REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KURIMOTO (PHILIPPINES) CORPORATION,
Petitioner,

-*versus*-

HON. CESAR R. DULAY – In his capacity as THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9417

Members:

CASTAÑEDA, JR., *Chairperson*
and
MANAHAN, *JJ.*

Promulgated:
JUN 04 2019
10:10 a.m.

x- x

DECISION

MANAHAN, *J.*:

This is a Petition for Review[1] filed by Kurimoto (Philippines) Corporation praying for the Court to reverse and set aside the Commissioner of Internal Revenue's partial denial of its claim and in lieu thereof, order the issuance of a tax credit certificate (TCC) in the amount of ₱11,797,880.86, allegedly representing excess/unutilized input value-added tax (VAT) attributable to zero-rated sales for the first and second quarters of calendar year (CY) 2014.

THE PARTIES

Petitioner Kurimoto (Philippines) Corporation is a domestic corporation duly organized and validly existing under the laws of the Philippines, with principal office at the Pacific Star Building, Makati Ave. cor. Sen. Gil Puyat Ave., Makati City.[2] It is registered with the Bureau of Internal Revenue

[1] Docket, CTA Case No. 9417, Vol. I, pp. 10-22.
[2] *Id.*, Vol. I, Par. 1, Joint Stipulation of Facts and Issues (JSFI), p. 205.

(BIR) as a VAT taxpayer with Tax Identification No. 007-889-234-000.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On March 16, 2016, petitioner filed an Application for Tax Credits/Refunds with the BIR Revenue District Office (RDO) No. 49 in the amount of ₱11,797,880.86 for the period covering January 31, 2014 to June 30, 2014.[4]

Thereafter, respondent issued Letter of Authority No. eLA201200034645/LOA-049-2016-00000005 dated April 27, 2016, authorizing Revenue Officer Myrna Jao and Group Supervisor Marilyn Dumapias of RDO No. 049 – North Makati to examine petitioner's books of accounts and other accounting records for VAT for the period covering January 1, 2014 to June 30, 2014.[5]

In the letter dated June 23, 2016, which was received by petitioner on July 7, 2016, Deputy Commissioner of the Operations Group Nelson M. Aspe partially granted petitioner's application and recommended the refund of the amount of ₱236,940.00, net of disallowances.[6]

Hence, this petition.

Respondent filed his Answer[7] on October 5, 2016, interposing the following Special and Affirmative Defenses:

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[3] Docket, Vol. I, Par. 2, JSFI, p. 205; Docket, Vol. I, Exhibit "P-3-1", p. 364.
[4] *Id.*, Vol I., Exhibits "P-1" and "P-1-1", pp. 329-333.
[5] *Id.*, Vol. I, Par. 4, JSFI, p. 205; Docket, Vol. I, Exhibit "P-8", p. 426.
[6] *Id.*, Vol. I, Par. 5, JSFI, p. 205; Docket, Vol. I, Exhibits "P-9" and "P-9-1", p. 429.
[7] *Id.*, Vol. I, pp. 113-115.

"SPECIAL AND AFFIRMATIVE DEFENSES

Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:

6. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent Commissioner of Internal Revenue.

7. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

8. Petitioner's claim for refund or issuance of tax credit certificate, if any, in the amount of Php11,797,880.86, representing alleged unutilized/excess input VAT for the first and second quarters 2014, were not substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.

9. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit.

10. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

11. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs.***

Commissioner of Internal Revenue, 124 SCRA 1211)."

A Notice of Pre-Trial Conference[8] was issued by this Court on October 25, 2016, setting the case for pre-trial conference on December 1, 2016. Accordingly, the Pre-Trial Brief (for the Petitioner)[9] was filed on January 16, 2017, while the Pre-Trial Brief (for the Respondent)[10] was filed on January 17, 2017.

The pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[11] on February 8, 2017. Subsequently, the Court issued a Pre-Trial Order[12] on February 15, 2017, adopting the parties' joint stipulations and terminating the pre-trial.

Upon petitioner's motion,[13] the Court commissioned Atty. Ma. Cecilia C. Katigbak as the Independent Certified Public Accountant (ICPA) for the case.[14]

During trial, petitioner presented Ms. Miel O. Golla[15], the head of petitioner's Accounting Department, and Atty. Ma. Cecilia C. Katigbak[16], the Court-commissioned ICPA, as its witnesses.

Petitioner filed its Formal Offer of Exhibits (with Motion to Allow the Independent Certified Public Accountant to Correct her Sub-Markings in Exhibit "P-34"; or in the Alternative, the Setting of a Commissioner's Hearing for Purposes of Correcting the Sub-Markings of Exhibit P-34)[17] on July 20, 2017. On January 24, 2018, the Court denied all of petitioner's exhibits for failure to comply with Sections 3(b),

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[8] Docket, Vol. I, pp. 117-118.
[9] *Id.*, Vol. I, pp. 122-128.
[10] *Id.*, Vol. I, pp. 198-200.
[11] *Id.*, Vol. I, pp. 205-208.
[12] *Id.*, Vol. I, pp. 210-213.
[13] *Id.*, Vol. 1, Motion for the Appointment of an Independent Certified Public Accountant, pp. 218-221.
[14] *Id.*, Vol. I, Minutes of the Hearing dated March 15, 2017, p. 264.
[15] *Id.*, Vol. I, Exhibit "P-13", pp. 248-262; Docket, Vol. II, Judicial Affidavit of Miel O. Golla, pp. 732-746; Docket, Vol. I, Minutes of the Hearing dated March 15, 2017, p. 264; Docket, Vol. I, Exhibit "P-41", pp. 309-313; Docket, Vol. II, Judicial Affidavit of Miel O. Golla on Recall Testimony, pp. 726-731; and, Docket, Vol. I, Minutes of the Hearing dated July 10, 2017, p. 314.
[16] *Id.*, Vol. I, Exhibit "P-14", pp. 293-301; Docket, Vol. II, Judicial Affidavit (Atty. Ma. Cecilia C. Katigbak, C.P.A.), pp. 747-756; Docket, Vol. I, Minutes of the Hearing dated May 31, 2017, p. 305.
[17] *Id.*, Vol. I, pp. 317-328.

3(c) and 4(a) of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule, and for failure to identify.[18]

On the other hand, respondent manifested that he will no longer be presenting any evidence, since the BIR revenue examiner who handled petitioner's application for refund has no final report.[19]

Petitioner filed an Omnibus Motion (Motion for Reconsideration with Motion to Admit and/or Motion to Set Case for Hearing)[20] on February 9, 2018. In the Resolution[21] dated March 26, 2018, the Court granted petitioner's Motion for Reconsideration with Motion to Admit, while its Motion to Set Case for Hearing was deemed moot. Accordingly, all of petitioner's formally offered exhibits were admitted by the Court.

The Court declared the case deemed submitted for decision on June 7, 2018,[22] considering the Memorandum [for the Petitioner][23] filed on May 28, 2018 and the Records Verification[24] issued by the Court's Judicial Records Division on May 30, 2018 stating that respondent failed to file a memorandum.

ISSUE

The parties agreed that the sole issue to be resolved in this case is:[25]

> Whether petitioner is entitled to its claim for VAT refund and/or issuance of tax credit certificate amounting to ₱11,797,880.86 representing unutilized input taxes for the first and second quarters of 2014.

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[18] Docket, Vol. II, Resolution dated January 24, 2018, pp. 711-713.
[19] *Id.*, Vol. II, Respondent's Manifestation filed on February 2, 2018, pp. 717-718.
[20] *Id.*, Vol. II, pp. 720-725.
[21] *Id.*, Vol. II, Resolution dated March 26, 2018, pp. 762-765.
[22] *Id.*, Vol. II, Resolution dated June 7, 2018, p. 801.
[23] *Id.*, Vol. II, pp. 780-798.
[24] *Id.*, Vol. II, p. 800.
[25] *Id.*, Vol. I, Stipulated Issue, JSFI, p. 206.

Petitioner's Arguments[26]

Petitioner argues that it complied with all the requirements of claim for refund under the case of *San Roque Power Corporation v. Commissioner of Internal Revenue*[27] and that the sale of service to Taganito HPAL Nickel Corporation (THPAL), which is a Philippine Economic Zone Authority (PEZA)-registered entity, is subject to 0% VAT.

Further, it argues that its sale of service to Kurimoto, Ltd. Japan, a non-resident foreign corporation not engaged in business within the Philippines, is subject to 0% VAT.

Respondent's Counter-Arguments[28]

Respondent argues that petitioner should prove its entitlement on said claim for refund pursuant to Section 204(c) in relation to Section 229 of the 1997 NIRC, as amended.

RULING OF THE COURT

Pertinent to the resolution of the case at bench is Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of

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[26] *Supra.*, Note 23.
[27] G.R. No. 180345, November 25, 2009.
[28] *Supra.*, Note 7.

> creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant thereto, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, it is imperative to prove the following:

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

<u>1st Requisite</u>: Petitioner is a VAT-registered entity.

Petitioner is registered with the BIR as a VAT taxpayer with Tax Identification No. 007-889-234-000.[29]

<u>2nd Requisite</u>: Petitioner's administrative and judicial claims were filed on time.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for refund or tax credit of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

Since the present claim covers the first and second quarters of CY 2014, which respectively closed on March 31, 2014 and on June 30, 2014, petitioner had until March 31, 2016 and June 30, 2016, within which to file its administrative claim for refund or tax credit for the respective quarters. Clearly, the administrative claim for refund or tax credit[30] was timely filed by petitioner on March 16, 2016.

Anent the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[31]

Accordingly, from the filing of petitioner's administrative claim together with the supporting documents on March 16, 2016, respondent had one hundred twenty (120) days or until July 14, 2016 to act on the said claim. On July 7, 2016[32], petitioner received a letter[33] from respondent dated June 23, 2016 granting petitioner's refund claim only in the amount of

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[29] *Supra.*, Note 3.
[30] Docket, Vol. I, Exhibits "P-1" and "P-1-1", pp. 329-333.
[31] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[32] Docket, Vol. I, Exhibit "P-9-1", p. 429.
[33] *Id.*, Vol. I, Exhibit "P-9", p. 429.

₱236,940.72, hence, denying the remaining amount of the claim. Counting thirty (30) days from petitioner's receipt on July 7, 2016 of respondent's partial denial of its claim, petitioner had until August 8, 2016[34] within which to file an appeal before this Court. Evidently, petitioner's judicial appeal by way of a Petition for Review was also timely filed on August 8, 2016.

3rd Requisite: Petitioner had zero-rated or effectively zero-rated sales.

In its Amended Quarterly VAT Returns[35] for the first and second quarters of CY 2014, petitioner reported an amount of ₱150,346,549.84 zero-rated sales, broken down as follows:

Exhibit	CY 2014	Zero-Rated Sales
P-5-1-3[36]	1st Quarter	₱ 98,038,813.74
P-6-1-3[37]	2nd Quarter	52,307,736.10
	Total	**₱150,346,549.84**

Petitioner submits that the said reported zero-rated sales pertain to its sales of services to Kurimoto Ltd., a non-resident foreign corporation not engaged in business in the Philippines, and to THPAL, a PEZA-registered entity.

Sales of services to Kurimoto Ltd.

With reference to the VAT zero-rating of its sales of services to Kurimoto Ltd., petitioner relies on Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

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[34] August 6, 2016 fell on a Saturday.
[35] Docket, Vol. I, Exhibits "P-5-1" and "P-6-1", inclusive of sub-markings, pp. 390-391 and 413-415, respectively.
[36] Docket, Vol. I, unpaged.
[37] *Id.*, Vol. I, p. 413.

> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident 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);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[38], the Supreme Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

Petitioner complied with the first requisite. Records show that petitioner was duly registered with the Securities and Exchange Commission (SEC) to enter into contracts related to construction, installation works, electric works, piping works, repairs and maintenance and staff service of various kinds of plants except for locally funded public works and defense related infrastructure and without engaging in local recruitment business.[39] These services clearly fall within the scope of "services other than processing, manufacturing or repacking of goods" contemplated by the afore-mentioned provision.

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[38] G.R. No. 153205, January 22, 2007.
[39] Docket, Vol. I, Exhibit "P-2", pp. 334, 337, and 339.

Petitioner likewise satisfied the third requisite. Petitioner presented the following documents proving that its client, Kurimoto Ltd. is a non-resident foreign corporation doing business outside the Philippines during CY 2014:

1. Authenticated and Consularized Articles of Incorporation of Kurimoto Ltd.[40];

2. SEC Certification of Non-Registration of Kurimoto Ltd.[41];

3. Certificate of Withdrawal of License of a Foreign Corporation[42] issued by the SEC dated June 27, 2012; and

4. SEC Certification of Corporate Filing/Information[43] dated August 3, 2016 confirming the issuance of the *Certificate of Withdrawal of License of a Foreign Corporation* to Kurimoto Ltd. on July 6, 2011.

In relation to the second requisite, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as well as Sections 237 and 238 of the NIRC of 1997, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT official receipt which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> xxx xxx xxx
>
> (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:

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[40] *Id.*, Vol. I, Exhibit "P-16", pp. 486-501.
[41] *Id.*, Vol. I, Exhibit "P-17", p. 502.
[42] *Id.*, Vol. I, Exhibit "P-18", p. 470.
[43] Exhibit "P-33", ICPA Report, Folder 2, p. 61.

(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 xxx xxx

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

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

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

xxx xxx xxx

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

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or **official receipts**. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

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

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

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

xxx xxx xxx

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

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* – All persons subject to an internal revenue tax shall, for each sale and 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" *(Emphasis supplied)*

"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."

Pursuant thereto, the foreign currency remittances referred to under Section 108(B)(2) of the NIRC of 1997, as amended, must be supported by VAT zero-rated official receipts.

In the instant claim, petitioner submitted its Summary of Sales for the first and second quarters of CY 2014[44] and the corresponding official receipts (ORs) and sales invoices[45] proving that for services rendered to Kurimoto Ltd. for the said periods, petitioner was paid in US Dollars and Japanese Yen except for the reported sales of ₱5,042,745.31, as shown below:

Period	Amount (in JPY)	Amount (in USD)	Amount (in PHP)	Exhibit No.[46]
Sales paid in Philippine Pesos				

[44] Exhibits "P-27" to "P-31", ICPA Report, Folder 2, pp. 53-57.
[45] Exhibit "P-34 inclusive of submarkings", black binder, Folder 3, pp. 1-36.
[46] ICPA Report, Folder 2 and Black Binder, Folder 3.

January			175,377.63	P-27, P-34-1
March			4,867,367.68	P-29, P-34-5
1st Quarter subtotal			***5,042,745.31***	
Sales without proof that the foreign currency proceeds thereof were duly accounted for in accordance with the BSP rules and regulations				
January	112,200.00		48,511.16	P-27, P-34-2
February		62,807.81	2,812,722.43	P-28, P-34-3
March	13,300.00		5,773.52	P-29, P-34-4
	83,500.00		36,247.30	P-29, P-34-6
	11,280.00		4,896.64	P-29, P-34-7
	52,500.00		22,790.22	P-29, P-34-8
1st Quarter subtotal	***272,780.00***	***62,807.81***	***2,930,941.27***	
May	866,500.00		374,042.77	P-30, P-34-13
	393,250.00		169,754.55	P-30, P-34-14
	10,125,000.00		4,360,239.78	P-30, P-34-15
June	7,500.00		3,227.15	P-31, P-34-16
		2,850.00	125,169.09	P-31, P-34-17
	261,000.00		112,304.92	P-31, P-34-18
	70,000.00		30,120.09	P-31, P-34-19
	24,500.00		10,542.03	P-31, P-34-20
		45,000.00	1,967,823.89	P-31, P-34-21
		31,000.00	1,355,612.02	P-31, P-34-23
		22,000.00	962,047.24	P-31, P-34-25
		47,000.00	2,055,282.73	P-31, P-34-27
2nd Quarter subtotal	***11,747,750.00***	***273,465.62***	***11,526,166.26***	
Total	***12,020,530.00***	***336,273.43***	***14,457,107.53***	
Grand Total	**12,020,530.00**	**336,273.43**	**19,499,852.84**	

However, aside from not being able to prove that the reported sales of ₱5,042,745.31 were paid for in acceptable foreign currency, petitioner was unable to establish that the foreign currency sales proceeds in the amounts of JPY12,020,530.00 and US$336,273.43 with a combined peso equivalent of ₱14,457,107.53 were duly accounted for in accordance with the BSP rules and regulations. Thus, petitioner failed to satisfy the second requisite for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, *i.e.*, payments for its services must be in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations. As such, petitioner's reported sales to Kurimoto Ltd in the amount of ₱19,499,852.84 (the sum of ₱5,042,745.31 and ₱14,457,107.53) shall be disallowed.

Sales of services to THPAL

Petitioner claims that its customer, THPAL, is a PEZA-registered entity, hence, its sales thereto are subject to zero percent (0%) VAT pursuant to Section 108(B)(3) of the NIRC of 1997, as amended, as implemented by Section 4.108-5(b)(3) of RR No. 16-05, which provides:

> "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
>
> (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**;" *(Emphasis supplied)*
>
> "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
>
> (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**;" *(Emphasis supplied)*

Indeed, sales of services by a VAT-registered taxpayer, such as herein petitioner, to a PEZA-registered entity are subject to 0% VAT. The special law specific to this case is Republic Act (RA) No. 7916, as amended, otherwise known as "The Special Economic Zone Act of 1995". Section 8 of RA No. 7916, as amended, mandates that the PEZA shall manage and operate the Ecozones as a separate customs territory, thus:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The ECOZONES 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."

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 0% VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[47], 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**.
>
> xxx An ECOZONE or a Special Economic Zone has been described as —
>
>> ... [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

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

> 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[48]." (*Emphasis supplied*)

It was established that THPAL is a PEZA-registered entity for the subject period of claim as evidenced by PEZA Certificate Nos. 2014-0620[49] and 2014-0529[50]. Accordingly, petitioner's reported sales to THPAL for the first and second quarters of CY 2014 amounting to ₱130,846,697.03, which is duly covered by VAT zero-rated official receipts[51] in accordance with Section 113(A)(2) of the NIRC of 1997, as amended, qualify for VAT zero-rating under Section 108(B)(3) of the same Code. Below is the breakdown of the amount of ₱130,846,697.03:

	Zero-rated sales	**Exhibit No.**
1st Qtr (March)	₱ 33,162,495.69	P-29, P-34-9
	56,902,631.50	P-29, P-34-11
Subtotal	***₱ 90,065,127.19***	
2nd Qtr (June)	23,500,166.89	P-31, P-34-29
	17,281,402.95	P-31, P-34-31
Subtotal	***₱ 40,781,569.84***	
Total	**₱130,846,697.03**	

Thus, out of the total reported zero-rated sales of ₱150,346,549.84, only the amount of ₱130,846,697.00

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[48] Now at 12% VAT rate.
[49] Docket, Vol. I, Exhibit "P-10", p. 430.
[50] Exhibit "P-32", ICPA Report, Folder 2, pp. 59-60.
[51] Exhibits "P-34-9", "P-34-11", "P-34-29", and "P-34-31", Black Binder, Folder 3, pp. 11, 13, 33, and 35.

represents petitioner's valid zero-rated sales for the first and second quarters of CY 2014, computed as follows:

	1st Qtr	2nd Qtr	Total
Reported Zero-Rated Sales	₱ 98,038,813.74	₱ 52,307,736.10	₱ 150,346,549.84
Less: Denied Zero-Rated Sales	7,973,686.58	11,526,166.26	19,499,852.84
Valid Zero-Rated Sales	**₱90,065,127.16**	**₱40,781,569.84**	**₱130,846,697.00**

4th and 5th Requisites: Petitioner incurred or paid input taxes which are attributable to its zero-rated or effectively zero-rated sales

In its Amended Quarterly VAT Returns for the first and second quarters of CY 2014, petitioner reflected a total amount of ₱11,797,880.98 input VAT arising from its domestic purchases of goods (other than capital goods) and services, broken down as follows:

	1st Qtr *(Exh. P-5-1)*	**2nd Qtr** *(Exh. P-6-1)*	**Total**
Input tax on Domestic Purchases of Goods other than Capital Goods *(Line 21F)*	₱ 64,426.55	₱ 246,091.43	₱ 310,517.98
Input tax on Domestic Purchase of Services *(Line 21J)*	1,459,758.13	10,027,604.87	11,487,363.00
Total input taxes for the period	**₱1,524,184.68**	**₱10,273,696.30**	**₱11,797,880.98**

In support of its input taxes, petitioner submitted its Summary of Purchases for the months covering the first and second quarters of CY 2014[52] and the related suppliers' ORs and invoices[53], which were examined by the Court-commissioned ICPA.

Upon examination of the said documents, the ICPA noted exceptions worth ₱340,440.24, as summarized below, which shall be disallowed for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in

[52] Exhibits "P-21" to "P-26", ICPA Report, Folder 2, pp. 25-52.
[53] Exhibits "P-35" to "P-40", Black Binder, Folder 3, pp. 37-424, and Folder 4, pp. 1-531.

relation to Sections 4.110-1, 4.110-8, and 4.113-1 of RR No. 16-05:[54]

Nature	1st Qtr	2nd Qtr	Total	Reference[55]
1. Input VAT on purchase of goods and services supported by documents where amount of input VAT is not shown separately	₱ 35,178.04	₱ 178,991.49	₱214,169.53	Annex 4-1
2. Input VAT on purchase of goods and services with no NAME, TIN and ADDRESS of the Company	26,493.74	35,536.20	62,029.94	Annex 4-2
3. Input VAT on purchase of good and services supported by invalid documents	9,108.08	15,995.96	25,104.04	Annex 4-3
4. Input VAT on purchase of good and services with no supporting documents	10,929.91	28,206.82	39,136.73	Annex 4-4
Total disallowed input VAT claims	**₱81,709.77**	**₱258,730.47**	**₱340,440.24**	

In addition, petitioner's input VAT claim in the amount of ₱170,089.79 shall also be disallowed for failure to meet the substantiation requirements under the afore-mentioned VAT law and regulations, detailed as follows:

Exhibit No.	Name of Supplier	Amount	Reason for Disallowance
1st Quarter			
P-35-4	Airphil Express	₱ 188.57	Supported by VAT OR without the TIN and address of petitioner
P-35-33	DHL Express Philippines Corp	208.00	Supported by VAT OR without the year indicated on the date
P-35-35	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR
P-35-36	Dusit Thani	636.00	Purchase of services supported by document other than VAT OR
P-35-37	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR
P-35-38	Dusit Thani	636.00	Purchase of services supported by document other than VAT OR
P-35-49	Fuji Xerox Philippines Inc	3,081.23	Supported by VAT OR without the TIN and address of petitioner and the input VAT amount was not separately shown
P-35-54	Iron City Caltex Station	1,305.37	Purchase of goods supported by document other than VAT invoice

[54] Exhibit "P-15", ICPA Report, Folder 1, p. 5 and 10.
[55] Exhibit "P-15", ICPA Report, Folder 1, pp. 11 to 22.

P-35-81	PLDT	2,654.07	Supported by VAT OR but without the BIR's Authority to Print (ATP) and dated outside the period of claim
P-35-88	Skycable	324.11	Purchase of services supported by document other than VAT OR
P-36-29	DHL Express Philippines Corp	288.00	Supported by VAT OR without the year indicated on the date
P-36-30	DHL Express Philippines Corp	418.96	Supported by VAT OR without the year indicated on the date
P-36-32	Dusit Thani	972.00	Purchase of services supported by document other than VAT OR
P-36-51	Iron City Caltex Station	1,424.77	Purchase of goods supported by document other than VAT invoice
P-36-52	Iron City Caltex Station	908.92	Purchase of goods supported by document other than VAT invoice
P-36-62	LBC	128.04	Supported by VAT OR without the TIN of petitioner
P-36-63	LBC	250.71	Supported by VAT OR without the TIN of petitioner
P-36-68	Mackim Prints Inc	327.86	Supported by VAT OR without the address of petitioner
P-37-21	DHL Express Philippines Corp	180.00	Supported by VAT OR without the year indicated on the date
P-37-22	DHL Express Philippines Corp	217.00	Supported by VAT OR without the year indicated on the date
P-37-24	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR
P-37-25	Dusit Thani	3,852.00	Purchase of services supported by document other than VAT OR
P-37-26	Dusit Thani	2,544.00	Purchase of services supported by document other than VAT OR
P-37-27	Dusit Thani	2,184.00	Purchase of services supported by document other than VAT OR
P-37-43	Iron City Caltex Station	1,899.93	Purchase of goods supported by document other than VAT invoice
P-37-44 & P-37-45	Jecams Enterprises	2,592.77	Purchase of goods and services supported by VAT invoice and OR with incomplete name of the petitioner
P-37-53	LBC	248.04	Supported by VAT OR without the TIN of petitioner
P-37-55	LBC	159.64	Supported by VAT OR without the TIN of petitioner
P-37-77	Seven Red Diamond Corporation	572.46	Supported by VAT OR wherein the input VAT amount was not separately shown
	subtotal	***₱ 32,018.45***	
2nd Quarter			
P-38-2	Alphatech Corporation	₱ 95,280.00	Supported by VAT invoice without the TIN of petitioner
P-38-7	Balgos Gumaru and Jalandoni	1,200.00	Purchase of services supported by document other than VAT OR
P-38-32	DHL Express Philippines Corp	36.00	Supported by VAT OR without the year indicated on the date
P-38-34	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR

P-38-35	Dusit Thani	3,180.00	Purchase of services supported by document other than VAT OR
P-38-73	LBC	256.61	Supported by VAT OR without the TIN of petitioner
P-38-94	PLDT	1,417.62	Supported by VAT OR wherein the amount per OR (₱2,626.80) is less than the amount of claim (₱4,044.42)
P-38-100	RBER Industrial and Trading Corporation	421.20	Supported by VAT invoice not issued in the name of petitioner
P-38-100	RBER Industrial and Trading Corporation	4,617.00	Supported by VAT invoice without the TIN of petitioner
P-38-106	Skycable	324.11	Purchase of services supported by document other than VAT OR
P-39-7	Bituin Property Holdings Inc	602.72	Supported by VAT OR wherein the amount per OR (₱8,137.98) is less than the amount of claim (₱8,740.70)
P-39-8	Camera Haus	2,014.29	Supported by VAT invoice without the BIR's ATP
P-39-47	Iron City Caltex Station	2,216.08	Purchase of goods supported by document other than VAT invoice
P-39-60	Lubri Chem Philippines Distributor	14,221.71	Supported by VAT invoice without the TIN of petitioner
P-40-5	Balgos Gumaru and Jalandoni	1,200.00	Supported by VAT OR with alteration on date but without counter signature
P-40-13	Citi Hardware Bacolod Inc	136.39	Purchase of goods supported by document other than VAT invoice
P-40-23	DHL Express Philippines Corp	36.00	Supported by VAT OR without the year indicated on the date
P-40-25	DHL Express Philippines Corp	36.00	Amount was claimed twice; the same with Exhibit P-40-23
P-40-27	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR
P-40-28	Dusit Thani	1,272.00	Purchase of services supported by document other than VAT OR
P-40-63	LBC	120.00	Supported by VAT OR without the TIN of petitioner
P-40-64	LBC	240.54	Supported by VAT OR without the TIN of petitioner
P-40-78	New Wellington Bazaar	241.07	Supported by VAT invoice with alteration on the amount but without counter signature
P-40-79	NNA Philippines Co Inc	837.60	Supported by VAT OR with incomplete name of petitioner
P-40-88	Power Star Trading Incorporated	4,457.14	Supported by VAT invoice without the TIN of petitioner
P-40-115	Toyota	1,092.55	Supported by VAT OR without the TIN of petitioner
P-40-117	Unicity Gen Mdse Inc	70.71	Supported by document with notation "not valid for claiming input tax"
	subtotal	***₱138,071.34***	
	Total	**₱170,089.79**	

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In sum, only the remaining amount of ₱11,287,350.95 represents petitioner's valid input VAT for the first and second quarters of CY 2014, as computed below:

	1st Quarter	2nd Quarter	Total
Input VAT per Returns	₱ 1,524,184.68	₱ 10,273,696.30	₱ 11,797,880.98
Less: Disallowances			
Per ICPA findings	81,709.77	258,730.47	340,440.24
Per this Court's further verification	32,018.45	138,071.34	170,089.79
Total Valid Input VAT	**₱1,410,456.46**	**₱ 9,876,894.49**	**₱11,287,350.95**

Considering that petitioner had no other type of sales reported during the first and second quarters of CY 2014, the valid input VAT of ₱11,287,350.95 is entirely attributable to the declared zero-rated sales of ₱150,346,549.84, but only the input VAT of ₱8,996,232.52 is attributable to the valid zero-rated sales of ₱130,846,697.00, computed as follows:

	1st Quarter	2nd Quarter	Total
Valid Input VAT	₱ 1,410,456.46	₱ 9,876,894.49	₱ 11,287,350.95
Divide by Declared Zero-Rated Sales	98,038,813.74	52,307,736.10	150,346,549.84
Multiply by Valid Zero-Rated Sales	90,065,127.16	40,781,569.84	130,846,697.00
Input VAT attributable to Valid Zero-Rated Sales	**₱1,295,741.30**	**₱7,700,491.22**	**₱8,996,232.52**

<u>6th Requisite</u>: The input taxes were not applied against any output VAT liability

Perusal of petitioner's Amended Quarterly VAT Returns for the first and second quarters of CY 2014[56] shows that it had no output tax liability against which the valid input VAT of ₱8,996,232.52 may be applied or credited. Moreover, the claimed input VAT was not carried over to the succeeding quarters and the same remained unutilized as the said amount was deducted as "VAT Refund/TCC claimed"[57] in its Amended Quarterly VAT Returns for the first and second quarters of CY 2014.

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[56] Docket, Vol. I, Exhibit "P-5-1", Line 19B, unpaged; Docket, Vol. I, Exhibit "P-6-1", Line 19B, p. 413.
[57] *Id.*, Vol. I, Exhibits "P-5-1-1" and "P-6-1-1", pp. 391 and 414, respectively.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱8,996,232.52** representing unutilized input taxes attributable to its zero-rated sales for the first and second quarters of CY 2014.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

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

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

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