp.	384,664.00
06/30/2015	"P-92-xo"	MSP13245R	Rio Tuba Nickel Mining Corp.	366,128.00
04/22/2015	"P-93-o"	CBUP15312	Phil. Makoto Corporation	6,128.00
05/25/2015	"P-93-bq"	MAP12826A	Scad Services (S) Pte, Ltd	1,747.00
05/06/2015	"P-94-ab"	MAP12282A	Biglift Properties And Dev'T Corporation	12,168.00
			Subtotal	*₱ 2,965,365.82*
2nd Quarter				
07/01/2015	"P-92-xp"	BTNP-07553C-1	Adnama Mining Resources Inc.	₱ 11,144.00
07/01/2015	"P-92-xq"	MSP13247N-1	Berong Nickel Corporation	1,379,808.00
07/01/2015	"P-92-xr"	MSP13249N-1	Berong Nickel Corporation	14,432.00
07/01/2015	"P-92-ym"	BTNP-07754L-1	Century Peak Corporation	31,040.00
07/01/2015		BTNP-07754L-2	Century Peak Corporation	11,680.00

[75] Expressed in mm/dd/yyyy.

07/01/2015	"P-92-yo"	BTNP-07552C-1	Ctp Construction & Mining Corp.	10,354.00
07/01/2015	"P-92-ys"	BTNP-07557C-1	Marcventures Mining And Development Corporation	38,400.00
07/02/2015	"P-92-zg"	BTNP-07559C-61C-1	Ctp Construction & Mining Corp.	24,072.00
07/02/2015	"P-92-zh"	BTNP-07562L	Krominco Inc.	40,096.00
07/02/2015	"P-92-zi"	BTNP-07563C	Marcventures Mining And Development Corporation	136,552.00
07/03/2015	"P-92-zp"	BTNP-07567C-1	Ctp Construction & Mining Corp.	8,288.00
07/03/2015	"P-92-zq"	BTNP-07568C	Ctp Construction & Mining Corp.	16,216.00
07/03/2015	"P-92-zr"	BTNP-07569C-1	Ctp Construction & Mining Corp.	3,432.00
07/03/2015	"P-92-zs"	BTNP-07570C-1	Ctp Construction & Mining Corp.	39,274.00
07/03/2015	"P-92-zw"	MSP13257O-1	Fcf Minerals Corporation	183,000.00
07/06/2015	"P-92-aal"	BTNP-07571C	Marcventures Mining And Development Corporation	10,784.00
07/07/2015	"P-92-aas"	MSP13281N-1	Berong Nickel Corporation	99,288.00
07/15/2015	"P-92-adu"	BTNP-07595C	Adnama Mining Resources Inc.	32,784.00
07/15/2015	"P-92-adv"	MHP16103C-1	Carmen Copper Corp.	41,520.00
07/15/2015	"P-92-aec"	MHP16112C	Carmen Copper Corp.	4,184.00
07/15/2015	"P-92-aen"	BTNP-07592C	Ctp Construction & Mining Corp.	13,312.00
07/15/2015	"P-92-aeo"	BTNP-07593C-1	Ctp Construction & Mining Corp.	12,664.00
07/15/2015	"P-92-aep"	BTNP-07597C	Ctp Construction & Mining Corp.	23,864.00
07/15/2015	"P-92-aew"	BTNP-07599P	Platinum Group Metals Corp.	36,096.17
07/16/2015	"P-92-afa"	BTNP-07729C-30C-1	Ctp Construction & Mining Corp.	82,503.90
07/18/2015	"P-92-afb"	BTNP-07529T	Taganito Mining Corp.	1,546,670.40
07/20/2015	"P-92-afc"	BTNP-07733C	Adnama Mining Resources Inc.	3,840.00
07/20/2015	"P-92-afd"	BTNP-07735C	Adnama Mining Resources Inc.	76,120.92
07/20/2015	"P-92-afe"	BTNP-07737C	Adnama Mining Resources Inc.	76,120.92
07/21/2015	"P-92-afz"	BTNP-07760C-61C-1	Ctp Construction & Mining Corp.	76,080.00
07/22/2015	"P-92-agc"	BTNP-07761C-1	Adnama Mining Resources Inc.	6,832.00
07/24/2015	"P-92-agy"	BTNP-07547T	Hinatuan Mining Corporation	60,008.00
07/27/2015	"P-92-ahh"	BTNP-07777C-78C-1	Ctp Construction & Mining Corp.	100,912.00
07/27/2015	"P-92-aho"	BTNP-07786C	Marcventures Mining And Development Corporation	14,616.00
08/03/2015	"P-92-ajy"	MHP16226-27C-1	Carmen Copper Corp.	1,775,830.00
08/03/2015	"P-92-aki"	BTNP-07669C-1	Marcventures Mining And Development Corporation	109,442.56
08/04/2015	"P-92-akj"	BTNP-07678C	Adnama Mining Resources Inc.	20,704.00
08/05/2015	"P-92-akz"	BTNP-07685C	Adnama Mining Resources Inc.	77,600.00
08/05/2015	"P-92-alb"	BTNP-07681C-1	Ctp Construction & Mining Corp.	46,296.00
08/05/2015		BTNP-07681C-2	Ctp Construction & Mining Corp.	10,000.00
08/05/2015	"P-92-alc"	BTNP-07682C-83C-1	Ctp Construction & Mining Corp.	11,600.00
08/05/2015		BTNP-07682C-83C-2	Ctp Construction & Mining Corp.	96,176.00
08/05/2015	"P-92-ald"	BTNP-07686C	Ctp Construction & Mining Corp.	11,096.00
08/05/2015	"P-92-ale"	BTNP-07688C-89C-1	Ctp Construction & Mining Corp.	132,719.90
08/05/2015	"P-92-alf"	BTNP-07690C-91C-1	Ctp Construction & Mining Corp.	87,075.90
08/05/2015	"P-92-all"	MSP14066O-1	Fcf Minerals Corporation	27,510.00
08/06/2015	"P-92-amf"	BTNP-07692C-1	Ctp Construction & Mining Corp.	15,720.00
08/06/2015	"P-92-amg"	BTNP-07695C	Ctp Construction & Mining Corp.	12,104.00
08/18/2015	"P-92-ape"	CBUP16319	Adnama Mining Resources Inc.	4,658.00
08/27/2015	"P-92-aru"	MSP14225-26N-1	Berong Nickel Corporation	541,376.00
09/11/2015	"P-92-avz"	MSP14806-08N-2	Berong Nickel Corporation	233,752.00
09/14/2015	"P-92-awk"	CBUP16453	Adnama Mining Resources Inc.	4,446.00
09/15/2015	"P-92-awy"	CBUP16454	Adnama Mining Resources Inc.	6,714.00
09/21/2015	"P-92-ayu"	CBUP16488	Adnama Mining Resources Inc.	7,785.00
09/24/2015	"P-92-bau"	BTNP-08040T-44T	Cagdianao Mining Corporation	694,368.00
07/09/2015	"P-93-dp"	MAP13426A	House Technology Industries Pte., Ltd.	3,434.00
07/15/2015	"P-93-ei"	MAP13513A	Scad Services (S) Pte, Ltd	14,772.00
07/16/2015	"P-93-ej"	MAP13517A	Majestic Landscape Corporation	2,384.00
07/16/2015	"P-93-ek"	MAP13515A	Scad Services (S) Pte, Ltd	1,326.00
07/16/2015	"P-93-el"	MAP13516A	Scad Services (S) Pte, Ltd	5,898.00
07/20/2015	"P-93-ep"	BTNP-07734P-1	Taganito Hpal Nickel Corporation	34,656.00
07/21/2015	"P-93-eq"	BTNP-07762P-1	Taganito Hpal Nickel Corporation	34,656.00
08/27/2015	"P-93-fo"	CBUP16343-1	Phil. Ass. Smelting & Ref.Corp	12,665.00
08/27/2015	"P-93-fp"	CBUP16347-1	Phil. Ass. Smelting & Ref.Corp	27,552.00
08/27/2015	"P-93-fs"	MAP14389A-1	Wu Kong Singapore Pte. Ltd	8,738.00
08/27/2015		MAP14389A-2	Wu Kong Singapore Pte. Ltd	4,086.00
08/27/2015	"P-93-ft"	MAP14390A-1	Wu Kong Singapore Pte. Ltd	3,286.00
08/27/2015		MAP14390A-2	Wu Kong Singapore Pte. Ltd	9,457.00
08/27/2015	"P-93-fu"	MAP14391A-1	Wu Kong Singapore Pte. Ltd	11,180.09

08/27/2015		MAP14391A-2	Wu Kong Singapore Pte. Ltd	11,652.00
08/04/2015	"P-94-ch"	BTNP-07680P	Subic Consolidated Projects, Inc.	58,930.08
			Subtotal	*₱ 8,437,633.84*
			TOTAL - No. 3	*₱ 11,402,999.66*
			TOTAL - 1st Quarter	₱ 20,012,535.38
			TOTAL - 2nd Quarter	127,918,788.59
			GRAND TOTAL	**₱ 147,931,323.97**

In sum, out of the total reported zero-rated sales of ₱924,347,373.08 only the amount of ₱713,010,527.74, as computed below, qualify for VAT zero-rating for the 1st and 2nd quarters of FY 2016:

FY 2016	1st Quarter	2nd Quarter	Total
Total Reported Zero-Rated Sales	₱ 573,817,686.51	₱ 350,529,686.57	₱ 924,347,373.08
Less: Sales denied of VAT zero-rating			
Per ICPA *Report*	31,295,059.45	32,110,461.92	63,405,521.37
Per Court's further verification	20,012,535.38	127,918,788.59	147,931,323.97
Valid Zero-Rated Sales	**₱ 522,510,091.68**	**₱ 190,500,436.06**	**₱713,010,527.74**

Thus, for purposes of the *fourth* requisite, the Court finds that petitioner had VAT zero-rated sales in the said amount of ₱713,010,527.74 for the 1st and 2nd quarters of FY 2016.

As for the *fifth* requisite, which is to the effect that petitioner must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations under **Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2),** all of the NIRC of 1997, as amended, since the legal basis for petitioner's zero-rated sales of ₱713,010,527.74 is **Section 106(A)(2)(a)(3), (5) and (c)** of the NIRC of 1997, as amended, the instant case need not comply with the said *fifth* requisite. In this connection, while petitioner alleges that it has sales of services to certain non-resident foreign corporations, the Court need **not** determine whether there was compliance with the same *fifth* requisite, since it was not duly proven, as *above* shown, that the said sales of services qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Having found that petitioner had valid zero-rated sales in the total amount of ₱713,010,527.74 for the subject period of claim, the Court shall then proceed to determine whether petitioner complied with the following remaining requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate:

a. *sixth* requisite: the input taxes are not transitional input taxes;
b. *seventh* requisite: the input taxes are due or paid;
c. *eighth* requisite: 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 attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

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

The input VAT being claimed do not appear to be transitional input taxes.

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

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[76]

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

Not all of the input VAT being claimed are due or paid.

Anent the *seventh requisite* in claiming VAT refund, it is important for petitioner to provide supporting documents to prove the input taxes claimed

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

during the 1st and 2nd quarters of FY 2016 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) 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 (₱1,000,000): 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*, 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 Sections 4.110-1 to 4.110-3 of RR No. 16-2005, which provides as follows:

> "SECTION 4.110-1. *Credits For Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.
>
> It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.
>
> 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;

xxx xxx xxx

SECTION 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;

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

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

SECTION 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 (₱1,000,000.00), 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 (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

xxx xxx xxx

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations."

Furthermore, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits on domestic 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.

It is categorically mentioned in the above provisions that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods or properties) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, which was quoted earlier.

Thus, in order to prove entitlement to credits for input taxes due or paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but more importantly, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

For the 1st and 2nd quarters of FY 2016, petitioner declared input taxes in the total amount of ₱304,447,090.71, out of which the amount of ₱66,647,287.09 is the subject of petitioner's claim for refund, to wit:

Input taxes as declared per Amended Quarterly VAT Returns:[77]

Exhibit No.	"P-22"	"P-23"	
Period	**1st Quarter**	**2nd Quarter**	**Total**
Input Tax Deferred on Capital Goods exceeding P1Million from Previous Quarter *(Line 20B)*	₱ 1,755,632.72	₱ 1,560,417.26[78]	₱ 3,316,049.98

[77] Exhibits "P-22"and "P-23", Docket – Vol. 3, pp. 1209 to 1212.
[78] With a difference of ₱0.02 from previous quarter amount.

Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for succeeding period *(Line 23A)*	(1,560,417.24)	(1,365,201.69)	(2,925,618.93)
Input tax Amortized for the period	**₱ 195,215.48**	**₱ 195,215.57**	**₱ 390,431.05**
Add: Current Input Taxes			
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 3,056,398.55	₱ 2,509,940.54	₱ 5,566,339.09
Importation of Goods Other than Capital Goods *(Line 21H)*	182,616,627.00	105,482,337.00	288,098,964.00
Domestic Purchase of Services *(Line 21J)*	5,372,058.34	5,019,298.23	10,391,356.57
Total Current Input Tax	**₱ 191,045,083.89**	**₱ 113,011,575.77**	**₱ 304,056,659.66**
Total Input Taxes for the period	**₱ 191,240,299.37**	**₱ 113,206,791.34**	**₱ 304,447,090.71**

Input taxes as per subject claim:[79]

	1st Quarter	2nd Quarter	Total
Total Input Taxes for the period	₱ 191,240,299.37	₱ 113,206,791.34	₱ 304,447,090.71
Less: Input tax on VATable sale of machineries from current purchases	46,185,462.61	14,036,333.38	60,221,795.99
Input tax on zero-rated sale of machineries from current purchases	31,484,899.22	1,298,282.11	32,783,181.33
Input tax directly identified and allocable to government sales	1,023,599.80	130,440.14	1,154,039.94
Input tax on current purchase of machineries not sold within the quarter	70,542,580.17	55,415,086.51	125,957,666.68
Total common input tax allocable to VATable and VAT zero-rated sales	₱ 42,003,757.57	₱ 42,326,649.21[80]	₱ 84,330,406.78
Multiply by zero-rated sales	573,817,686.51	350,529,686.57	
Divide by total sales	1,818,107,814.54	1,383,229,895.09	
Common input tax allocated to zero-rated sales	₱ 13,256,914.03	₱ 10,726,161.38	₱ 23,983,075.41
Add: Input tax directly related to zero-rated sale of machineries which were imported and sold in current period	31,484,899.22	1,298,282.11	32,783,181.33
Input tax directly related to zero-rated sale of machineries which were imported in prior years but sold only this quarter	9,319,761.35	561,269.00	9,881,030.35
Total input tax claimed for refund/TCC	**₱ 54,061,574.60**	**₱ 12,585,712.49**	**₱ 66,647,287.09**

[79] Petition for Review (paragraphs 90 to 103), Docket - Vol. 1, pp. 41 to 44.
[80] With a difference of ₱0.01 per actual footing.

In support of its input taxes due or paid, petitioner submitted various sales invoices, ORs, Import Entry and Internal Revenue Declarations (IEIRDs), Bureau of Customs (BOC) Single Administrative Document (SAD), Statements of Settlement of Duties and Taxes (SSDTs), BOC ORs, and other related documents,[81] which were examined by the ICPA.

Summarized below are the current input taxes for the 1st and 2nd quarters of FY 2016 in the total amount of ₱304,056,660.21[82], as accounted for by the ICPA:[83]

	1st Quarter	2nd Quarter	Total	Exhibit No.
A. Input tax on the current quarter's importations directly related to VATable sale of machineries in the same quarter	₱ 46,185,462.61	₱ 14,036,333.38	₱60,221,795.99	"P-60" to "P-63"
B. Input tax on the current quarter's importations directly related to zero-rated sale of machineries in the same quarter	31,484,899.22	1,298,282.11	32,783,181.33	"P-64" to "P-67"
C. Input tax on current purchase of machineries not sold within the quarter	70,542,580.17	55,415,086.51	125,957,666.68	"P-68" to "P-72"
D. Common input tax to be allocated between VATable and zero-rated sales				
a. Input tax on current quarter's importations	₱ 34,403,685.00	₱ 34,732,635.51	₱ 69,136,320.51	"P-73" to "P-78"
b. Input tax on current quarter's domestic purchases	8,428,457.01	7,529,238.69	15,957,695.70	"P-79" to "P-89"
Subtotal	₱ 42,832,142.01	₱ 42,261,874.20	₱ 85,094,016.21	
Total	**₱191,045,084.01**	**₱113,011,576.20**	**₱304,056,660.21**	

[81] Exhibits "P-64-a" to "P-64-h", "P-65-a" to "P-65-b", "P-66-a" to "P-66-d", "P-67-a", "P-68-a" to "P-68-cg", "P-69-a" to "P-69-t", "P-70-a", "P-71-a" to "P-71-r", "P-72-a" to "P-72-f", "P-73-a" to "P-73-cv", "P-74-a" to "P-74-jo", "P-77-a" to "P-77-ac", "P-78-a" to "P-78-l", "P-79-a" to "P-79-aha", "P-80-a" to "P-80-do", "P-81-a" to "P-81-yk", "P-82-a" to "P-82-kq", "P-83-a" to "P-83-ep", "P-84-a" to "P-84-jj", "P-85-a" to "P-85-aid", "P-86-a" to "P-86-rx", "P-87-a" to "P-87-de", "P-88-a" to "P-88-ai", "P-90-a" to "P-90-v", and "P-91-a" to "P-91-c".
[82] With ₱0.55 difference against reported input VAT of ₱304,447,090.71 per Amended Quarterly VAT Returns.
[83] Exhibit "P-51", Part 1 of 4 (Nos. 1 to 4), pp. 3 to 7; Parts 2 and 3 of 4.

As per ICPA *Report*, the input VAT in the amount of ₱167,440,308.05[84] shall be disallowed for failure to meet the substantiation requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended:

Exhibit No.	Description	1st Quarter	2nd Quarter	Total
A. Input tax on the current quarter's importations directly related to VATable sale of machineries in the same quarter				
"P-61"	Supported by IEIRDs/SADs* and traced to E2M Schedule (Exhibits "P-61-a" to "P-61-c")	₱ 797,472.00	₱ 1,614,502.89	₱ 2,411,974.89
"P-63"	Supported by IEIRDs/SAD and traced to E2M but dated in the prior quarters not falling in the same taxable year and the input tax is recognized only once (Exhibits "P-63-a" to "P-63-d")	25,082,446.76	-	25,082,446.76
Total – A		**₱ 25,879,918.76**	**₱ 1,614,502.89**	**₱ 27,494,421.65**
B. Input tax on the current quarter's importations directly related to zero-rated sale of machineries in the same quarter				
"P-64-g"	Supported by IEIRDs/SAD and SSDTs and traced to E2M Schedule which pertain to zero-rated sales without the pertinent VAT zero-rating certificates[85]	₱ -	₱ 133,520.66	₱ 133,520.66
"P-65"	Supported by IEIRDs/SAD* and traced to E2M Schedule (Exhibits "P-65-a" to "P-65-b")	30,256,710.00	-	30,256,710.00
"P-67"	Supported by IEIRDs/SAD and traced to E2M but dated in the prior quarters not falling in the same taxable year and the input tax is recognized only once (Exhibit "P-67-a")	564,651.22	-	564,651.22
Total – B		**₱ 30,821,361.22**	**₱ 133,520.66**	**₱ 30,954,881.88**
C. Input tax on current purchase of machineries not sold within the quarter				
"P-69"	Supported by IEIRDs/SAD* and traced to E2M schedule (Exhibits "P-69-a" to "P-69-t")	₱ 12,734,997.00	₱ 8,354,095.11	₱ 21,089,092.11
"P-72"	Supported by IEIRDs/SAD and traced to E2M schedule but dated in prior quarters not falling within the same taxable year and the input tax is recognized only once (Exhibits "P-72-a" to "P-72-f")	15,549,841.02	-	15,549,841.02
Total – C		**₱ 28,284,838.02**	**₱ 8,354,095.11**	**₱ 36,638,933.13**
D. Common input tax to be allocated between VATable and zero-rated sales				
a. Input tax on current quarter's importations				
"P-74"	Supported by IEIRDs/SAD* and traced to E2M schedule (Exhibits "P-74-a" to "P-74-jo")	₱ 20,341,430.25	₱ 27,989,122.51	₱ 48,330,552.76
"P-75"	Traced to E2M schedule only	1,801,386.75	880,180.00	2,681,566.75

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[84] Exhibit "P-51", Part 1 of 4 (Nos. 1 to 4), pp. 3 to 7; Parts 2 and 3 of 4.
[85] Exhibit "P-51", Part 1 of 4 (No. 12), p. 12.

"P-76"	Supported by incomplete IEIRD/SAD and traced to E2M schedule but dated in prior quarters not falling within the same taxable year and the input tax is recognized only once	1,412,836.05	379,671.00	1,792,507.05
"P-77"	Supported by IEIRDs/SAD* and traced to E2M schedule dated in prior quarters falling within the same taxable year and the input tax is recognized only once (Exhibits "P-77-a" to "P-77-ac")	-	5,387,117.00	5,387,117.00
"P-78"	Supported by IEIRDs/SAD and traced to E2M schedule but dated in prior quarters not falling within the same taxable year and the input tax is recognized only once (Exhibits "P-78-a" to "P-78-l")	3,367,949.95	16,445.00	3,384,394.95
	Subtotal (on importations)	**₱ 26,923,603.00**	**₱34,652,535.51**	**₱ 61,576,138.51**
b. Input tax on current quarter's domestic purchases				
"P-81"	Domestic purchase of goods not properly supported by VAT invoice/purchase of services not properly supported by VAT OR (Exhibits "P-81-a" to "P-81-yk")	₱ 942,586.67	₱ 1,038,788.96	₱ 1,981,375.63
"P-82"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR but not dated within the same taxable year or dated in the subsequent quarter (Exhibits "P-82-a" to "P-82-kq")	487,374.60	291,928.24	779,302.84
"P-83"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR but without date (Exhibits "P-83-a" to "P-83-cp")	39,924.63	7,991.44	47,916.07
"P-84"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR but without valid Authority to Print (ATP) (Exhibits "P-84-a" to "P-84-jj")	84,991.57	195,328.44	280,320.01
"P-85"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR with missing and/or incorrect Company name (Exhibits "P-85-a" to "P-85-aid")	69,576.72	196,571.58	266,148.30
"P-86"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR with missing and/or incorrect TIN (Exhibits "P-86-a" to "P-86-rx")	594,058.10	742,307.35	1,336,365.45
"P-87"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR with missing and/or incorrect registered address	178,539.93	207,397.27	385,937.20

	(Exhibits "P-87-a" to "P-87-de")			
"P-88"	Domestic purchase of goods supported by VAT invoice/purchase of services supported by VAT OR with a note "This document is not valid for claiming input taxes" (Exhibits "P-88-a" to "P-88-ai")	116,292.59	92,403.12	208,695.71
"P-89"	Domestic purchases without supporting invoices/ORs presented	3,291,268.82	2,198,602.85	5,489,871.67
	Subtotal (on domestic purchases)	**₱ 5,804,613.63**	**₱ 4,971,319.25**	**₱ 10,775,932.88**
Total Common Input Tax - D		**₱ 32,728,216.63**	**₱39,623,854.76**	**₱ 72,352,071.39**
Grand Total		**₱117,714,334.63**	**₱49,725,973.42**	**₱167,440,308.05**

**IEIRDs/SADs are without machine validation.*

In addition to the above disallowances, the input VAT in the amount of ₱611,915.53 shall, likewise, be disallowed for failure to meet the substantiation and invoicing requirements under the aforementioned VAT law and regulations:

1st Quarter					
Date[86]	**Exhibit No.**	**Invoice Receipt No**	**Registered Name**	**Amount**	**Input VAT**
D. b. Common input tax on current quarter's domestic purchases to be allocated between VATable and zero-rated sales					
The address of the petitioner is not indicated in the invoice/receipt					
21/05/2015	"P-79-kq"	NL-L005184285-3	Philippine Port Authority	₱ 519.33	₱ 62.32
Subtotal				***₱ 519.33***	***₱ 62.32***
The TIN of the petitioner is not indicated in the invoice/receipt					
04/05/2015	"P-79-em"	7361799 7361798 7361800	Cagayan Electric Power And Light Co Inc	₱ 3,195.75	₱ 383.49
04/05/2015	"P-79-ew"	2038	Xoom Auto Gaz Inc.	312.50	37.50
14/05/2015	"P-79-ho"	MLA2-0000062100 MLA2-0000062101 MLA2-0000062099 MLA2-0000062098	Charter Ping An Insurance Corporation	118,950.00	14,274.00
19/05/2015	"P-79-jl"	2486036	Manila Electric Company	57,236.83	6,868.42
25/05/2015	"P-79-lh"	93628	Kintetsu World Express (Philippines) Inc.	1,200.00	144.00
27/05/2015	"P-79-lx"	S1023726	Toyota Isabela Inc	3,936.08	472.33
28/05/2015	"P-79-mb"	397206	Bayan Telecommunications Inc	11,606.25	1,392.75
28/05/2015	"P-79-mt"	2000291851	Petron Corporation (Petron Fleet Card)	446,492.75	53,579.13
03/06/2015	"P-79-nx"	BK0001590322	Manila Electric Company	80,496.83	9,659.62
04/06/2015	"P-79-oh"	81831 81832	Gakken (Philippines), Inc.	101,783.92	12,214.07
04/06/2015	"P-79-om"	3000	Nelly Go Ilizon	85,359.58	10,243.15
11/06/2015	"P-79-ps"	MLA2-0000063969	Charter Ping An Insurance Corporation	3,155.25	378.63
13/06/2015	"P-79-qg"	BUT0186826	Lbc Express	165.18	19.82
15/06/2015	"P-79-qj"	4797	I Nav Philippines Corp	23,035.75	2,764.29
16/06/2015	"P-79-qq"	BUT0187216	Lbc Express	165.18	19.82
18/06/2015	"P-79-qu"	A-8169659	Cagayan Electric Power And	4,461.42	535.37

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[86] Expressed in dd/mm/yyyy.

		A-8169658 A-8169660	Light Co Inc		
Subtotal				***₱941,553.27***	***₱112,986.39***
The address and TIN of the petitioner are not indicated in the invoice/receipt					
07/04/2015	"P-79-d"	11590	88 Plaza Hotel, Inc	₱ 616.08	₱ 73.93
Subtotal				***₱ 616.08***	***₱ 73.93***
The TIN of the petitioner is not indicated in the invoice/receipt and the VAT component is not separately indicated in the invoice/receipt					
29/04/2015	"P-79-do"	904	I Car Trucking And Services	₱ 6,250.00	₱ 750.00
30/04/2015	"P-79-ei"	63926	T A Fresco Corp	10,321.42	1,238.57
13/05/2015	"P-79-hk"	62216	Yale Hardware Corp	250,000.00	30,000.00
22/05/2015	"P-79-lb"	63650	U-Freight Cargo Philippines, Inc.	1,400.00	168.00
Subtotal				***₱267,971.42***	***₱32,156.57***
The details in the invoice/receipt are unreadable					
17/04/2015	"P-79-ak"	ACC091000131276	Lbc Express	₱ 156.25	₱ 18.75
24/04/2015	"P-79-cr"	CND01166398	Lbc Express	93.75	11.25
28/04/2015	"P-79-dg"	QZA0167748	Lbc Express	160.75	19.29
28/04/2015	"P-79-dh"	1995741	People S Air Cargo And Warehousing Co Inc	2,238.75	268.65
29/04/2015	"P-79-dp"	CTI0120616 CTI0120615	Lbc Express	200.92	24.11
04/05/2015	"P-79-en"	BUT0181083 BUT0181351 BUT0181787	Lbc Express	464.25	55.71
18/05/2015	"P-79-jc"	35922	Galleon Enterprises	888.42	106.61
05/06/2015	"P-79-oz"	4794	I Nav Philippines Corp	23,035.75	2,764.29
18/06/2015	"P-79-qy"	1578084	Manila Electric Company	60,360.25	7,243.23
18/06/2015	"P-79-qz"	5874	Maple Leaf Movers Inc	31,250.00	3,750.00
Subtotal				***₱118,849.09***	***₱14,261.89***
The VAT component is not separately indicated in the invoice/receipt					
21/04/2015	"P-79-bl"	96004	Stronghold Hardware	₱ 464.29	₱ 55.71
22/04/2015	"P-79-bq"	35568	Nikkie Pollution Test Co.	446.42	53.57
23/04/2015	"P-79-cm"	10007	Uy, Leoncio S. - Prop. (Deal Freight Services)	20,089.25	2,410.71
11/05/2015	"P-79-ge"	915	I Car Trucking And Services	22,321.42	2,678.57
12/05/2015	"P-79-gl"	197784	Ambida, Maria Minda F. - Prop. (Carrascal Refilling Station)	1,785.75	214.29
13/05/2015	"P-79-gv"	784	Cagayan Valley Battery Sales Inc	964.25	115.71
14/05/2015	"P-79-ht"	5857	MAPLE LEAF MOVERS INC	13,392.83	1,607.14
14/05/2015	"P-79-ib"	11611	Mendez System Maintenance And Manpower Services	4,992.50	599.10
17/05/2015	"P-79-iw"	1434681	Co, Freddie Lim (7411 General Merchandise)	964.29	115.71
18/05/2015	"P-79-jh"	5385	The Margarette Business Hotel	1,272.33	152.68
27/05/2015	"P-79-ls"	69354 69353	Pangasinan Regency Corp	2,008.92	241.07
28/05/2015	"P-79-nc"	14056	Vidona Hotel And Restaurant, Inc. (Lewana Lodge)	1,071.42	128.57
04/06/2015	"P-79-of"	4498	Fivestar Cargo Services Inc	88,773.33	10,652.80
14/06/2015	"P-79-qi"	21439	Valencia Business Pioneers, Inc. (Valencia Taifan Restaurant)	870.50	104.46
18/06/2015	"P-79-re"	41809-30455	Transcontainer Tel Philippines Inc	2,492.83	299.14
18/06/2015	"P-79-re"	41809-31671	Transcontainer Tel Philippines Inc	2,492.83	299.14
18/06/2015	"P-79-re"	41809-32249	Transcontainer Tel Philippines Inc	3,314.25	397.71

18/06/2015	"P-79-re"	41809-32783	Transcontainer Tel Philippines Inc	2,833.42	340.01
25/06/2015	"P-79-ro"	31	Bsm Heavy Equipment Technical Services Inc.	32,000.00	3,840.00
25/06/2015	"P-79-ru"	0508-X4V1502627-1	Ong, Jester Jude A (Ladriano Enterprises)	74,959.83	8,995.18
25/06/2015	"P-79-ru"	0508-X4V1502627-2	Ong, Jester Jude A (Ladriano Enterprises)	19,642.83	2,357.14
Subtotal				***₱ 297,153.49***	***₱ 35,658.41***
Total - 1st Quarter - D. b.				**₱1,626,662.68**	**₱195,199.51**
Input tax on purchase of capital goods exceeding P1Million amortized for the period					
Without supporting documents					₱ 195,215.48
Total - 1st Quarter - input tax on purchase of capital goods exceeding P1Million amortized for the period					**₱195,215.48**
TOTAL - 1st Quarter - D. b. & input tax on purchase of capital goods exceeding P1Million amortized for the period					**₱390,414.99**
2nd Quarter					
D. b. Common input tax on current quarter's domestic purchases to be allocated between VATable and zero-rated sales					
The details in the invoice/receipt are unreadable					
07/09/2015	"P-79-acb"	GACH1214001OR0070319	Globe Telecom Inc.	₱ 238.25	₱ 28.59
07/09/2015	"P-79-acc"	GACH1214001OR0070320	Globe Telecom Inc.	2,223.78	266.85
10/06/2015	"P-80-aa"	TLD047716 MAM03121840	Lbc Express	267.86	32.14
17/06/2015	"P-80-ax"	100508	Reynaldo C. Eusebio (Galleon Enterprises)	888.39	106.61
20/06/2015	"P-80-bl"	CT10122817	Lbc Express	98.21	11.79
23/06/2015	"P-80-bz"	SUG02158669	Lbc Express	133.93	16.07
27/06/2015	"P-80-dd"	TLD047716 MAM03121840 TLD048044 TLD048095	Lbc Express	165.18	19.82
30/06/2015	"P-80-do"	2053	Rosemarie M. Baladiang (Palm Wood Pension House)	1,294.64	155.36
Subtotal				***₱ 5,310.24***	***₱ 637.23***
The VAT component is not separately indicated in the invoice/receipt					
01/07/2015	"P-79-sj"	40404	Bustamante, Pia S. (Bay's Inn)	₱ 1,428.57	₱ 171.43
02/07/2015	"P-79-sr"	1327	Unitech Power Corp	23,660.71	2,839.29
06/07/2015	"P-79-tc"	198041	Ambida, Maria Minda Francia (Cantilan Caltex Station)	1,339.29	160.71
11/07/2015	"P-79-uc"	63748	Vicencio, Pablito E.	1,785.71	214.29
18/07/2015	"P-79-vh"	5719	Lim, Rolando E.	1,205.36	144.64
28/07/2015	"P-79-wn"	16299	April Mae I. Bitac (Honey's Hotel And Restaurant)	848.21	101.79
28/07/2015	"P-79-wp"	4385-X4V1504401-1	Dy Teban Trading Incorporated (Dy Teban Hardware & Auto Supply)	3,535.67	424.28
13/08/2015	"P-79-aai"	374	Synergy Global Logistics Solution, Inc.	22,917.92	2,750.15
20/08/2015	"P-79-abj"	1263121	Wide Wide World Express Corporation	2,960.00	355.20
27/08/2015	"P-79-acs"	1009	Sun Trellis Bed & Breakfast Inc	1,428.57	171.43
03/09/2015	"P-79-and"	5895	Maple Leaf Movers Inc	44,642.86	5,357.14
03/09/2015	"P-79-adq"	526	Ong, Jester Jude A (Ladriano Enterprises)	4,464.29	535.71

04/09/2015	"P-79-adv"	38763	I.A.L Enterprises, Inc. (Ormoc Villa Hotel)	2,410.71	289.29
04/09/2015	"P-79-adw"	38767	Ormoc Villa Hotel	2,964.29	355.71
10/09/2015	"P-79-aew"	9141	Sea Worth International Freight Inc	20,000.00	2,400.00
24/09/2015	"P-79-agr"	13292	Gateway Container Line Phils Inc	59,180.00	7,101.60
24/09/2015	"P-79-ags"	1468	Jocelyn A. Terezo (Nutek Advance Phils. Inc)	3,459.82	415.18
31/05/2015	"P-80-l"	5306	Hotel De Susana	891.96	107.04
Subtotal				***₱199,123.94***	***₱23,894.88***
The TIN of the petitioner is not indicated in the invoice/receipt					
01/06/2015	"P-80-n"	14082	Vidona Hotel & Restaurant Inc. (Lewana Lodge)	₱ 1,071.43	₱ 128.57
01/06/2015	"P-80-o"	14083	Vidona Hotel & Restaurant Inc. (Lewana Lodge)	803.57	96.43
02/06/2015	"P-80-p"	OMC0536141	Lbc Express	102.68	12.32
02/06/2015	"P-80-q"	OMC0536142	Lbc Express	98.21	11.79
05/06/2015	"P-80-s"	OMC0536275	Lbc Express	102.68	12.32
05/06/2015	"P-80-t"	OMC0536302	Lbc Express	102.68	12.32
13/06/2015	"P-80-ak"	11561	Boholst, Nerissa M. (Ksc Enterprises)	160.71	19.29
16/06/2015	"P-80-ao"	23780	Adam Gas And Trading Corp	3,214.29	385.71
16/06/2015	"P-80-aq"	76472	Maayo Shipping Inc	270.09	32.41
16/06/2015	"P-80-aq"	0076472-2	Maayo Shipping Inc	270.09	32.41
17/06/2015	"P-80-av"	BR00124610	Lbc Express	93.75	11.25
17/06/2015	"P-80-aw"	CTR01234590 CTR01234903 CTR01235210 CTR01235424	Lbc Express	410.71	49.29
19/06/2015	"P-80-bf"	371500	Lcg Marketing Philippines Corporation	5,150.00	618.00
24/06/2015	"P-80-cd"	BUT0188222	Lbc Express	125.00	15.00
24/06/2015	"P-80-ce"	BUT0188223	Lbc Express	165.18	19.82
29/06/2015	"P-80-di"	VTR0435808	Lbc Express	93.75	11.25
29/06/2015	"P-80-dj"	ACC08154485	Lbc Express	129.46	15.54
Subtotal				***₱ 12,364.28***	***₱ 1,483.72***
The address and TIN of the petitioner is not indicated in the invoice/receipt					
04/06/2015	"P-80-r"	10437 10634	Gabuya, Luisito Uy (Gabuya Enterprises)	₱ 930.36	₱ 111.64
06/06/2015	"P-80-u"	13639	Vismin Gv Hotel Inc (Gv Hotel - Catarman Branch)	602.68	72.32
07/06/2015	"P-80-w"	13663	Vismin Gv Hotel Inc (Gv Hotel - Catarman Branch)	602.68	72.32
Subtotal				***₱ 2,135.72***	***₱ 256.28***
The TIN of the petitioner is not indicated in the invoice/receipt and the VAT component is not separately indicated in the invoice/receipt					
15/06/2015	"P-80-al"	113213	Diadem Terminal Maritime Services & Realty, Inc.	₱ 107.17	₱ 12.86
Subtotal				***₱ 107.17***	***₱ 12.86***
Total - 2nd Quarter -D. b.				**₱219,041.35**	**₱26,284.97**
Input tax on purchase of capital goods exceeding P1Million amortized for the period					
Without supporting documents					₱ 195,215.57
Total - 2nd Quarter - input tax on purchase of capital goods exceeding P1Million amortized for the period					**₱195,215.57**
TOTAL - 2nd Quarter - D. b. & input tax on purchase of capital goods exceeding P1Million amortized for the period					**₱221,500.54**
GRAND TOTAL					**₱611,915.53**

In sum, out of the total input VAT of ₱304,447,091.26[87] for the 1st and 2nd quarters of FY 2016, petitioner was able to substantiate only the amount of ₱136,394,867.68, computed as follows:

Particulars	Total Input VAT	Disallowances Per ICPA Report	Disallowances Per Court's further verification	Substantiated Input VAT
1st Quarter of FY 2016				
A. Input tax on the current quarter's importations directly related to VATable sale of machineries in the same quarter	₱ 46,185,462.61	₱ 25,879,918.76	₱ -	₱ 20,305,543.85
B. Input tax on the current quarter's importations directly related to zero-rated sale of machineries in the same quarter	31,484,899.22	30,821,361.22	-	663,538.00
C. Input tax on current purchase of machineries not sold within the quarter	70,542,580.17	28,284,838.02	-	42,257,742.15
D. Common input tax to be allocated between VATable and zero-rated sales	42,832,142.01	32,728,216.63	195,199.51	9,908,725.87
Input VAT on purchases of capital goods exceeding P1Million amortized for the period	195,215.48	-	195,215.48	-
Subtotal	***₱ 191,240,299.49***	***₱ 117,714,334.63***	***₱ 390,414.99***	***₱ 73,135,549.87***
2nd Quarter of FY 2016				
A. Input tax on the current quarter's importations directly related to VATable sale of machineries in the same quarter	₱ 14,036,333.38	₱ 1,614,502.89	₱ -	₱ 12,421,830.49
B. Input tax on the current quarter's importations directly related to zero-rated sale of machineries in the same quarter	1,298,282.11	133,520.66	-	1,164,761.45
C. Input tax on current purchase of machineries not sold within the quarter	55,415,086.51	8,354,095.11	-	47,060,991.40
D. Common input tax to be allocated between VATable and zero-rated sales	42,261,874.20	39,623,854.76	26,284.97	2,611,734.47
Input VAT on purchases of capital goods exceeding P1Million amortized for the period	195,215.57	-	195,215.57	-
Subtotal	***₱ 113,206,791.77***	***₱ 49,725,973.42***	***₱ 221,500.54***	***₱ 63,259,317.81***
TOTAL	**₱ 304,447,091.26**	**₱ 167,440,308.05**	**₱ 611,915.53**	**₱ 136,394,867.68**

A portion of petitioner's valid input taxes due or paid are attributable to its zero-rated or effectively zero-rated sales

[87] With ₱0.55 difference against reported input VAT of ₱304,447,090.71 per Amended Quarterly VAT Returns.

To reiterate, the *eighth* requisite is to the effect that 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.

Considering that petitioner is engaged in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, and its common input VAT of ₱9,908,725.87 and ₱2,611,734.47 *(item D. above)* for the 1st and 2nd quarters of FY 2016, respectively, cannot be directly or entirely attributed to any of the transactions, the same shall be allocated proportionately on the basis of the volume of its sales for the respective quarters in this wise:

Period (FY 2016)	VAT Sales (a)	Sales to Gov't (b)	Zero-Rated Sales (c)	Total Sales (d = a+b+c)
1st Quarter	₱ 1,231,874,170.67	₱ 12,415,957.36	₱ 573,817,686.51	₱ 1,818,107,814.54
2nd Quarter	1,030,382,576.59	2,317,631.93	350,529,686.57	1,383,229,895.09
1st Quarter Substantiated input VAT attributable to:				
VAT Sales (₱1,231,874,170.67 / ₱1,818,107,814.54 x ₱9,908,725.87)				₱ 6,713,740.17
Sales to Gov't (₱12,415,957.36 / ₱1,818,107,814.54 x ₱9,908,725.87)				67,667.23
Zero-Rated Sales (₱573,817,686.51 / ₱1,818,107,814.54 x ₱9,908,725.87)				3,127,318.47
			Total - 1st Quarter	**₱ 9,908,725.87**
2nd Quarter Substantiated input VAT attributable to:				
VAT Sales (₱1,030,382,576.59 / ₱1,383,229,895.09 x ₱2,611,734.47)				₱ 1,945,508.62
Sales to Gov't (₱2,317,631.93 / ₱1,383,229,895.09 x ₱2,611,734.47)				4,376.02
Zero-Rated Sales (₱350,529,686.57 / ₱1,383,229,895.09 x ₱2,611,734.47)				661,849.83
			Total - 2nd Quarter	**₱ 2,611,734.47**

Petitioner also included in its claim the input VAT amounting to ₱9,881,030.35 which, accordingly, pertains to *"input tax directly related to zero-rated sale of machineries which were imported in prior years but sold only this quarter"*. As per ICPA *Report*, the input VAT in the amount of ₱6,360,518.30 shall be disallowed for the following reasons, to wit:[88]

Exhibit No.	Supporting Documents	1st Quarter	2nd Quarter	Total
"P-90-a"; "P-90-b"	Supported by IEIRDs/SAD and SSDTs and traced to E2M schedule which pertain to zero-rated sales with various documentation issues	₱ 990,464.40	-	₱ 990,464.40
"P-90-q"; "P-90-r"	Supported by IEIRDs/SAD and SSDTs and traced to E2M schedule which pertain to zero-rated sales with various documentation issues	287,764.00	-	287,764.00

[88] Exhibit "P-51", Part 1 of 4 (Nos. 9 and 13), pp. 10 and 12.

"P-91"	Supported by IEIRDs/SAD* and traced to E2M schedule (Exhibits "P-91-a" to "P91-c")	5,082,289.90	-	5,082,289.90
	Total	**₱6,360,518.30**	-	**₱6,360,518.30**

**IEIRDs/SADs are without machine validation.*

Hence, out of the input VAT directly related to zero-rated sale of machineries which were imported in prior years but sold only this quarter of ₱9,881,030.35, only the amounts of ₱2,959,243.05[89] and ₱561,269.00 pertaining to the 1st and 2nd quarters of FY 2016, respectively, or a total of ₱3,520,512.05, were duly supported by IEIRDs/SADs and SSDTs.

In view thereof, petitioner's input VAT directly and indirectly attributable to its zero-rated sales amounted to ₱9,137,979.80, as computed below:

	1st Quarter	**2nd Quarter**	**Total**
Input VAT allocable to zero-rated sales	₱ 3,127,318.47	₱ 661,849.83	₱3,789,168.30
Add: Input VAT directly related to zero-rated sale of machineries which were imported and sold in current period	663,538.00	1,164,761.45	1,828,299.45
Input VAT directly related to zero-rated sale of machineries which were imported in prior years but sold only this quarter	2,959,243.05	561,269.00	3,520,512.05
Total Input VAT attributable to zero-rated sales	**₱ 6,750,099.52**	**₱2,387,880.28**	**₱9,137,979.80**

Petitioner has no excess input VAT available for refund

Having determined that petitioner had valid input VAT attributable to its zero-rated sales, the Court shall now determine whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales to private entities amounting to ₱41,386,623.13 from its output VAT liability of ₱271,470,809.67 on the said sales, petitioner still has a net output VAT payable of ₱230,084,186.54 as computed below:

	1st Quarter (FY 2016)	**2nd Quarter (FY 2016)**	**Total**

[89] ₱9,319,761.35 less ₱6,360,518.30.

Output VAT per Returns[90]	₱ 147,824,900.48	₱ 123,645,909.19	₱ 271,470,809.67
Less: Input VAT attributable to VATable sales to private entities			
(₱6,713,740.17 + ₱20,305,543.85)	₱ 27,019,284.02		₱ 27,019,284.02
(₱1,945,508.62 + ₱12,421,830.49)		₱ 14,367,339.11	14,367,339.11
Total	₱ 27,019,284.02	₱ 14,367,339.11	₱ 41,386,623.13
Net output VAT Payable	**₱120,805,616.46**	**₱109,278,570.08**	**₱230,084,186.54**

Since the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, it is apparent that the input VAT attributable to zero-rated sales of ₱9,137,979.80 is a way lower than the net output VAT payable of ₱230,084,186.54. Consequently, petitioner still has net output VAT due of ₱220,946,206.74, computed as follows:

	1st Quarter	2nd Quarter	Total
Net output VAT Payable	₱ 120,805,616.46	₱ 109,278,570.08	₱ 230,084,186.54
Less: Input VAT attributable to zero-rated sales	6,750,099.52	2,387,880.28	9,137,979.80
Net Output VAT Still Due	**₱ 114,055,516.94**	**₱ 106,890,689.80**	**₱ 220,946,206.74**

Although petitioner's Amended Quarterly VAT returns for the 1st and 2nd quarters of FY 2016 reflected the respective amounts of ₱449,743,621.82[91] and ₱459,836,211.33[92] as *"Input Tax Carried Over from Previous Period"*, still, petitioner failed to substantiate the same.

Consequently, the input tax carryover of ₱449,743,621.82 and ₱459,836,211.33, cannot be validly applied against petitioner's output tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended, which states:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax

[90] Exhibits "P-22" and "P-23" (Line 15B), Docket – Vol. 3, pp. 1209 and 1211.
[91] Exhibit "P-22" (Line 20A), Docket – Vol. 3, p. 1209.
[92] Exhibit "P-23" (Line 20A), Docket – Vol. 3, p. 1211.

exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: xxx."

It is worthy to stress that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input tax credits to cover its output tax liability for the current taxable year. To reiterate, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[93]

Consequently, there being no excess input VAT which may be the subject of a claim for refund or tax credit certificate, the instant claim must be denied.

It is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[94] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[95] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[96] Strict adherence to the conditions prescribed by law is required of the taxpayer.[97]

In light of the foregoing considerations, this Court finds that there is no showing: (1) that the administrative claim of petitioner should have been granted in the first place, and should not have been denied by respondent; and (2) that petitioner fully complied with the requisites to successfully obtain a credit/refund of input VAT. Thus, petitioner failed to sufficiently prove its entitlement to a refund or tax credit of its input VAT for the period covering April 1, 2015 to September 30, 2015 or the 1st and 2nd quarters of FY 2016. Such being the case, the instant claim for refund must be denied.

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[93] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[94] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[95] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

[96] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, *citing J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.

[97] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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.

ROMAN G. DEL ROSARIO
Presiding Justice