REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PILIPINAS TOTAL GAS, INC.,
Petitioner,

C.T.A. EB CASE No. 674
(C.T.A. Case No. 7777)

- versus-

Present:
Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 05 2012 ccApolinario 9:20 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

This resolves the *Petition for Review*[1] filed by Pilipinas Total Gas, Inc., on August 27, 2010, pursuant to *Section 18 of Republic Act (R.A.) No. 1125, as amended by Section 11 of R.A. No. 9282, and Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA),* assailing the *Decision*[2] and *Resolution*[3] promulgated by the Second Division of this Court on April 8, 2010 and August 10, 2010, respectively. The dispositive portions of which reads:

[1] *Rollo*, pp. 1-33.
[2] *Rollo*, pp. 37-53, Decision dated April 8, 2010 penned by Associate Justice Cielito N. Mindaro-Grulla in the case entitled *Pilipinas Total Gas, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 7777.
[3] *Rollo*, pp. 54-56, Resolution dated August 10, 2010 penned by Associate Justice Cielito N. Mindaro-Grulla in the case entitled *Pilipinas Total Gas, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 7777.

Decision dated April 8, 2010:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Resolution dated August 10, 2010:

> "**WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner is seeking for the reversal and setting aside of the above-quoted *Decision* and *Resolution*, and in lieu thereof, a judgment be rendered ordering the Commissioner of Internal Revenue (CIR) to grant petitioner's claim for refund or issuance of tax credit certificate in the total amount of P17,528,906.71, allegedly representing excess and unutilized input value added tax (VAT) for taxable year 2006, arising from its zero-rated sales to Philippine Economic Zone Authority (PEZA) and Clark Development Corporation (CDC)-registered entities.

ANTECEDENT FACTS

The facts, as narrated by the Court in Division in its *Decision*[4], are reproduced hereunder:

> "Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal place of business located at MDD 121 East Science Avenue, Laguna Technopark, Binan Laguna. It is engaged in the sale, transportation, and distribution of industrial gases as well as the sale of gas equipment and other related businesses on wholesale basis.

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[4] *Supra*, Note 2.

It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification No. 004-609-538-000, as evidenced by its Certificate of Registration No. 3RC0000031647.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes. Respondent holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed with respondent its Quarterly VAT Returns and Final Amended Quarterly VAT Returns for the four quarters of 2006 on the following dates:

Year 2006	Exh.	Date Filed of Quarterly VAT Returns	Exh.	Date filed of the Final Amended Quarterly VAT Returns
1st Qtr	"J"	April 25, 2006	"N"	September 19, 2007
2nd Qtr	"W"	July 25, 2006	"Z"	September 19, 2007
3rd Qtr	"II"	October 23, 2006	"LL"	September 19, 2007
4th Qtr	"UU"	January 23, 2007	"XX"	September 19, 2007

On July 31, 2007, petitioner filed an administrative claim for tax refund/tax credit of the alleged excess input tax for taxable year 2006, in the amount of P17,528,906.17, before the BIR Revenue District Office No. 057-Biñan, Laguna. However, respondent had not issued a final decision on said claim for refund or tax credit. Hence, petitioner filed the instant Petition for Review on April 24, 2008.

In Answer, respondent interposed the following Special and Affirmative Defenses:

"4. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special Affirmative Defenses;

5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent's Bureau;

6. Petitioner failed to demonstrate that the amount allegedly paid was erroneously or illegally collected;

7. Taxes collected are presumed to be in accordance with laws and regulations;

8. Petitioner's claim for refund has prescribed already in view of Section 112(C) of the 1997 National Internal Revenue Code which provides that:

> 'Section 112. Refunds or Tax Credits of Input Tax –
>
> (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 (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'. – (Italics supplied)

Hence, when petitioner filed its administrative claim for tax refund/credit with the Bureau of Internal Revenue ('BIR') Revenue District Office No. 57 on 31 July 2007, respondent had 120 days within which to decide on petitioner's claim for tax refund/credit. And in case of full or partial denial of the claim or failure of respondent to act on the application within the 120 day period, petitioner has 30 days to appeal the decision or inaction with the Court of Tax Appeals. Thus, respondent had to render a decision within 120 days from 31 July 2007 or until 28 November 2007. In the event that respondent failed to act upon petitioner's claim for tax refund/credit, petitioner has 30 days from 28 November 2007 or until <u>28 December 2007</u> to appeal the unacted claim with the Court of Tax

Appeals. Petitioner filed the instant Petition for Review with the Court of Tax Appeals only on 24 April 2008, almost four (4) months after the lapse of the period allowed by law to file the judicial claim for tax refund/credit with the Court of Tax appeals. This being so, the instant petition for review was clearly filed out of time.

The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, p. 266). For this reason, the courts construe these provisions of statutes as mandatory (Ibid., citing Alvero vs. De la Rosa, 76 Phil. 428, 434).

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

9. Assuming without admitting that the subject claim for refund has not yet prescribed, it is imperative for the petitioner to prove its compliance with the following:

   a. The registration requirements of a value-added taxpayer under the pertinent provision of the National Internal Revenue Code of 1997, as amended, and its implementing revenue regulations;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT pursuant to the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax of the taxpayer claimant (Revenue Memorandum Circular No. 42-2003);

c. The submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (C) of the Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for refund which is a condition sine qua non prior to the filing of judicial claim in accordance with Section 229 of the Tax Code, as amended;

d. That the input taxes of P17,528,906.17 allegedly representing unutilized input VAT from its domestic purchases of goods and services and importation of goods were:

i. paid by the petitioner;

ii. attributable to its zero-rated or effectively zero-rated sales; and,

iii. such input taxes paid should not have been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) in the amount of P17,528,906.17 was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly provided in Sections 112 (A) and 229 of the Tax Code, as amended.

10. Moreover, in an action for tax refund, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a claim for refund;

11. Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed strictissimi juris against the entity claiming

the same (Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue, G.R. No. 154028, July 27, 2005). Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State. In this regard, taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (SeaLand Service, Inc., vs. Court of Appeals, 357 SCRA 444)."

During trial, petitioner presented its documentary and testimonial evidence to support its claim. However, respondent's counsel manifested that she is waiving the right of respondent to present evidence absent an audit report.

On January 5, 2010, this Court issued a Resolution submitting this case for Decision, considering that petitioner and respondent have already submitted their Memoranda on December 28, 2009 and January 4, 2010, respectively.

The parties' jointly stipulated issues are as follows:

1. Whether or not Petitioner's judicial claim for tax refund of unutilized input VAT with this Honorable Court was filed out of time.
2. Whether or not the Petitioner has complied with the substantiation requirements as provided by law.
3. Whether or not the input taxes of P17,528,906.17 allegedly representing unutilized input VAT from its domestic purchases of goods and services and importation of goods, were:
    a. paid by Petitioner;
    b. attributable to its zero-rated or effectively zerorated sales; and
    c. not applied against any output tax
4. Whether or not Petitioner is entitled to its claim for refund or issuance of TCC on its unutilized input tax attributable to zero-rated sales in the amount of P17,528,906.17 incurred for taxable year 2006."

The foregoing issues may be summed up into the single issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P17,528,906.17, allegedly representing petitioner's unutilized input taxes for the taxable year 2006.

The Ruling of the Court in Division

The Court in Division denied the petition.

While the Court *a quo* agrees with petitioner that its sales to PEZA and CDC-registered enterprises are subject to zero percent (0%) VAT, the Court in Division found that petitioner failed to sufficiently substantiate its reported zero-rated sales to said enterprises, as well as the input VAT on its domestic purchases of goods and services for taxable year 2006.

Further, the Court in Division declared that even though the court-commissioned Independent Certified Public Accountant (ICPA) attested and confirmed that he examined the original copies of the documents, such as petitioner's VAT returns, official receipts, invoices, the said documents, however, were not presented and formally offered in evidence before this Court.

A Motion for Reconsideration was filed by petitioner on April 27, 2010, however, said Motion was likewise denied by the Court *a quo* for lack of merit.

Undaunted, petitioner filed the instant *Petition for Review*[5].

On September 20, 2010, the Court *En Banc* ordered respondent CIR to file her comment within ten (10) days from receipt of resolution.[6] Respondent's Comment[7] was sent by registered mail on October 13, 2010, and was received by this Court on October 22, 2010.

[5] *Supra* Note 1.
[6] *Rollo*, pp. 58-59.
[7] *Rollo*, pp. 68-83.

In response to respondent's Comment, petitioner filed its Reply (To Respondent's Comment)[8] on November 4, 2010.

In a Resolution[9] dated November 2, 2010, the parties were ordered to submit their respective Memoranda within a non-extendible period of thirty (30) days from receipt thereof. Petitioner filed its Memorandum on December 8, 2010, whereas respondent's Memorandum was received by this Court on January 10, 2011; thus, the above-captioned case was submitted for decision on January 19, 2011.

ISSUES

The foregoing account, as revealed by the records of this case, leads this Court to resolve the following controversies:

I. Whether this Court through its Second Division erred in denying petitioner's claim for refund or tax credit of its unutilized input VAT for taxable year 2006 on the following grounds, *to wit*: [i] petitioner's failure to sufficiently substantiate its reported zero-rated sales to PEZA and CDC-registered enterprises; and [ii] petitioner's failure to formally offer the pieces of evidence in support of its claim, *i.e. official receipts and invoices*.

II. Whether petitioner is entitled to refund or issuance of a tax credit certificate (TCC) in the amount of P17,528,906.71, allegedly representing excess and unutilized input VAT for taxable year 2006, arising from its zero-rated sales to PEZA and CDC-registered enterprises.

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[8] *Rollo*, pp. 89-98.
[9] *Rollo*, pp. 87-88.

III. Whether this Court is bereft of jurisdiction to try the instant case on the ground of prescription of judicial claim.

Arguments of Petitioner

Petitioner disagrees with the findings of the Court in Division that it failed to formally offer the VAT returns, official receipts, invoices, and other supporting documents to support its claim for refund or tax credit. According to petitioner, a perusal of its Formal Offer of Evidence and Supplemental Formal Offer of Evidence shows that all of the VAT returns, sales invoices and official receipts for taxable year 2006 were formally offered in evidence, and all such exhibits were admitted by the Court in Division.

In particular, petitioner pointed out that Exhibits "A" up to "XX", consisting of petitioner's monthly and quarterly VAT returns for taxable year 2006, were included in petitioner's Formal Offer of Evidence dated February 12, 2009 and admitted in the Resolution dated March 25, 2009. Exhibits "RRRR", "SSSS" and "TTTT", consisting of petitioner's quarterly VAT return for the first quarter of taxable year 2007, were offered in the Supplemental Formal Offer of Evidence dated October 23, 2009 and admitted in the Resolution dated November 23, 2009.

As to sales invoices and official receipts, petitioner asserts that these were included in petitioner's Formal Offer of Evidence. Pages 16 to 24 of the Formal Offer of Evidence covers sales invoices and official receipts numbered 1-4,755; pages 25 to 27 covers sales invoices and official receipts numbered 4,756-5,929; and pages 36 to 43 covers sales invoices and official receipts numbered 5,930-7,132.

In addition, petitioner argued that the ICPA commissioned by the Court in Division has identified, pre-marked, and submitted all the sales invoices and official receipts involved in the claim for refund or tax credit.

Petitioner finally manifests that upon verification with the Records Division of this Court on April 22, 2010, it was able to confirm that the VAT returns, sales invoices and official receipts relevant to petitioner's claim are in the actual custody of this Court.

In its Reply to respondent's Comment, petitioner expresses its dissension to respondent's allegation that its judicial claim was filed out of time. Petitioner maintains that while its administrative claim was timely filed on July 31, 2007, the final submission of various supporting documents occurred on December 13, 2007 with Revenue District Office No. 57 [Exhibits "QQQQ" and "UUUU"]; thus, pursuant to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997, *as amended*, respondent had one hundred twenty (120) days from December 13, 2007, or until April 11, 2008, within which to decide on the administrative claim, and in turn, petitioner had thirty (30) days from the lapse of the 120-day period, or until May 11, 2008, within which to file an appeal with this Court. Hence, petitioner insists that its petition was timely filed with the Court in Division on April 24, 2008.

Arguments of Respondent

Respondent manifests that this Court is bereft of jurisdiction to hear and decide on petitioner's claim for refund and/or issuance of tax credit certificate allegedly representing unutilized input VAT for the taxable year 2006 on the ground that petitioner's judicial claim was filed beyond the "120-30 day period" provided under Section 112 (C) of the NIRC of 1997, *as amended.*

Also, respondent avers that petitioner failed to comply with the requisites for refund of input tax under the pertinent provisions of the NIRC of 1997, as amended, and other pertinent rules and regulations governing the application for tax refund or issuance of tax credit certificate. Respondent submits that petitioner failed to prove that the substantiated input VAT is entirely attributable to the reported zero-rated sales of petitioner considering that petitioner has vatable transactions subject to twelve (12%) percent and zero-rated transactions. To support its argument, respondent cites Section 4.110.-4 of Revenue Regulations (RR) No. 16-2005. According to respondent, the audit report did not specifically and categorically stated which of the input tax being claimed by petitioner are directly attributable to its zero-rated transaction, the court commissioned ICPA attributed all the input VAT being claimed to petitioner's alleged zero-rated transactions when it is evident that there exists transactions subject to 12% VAT rate.

THE RULING OF THE COURT *EN BANC*

The Petition for Review is hinged principally on Section 112 (A) and (C) of the NIRC of 1997, *as amended*, which pertains to refunds or tax credits of input tax attributable to zero-rated or effectively zero-rated sales, *viz*:

> "SEC. 112. *Refunds or Tax Credits of Input Tax*. -
>
> > "(A) *Zero-Rated or Effectively Zero-Rated Sales*. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in

> the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> "(B) *Cancellation of VAT Registration.* - 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.
>
> "(D) *Manner of Giving Refund.* - xxx."

It is readily apparent from the above-quoted provision that a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for tax refund or issuance of TCC for unutilized input VAT provided the following requisites are satisfied:

(1) the taxpayer is VAT registered;

(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) the input taxes were incurred or paid;

(4) the input taxes have not been applied against output taxes during and in the succeeding quarters;

(5) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(6) the claim was applied/filed within the period prescribed in Section 112(A) and (C) of the NIRC of 1997, *as amended.*

Timeliness of Petitioner's judicial claim for refund or tax credit of input VAT for taxable year 2006.

Before the Court *En Banc* proceeds in resolving the first two issues, *We* deem it appropriate to first resolve the third issue pertaining to the timeliness of petitioner's judicial claim for refund or tax credit of input tax, seeing that the resolution of this controversy is pivotal in determining whether this Court should proceed with the disquisition of the other issues raised in this petition.

In determining whether petitioner Pilipinas Total Gas, Inc. timely filed its judicial claim for refund or issuance of TCC of unutilized input VAT, reference must be made to the aforementioned provision of Section 112(C) of the NIRC of 1997, *as amended.* Section 112(C) clearly provides that the CIR has "120 days from the date of submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals (CTA) within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within 30 days.[10]

In this case, records show that:

Quarters (2006)	Administrative Claim Filed	Submitted Supporting Documents with the BIR[11]	End of 120 Days for the BIR Commissioner to Decide the Claim	End of 30 Days from the expiration of the 120 days	Judicial Claim Filed
1st to 4th	July 31, 2007	December 13, 2007	April 11, 2008	May 11, 2008	**April 24, 2008**

Petitioner filed its administrative claim for refund for all the quarters of 2006 on July 31, 2007, pursuant to Section 112(C) of the NIRC of 1997, *as amended*, the CIR has 120 days, from the date of submission of the complete documents in support of the application for tax refund/credit, within which to grant or deny the claim. The records of this case affirm petitioner's allegation that while its administrative claim was filed on July 31, 2007, the final submission of various supporting documents occurred on December 13, 2007 with Revenue District Office No. 57 considering that petitioner was able to sufficiently substantiate the same by furnishing this Court with a copy of its letter[12] to BIR sending the documents in support of its input VAT refund/ tax credit, which letter was attached as Exhibit "UUUU" to its Supplemental Formal Offer of Evidence[13]. The respondent having interposed no objection to the aforesaid Supplemental Formal Offer of Evidence, the said formal offer was admitted by the

[10] *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, October 6, 2010.
[11] *Division Docket*, p. 493, Exhibit "UUUU".
[12] *Division Docket*, p. 493, Exhibit "UUUU".
[13] *Division Docket*, pp. 464-494.

Court *a quo* in a *Resolution*[14] dated November 23, 2009. Thus, the Court *En Banc* is persuaded that December 13, 2007 is the reckoning point in counting the 120-day period. Counting **120 days** from December 13, 2007, respondent CIR had until **April 11, 2008** within which to decide the claim for refund/tax credit, consequently, petitioner had **30 days** from April 11, 2008 or until **May 11, 2008** within which to appeal to this Court.

Clearly, respondent CIR's allegation imputing prescription on petitioner's judicial claim does not have a leg to stand on, petitioner's judicial claim was filed on **April 24, 2008**, which is definitely within 120 days from the date of submission of complete documents, *i.e. April 11, 2008*, and within 30 days from the lapse of the 120-day period, *i.e. May 11, 2008*.

Hence, with regard to petitioner's judicial claim for refund/tax credit of input VAT for the taxable year 2006, *We* find the same to have been filed within the period allowed under Section 112(C) of the NIRC of 1997, *as amended*, as it was filed on **April 24, 2008**, thus, has not yet prescribed.

Whether the Court in Division erred in denying petitioner's claim for refund/tax credit of input VAT for taxable year 2006 on the ground that petitioner failed to substantiate its claim for failure of petitioner to formally offer the evidence in support of its claim.

After having ascertained the timeliness of petitioner's judicial claim for refund/tax credit of input VAT for taxable year 2006, the next issue relevant to the proper adjudication of the instant petition is whether the Court in Division correctly

[14] *Division Docket*, p. 500.

ruled that petitioner failed to substantiate its claim for refund/tax credit for failure of petitioner to have the pieces of evidence in support of its claim, particularly, sales invoices and official receipts, formally offered in evidence.

After going over the records of this case and due consideration of the parties' arguments, *We* find that the pieces of evidence, *i.e. sales invoices, official receipts,* needed to be assessed, reviewed and evaluated by this Court for the purpose of verifying the authenticity and veracity of the independent auditor's conclusions and petitioner's claim, were in fact presented and identified in open court, and formally offered in evidence.

Invoices and Official Receipts: Pre-marked

In the case at bar, petitioner moved to refer the voluminous documents to be introduced in evidence to an ICPA. Section 5, Rule 12 of the RRCTA governs the procedure in the presentation of voluminous documents, *viz*:

RULE 12
TRIAL

xxx

> **SEC. 5.** *Presentation of voluminous documents or long accounts.* – In the interest of speedy administration of justice, the following rules shall govern the presentation of voluminous documents or long accounts, such as receipts, invoices and vouchers, as evidence to establish certain facts:
>
> > (a) Summary and CPA certification. – The party who desires to introduce in evidence such voluminous documents or long accounts must, upon motion and approval by the Court, refer the voluminous documents to an independent Certified Public Accountant (CPA) for the purpose of presenting:
> >
> > > (1) a summary containing, among other matters, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount(s) of taxes paid and
> > >
> > > (2) a certification of an independent CPA attesting to the correctness of the contents of the summary after making an

> examination, evaluation and audit of voluminous receipts, invoices or long accounts.
>
> The name of the Certified Public Accountant or partner of a professional partnership of certified public accountants in charge must be stated in the motion. The Court shall issue a commission authorizing him to conduct an audit and, thereafter, testify relative to such summary and certification.
>
> (b) Pre-marking and availability of originals. – The receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be <u>pre-marked by the party concerned</u> and <u>submitted to the Court</u> <u>in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification.</u> The original copies of the voluminous receipts, invoices or accounts must be ready for verification and comparison in case doubt on its authenticity is raised during the hearing or resolution of the formal offer of evidence. (n)

Records show that the ICPA has provided this Court the above-mentioned summary (Exhibits "NNNN-5" to "NNNN-5-12"; "NNNN-8" to "NNNN-8-12"; "NNNN-11" to "NNNN-11-12"), and the ICPA likewise attested and confirmed that he examined the original copies/certified true copies of petitioner's documents, such as petitioner's Monthly and Quarterly VAT returns, official receipts, invoices, Schedule of Sales and Receipts, PEZA VAT zero-rating certificates, CSEZ Certificates of Registration and Tax Exemption and other supporting documents. The ICPA also testified that he has pre-marked the said documents.[15]

As regards the invoices and official receipts, an inspection of the records at hand shows that the invoices and official receipts from January to December 2006 were conspicuously pre-marked as "Supporting Documents" with reference numbers (numbered 1 until 7,132). Each invoice and official receipt has its own distinctive reference number.

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[15] Exhibit "PPPP".

These reference numbers were intricately appended on each of the invoices and official receipts; they are visible on and can be traced on the last columns of each summary, *i.e. Summary List of Purchases, Schedule of Sales and Receipts, and Summary of Official Receipts*. On the last column of each row of the said summary and schedules there can be found a specific reference number which points to a particular invoice or official receipt on record - which this Court can look into in order to verify the authenticity and veracity of the ICPA's conclusions. Also, these reference numbers of the invoices and official receipts were likewise chronologically listed in petitioner's Formal Offer of Evidence to support a particular summary or schedule. In view of the foregoing considerations, the Court is of the sense that petitioner has substantially complied with the requisite pre-marking of the invoices and official receipts.

Invoices and Official Receipts: Presented Before the Court and Formally Offered

Crucial to the issue on formal offer of evidence is Section 34, Rule 132 of the Revised Rules of Court which provides:

> "SEC. 34. *Offer of evidence.* — The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In the case of *People vs. Villanueva*[16], the Supreme Court had the occasion to reiterate its ruling in the case of *Heirs of Pedro Pasag v. Parocha*[17], *viz*:

> The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, as in this case, any evidence that has not been offered shall be excluded and rejected.

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[16] G.R. No. 181829, September 1, 2010.
[17] G.R. No. 155483, April 27, 2007, 522 SCRA 410.

> x x x x
>
> The Rules of Court [provide] that 'the court shall consider no evidence which has not been formally offered.' A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.
>
> x x x x
>
> Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.

Clearly, without a formal offer of evidence, courts are constrained to take no notice of the evidence even if it has been marked and identified.[18]

In the case before us, records manifest that the pieces of evidence, *i.e. invoices, official receipts,* were presented and identified in open court. The invoices and official receipts pre-marked as "Supporting Documents" with reference numbers

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[18] *Far East Bank & Trust Co. vs. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006.

from 1 until 7,132 were identified and presented in open court during the hearing held on January 13, 2009, following is an excerpt of the ICPA's testimony[19]:

ATTY. CAPPLEMAN:

Q. Mr. Witness, in your judicial Affidavit you likewise mentioned that you have examined the original copies of petitioner's official receipts and invoices. Do you have copies of the same with you?

MR. FERNANDO:

A. I have the machine reproductions of those documents, your Honors.

ATTY. CAPPLEMAN:

Q. Can you identify the same?

JUSTICE BAUTISTA:

You identify those documents by bunch.

MR. FERNANDO:

A. Yes, your Honors.

This bunch of documents, your Honors, represents the official receipts issued by Pilipinas Total Gas, Inc., for the period January 2006 to December 2006. Exhibits "NNNN" with submarkings Exhibits "NNNN-1" to "NNNN-1-12".

This bunch of documents represents the copy of official receipts and sales or charged invoice of input VAT claim for the month of January 2006 to December 2006, your Honors.

While this bunch of documents supports the sales invoice issued by Pilipinas Total Gas, Inc., for the period January 2006 to December 2006, your Honors.

JUSTICE BAUTISTA:

All right.

ATTY. CAPPLEMAN:

Q. Mr. Witness, do you affirm and confirm that these are the faithful reproductions of the originals which you have examined?

MR. FERNANDO:

A. Yes, Ma'am.

[19] Pp. 14-16, Transcript of Stenographic Notes for the January 13, 2009 hearing.

Furthermore, a careful scrutiny of petitioner's Formal Offer of Evidence (FOE) filed on February 12, 2009 reveals that the invoices and official receipts pre-marked as "Supporting Documents" with reference numbers 1 to 7,132 were formally offered in evidence.

Petitioner's FOE, pages 16-24, lists down the "*Summary List of Purchases*" for the months of January to December 2006, marked as Exhibits "NNNN-5-1" up to "NNNN-5-12". On the same pages it is noticeable that, other than the "*Summary List of Purchases*", each exhibit actually includes the "*Supporting Documents*" with corresponding reference numbers for that particular summary; in other words, one exhibit number (e.g. "NNNN-5-1") embraces or covers two (2) separate pieces of evidence, *i.e.* "*Summary List of Purchases*" and the "*Supporting Documents*". Upon verification, *We* were able to confirm that these so-called "*Supporting Documents*" are indeed copies of official receipts and sales/charge invoices for taxable year 2006 with reference numbers.

Clearly, the invoices and receipts subject of the aforesaid *Summary List of Purchases* were in fact formally offered and can be traced on pages 17 to 24 of petitioner's FOE captioned as follows:

"*Supporting documents for Exhibit NNNN-5-1 per reference no. 1-438*"; "*Supporting documents for Exhibit NNNN-5-2 per reference no. 439-886*"; "*Supporting documents for Exhibit NNNN-5-3 per reference no. 887-1323*"; "*Supporting documents for Exhibit NNNN-5-4 per reference no. 1324-1723*"; "*Supporting documents for Exhibit NNNN-5-5 per reference no. 1724-2134*"; "*Supporting documents for Exhibit NNNN-5-6 per reference no. 2135-2515*"; "*Supporting documents for Exhibit NNNN-5-7 per reference no. 2516-2888*"; "*Supporting documents for Exhibit NNNN-5-8 per reference no. 2889-3271*";

"Supporting documents for Exhibit NNNN-5-9 per reference no. 3272-3630";

"Supporting documents for Exhibit NNNN-5-10 per reference no. 3631-4014";

"Supporting documents for Exhibit NNNN-5-11 per reference no. 4015-4400";

"Supporting documents for Exhibit NNNN-5-12 per reference no. 4401-4755".

Below is an excerpt of petitioner's FOE for easier appreciation of our findings:

Exhibit	Description	Purpose
xxx	xxx	xxx
NNNN-5-1	**Summary List of Purchases** for the month of January 2006 *[Emphasis ours]*	To prove that the independent CPA conducted the required verification of Petitioner's Invoices, Official Receipts and Summary List of Purchases for the month of January 2006 and that the said documents support and substantiate Petitioner's claim for tax refund/issuance of tax credit certificate for taxable year 2006.
	Supporting documents for Exhibit NNNN-5-1 as per reference no. 1-438 *[Emphasis ours]*	To prove that the amount of Input Tax claimed by Petitioner for taxable year 2006 is duly substantiated by documentary evidence; To prove that the various invoices and receipts in support of Petitioner's input tax for 2006 are in compliance with the invoicing requirements provided under Section 113 of the 1997 Tax Code and as implemented under Section 4.113-1 of Revenue Regulations No. 16-05 To prove that the independent CPA has conducted the verification of petitioner's VAT returns and other supporting documents and that the foregoing documents support and substantiate Petitioner's claim for tax refund/issuance of TCC for taxable year 2006.
NNNN-5-2	**Summary List of Purchases** for the month of February 2006 *[Emphasis ours]*	To prove that the independent CPA conducted the required verification of Petitioner's

		Invoices, Official Receipts and Summary List of Purchases for the month of January 2006 and that the said documents support and substantiate Petitioner's claim for tax refund/issuance of tax credit certificate for taxable year 2006.
	<u>Supporting documents</u> for Exhibit NNNN-5-2 as per reference no. 439-886 *[Emphasis ours]*	To prove that the amount of Input Tax claimed by Petitioner for taxable year 2006 is duly substantiated by documentary evidence; To prove that the various invoices and receipts in support of Petitioner's input tax for 2006 are in compliance with the invoicing requirements provided under Section 113 of the 1997 Tax Code and as implemented under Section 4.113-1 of Revenue Regulations No. 16-05 To prove that the independent CPA has conducted the verification of petitioner's VAT returns and other supporting documents and that the foregoing documents support and substantiate Petitioner's claim for tax refund/issuance of TCC for taxable year 2006.
Xxx	xxx	xxx

Further, listed on pages 25-27 of petitioner's FOE are the *Schedule of Sales and Receipts* for the months of January to December 2006 marked as Exhibits "NNNN-8-1" up to "NNNN-8-12". The invoices and receipts subject of the said *Schedule of Sales and Receipts* were also formally offered and can be traced on pages 26 and 27 of petitioner's FOE collectively labelled as "*Supporting documents for Exhibit NNNN-8-1 to Exhibit No. NNNN-8-6 per reference no. 4756-5302*" and "*Supporting documents for Exhibit NNNN-8-7 to Exhibit No. NNNN-8-12 per reference no. 5303-5929*".

Also, pages 36-43 of petitioner's FOE list down the *Summary of Official Receipts* for the months of January to December 2006 marked as Exhibits "NNNN-11-1" up to "NNNN-11-12". The invoices and receipts subject of the said *Summary of Official Receipts* were likewise formally offered and can be traced on pages 36 to 43 of petitioner's FOE collectively captioned as follows:

"*Supporting documents for Exhibit NNNN-11-1 per reference no. 5930-6047*";
"*Supporting documents for Exhibit NNNN-11-2 per reference no. 6048-6119*";
"*Supporting documents for Exhibit NNNN-11-3 per reference no. 6120-6225*";
"*Supporting documents for Exhibit NNNN-11-4 per reference no. 6226-6316*";
"*Supporting documents for Exhibit NNNN-11-5 per reference no. 6317-6408*";
"*Supporting documents for Exhibit NNNN-11-6 per reference no. 6409-6513*";
"*Supporting documents for Exhibit NNNN-11-7 per reference no. 6514-6613*";
"*Supporting documents for Exhibit NNNN-11-8 per reference no. 6614-6715*";
"*Supporting documents for Exhibit NNNN-11-9 per reference no. 6716-6829*";
"*Supporting documents for Exhibit NNNN-11-10 per reference no. 6830-6927*";
"*Supporting documents for Exhibit NNNN-11-11 per reference no. 6928-7046*";
"*Supporting documents for Exhibit NNNN-11-12 per reference no. 7047-7132*".

It is indubitably visible to the eye that the invoices and official receipts pre-marked as "Supporting Documents" with reference numbers 1 to 7,132 were all listed on petitioner's FOE, and the purpose/s for which these pieces of evidence were offered had also been specified. *We* deem this to be sufficient compliance with the rule on offer of evidence which plainly provides that '*the Court shall consider no evidence which has not been **formally offered**. The **purpose for which the evidence is offered must be specified***'[20].

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[20] Section 34, Rule 132 of the Revised Rules of Court.

This Court is aware and accede to the rule and well-settled principle in this jurisdiction that '*while the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of the purchase receipts and/or invoices is not [a] mere procedural technicality which may be disregarded considering that it is the only* ***means by which the CTA may ascertain and verify the truth of respondent's claims***,[21] however, such failure to present the purchase receipts and invoices is not obtaining in this instance, and thus, the aforementioned precept finds no application in the case at bar.

The invoices and official receipts were pre-marked as "Supporting Documents" with reference numbers 1 to 7,132, and these reference numbers were incorporated and consciously made to appear on each of the summary, schedules, and formally offered on petitioner's FOE. By the manner these invoices and official receipts were pre-marked and incorporated by reference numbers to the summary, schedules and formally offered on petitioner's FOE, – buttressed by the fact that all these documents are in the custody of this Court – *We* are confident that this Court has **all the means by which to ascertain and verify the truth of petitioner's claim**.

As mentioned earlier, the main object of having the evidence pre-marked and submitted to the Court is to attain the ultimate goal of making the documents ***'accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification'***[22]. To reiterate, the invoices and official receipts were pre-marked by reference numbers, incorporated in the summary and

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[21] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.
[22] paragraph (b) Section 5, Rule 12 of the RRCTA.

schedules, formally offered in the FOE, and currently in the custody of this Court; thus, to this Court's mind, the spirit of this rule and jurisprudential precept has been achieved and gratified.

As pronounced by the Supreme Court in the case of *Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue*[23]

> "We reiterate the fundamental principle that technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice. And in cases before tax courts, Rules of Court applies only by analogy or in a suppletory character and whenever practicable and convenient shall be liberally construed in order to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding. <u>The quest for orderly presentation of issues is not an absolute.</u> <u>It should not bar the courts from considering undisputed facts to arrive at a just determination of a controversy.</u> <u>This is because</u>, after all, <u>the paramount consideration remains the ascertainment of truth</u>. Section 8 of R.A. No. 1125 creating the CTA also expressly provides that it shall not be governed strictly by technical rules of evidence.

And, in the case of *BPI-Family Savings Bank, Inc. vs. Court of Appeals*[24] the Supreme Court explicitly pronounced that:

> "...Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness."

In this regard, while *We* share the Court *a quo's* stance in being a strong proponent of the rule on formal offer of evidence under Section 34, Rule 132 of the

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[23] G.R. No. 141973, June 28, 2005.
[24] G.R. No. 122480, April 12, 2000, 330 SCRA 507, 509-510.

Rules of Court, which essentially states that courts cannot consider evidence which was not formally offered, *We* beg to differ with respect to the Court in Division's finding that petitioner failed to substantiate its claim for refund/tax credit due to petitioner's lapse in having the pieces of evidence in support of its claim, particularly, invoices and official receipts, formally offered in evidence. As pointed out in the above discourse, the pieces of evidence, *i.e. invoices, official receipts,* needed by this Court verify the authenticity and veracity of the independent auditors conclusions and petitioner's claim, were pre-marked by reference numbers and incorporated in the summary and schedules, presented in open court, formally offered in evidence, and currently in the custody of this Court.

Whether petitioner is entitled to refund or issuance of TCC in the amount of P17,528,906.71, allegedly representing excess and unutilized input VAT for taxable year 2006, arising from its zero-rated sales to PEZA and CDC-registered enterprises.

Having established that the pieces of evidence, *i.e. sales invoices, official receipts,* in support of petitioner's claim for refund/tax credit were formally offered in evidence and that petitioner's judicial claim for refund/tax credit of input VAT for taxable year 2006 was timely filed, it is now appropriate for this Court to proceed in giving due course to the instant Petition for Review for the purpose of determining whether petitioner is entitled to refund or the issuance of TCC in the amount of **P17,528,906.71** representing its excess and unutilized input VAT incurred for taxable year 2006 attributable to zero-rated sales to PEZA and CDC-registered enterprises.

As earlier discussed, one must be guided and abide by the provision of the NIRC of 1997, *as amended,* specifically Section 112 (A), in claiming a refund/tax credit of unutilized input VAT attributable to zero rated or effectively zero-rated sales. The aforesaid provision mandates that the following requisites be satisfied before a taxpayer engaged in zero-rated or effectively zero-rated transactions may be granted a refund/tax credit for unutilized input VAT:

(1) the taxpayer is VAT registered;

(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;

(3) the input taxes were incurred or paid;

(4) the input taxes have not been applied against output taxes during and in the succeeding quarters;

(5) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

(6) the claim was applied/filed within the period prescribed in Section 112(A) and (C) of the NIRC of 1997, *as amended.*

Inasmuch as *We* have already resolved the issue on the timeliness of petitioner's judicial claim, this Court shall now proceed in determining whether petitioner was able to satisfactorily meet the first five requisites for the grant of its claim for refund/tax credit of its unutilized input VAT for taxable year 2006 arising from its zero-rated sales.

For the year 2006, petitioner generated sales in the form of goods and services to entities duly registered with PEZA and Clark Special Economic Zone (CSEZ) as evidenced by the various sales invoices[25] and official receipts[26] issued by petitioner to its customers, certifications[27] issued by PEZA and Certificates[28] of Registration and Tax Exemption issued by CDC. Such sales qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, in relation to Articles 23 and 77 (1) and (2) of Executive Order No. 226, also known as the "Omnibus Investment Code of 1987, Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended, in relation to Section 15 of Republic Act (RA) No. 7227 otherwise known as the "Bases Conversion Development Act of 1992", as amended by RA No. 9400, Sections 23 and 24 of RA No. 7916 otherwise known as "The Special Economic Zone Act of 1995", as amended by RA No. 8748.

The VAT zero-rating of sales of goods and services to ecozone entities is in consonance with the Cross Border Doctrine under the Philippine VAT system as clarified by the BIR in Section 3.3 Revenue Memorandum Circular No. 74-99 and affirmed by the Supreme Court in Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,[29] and Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.[30]

However, a comparison of the amounts of zero-rated sales/receipts as reflected in petitioner's Quarterly VAT Returns and as shown in its monthly Summary of Sales and Receipts for the same period revealed a discrepancy in the amount of P88,771.68, broken down as follows:

[25] Reference Nos. 4756-5302 and 5303-5929.
[26] Reference Nos. 5930 to 7132.
[27] Exhibits NNNN-9-1 to NNNN-9-33.
[28] Exhibits NNNN-9-34 to NNNN-9-36.
[29] G.R. No. 150154, August 9, 2005.
[30] G.R. No. 149671, July 21, 2006.

	Per Return		Per Summary of Sales and Receipts		Discrepancy
Year 2006	**Amount**	**Exh.**	**Amount**	**Exh.**	
January			P 14,439,298.68	NNNN-8-1	
February			15,976,890.62	NNNN-8-2	
March			15,872,534.00	NNNN-8-3	
Total - 1st Qtr	P 46,377,494.97	"N"	**P 46,288,723.30**		P 88,771.67
April			P 13,202,583.70	NNNN-8-4	
May			16,860,502.89	NNNN-8-5	
June			14,805,735.45	NNNN-8-6	
Total - 2nd Qtr	44,868,822.05	"Z"	**P 44,868,822.04**		0.01
July			P 16,078,947.02	NNNN-8-7	
August			14,010,017.86	NNNN-8-8	
September			14,065,432.31	NNNN-8-9	
Total - 3rd Qtr	44,154,397.19	"LL"	**P 44,154,397.19**		0.00
October			P 18,158,125.72	NNNN-8-10	
November			15,741,625.68	NNNN-8-11	
December			16,418,808.21	NNNN-8-12	
Total - 4th Qtr	50,318,559.61	"XX"	**P 50,318,559.61**		0.00
Grand Total	**P 185,719,273.82**		**P185,630,502.14**		**P 88,771.68**

Since petitioner failed to substantiate the amount of P88,771.68, the same shall be denied VAT zero-rating.

Moreover, a careful scrutiny of the documents supporting petitioner's claimed zero-rated sales/receipts in the amount of P185,630,502.14 showed that the amount of P11,806,953.22 should be disallowed for the following reasons[31]:

Findings	Amount
1. Sales of services supported by official receipts with no word "zero-rated" in violation of Section 113(B(2)(c) of the NIRC of 1997, as amended	P 6,837,518.00
2. Sales of goods to entities with no certifications from PEZA or CDC	2,115,811.19
3. Sales of goods supported by invoices with no word "zero-rated" in violation of Section 113(B)(2)(c) of the NIRC of 1997, as amended	591,948.65
4. Sales of services and others not supported by official receipts	1,058,505.38
5. Zero-rated sales with no supporting documents	1,203,170.00
TOTAL	**P 11,806,953.22**

Thus, Petitioner was able to properly substantiate its reported zero-rated sales/receipts for taxable year 2006 but only to the extent of P 173,823,548.92, computed as follows:

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[31] See Annex A attached herewith for details.

Declared zero-rated sales/receipts	P 185,719,273.82
Less: Unsubstantiated difference in zero-rated sales/receipts as reflected per VAT returns and per summary	88,771.68
Other Disallowances	11,806,953.22
Substantiated zero-rated sales	**P 173,823,548.92**

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated sales/receipts of P173,823,548.92 will be considered for refund. The rate to be applied is based on the total amount of reported zero-rated sales/receipts and is computed as follows:

Substantiated zero-rated sales/receipts	P 173,823,548.92
Divided by total declared zero-rated sales/receipts	÷ P 185,719,273.82
Rate of qualified zero-rated sales/receipts	**93.59%**

Petitioner's input VAT claim of P17,528,906.17 represents the input VAT incurred on its domestic purchases and importation of goods and services less the output tax due plus the VAT paid per its Quarterly VAT Returns for taxable year 2006, as shown below:

Exh.	Qtr.	Input tax for the quarter	Output tax for the quarter	VAT Paid per returns	VAT Claim
N	1st	P 4,263,850.64	P 63,727.00	P 19,118.10	P 4,219,241.74
Z	2nd	4,471,971.03	259,440.00	77,832.00	4,290,363.03
LL	3rd	4,199,696.88	122,210.42	36,663.13	4,114,149.59
XX	4th	4,923,668.58	23,443.96	4,927.19	4,905,151.81
	TOTAL	**P17,859,187.13**	**P 468,821.38**	**P 138,540.42**	**P17,528,906.17**

The Court-commissioned independent CPA[32] tasked to verify petitioner's claim recommended for the disallowance of the following input taxes in the amount of P1,161,284.50 before allocation[33]:

Item	Nature	Exhibit	Amount
1.	Input VAT on purchase of goods and services supported by documents where the address and TIN of the Company is not indicated	NNNN-10-6	P 732,395.28
2.	Input VAT on purchase of goods and services without original supporting documents	NNNN-10-1	182,802.91

[32] Mr. Armando T. Fernando, a Partner of Dy Go Fernando and Company.
[33] Page 5 of Exhibit OOOO.

Item	Nature	Exhibit	Amount
3.	Input VAT on purchases of goods and services where no withholding taxes were recognized	NNNN-10-3	158,973.65
4.	Input VAT on purchase of goods and services with identified errors in VAT computation	NNNN-10-5	53,343.09
5.	Input VAT on purchase of goods and services supported by official receipts not in the name of the Company	NNNN-10-2	32,160.97
6.	Other invalid input VAT claims on purchase of goods and services	NNNN-10-4	1,608.60
Disallowed input VAT claims before allocation			**P 1,161,284.50**

The Court agrees with the ICPA's findings except for the input taxes under nos. 3 and 4.

The input VAT of P158,973.65 under no. 3 of the ICPA's findings shall not be disallowed for the reason that petitioner's failure to withhold expanded withholding tax from its purchases does not affect the amount of input tax incurred on the said purchases.

As regards the input VAT of P53,343.09 under no. 4 of the ICPA's findings pertaining to petitioner's purchases of goods and services with identified errors in VAT computation, only the amount of P1,533.90 representing the excess of the P26,270.09 claimed input VAT over the correct input VAT of P24,736.19 on the following purchases shall be denied:

Month	Supplier	Reference Number	Input Taxes Claimed	Correct Input Tax	Disallowed Input Tax
May	Insular Life Health Care, Inc.	2095	P 1,356.21	P 266.40	P 1,089.81
June	BPI/MS Insurance Corporation	2495	4,438.80	4,359.68	79.12
Nov.	BPI/MS Insurance Corporation	4030	20,475.08	20,110.11	364.97
			P 26,270.09	**P 24,736.19**	**P 1,533.90**

While petitioner's claimed input VAT of P6,894.04 on the following purchases were correctly computed, the same shall be denied for the following reasons:

Month	Supplier	Reference Number	Input Taxes Claimed
1. Purchases of services supported by documents other than ORs (such as delivery receipt and statement of account)			

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Month	Supplier	Reference Number	Input Taxes Claimed
Feb	Blu Boz	804	P 18.18
Aug	Globe Telecom	3248	131.95
	PLDT	3251	1,124.71
	PLDT	3252	173.16
	PLDT	3523	283.90
	PLDT	3254	928.58
	PLDT	3255	363.66
Dec	Globe Telecom	4751	342.98
	Globe Telecom	4752	159.43
2. Purchases of services supported by ORs dated outside the period of claim			
Dec	PLDT	4732	1,130.97
	PLDT	4733	491.62
	PLDT	4734	187.88
	PLDT	4735	1,114.54
	PLDT	4736	442.48
	Total		**P 6,894.04**

In other words, out of the P53,943.09 input VAT disallowed by the ICPA, the amount of P44,915.15 (P53,343.09 less P1,533.90 less P6,894.04) represents petitioner's valid claim as it was properly computed and supported by VAT invoices and official receipts.

In fine, the ICPA's recommended disallowances shall be reduced to the amount of P957,395.70, computed as follows:

Input VAT Disallowances per ICPA's Report			P 1,161,284.50
Less:	Input VAT Claims found to be valid by the Court		
	Per ICPA's Finding No. 3	P 158,973.65	
	Per ICPA's Finding No. 4	44,915.15	203,888.80
Adjusted Input VAT Disallowances per ICPA's Report			**P 957,395.70**

In addition to the above disallowances, petitioner's claim should be reduced by the following input taxes totaling P1,126,013.41[34]:

Findings	Input Tax
1. Purchases of services not supported by official receipts in violation of Section 113(A)(2) of the NIRC of 1997, as amended	P 494,712.17
2. Purchases of goods not supported by sales invoices in violation of Section 113(A)(1) of the NIRC of 1997, as amended	336,276.35

[34] See Annex B attached herewith for details.

Findings	Input Tax
3. Purchases of services supported by official receipts with the phrase "Not a valid source of input tax" indicated thereon	152,664.27
4. Purchases of goods supported by invoices which are not legible	28,057.72
5. Purchases of goods or services with overclaimed input tax	20,212.27
6. Purchases of goods or services with no supporting documents	21,788.92
7. Importation of goods supported by IEIRD which has no machine validation as to the amount paid for customs duties and taxes (including VAT)	71,766.00
8.Purchase of services supported by an official receipt which is dated outside the period of claim	535.71
TOTAL	**P 1,126,013.41**

Thus, petitioner's valid input VAT on domestic purchases and importation of goods and services amounts to only P15,445,497.06 and only P14,455,440.70 thereof is attributable to Petitioner's qualified zero-rated sales, as computed below:

Input VAT Claim		P 17,528,906.17
Less: Disallowances		
Per ICPA's Report, as adjusted	P 957,395.70	
Per this Court's further verification	1,126,013.41	2,083,409.11
Validly supported input VAT		P 15,445,497.06
Multiply by rate of qualified zero-rated sales		93.59%
Input VAT claim attributable to qualified zero-rated sales		**P 14,455,440.70**

Finally, anent the fourth requisite, petitioner's claim is net of its output liability for the year 2006. In its amended Quarterly VAT Returns for the four quarters of the same taxable year, petitioner deducted the following amounts as "Any VAT Refund/TCC Claimed":[35]

Quarter	Exhibit	VAT Refund/TCC Claimed
1st	N	P 4,219,241.74
2nd	Z	4,290,363.03
3rd	LL	4,114,149.59
4th	XX	4,905,151.81
TOTAL		**P 17,528,906.17**

Thus, petitioner could not have possibly utilized the substantiated input VAT of P14,455,440.70 in the succeeding quarters. In view of the foregoing, petitioner's refundable claim amounts to P14,455,440.70.

[35] Line 23D of Exhibits "N", "Z", "LL" and "XX".

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED but in a reduced amount of P14,455,440.70. Accordingly, the appealed *Decision* dated April 8, 2010 and *Resolution* dated August 10, 2010 are hereby REVERSED and SET ASIDE. Respondent is ORDERED TO REFUND, or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in favor of the petitioner in the amount of P14,455,440.70 representing excess and unutilized input VAT for taxable year 2006, arising from its zero-rated sales.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(I vote to affirm the Court a quo decision as evidence adverted to was not formally offered.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join Associate Justice Castañeda, Jr.)
CAESAR A. CASANOVA
Associate Justice

See attached Separate Concurring Opinion
(With Separate Concurring Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I join Associate Justice Castañeda, Jr.)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

ANNEX A

DISALLOWED ZERO-RATED SALES
FOR THE TAXABLE YEAR 2006
PER VERIFICATION OF THE COURT

Ref. #	Inv./OR #	Customer	Amount (PhP)
1. Sale of services supported by official receipts with no word "zero-rated"			
4756	4506	Rohm Apollo Electronic Co., Ltd.	265,000.00
4757	4515	Ushio Philippines, Inc.	33,605.00
4758	4455	Airwater Philippines	40,000.00
4761	4456	Showa Aluminum Mfg.	183,921.50
4782	4553	Airwater Philippines	21,911.40
4798	4435	Epson Precision (Phils.) Inc.	20,000.00
4800	4299	F-Tech Phils. Mfg.	47,622.34
4803	4436	Hitachi Global Storage Technologies	45,000.00
4806	4482	Rohm Apollo Electronic Co., Ltd.	60,000.00
4808	4461	Rohm Mechatech	5,500.00
4814	4431	Yokohama Tire Phils.	33,000.00
4815	4484	Futaba Corp. Phils.	10,600.00
4816	4484	Futaba Corp. Phils.	10,984.00
4817	4468	Airwater Philippines	62,000.00
4822	4367	Nanox Phils.	28,000.00
4835	4519	Fortunecross Phils.	1,000.00
4843	4484	Futaba Corp. Phils.	22,300.00
4850	4467	Airwater Philippines	4,500.00
4859	4314	Rohm Apollo Electronic Co., Ltd.	60,000.00
4879	4559	Airwater Philippines	21,693.00
4882	4449	Epson Precision (Phils.) Inc.	20,000.00
4884	4561	F-Tech Phils. Mfg.	47,147.67
4887	4606	Hitachi Global Storage Technologies	45,000.00
4892	4560	NEC Tokin Electronics	37,188.00
4917	4627	Yokohama Tire Phils.	33,000.00
4918	4574	TDK Phils. Corp.	18,594.00
4919	4522	Nanox Phils.	28,000.00
4920	4613	Hitachi Global Storage Technologies	18,648.00
4922	4315	Rohm Mechatech	5,500.00
4931	4617	Hoya Glass Disk Phils.	87,454.00
4941	4653	Epson Precision (Phils.) Inc.	29,640.00
4942	4756	Hitachi Global Storage Technologies	18,700.00
4944	4648	Hitachi Global Storage Technologies	59,000.00
4952	4590	TDK Phils. Corp.	80,573.00
4956	4572	Airwater Philippines	21,911.40
4958	4537	Nanox Phils.	28,000.00
4961	4616	Yokohama Tire Phils.	33,000.00
4964	4593	F-Tech Phils. Mfg.	17,070.46
4977	4628	Hitachi Global Storage Technologies	45,000.00
4981	4570	NEC Tokin Electronics	36,810.00
4983	4315	Rohm Mechatech	5,500.00
5018	4626	Epson Precision (Phils.) Inc.	20,000.00
5022	4665	Rohm Apollo Electronic Co., Ltd.	60,000.00
5031	4804	TDK Phils. Corp.	31,140.00
5032	4598	Ushio Philippines, Inc.	36,330.00
5033	4596	Toshiba Information Equipt.	57,090.00
5041	4587	NEC Tokin Electronics	37,285.20
5067	4591	Airwater Philippines	21,749.70
5070	4645	Epson Precision (Phils.) Inc.	20,000.00
5072	4593	F-Tech Phils. Mfg.	17,287.90
5083	4638	Hitachi Global Storage Technologies	45,000.00
5090	4681	Rohm Apollo Electronic Co., Ltd.	60,000.00

ANNEX A

Ref. #	Inv./OR #	Customer	Amount (PhP)
5094	4540	Nanox Phils.	28,000.00
5097	4751	Yokohama Tire Phils.	33,000.00
5103	4371	Rohm Mechatech	5,500.00
5108	4697	Rohm Apollo Electronic Co., Ltd.	62,400.00
5123	4762	Hitachi Global Storage Technologies	51,000.00
5129	4802	NEC Tokin Electronics	38,059.20
5132	4371	Rohm Mechatech	5,500.00
5136	4673	Airwater Philippines	1,365.00
5141	4759	Epson Precision (Phils.) Inc.	96,114.00
5147	4713	Nanox Phils.	28,000.00
5150	4718	Yokohama Tire Phils.	33,000.00
5171	4805	Airwater Philippines	22,201.20
5174	4807	F-Tech Phils. Mfg.	17,646.78
5179	4755	Hitachi Global Storage Technologies	45,000.00
5187	4697	Rohm Apollo Electronic Co., Ltd.	60,000.00
5188	4697	Rohm Apollo Electronic Co., Ltd.	72,000.00
5202	4377	Epson Precision (Phils.) Inc.	20,000.00
5215	4697	Rohm Apollo Electronic Co., Ltd.	60,000.00
5216	4697	Rohm Apollo Electronic Co., Ltd.	72,000.00
5222	4813	NEC Tokin Electronics	38,239.20
5235	4694	Rohm Mechatech	5,500.00
5242	4812	Airwater Philippines	22,306.20
5245	4815	F-Tech Phils. Mfg.	17,730.24
5250	4770	Hitachi Global Storage Technologies	45,000.00
5292	4868	Ushio Philippines, Inc.	90,000.00
5295	4774	Epson Precision (Phils.) Inc.	20,000.00
5297	4712	Nanox Phils.	28,000.00
5300	4777	Yokohama Tire Phils.	33,000.00
5314	4379	Ushio Philippines, Inc.	34,865.00
5323	4904	Hoya Glass Disk Phils.	35,920.00
5369	4823	F-Tech Phils. Mfg.	17,186.08
5373	4913	Epson Precision (Phils.) Inc.	20,000.00
5377	4812	Airwater Philippines	21,621.60
5383	4793	Hitachi Global Storage Technologies	45,000.00
5384	5529	Hitachi Global Storage Technologies	51,000.00
5385	4865	Airwater Philippines	18,920.00
5387	4818	NEC Tokin Electronics	37,065.60
5401	4868	Ushio Philippines, Inc.	45,000.00
5408	4796	Yokohama Tire Phils.	33,000.00
5409	4915	Nanox Phils.	28,000.00
5410	4883	Rohm Apollo Electronic Co., Ltd.	60,000.00
5411	4883	Rohm Apollo Electronic Co., Ltd.	72,000.00
5412	4882	Rohm Mechatech	5,500.00
5459	4829	Airwater Philippines	21,333.90
5460	4929	Epson Precision (Phils.) Inc.	20,000.00
5461	4828	F-Tech Phils. Mfg.	16,957.40
5462	4918	Hitachi Global Storage Technologies	45,000.00
5463	4916	Nanox Phils.	28,000.00
5464	4831	NEC Tokin Electronics	36,572.40
5465	4883	Rohm Apollo Electronic Co., Ltd.	60,000.00
5466	4883	Rohm Apollo Electronic Co., Ltd.	72,000.00
5467	4882	Rohm Mechatech	5,500.00
5468	4380	Ushio Philippines, Inc.	45,000.00
5469	4924	Yokohama Tire Phils.	33,000.00
5525	5529	Hitachi Global Storage Technologies	18,700.00
5526	5503	Hoya Glass Disk Phils.	74,590.50

Ref. #	Inv./OR #	Customer	Amount (PhP)
5527	5503	Hoya Glass Disk Phils.	98,377.50
5552	4746	Ushio Philippines, Inc.	9,500.00
5563	4836	Airwater Philippines	21,088.20
5564	5512	Epson Precision (Phils.) Inc.	20,000.00
5565	4835	F-Tech Phils. Mfg.	16,762.11
5566	5517	Hitachi Global Storage Technologies	45,000.00
5567	4725	Nanox Phils.	28,000.00
5568	4831	NEC Tokin Electronics	36,151.20
5569	5471	Rohm Apollo Electronic Co., Ltd.	60,000.00
5570	5471	Rohm Apollo Electronic Co., Ltd.	72,000.00
5571	5452	Rohm Mechatech	5,500.00
5572	4748	Ushio Philippines, Inc.	45,000.00
5573	4942	Yokohama Tire Phils.	33,000.00
5618	5540	Hitachi Global Storage Technologies	11,472.00
5619	5524	Toshiba Information Equipt.	8,194.00
5633	5004	Yokohama Tire Phils.	1,360,600.00
5635	5011	Epson Precision (Phils.) Inc.	18,915.00
5640	5534	Airwater Philippines	20,932.80
5641	5536	Epson Precision (Phils.) Inc.	20,000.00
5642	4845	F-Tech Phils. Mfg.	16,638.59
5643	5529	Hitachi Global Storage Technologies	45,000.00
5644	4954	Nanox Phils.	28,000.00
5645	5533	NEC Tokin Electronics	35,884.80
5646	4967	Rohm Apollo Electronic Co., Ltd.	60,000.00
5647	4967	Rohm Apollo Electronic Co., Ltd.	72,000.00
5648	5470	Rohm Mechatech	5,500.00
5649	5473	Ushio Philippines, Inc.	45,000.00
5650	5515	Yokohama Tire Phils.	33,000.00
5684	5531	TDK Phils. Corp.	108,386.64
5688	5458	Fuji Electric Phils. Inc.	11,210.00
5728	4749	Clarion Mfg. Corp.	27,000.00
5776	5202	Toshiba Information Equipt.	49,163.40
5781	4970	Nanox Phils.	28,000.00
5782	4966	Rohm Mechatech	5,500.00
5783	4848	Airwater Philippines	20,857.20
5784	4850	F-Tech Phils. Mfg.	16,578.49
5788	4847	NEC Tokin Electronics	35,755.20
5790	2601	Fuji Electric Phils. Inc.	35,000.00
5791	4963	Ushio Philippines, Inc.	45,000.00
5792	5543	Yokohama Tire Phils.	33,000.00
		Sub-total	*6,837,518.00*

2. Sale of goods to entities with no certification from PEZA or CDC

Ref. #	Inv./OR #	Customer	Amount (PhP)
4762	6373	Yield Ltd., Inc.	15,860.10
4763	6374	Yield Ltd., Inc.	52,867.00
4779	6392	Yield Ltd., Inc.	104,340.00
4809	6423	Suncall Corp.	8,800.00
4833	6466	Tomoe Shokai Co. Ltd.	106,368.40
4849	6468	Yield Ltd., Inc.	78,300.00
4895	6516	Suncall Corp.	6,600.00
4933	6554	Tomoe Shokai Co. Ltd.	24,800.58
4984	6610	Suncall Corp.	6,600.00
5044	6676	IDESS	5,282.07
5092	6727	Suncall Corp.	6,600.00
5104	6740	Yield Ltd., Inc.	108,990.00
5118	6750	Nidec Precision Phils.	500.00

Ref. #	Inv./OR #	Customer	Amount (PhP)
5127	6761	Yield Ltd., Inc.	79,425.00
5142	6777	OMTPI	165,813.36
5190	6825	Suncall Corp.	4,400.00
5223	6859	Yield Ltd., Inc.	42,222.71
5239	6877	Yield Ltd., Inc.	159,330.00
5271	6909	Suncall Corp.	6,600.00
5306	6939	Tomoe Shokai Co. Ltd.	27,640.80
5309	6944	Yield Ltd., Inc.	245,312.00
5310	6945	Yield Ltd., Inc.	52,320.00
5317	6956	Sumisetsu Phils.	146,320.72
5360	7002	First Sumiden	5,406.00
5389	7031	Suncall Corp.	6,600.00
5497	7144	Suncall Corp.	4,400.00
5524	7172	Yield Ltd., Inc.	165,858.00
5611	7318	Suncall Corp.	8,800.00
5617	7324	Yield Ltd., Inc.	150,360.00
5625	7341	Yield Ltd., Inc.	75,566.05
5677	7296	Suncall Corp.	2,200.00
5709	7366	Suncall Corp.	4,400.00
5746	7403	Sun Machinery	23,381.28
5747	7404	Tomoe Shokai Co. Ltd.	3,597.12
5798	7464	Yield Ltd., Inc.	49,660.00
5823	7489	Suncall Corp.	6,600.00
5904	7569	Suncall Corp.	6,600.00
5928	7594	Yield Ltd., Inc.	147,090.00
		Sub-total	*2,115,811.19*
3. Sale of goods supported by invoices with no word "zero-rated"			
4777	6390	Epson Precision (Phils.) Inc.	8,974.65
5027	6655	Rohm Apollo Electronic Co., Ltd.	427,500.00
5028	6656	Hitachi Global Storage Technologies	108,000.00
5122	6755	T&S Laser Solutions	47,020.00
5308	6943	Toshiba Information Equipt.	454.00
		Sub-total	*591,948.65*
4. Sale of services and others not supported by an official receipt			
5636	7255	Hitachi Global Storage Technologies	18,700.00
5738	7395	Hoya Glass Disk Phils.	18,993.00
5779	7443	Epson Precision (Phils.) Inc.	20,000.00
5780	7444	Hitachi Global Storage Technologies	45,000.00
5785	7449	Rohm Apollo Electronic Co., Ltd.	60,000.00
5787	7451	Rohm Apollo Electronic Co., Ltd.	72,000.00
5835	7502	PHCP, Inc.	21,000.00
5847	7508	PHCP, Inc.	230,000.00
5862	7526	Airwater Philippines	11,450.00
5864	7528	Epson Precision (Phils.) Inc.	20,000.00
5865	7529	Hitachi Global Storage Technologies	45,000.00
5866	7530	Nanox Phils.	28,000.00
5867	7531	Rohm Mechatech	5,500.00
5868	7532	Ushio Philippines, Inc.	45,000.00
5869	7533	Yokohama Tire Phils.	33,000.00
5870	7534	PHCP, Inc.	21,000.00
5871	7535	Airwater Philippines	20,592.60
5872	7536	F-Tech Phils. Mfg.	16,368.18
5873	7537	NEC Tokin Electronics	35,301.60
5874	7538	Rohm Apollo Electronic Co., Ltd.	60,000.00

ANNEX A

Ref. #	Inv./OR #	Customer	Amount (PhP)
5875	7539	Rohm Apollo Electronic Co., Ltd.	72,000.00
5919	7585	Yokohama Tire Phils.	64,600.00
5926	7592	Philippines HKR Inc.	95,000.00
		Sub-total	*1,058,505.38*
5. Zero-rated sales with no supporting documents			
	6533	Ushio Philippines, Inc.	72,000.00
	6662	T&S Laser Solutions	285,000.00
	6839	Ushio Philippines, Inc.	824,760.00
	7081	TDK Phils. Corp.	11,110.00
	7386	TDK Phils. Corp.	6,300.00
	7516	Hoya Glass Disk Phils.	4,000.00
		Sub-total	*1,203,170.00*
		TOTAL	**11,806,953.22**

ADDITIONAL DISALLOWANCES
PER VERIFICATION OF THE COURT

Ref. No.	Supplier	OR/Invoice No.	Date	Amount (PhP)
1. Purchase of services not supported by an official receipt				
2	Ingasco, Inc.	191578	1/31/2006	110,000.00
3	Ingasco, Inc.	207880	1/31/2006	1,320.00
4	Ingasco, Inc.	207878	1/31/2006	210.00
5	Ingasco, Inc.	107875	1/31/2006	17,981.75
6	Ingasco, Inc.	207408	1/31/2006	3,576.14
11	Ingasco, Inc.	207386	1/31/2006	1,065.00
12	Ingasco, Inc.	207385	1/31/2006	30,071.70
362	Globe Telecom			289.66
363	PLDT	58001987858		942.65
364	PLDT	58001987858		196.65
365	PLDT	58001987858		656.32
366	PLDT	58001987858		161.58
367	PLDT	58001987858		346.61
397	Globe Telecom			176.45
403	Smart Communication			318.18
435	Mobile Carwash			27.27
812	Globe Telecom			132.07
813	Globe Telecom			212.46
814	Globe Telecom			138.03
815	PLDT			1,131.19
816	PLDT			457.27
817	PLDT			217.42
818	PLDT			1,228.37
819	PLDT			419.89
829	Smart Communication			375.00
1297	Globe Telecom			214.75
1298	Globe Telecom			430.93
1299	Smart Communication			438.36
1309	Globe Telecom			129.11
1319	PLDT			294.82
1320	PLDT			1,056.63
1321	PLDT			183.55
1322	PLDT			446.16
1323	PLDT			1,129.50
1492	Ingasco, Inc.	211501	4/17/2006	5,887.20
1493	Ingasco, Inc.	211500	4/10/2006	120,000.00
1667	Globe Telecom	41280905		251.09
1671	Smart Communication			375.00
1703	Isuzu Pasig	21471	4/25/2006	241.07
1704	Isuzu Pasig	21470	4/25/2006	392.89
1715	PLDT	58002139534		307.42
1716	PLDT	58002139533		1,155.37
1717	PLDT	58002139532		176.67
1718	PLDT	58002157272		454.31
1719	PLDT	58002157271		1,119.71
1731	PCM Industrial Sales, Inc.	4867	5/24/2006	5,880.00
1732	PCM Industrial Sales, Inc.	4868	5/24/2006	1,260.00
1733	PCM Industrial Sales, Inc.	4869	5/24/2006	4,440.00
2093	Globe Telecom	37		1,890.00
2108	Globe Telecom	8		192.86
2109	Globe Telecom	14		187.25
2110	Smart Communication	84652617		375.00

Ref. No.	Supplier	OR/Invoice No.	Date	Amount (PhP)
2117	Globe Telecom	38		147.39
2129	PLDT	58002190612		329.82
2130	PLDT	58002190611		1,022.63
2131	PLDT	58002190610		221.91
2132	PLDT	58002208352		544.17
2141	PCM Industrial Sales, Inc.	4884	5/24/2006	480.00
2142	PCM Industrial Sales, Inc.	4886	6/13/2006	2,160.00
2143	PCM Industrial Sales, Inc.	4892	6/20/2006	16,925.76
2484	Globe Telecom			188.11
2486	Globe Telecom			219.93
2488	PLDT	58002190612		1,136.65
2489	PLDT	58002190611		528.79
2490	PLDT	58002190610		183.86
2491	PLDT	58002208352		1,314.18
2492	PLDT	58002208351		310.86
2493	Smart Communication	85640177		375.00
2520	PCM Industrial Sales, Inc.	4955	8/7/2006	3,360.00
2521	PCM Industrial Sales, Inc.	4921	7/17/2006	852.24
2522	PCM Industrial Sales, Inc.	4933	7/24/2006	1,850.04
2523	PCM Industrial Sales, Inc.	4936	7/28/2006	968.45
2524	PCM Industrial Sales, Inc.	4943	7/31/2006	11,555.90
2851	Globe Telecom			190.58
2852	Globe Telecom			192.86
2855	PLDT	58002316731		1,113.09
2856	PLDT	58002316732		428.07
2857	PLDT	58002297586		184.77
2858	PLDT	58002297587		971.04
2859	PLDT	58002297588		342.41
2864	Smart Communication	86633895		375.00
3247	Globe Telecom			228.88
3249	Globe Telecom			192.86
3259	Smart Communication	087640095	7/28/2006	385.95
3278	PCM Industrial Sales, Inc.	4995	9/11/2006	10,986.72
3279	PCM Industrial Sales, Inc.	4997	9/11/2006	1,167.04
3608	Globe Telecom			300.45
3609	Globe Telecom			200.87
3610	Globe Telecom			192.86
3617	Smart Communication	088681462	8/2/2006	376.03
3632	Ingasco, Inc.	221623	10/31/2006	707.14
3633	PCM Industrial Sales, Inc.	5016	10/4/2006	1,026.00
3634	PCM Industrial Sales, Inc.	5022	10/9/2006	9,000.00
4006	Globe Telecom			381.16
4012	Smart Communication			479.13
4013	Globe Telecom			196.19
4014	Republic Courier Service, Inc.			365.29
4022	PCM Industrial Sales, Inc.	5059	11/13/2006	19,542.32
4023	PCM Industrial Sales, Inc.	5060	11/13/2006	35,373.55
4024	PCM Industrial Sales, Inc.	5061	11/13/2006	11,697.35
4371	Globe Telecom			184.83
4372	Globe Telecom			399.65
4398	Smart Communication			481.03
4403	Ingasco, Inc.	225151	12/31/2006	697.24
4411	PCM Industrial Sales, Inc.	5085	12/11/2006	732.11
4413	PCM Industrial Sales, Inc.	5088	12/13/2006	2,019.60
4414	PCM Industrial Sales, Inc.	5089	12/13/2006	19,563.30
4415	PCM Industrial Sales, Inc.	5090	12/13/2006	726.00

Ref. No.	Supplier	OR/Invoice No.	Date	Amount (PhP)
4460	Ingasco, Inc.	225153	12/31/2006	2,643.48
4461	Ingasco, Inc.	225152	12/31/2006	2,618.18
4462	Ingasco, Inc.	225150	12/31/2006	2,100.00
4516	Ingasco, Inc.	224726	12/19/2006	17.79
4674	Ingasco, Inc.	223853	12/6/2006	35.57
4738	Globe Telecom			185.82
4750	Smart Communication			472.96
	Sub-total			***494,712.17***
2. Purchase of goods not supported by an invoice				
13	Beta Chemicals, Inc.	11505	2/24/2006	3,600.00
18	Beta Chemicals, Inc.	11427	2/17/2006	3,600.00
19	Beta Chemicals, Inc.	11456	2/10/2006	3,600.00
360	Anrah I.T. Products, Inc.	1274	2/3/2006	3,656.36
837	Anrah I.T. Products, Inc.	1759	3/3/2006	300.00
843	Tricom Dynamics, Inc.	128105	3/3/2006	1,568.14
887	Pacific Carbonic Corp.	4490	5/12/2006	12,283.66
893	Pacific Carbonic Corp.	4484	4/10/2006	14,686.98
1295	Anrah I.T. Products, Inc.	1884	4/7/2006	1,366.07
1714	Pilipinas Shell Petroleum Corp.	428055	5/16/2006	3,524.60
1739	Beta Chemicals, Inc.	12031	6/30/2006	4,821.43
1740	Beta Chemicals, Inc.	11945	6/23/2006	3,857.14
1748	VAF Enterprises	2423	5/25/2006	66,306.72
1749	Manila Fluid System, Inc.	3918	6/7/2006	64.61
1750	Marman Trading	39137	6/26/2006	4,285.71
2111	Anrah I.T. Products, Inc.	2279	5/19/2006	4,079.46
2134	Pilipinas Shell Petroleum Corp.			4,705.41
2144	Beta Chemicals, Inc.	12054	7/7/2006	3,857.14
2145	Beta Chemicals, Inc.	13087	7/28/2006	3,857.14
2146	Beta Chemicals, Inc.	13088	7/28/2006	8,678.57
2487	Pilipinas Shell Petroleum Corp.	434079	7/18/2006	3,750.00
2530	VAF Enterprises	2421	7/19/2006	62,904.00
2854	Pilipinas Shell Petroleum Corp.	437715	8/16/2006	4,841.54
2899	Beta Chemicals, Inc.	12275	9/15/2006	3,857.14
2901	Toolec Inc.	23284	8/25/2006	1,671.43
2906	Festo Inc.	54951	9/22/2006	355.92
3250	Pilipinas Shell Petroleum Corp.	441678	9/14/2006	4,595.69
3266	Anrah I.T. Products, Inc.	3871	9/1/2006	3,337.17
3270	The Great Swan Lake Trading	2048	9/22/2006	433.71
3272	Pacific Carbonic Corp.	4536	11/6/2006	15,723.71
3280	Beta Chemicals, Inc.	12602	11/17/2006	4,800.00
3281	Beta Chemicals, Inc.	12487	10/27/2006	6,000.00
3289 to 3291	Jetmar Industrial Sales	6457	10/6/2006	1,899.11
3611	Pilipinas Shell Petroleum Corp.	444904	10/13/2006	4,071.43
3631	Cebu Legacy Enterprises	1576	11/17/2006	2,142.86
3642	Beta Chemicals, Inc.	12707	12/8/2006	4,800.00
3643	Beta Chemicals, Inc.	12610	11/24/2006	4,800.00
3645	Beta Chemicals, Inc.	12603	11/17/2006	4,800.00
3647	Jetmar Industrial Sales	6527	11/17/2006	423.21
3655	Toolec Inc.	23341	11/3/2006	144.64
3997	Pilipinas Shell Petroleum Corp.	448369	11/14/2006	4,477.49
4005	Anrah I.T. Products, Inc.	4861	11/10/2006	2,427.86
4010	Tricom Dynamics, Inc.	142010	11/3/2006	644.14
4011	Anrah I.T. Products, Inc.	4619	11/27/2006	396.96
4034	Toolec Inc.	24335	11/30/2006	3,942.86
4036	Manila Fluid System, Inc.	4171	11/27/2006	119.30

Ref. No.	Supplier	OR/Invoice No.	Date	Amount (PhP)
4042	Genequipt Sales	2347	11/22/2006	385.71
4373	Pilipinas Shell Petroleum Corp.	1969	12/15/2006	3,999.23
4392	Anrah I.T. Products, Inc.	9024	12/8/2006	1,462.50
4409	Pacific Carbonic Corp.	4569	2/2/2007	18,723.94
4416	Beta Chemicals, Inc.	12901	2/2/2007	5,689.29
4420	Jetmar Industrial Sales	7356	5/18/2007	900.00
4424	Manila Fluid System, Inc.	4195	12/29/2006	60.99
4731	Pilipinas Shell Petroleum Corp.	6788	1/16/2007	4,138.24
4741	AXN Tyre Medic Center	540	1/5/2007	857.14
	Sub-total			***336,276.35***
3. Purchase of services supported by official receipt with "Not a valid source of input tax"				
2137	PCM Industrial Sales, Inc.	2535	8/11/2006	907.20
2138	PCM Industrial Sales, Inc.	2536	8/11/2006	2,867.64
2139	PCM Industrial Sales, Inc.	2621	7/28/2006	2,396.64
2140	PCM Industrial Sales, Inc.	2620	7/28/2006	3,407.52
2894	PCM Industrial Sales, Inc.	2581	10/3/2006	1,021.92
2895	PCM Industrial Sales, Inc.	2578	9/15/2006	651.60
3276	PCM Industrial Sales, Inc.	2596	10/27/2006	1,916.26
3277	PCM Industrial Sales, Inc.	2631	11/3/2006	817.32
3635	PCM Industrial Sales, Inc.	2600	11/24/2006	136,390.02
4025	PCM Industrial Sales, Inc.	2645	11/30/2006	1,500.19
4410	PCM Industrial Sales, Inc.	2710	2/2/2007	787.96
	Sub-total			***152,664.27***
4. Purchase of goods supported by invoices which are not legible				
1474	Ingasco, Inc.	211571	4/18/2009	6,855.01
1790	Ingasco, Inc.	213626	5/27/2006	7,067.57
1800	Ingasco, Inc.	213592	5/26/2006	6,823.86
2012	Ingasco, Inc.	212524	5/6/2006	7,311.28
	Sub-total			***28,057.72***
5. Purchase of goods or services with overclaimed input tax				
788	Ingasco, Inc.	191507	1/31/2006	1,169.59
832	Manila Bulletin Publishing	5521667	2/19/2006	160.85
4007	Toyota Balintawak Inc.	78425	10/16/2006	43.39
4747	Insular Life Health Care, Inc.	131677	12/21/2006	18,838.44
	Sub-total			***20,212.27***
6. Purchase of goods or services with no supporting documents				
1807	Ingasco, Inc.	213557	5/25/2006	7,554.99
1853	Ingasco, Inc.	213316	5/22/2006	5,754.63
3230	Ingasco, Inc.	198145	8/19/2006	7,351.11
	PLDT	58002208351		1,128.19
	Sub-total			***21,788.92***
7. Importation of goods supported by IEIRD which is not validated				
3650	Bureau of Customs			71,766.00
	Sub-total			***71,766.00***
8. Purchase of services supported by an official receipt which is dated outside the period of claim				
4421	Best Value Trading Corp.	2929	1/5/2007	535.71
	Sub-total			***535.71***
	TOTAL			**1,126,013.41**

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PILIPINAS TOTAL GAS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 674
(CTA Case No. 7777)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
JAN 05 2012 [signature] 9:20 a.m.

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SEPARATE CONCURRING OPINION

BAUTISTA, J.

A perusal of the relevant law and jurisprudence convinces me that at the time of the filing of the administrative claim on July 31, 2007, and the subsequent Petition for Review with this Court on April 24, 2008, relative to a claim for refund of input value-added tax ("VAT") attributable to zero-rated sales for the four quarters of the taxable year 2006, *the prevailing jurisprudence then is that the two (2)-year prescriptive period is reckoned from the filing of the quarterly return*, which this Court has consistently applied in a long line of decisions, and has continued to guide taxpayers and practitioners alike.

Therefore, while I concur with the findings of the Court sitting *En Banc* that petitioner's administrative and judicial claims have been filed within the period allowed under Section 112(C) of the 1997 National Internal Revenue ("NIRC"), as amended, I, nonetheless, must point out my different view.

The factual circumstances present in the case at bench should make this Court consider the principle which states that "where there has been justifiable reliance on Our decisions, and those who have so relied may be substantially harmed if retroactive effect is given, where the purpose of the new rule can be adequately effectuated without giving it retroactive operation, or where retroactive operation might greatly burden the administration of justice, then it is Our duty to apply the new rule prospectively."[1]

This Court has been consistent that, even after the Petition for Review was filed on 2008, the Court has continued to invoke the rule that the reckoning of the two (2)-year prescriptive period for the filing of claims for VAT refund/tax credit certificate starts from the date of filing of the corresponding quarterly VAT returns, in similar cases such as *Takenaka Corp. Phil. Branch v. CIR, CTA Case No. 6762, March 20, 2006; Mirant (Navotas 11) Corporation v. CIR, CTA Case Nos. 7234 & 7295, October 2, 2008;* and *CE Luzon Geothermal Power Co. v. CIR, CTA Case Nos. 6792 & 6837, November 25, 2008.*

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[1] Magtoto *v.* Manguera, *et al.*, G.R. Nos. L-37201-02, L-37424, and L-38929, March 3, 1975, 63 SCRA 4, Concurring Opinion penned by Justice Felix Q. Antonio, with Justices Antonio P. Barredo and Cecilia Muñoz-Palma, concurring.

Thus, the rule that the reckoning of the two (2)-year period is the date of filing of the quarterly VAT return has become a well-established doctrine and adopted in numerous decisions of this Court, the Court of Appeals and even the Supreme Court until the latter issued a ruling wherein the two (2)-year period is reckoned, not from the filing of the return, but from the close of the taxable quarter when the sales were made.

Further, the use of the word *"may"* in Section 112(C) of the 1997 NIRC, as amended, indicates that the judicial recourse within thirty (30) days after the lapse of the one hundred twenty (120)-day period is directory and permissive, and not mandatory nor jurisdictional as long as the said period is within the two (2)-year prescriptive period under Sections 112[2] and 229[3] of the 1997 NIRC.[4] Therefore, if the two (2)-year prescriptive period is about to expire, there is no need to wait for the

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[2] 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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

[3] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[4] Commissioner of Internal Revenue *v.* Aichi Forging Company of Asia, Inc., CTA EB Case No. 416, February 4, 2009.

denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court.[5]

Otherwise, the Court will be deprived of jurisdiction to entertain the case.[6]

Based on the foregoing discussion, while I concur with the grant of the present Petition for Review, I maintain my view that the two (2) year prescriptive period should be reckoned from the filing of the relevant return, and that the period provided under Section 112(C) of the 1997 NIRC, as amended, is merely directory and not mandatory nor jurisdictional.

Accordingly, I vote for the **GRANT** of the Petition for Review.

LOVELL R. BAUTISTA
Associate Justice

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[5] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[6] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PILIPINAS TOTAL GAS, INC., *Petitioner,*	**C.T.A. EB NO. 674 (C.T.A. CASE No. 7777)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JAN 05 2012 9:20 a.m.

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SEPARATE CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

This case is an appeal by Pilipinas Total Gas, Inc. from the Decision dated April 8, 2010 of the Second Division in C.T.A. Case No. 7777, which denied petitioner's claim for refund of unutilized input VAT on the ground that petitioner failed to sufficiently substantiate its zero-rated sales for taxable year 2006 considering that petitioner's official receipts, invoices and other supporting documents were not formally offered in evidence before the Second Division, docketed as C.T.A. EB No. 674.

In C.T.A. EB No. 674, the *Ponente*, however, reversed said Decision dated April 8, 2010 of the Second Division on the ground that the invoices and official receipts in question were pre-marked and presented before the Second Division and formally offered in evidence.

With due respect, after a careful examination of the records of the case, I agree with Justice Amelia R. Cotangco-Manalastas, the *Ponente* in C.T.A. EB No. 674, that the supporting documents, invoices and official receipts in question were formally offered in evidence before the Second Division, even if only the schedules bear the corresponding exhibit numbers. A perusal of petitioner's Formal Offer of Evidence filed before the Second Division shows that although only the "Summary Lists of Purchases" were marked as Exhibits "NNNN-5-1" to "NNNN-5-12", each exhibit, e.g. Exhibit "NNNN-5-1", includes a caption "Supporting Documents for Exhibit NNNN-5-1 per reference no. 1-438", below it, and opposite it, the purpose for which said documents were being offered. This is true as regards the other NNNN-5 Exhibits.

The "Supporting Documents" referred to therein are copies of official receipts and sales/charge invoices for taxable year 2006, with corresponding reference numbers. Therefore, it is evident that the "Supporting Documents" mentioned in petitioner's Formal Offer of Evidence are part and parcel of the mother Exhibits "NNNN-5-1" to "NNNN-5-12". Clearly, said invoices and official receipts, subject of said "Summary List of Purchases", were formally offered in evidence. Considering that said "Supporting Documents" were formally offered in evidence, it is my humble view that there is substantial compliance with *Section 34, Rule 132 of the Revised Rules of Court*.

In fact, in the case of *Dizon vs. Court of Tax Appeals, 553 SCRA 128, citing the cases of People vs. Napat-a (179 SCRA 407) and People vs. Mate (103 SCRA 484),* the Supreme Court ruled that documents not formally offered may be admitted and considered in evidence if (1) the documents have been duly identified by testimony duly recorded, and (2) the documents have been incorporated in the records of the case.

During the hearing held on January 13, 2009, the Court-Commissioned Independent CPA identified the official receipts and invoices issued by petitioner for the period January 2006 to December 2006 *(TSN, Jan. 13, 2009, pp. 14-16).* Thus, it is clear that the official receipts and invoices in question were duly identified by the testimony of the ICPA. With more reasons, therefore, that petitioner's claim for refund of input VAT should not be denied on the ground that petitioner's official receipts, invoices and other supporting documents were not formally offered in evidence before the Second Division.

In view hereof, I concur with Justice Amelia R. Cotangco-Manalastas, the *Ponente* in C.T.A. EB No. 674, to reverse and set aside the Amended Decision dated April 8, 2010 of the Second Division and accordingly, to grant the Petition For Review in C.T.A. Case No. 7777 in the reduced amount of P14,455,440.70.

OLGA PALANCA-ENRIQUEZ
Associate Justice