REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SCHAEFFLER PHILIPPINES INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10388

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

Promulgated:
APR 24 2025

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that the Court render judgment ordering respondent to refund in favor of petitioner the amount of ₱2,529,139.00, representing petitioner's excess and unutilized input value-added tax (VAT) on its importations attributable to its zero-rated sales for the 2nd quarter of calendar year (CY) ended December 31, 2018.[1]

THE PARTIES

Petitioner Schaeffler Philippines Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 5F Optima Building, 221 Salcedo Street, Legaspi Village, Makati City, Philippines.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Tax Identification Number (TIN) 006-868-990-000.[3]

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[1] Statement of the Case, Pre-Trial Order dated July 21, 2021, Docket – Vol. I, p. 456.
[2] Par. 3, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 416; Exhibits "P-1" and "P-2", Docket – Vol. 2, pp. 440 to 457
[3] Exhibit "P-3", Docket – Vol. 2, p. 458.

On the other hand, respondent is being sued in his official capacity as the Commissioner of Internal Revenue, having been duly appointed and empowered to perform the duties of his office including, among others, the duty to act on and approve claims for refund and/or tax credits as provided by law.[4]

THE FACTS OF THE CASE

On July 15, 2020, petitioner filed with the Bureau of Internal Revenue (BIR) Revenue District Office No. 47 – East Makati City an *Application for Tax Credits/Refund* (BIR Form No. 1914),[5] for the refund or tax credit of input tax, amounting to ₱12,815,618.00, for period from April 1, 2018 to June 30, 2018, with a duly accomplished *Revised Checklist of Mandatory Requirements on Claims for VAT Refund*.[6]

Thereafter, on September 28, 2020, petitioner received the *VAT Refund Notice* dated September 23, 2020 signed by Regional Director Maridur V. Rosario,[7] wherein petitioner was informed that the total amount of input tax allowable on importations is only ₱9,292,103.97.

Petitioner filed the present *Petition for Review* on October 28, 2020.[8]

On January 18, 2021, respondent posted his *Answer*,[9] interposing the following special and affirmative defenses, to wit: (1) from petitioner's original claim of ₱12,815,618.00, only ₱9,292,103.97 was found refundable and substantiated by the documentary evidence; (2) petitioner's over-claimed input VAT in the amount of ₱2,529,139.00 must be disallowed, and a deficiency VAT must be assessed thereon; and (3) it is a well-settled principle that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law, and this cannot be permitted by vague implications.

Respondent submitted the *BIR Records* for the present case on January 26, 2021.[10]

[4] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. I, p. 416.
[5] Exhibit "P-34", Docket – Vol. 2, p. 523.
[6] Exhibit "P-35", Docket – Vol. 2, p. 527.
[7] Exhibit P-37", Docket – Vol. 2, pp. 528 to 538.
[8] Docket – Vol. I, pp. 7 to 48.
[9] Docket – Vol. I, pp. 268 to 276.
[10] Respondent's *Compliance* dated January 26, 2021, Docket – Vol. I, pp. 309 to 310.

The Pre-Trial Conference was set and held on June 1, 2021.[11] Prior thereto, *Respondent's Pre-Trial Brief* was filed on May 26, 2021,[12] while *Petitioner's Pre-Trial Brief* was filed on May 27, 2021.[13]

On July 1, 2021, the parties filed their *Joint Stipulation of Facts and Issues*,[14] which was admitted and approved by the Court in its Resolution dated July 15, 2021,[15] thereby deeming the termination of the Pre-Trial. Subsequently, the Court issued the Pre-Trial Order dated July 21, 2021.[16]

Trial then ensued, with the parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following, namely: (1) Ms. Melany A. Belen,[17] petitioner's Treasurer and Finance Manager; and (2) Ms. Ma. Fedna B. Parallag,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The *Report* of the ICPA was posted on October 27, 2021.[20]

On March 23, 2023, *Petitioner's Formal Offer of Evidence* was filed.[21] Respondent then filed through an accredited courier his *Comment/Opposition (on Petitioner's Formal Offer of Evidence)* on April 13, 2023.[22] In the Resolution dated July 4, 2023,[23] the Court admitted petitioner's exhibits, *except* the following:

1. Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-49 to P-51", "P-54 to P-60", "P-62", "P-367 to "P-590", "P-660", and "P-662 to P-663", for failure to present the originals for comparison; and

2. Exhibits "P-47", "P-48", and "P-145", for not being found in the records of the case.

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[11] Notice of Pre-Trial Conference dated January 29, 2021, Docket – Vol. I, pp. 312 to 313; Minutes of the hearing held on, and Order dated, June 1, 2021, Docket – Vol. I, pp. 387 to 390.
[12] Docket – Vol. I, pp. 314 to 319.
[13] Docket – Vol. I, pp. 347 to 382.
[14] Docket – Vol. I, pp. 416 to 429.
[15] Docket – Vol. I, pp. 451 to 452.
[16] Docket – Vol. I, pp. 456 to 470.
[17] Exhibits "P-38", "P-45" and "P-665", Docket – Vol. I, pp. 115 to 138, 397 to 405, and Docket – Vol. 2, pp. 357 to 367, respectively; Minutes of the hearing held on, and Order dated, February 21, 2023, Docket – Vol. 2, pp. 383, and 385 to 386, respectively.
[18] Exhibit "P-664", Docket – Vol. 2, pp. 301 to 318; Minutes of the hearing held on, and Order dated, September 27, 2022, Docket – Vol. 2, pp. 346 to 347;
[19] *Oath of Commission* dated July 21, 2021, Docket – Vol. I, p. 483; Minutes of the hearing held on, and Order dated, July 21, 2021, Docket – Vol. I, pp. 471 to 473.
[20] Exhibit "P-45", Docket – Vol. 2, pp. 592 to 692.
[21] Docket – Vol. 2, pp. 397 to 438.
[22] Docket – Vol. 3, pp. 561 to 563.
[23] Docket – Vol. 3, pp. 569 to 571.

For his part, respondent offered the testimony of Revenue Officer Jan Paulica De Guzman.[24]

Respondent's Formal Offer of Evidence was filed on July 19, 2023,[25] while petitioner submitted its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 14 July 2023)* through an accredited courier on August 4, 2023.[26] In the Resolution dated September 15, 2023,[27] the Court denied the admission of Exhibits "R-6" and "R-6-a", for failure to comply with Section 3(f) in relation to Section 10(c) of the Judicial Affidavit Rule, and Exhibits "R-1", "R-2", "R-2-A", "R-2-B", "R-2-C", "R-2-D", "R-3", "R-4", and "R-5", for failure to identify.

On September 26, 2023, petitioner filed through an accredited courier its *Motion to Reopen Trial Proceedings to Submit Supplemental Evidence*,[28] to which respondent posted his *Comment/Opposition (To Petitioner's Motion to Reopen Trial Proceedings to Submit Supplemental Evidence dated September 26, 2023)* on October 23, 2023.[29]

In the meantime, on October 5, 2023, respondent filed, through an accredited courier, his *Motion for Reconsideration And to Hold in Abeyance Submission of Parties' Respective Memoranda.*[30]

On November 20, 2023, a *Motion to Admit Attached Comment / Opposition (of Petitioner)* was filed through an accredited courier,[31] which the Court granted in the Minute Resolution dated November 22, 2023.[32] Thus, the Court admitted petitioner's *Comment/ Opposition (Re: Respondent's Motion for Reconsideration and to Hold in Abeyance Submission of Parties' Respective Memoranda dated 03 October 2023).*[33]

In the Resolution dated February 28, 2024,[34] the Court denied petitioner's *Motion to Reopen Trial Proceedings to Submit Supplemental Evidence* for lack of merit. In the same Resolution, the Court granted respondent's *Motion for Reconsideration And to Hold in Abeyance Submission of Parties' Respective Memoranda.* Thus, the Court admitted Exhibits "R-1", "R-2", "R-2-A", "R-2-B", "R-2-C", "R-2-D", "R-3", "R-4", "R-5", "R-6", and "R-6-1". Further, the Court granted the parties a period of thirty (30) days within which to file their respective memoranda, and amended and/or modified its Resolution dated September 15, 2023 insofar as it deemed respondent as having rested his case as of said date and also as it required the

[24] Exhibit "R-6", Docket – Vol. I, pp. 298 to 306; Minutes of the hearing held on, and Order dated, July 4, 2023, Docket – Vol. 3, pp. 572 to 575.
[25] Docket – Vol. 3, pp. 576 to 579.
[26] Docket – Vol. 3, pp. 611 to 616.
[27] Docket – Vol. 3, pp. 620 to 621.
[28] Docket – Vol. 3, pp. 622 to 630.
[29] Docket – Vol. 3, pp. 651 to 656.
[30] Docket – Vol. 3, pp. 634 to 638.
[31] Docket – Vol. 3, pp. 664 to 667.
[32] Docket – Vol. 3, p. 677.
[33] Docket – Vol. 3, pp. 669 to 674.
[34] Docket – Vol. 3, pp. 679 to 682.

parties to submit their respective memoranda within thirty (30) days from receipt thereof.

The *Memorandum (of Petitioner)* was filed on April 3, 2024.[35] Respondent, however, failed to file his memorandum.[36]

The present case was considered submitted for decision on May 14, 2024.[37]

THE ISSUES RAISED BY THE PARTIES

The parties submitted the following issues for this Court's resolution, to wit:

> "A. WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF PHP2,529,139.00, REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED INPUT VAT ON ITS IMPORTATIONS ATTRIBUTABLE TO ITS EFFECTIVELY ZERO-RATED SALES FOR THE 2ND QUARTER OF CY ENDED 31 DECEMBER 2018; AND
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> B. WHETHER OR NOT RESPONDENT ERRED IN DISALLOWING PETITIONER'S VAT REFUND CLAIM ON THE BASIS OF THE ALLEGED DISCREPANCY BETWEEN PETITIONER'S CLAIMED IMPORTATIONS PER SUMMARY LIST OF PURCHASES AND PETITIONER'S IMPORTATIONS PER THE BIR AUDIT INFORMATION, TAX EXEMPTION AND INCENTIVES DIVISION ('**BIR-AITEID**')."[38]

Petitioner's arguments:

Petitioner argues that its sale of goods to Philippine Economic Zone Authority (PEZA)-registered entities are considered effectively zero-rated sales of goods under Section 106(A)(2)(a)(2)(i), 106(A)(2)(a)(5), and 106(A)(2)(b) of the Tax Code; that respondent's disallowance of the VAT claim of ₱2,529,139.00 has no factual or legal basis whatsoever; that the excess and unutilized input VAT credits paid by it on its domestic and foreign purchases of goods and services attributable to effectively zero-rated sales for the 2nd quarter of CY 2018 are duly

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[35] Docket – Vol. 3, pp. 683 to 707.
[36] Records Verification dated May 9, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. 3, p. 709.
[37] Minute Resolution dated May 14, 2024, Docket – Vol. 3, p. 710.
[38] Par. 6, Statement of Issues to be Tried and Resolved, JSFI, Docket – Vol. I, p. 417.

substantiated by purchase documents issued in accordance with Sections 110 and 113 of the Tax Code, and pertinent BIR regulations; and that it is entitled to the refund of its judicial claim amounting to ₱2,529,139.00, representing its excess and unutilized input VAT credits attributable to its effectively zero-rated sales for the 2nd quarter of CY 2018.

Respondent's counter-arguments:

In his *Answer*, respondent contends that from petitioner's original claim of ₱12,815,618.00, only ₱9,292,103.97 was found refundable and substantiated by the documentary evidence; that petitioner's over-claimed input VAT in the amount of ₱2,529,139.00 must be disallowed, and a deficiency VAT must be assessed thereon; and that it is a well-settled principle that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he or she must justify his or her claim by the clearest grant under the Constitutional or statutory law, and this cannot be permitted by vague implications.

THE COURT'S RULING

The present *Petition for Review* lacks merit.

Requisites for the grant of the refund or issuance of tax credit certificate under the law.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act No. 10963,[39] provides, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign

[39] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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.

xxx xxx xxx

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites may be classified into certain categories as follows:

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[40]

2. in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission

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

of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision;

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

3. the taxpayer is a VAT-registered person;[41]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[42]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[43]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[44]

7. the input taxes are due or paid;[45]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[46] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[47]

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[48]

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

[42] *Ibid.*

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

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

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

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

Thus, it behooves petitioner to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

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

The present claim covers the 2nd quarter of CY ended December 31, 2018, or the period from April 1, 2018 to June 30, 2018. Thus, counting two (2) years from the close of the said quarter, the last day to file an administrative claim should have been June 30, 2020.

However, within the period allowed by law to file petitioner's administrative claim, the deadline for the filing of VAT refund applications was extended to August 31, 2020.[49] Thus, the filing of its *Application for Tax Credits/Refund* (BIR Form No. 1914),[50] on July 15, 2020, was therefore timely made.

The *second* requisite is to the effect that in case of full or partial denial of the refund claim rendered within a period of ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision. Thus, from the filing of petitioner's administrative claim on July 15, 2020, respondent had ninety (90) days or until October 13, 2020 to act on the claim.

In the present case, respondent, through Regional Director Maridur V. Rosario, issued the *VAT Refund Notice* dated September 23, 2020[51] within the above-stated ninety (90)-day period prescribed by law. Since petitioner received the said *Notice* on September 28, 2020,[52] the filing of the present *Petition for Review* on October 28, 2020[53] was likewise timely made within the thirty (30)-day prescriptive period.

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

49 Section 4(z) of Republic Act (RA) No. 11469 as implemented by Section 2, of BIR Revenue Regulations No. 16-2020, filing of claims for VAT refund for calendar quarters ending June 30, 2018 were extended until August 31, 2020.

50 Exhibit "P-34", Docket – Vol. 2, p. 523.

51 Exhibit P-37", Docket – Vol. 2, pp. 528 to 538.

52 Exhibit "P-37-a", Docket – Vol. 2, p. 528.

53 Docket – Vol. I, pp. 7 to 48.

Such being the case, the Court finds that petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered taxpayer.

As for its compliance with the *third* requisite, petitioner has fulfilled the same by presenting its *Certificate of Registration* with OCN No. 9RC0000541209 dated September 4, 2007, under TIN No. 006-868-990-000.[54]

Petitioner was able to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 2nd quarter of 2018, but only in the amount of ₱121,209,683.11.

The *fourth* and *fifth* requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales; and that for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner generated the total sales for the 2nd quarter of CY 2018, to wit:

Sales	Amount
Sales subject to VAT	₱ 68,044,683.38[55]
Zero-rated sales	147,694,818.28[56]
Total Sales	₱215,739,501.66

Considering the said zero-rated sales amounting to ₱147,694,818.28, the ICPA noted that the transactions were considered as such since they pertain to goods and services sold to entities registered with either the Board of Investments (BOI) or PEZA. The said amount is broken down as follows:

Agency	Customer's Name	Sales subjected to 0% VAT
BOI	Philippine Gold Processing and Refining Corporation (PGPRC)	₱ 197,851.00
	Subtotal of sales to BOI-registered entity	**₱197,851.00**
PEZA	Asian Transmission Corporation (ATC)	₱40,199,539.96
PEZA	Honda Parts Manufacturing Corporation (HPMC)	1,848,024.67
PEZA	Isuzu Autoparts Manufacturing Corporation (IAMC)	28,846,967.08
PEZA	Mitsuba Philippines Corporation (MPC)	582,241.03

[54] Exhibit "P-3", Docket – Vol. 2, p. 458.
[55] Exhibit "P-4", 2nd Quarter 2018 VAT Return, Line 15A, Docket – Vol. 2, p. 459.
[56] Exhibit "P-4", 2nd Quarter 2018 VAT Return, Line 17, Docket – Vol. 2, p. 459.

PEZA	Toyota Aisin Philippines, Inc. (TAPI)	76,020,194.54
	Subtotal of sales to PEZA-registered entities	**₱147,496,967.27**
	TOTAL SALES	**₱147,694,818.28**

Pertinent to this case is Section 106(A)(2)(a)(5) and (b) of the NIRC of 1997, as amended, which provides as follows:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> (a) *Export Sales.* - The term '**export sales**' means:
>
> xxx xxx xxx
>
> (5) **Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;**...
>
> xxx xxx xxx
>
> (b) **Sales to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero rate.**" *(Emphases added)*

Relative thereto, Sections 4.106-5(a) and (b) of Revenue Regulations (RR) No. 16-2005,[57] as amended by RR No. 13-2018,[58] also provide:

> "**SEC. 4.106-5. *__Zero-Rated Sales of Goods or Properties__*.** – xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> **(a) *Export sales.*** – '*Export Sales*' shall mean:

[57] SUBJECT: Consolidated Value-Added Tax Regulations of 2005
[58] SUBJECT: Regulations Implementing the Value-Added Tax Provisions under the Republic Act (RA) No. 10963, or the "Tax Reform for Acceleration and Inclusion (TRAIN)," Further Amending Revenue Regulations (RR) No. 16-2005 (Consolidated Value-Added Tax Regulations of 2005), as Amended, March 15, 2018.

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xxx xxx xxx

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

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

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

xxx xxx xxx

(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory **effectively subjects such sales to zero-rate.**" *(Emphasis and underscoring added)*

A. Sales to BOI-registered entity (₱197,851.00).

In *Commissioner of Internal Revenue vs. Filminera Resources Corporation* ("*Filminera* case"),[59] the Supreme Court said:

> "Proof of actual exportation of goods sold by a Value Added Tax (VAT)-registered taxpayer to a Board of Investments (BOI)-registered enterprise is vital for the transaction to be considered as zero-rated export sales.
>
> xxx xxx xxx
>
> Accordingly, **sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; <u>(2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products</u>. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.**" *(Emphasis and underscoring added)*

Thus, for its sale to PGPRC to be considered as subject to the 0% VAT, it is vital for petitioner to show a BOI certification to the effect that PGPRC exported its entire products. However, while petitioner presented the BOI Certification dated January 15, 2018 in favor of PGPRC,[60] the same was not admitted in evidence by this Court for failure to present the originals for comparison.[61] Thus, this Court cannot consider the said BOI Certification.

But even granting that this Court will show leniency in the admission of the said BOI Certification and ought to consider the same, this will be of no moment.

Notably, while the said BOI Certification is valid from **"January 1 to December 31, 2018"**, which covers the period of the present refund claim, the period certified as to PGPRC's exportation of 100% of its products covers *only* the period from **"January 1 to December 31, 2017"**. Considering that the period of the present refund claim is the 2nd quarter of CY 2018, the said BOI Certification will not suffice. This is so because the validity period of the certification is intended to accord zero-rating status to sales made during the

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[59] G.R. No. 236325, September 16, 2020.
[60] Exhibits "P-60", USB.
[61] Resolution dated July 4, 2023, Docket – Vol. 3, p. 569.

extended period, but *not* as proof that PGPRC exported its entire products during the same period.[62]

Correspondingly, lacking any proof that PGPRC exported its entire products for the entire year of 2018, the sale to PGPRC by petitioner amounting to ₱197,851.00 cannot be accorded VAT zero-rating.

B. Sales to PEZA-registered entity (₱147,496,967.27).

One of the special laws referred to in the aforequoted Section 106(A)(2)(a)(5) and (b) of the NIRC of 1997, as amended, and which governs export processing zones, is RA No. 7916, as amended by RA No. 8748, otherwise known as *"The Special Economic Zone Act of 1995".* Sections 8 and 24 thereof respectively provide as follows:

> "SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**
>
> The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphases added)*
>
> "SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** xxx." *(Emphases added)*

Since the Ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within an Ecozone are considered exports to a foreign country subject to 0% VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[63] to wit:

> "This Court agrees, however, that **<u>PEZA-registered enterprises</u>, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-

[62] *Commissioner of Internal Revenue vs. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.
[63] G.R. No. 150154, August 9, 2005.

registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**.

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

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

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

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

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

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."[64] *(Emphases and underscoring added)*

Moreover, in the *Filminera* case, the Supreme Court held as follows:

[64] Now at 12% VAT rate.

> "The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT. Plainly, sales of export products to another producer or to an export trader are subject to zero percent rate provided the export products are actually exported and consumed in a foreign country.
>
> In Revenue Memorandum Circular No. 74-99, the Bureau of Internal Revenue (BIR) clarified that **sales made to PEZA-registered enterprises qualify for zero-rating pursuant to the cross-border doctrine.** The ECOZONE is treated as a separate customs territory such that the buyer is treated as an importer and is imposed the corresponding import taxes and custom duties on his purchase of products from within the ECOZONE. **While ECOZONE enterprises are not necessarily manufacturer-exporters of products, taken as a whole, all their integrated activities eventually translate into manufactured products which are either actually exported to foreign countries, in which case, no VAT shall form part of the export price;** or actually sold to buyers from the customs territory, in which case, the regular VAT shall be paid by the buyers." *(Emphases and underscoring added)*

Simply put, while an ECOZONE is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ECOZONE to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent (0%).[65]

In this case, to prove that its clients are duly registered with the PEZA, petitioner submitted various certifications issued by the latter. However, the Court notes that petitioner was only able to present ***photocopies*** of PEZA Certifications (PEZA-ERD Forms No. 97-01) of ATC,[66] HPMC,[67] IAMC,[68] MPC,[69] and TAPI,[70] to the effect that they respectively qualify for VAT zero-rating of their transactions with local suppliers of goods, properties and services.

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[65] *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*, G.R. No. 149671, July 21, 2006.
[66] Marked as Exhibit "P-28", Docket – Vol. 2, p. 511.
[67] Marked as Exhibit "P-29", Docket – Vol. 2, p. 513.
[68] Marked as Exhibit "P-30", Docket – Vol. 2, p. 515.
[69] Marked as Exhibit "P-31", Docket – Vol. 2, p. 517.
[70] Marked as Exhibit "P-32", Docket – Vol. 2, p. 519.

In fact, an examination of petitioner's formally offered exhibits disclosed that the same were among those denied admission by the Court in its Resolution dated July 4, 2023,[71] for failure to present the originals for comparison. Thus, this Court cannot give probative value to the same, as this runs counter to the rule that "evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments."[72]

In any event, the admitted Certificates of Registration of ATC,[73] HPMC,[74] IAMC,[75] MPC,[76] and TAPI,[77] to the effect that they are ECOZONE Export Enterprises, may already be considered as sufficient proof that they are PEZA-registered to respectively entitle their transactions with petitioner as local supplier.

It is undisputed that petitioner declared a total zero-rated sales in its Quarterly VAT Return for the 2nd quarter of 2018 amounting to ₱147,694,818.28[78]. As already noted, out of this amount, the ICPA noted that ₱147,496,967.27[79] represents sales to PEZA registered entities.

To prove compliance with the VAT invoicing requirements, petitioner submitted various sales invoices[80] in support of its zero-rated sales to PEZA-registered entities, which were duly examined by the ICPA, extracted and summarized from petitioner's Schedule of Zero-Rated Sales-PEZA Registered Entities[81].

With the findings of the ICPA and upon further examination of this Court of the documents presented, only zero-rated sales to PEZA registered entities amounting to ₱121,209,683.11(₱147,496,967.27 less ₱26,287,284.16) were valid, while the amount ₱26,287,284.16 will be denied for reasons stated therein:

Exhibits	Buyer	Amount	Reason for Disallowance
"P-92"	Asian Transmission Corporation	₱8,760,776.00	Unreadable Invoice
"P-133"	Toyota Autoparts Philippines , Inc.	2,298,903.46	Blank Invoice
"P-134"	Toyota Autoparts Philippines , Inc.	2,782,519.45	Blank Invoice
"P-135"	Toyota Autoparts Philippines , Inc.	2,101,612.09	Blank Invoice
"P-662"	ISUZU AUTOPARTS MANUFACTURING CORP.	5,224,856.32	Provisionally Marked

[71] Docket – Vol. 3, pp. 569 to 571.
[72] *Dra. Leila A. Dela Llano vs. Rebecca Biong, doing business under the name and style of Pongkay Trading*, G.R. No. 182356, December 4, 2013.
[73] Exhibit "P-28-a", Docket – Vol. 2, p. 512.
[74] Exhibit "P-29-a", Docket – Vol. 2, p. 514.
[75] Exhibit "P-30-a", Docket – Vol. 2, p. 516.
[76] Exhibit "P-31-a", Docket – Vol. 2, p. 518.
[77] Exhibit "P-32-a", Docket – Vol. 2, p. 520.
[78] Exhibit "P-4", Line 17, Docket – Vol. 2, p. 459.
[79] ICPA Report, Annex 8, USB.
[80] Exhibits "P-65" to "P-122"; "P-133" to "P-135"; "P-662" to "P-663", USB.
[81] ICPA Report, Annex 8, USB.

"P-663"	ISUZU AUTOPARTS MANUFACTURING CORP.	5,118,616.84	Provisionally Marked
	TOTAL	**₱26,287,284.16**	

Thus, for the purpose of the *fourth* requisite to successfully obtain a credit/refund of input VAT, petitioner's valid VAT zero-rated sales is only ₱121,209,683.11.

Since the zero-rated sales in this case do not fall under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the *fifth* requisite does not apply and need not be complied with by petitioner.

Having found that petitioner had valid VAT zero-rated sales in the amount of ₱121,209,683.11 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

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

The *sixth* requisite provides that the claimed input taxes do *not* appear to be transitional input taxes, pursuant to Section 111(A) of the NIRC of 1997, to wit:

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[82]

In this case, the claimed input taxes do *not* appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, and thus, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Not all of petitioner's input VAT being claimed for refund were duly substantiated.

Anent the *seventh* requisite in claiming VAT refund, it is of fatal importance for petitioner to provide supporting documents to prove that the input taxes claimed were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended.

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

In its 2nd Quarterly VAT Return for 2018[83], petitioner reported total input VAT of ₱24,147,194.11, broken down as follows:

Input VAT on Goods Other Than Capital Goods	₱ 9,056.29
Input VAT on Importation of Goods	23,242,713.01
Input VAT on Services	721,989.33
Input VAT on Others	173,435.48
TOTAL	₱24,147,194.11

Input VAT recorded under "Others" in the amount of ₱173,435.48[84] of the amended Quarterly VAT Return pertains to withholding VAT. As ascertained by the ICPA[85], said withholding VAT are interest expenses incurred by petitioner from a loan, which was secured from a non-resident. The input

[82] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., et seq.*, G.R. Nos. 158885 and 170680, April 2, 2009.

[83] Exhibit "P-4", Docket – Vol. 2, p. 459.
[84] Exhibits "P-364", "P-365" and "P-366", USB.
[85] ICPA Report, Table 17 and 18, USB.

taxes related to the interest expense should be excluded, as these are not included in the computation of the Cost of Goods Sold.

In support for the input VAT on goods other than capital goods, importation and services, petitioner submitted a Schedule of Input VAT on Importation[86], Single Administrative Document (SAD) and Statement of Settlement of Duties and Taxes (SSDT)[87], Schedule of Input VAT on Local Purchases[88] and Invoices and Official Receipts[89].

However, Exhibits "P-367" to "P-590", the SAD and SSDT in support for the input VAT on importation amounting to ₱23,242,713.01 were all denied admission by the Court for failure to present originals for comparison.[90]

To continue, as ascertained by the ICPA[91] and further scrutiny by the Court of the documents presented, only the input VAT amounting to ₱190,987.53 were properly substantiated, and the amount of ₱23,956,206.58 shall be disallowed for failure to meet the invoicing requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, summarized as follows:

Particulars	Exhibit No./s	Amount
Properly Substantiated Input VAT	"P-591" to "P-615"	₱ 190,987.53
Exceptions:		
Denied Admission of SAD and SSDT	"P-367" to "P-590"	23,242,713.01
Input VAT Supported by Incomplete Address	"P-616"	842.88
Input VAT Supported by documents that are out of period	"P-617" to "P-622"	6,982.37
Input VAT supported by documents with no TIN indicated	"P-623" to "P-624"	2,248.93
Input VAT supported by documents with no address and no TIN indicated	"P-625"	79,416.14
Input VAT supported by documents reflecting the incomplete VAT breakdown	"P-626"	1,830.00
Input supported by documents reflecting the incomplete address,		
No TIN and incomplete VAT breakdown	"P-627" to "P-643"	24,210.88
Input VAT supported by documents with no TIN and Nature of Service indicated	"P-644" to "P-650"	276,672.67
Input VAT supported by documents not valid for claiming of input tax		238,927.81
Unclaimed Input Tax due to timing Difference		- 91,073.59
Others		173,435.48

[86] Annex 16, ICPA Report, USB.
[87] Exhibits "P-367" to "P-590", USB.
[88] Annex 17, ICPA Report, USB.
[89] Exhibits "P-591" to "P-650", USB.
[90] Resolution dated July 4, 2023, Docket – Vol. 3, pp. 569 to571.
[91] Exhibit "P-45", ICPA Report, Table 21, Docket – Vol. 2, pp. 610 to 611.

TOTAL	**₱24,147,194.11**

In fine, for compliance with the *seventh* requisite, out of the total reported input VAT of ₱24,147,194.11, only the amount of ₱190,987.53 represents petitioner's valid input VAT for the 2nd quarter of CY 2018, as computed below:

Input VAT Declared Per VAT Return	₱24,147,194.11
Less: Disallowances	23,956,206.58
Valid Input VAT	**₱ 190,987.53**

At this juncture, BIR's previous partial approval of petitioner's administrative claim through the issuance in the latter's favor of a *"VAT Refund/Credit Notice"*[92] in the amount of ₱9,292,103.97 is more than enough as compared to the ₱190,987.53 valid input VAT, as found by this Court, and thus, petitioner will no longer be entitled to receive an additional grant of refund.

Correspondingly, it is no longer necessary to determine whether petitioner fulfilled the *eight* and *ninth* requisites for granting a credit/refund of input VAT for 2nd quarter of CY 2018.

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

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[92] Exhibit "P-37", Docket – Vol. 2, p. 528.

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice