REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA Case No. 9101**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 04 2018 : 1:39pm

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DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on July 20, 2015 by Lepanto Consolidated Mining Company against the Commissioner of Internal Revenue, seeking the issuance of a tax credit certificate in the amount of ₱19,565,102.30, allegedly representing its input value-added tax (VAT) claims for the year 2013.

THE FACTS

Petitioner Lepanto Consolidated Mining Company is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Makati City.[1] It is a duly registered value-added tax (VAT) taxpayer with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification No. 000-160-47-000 since 1994 continuously up to the present.[2] It is likewise registered with the Board of Investments (BOI) as a new export

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 155.
[2] Par. 3, Stipulation of Facts, JSFI, Docket, p. 155.

producer of gold and its by-products since 2004 continuously up to the present.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to issue/grant tax credits of input VAT arising from importations and attributable to zero-rated sales. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Petitioner filed its Quarterly VAT Returns for 2013 on the following dates:

Period	VAT Return	Date of Filing
1st Quarter 2013	Original Quarterly VAT Return[5]	April 18, 2013
	Amended Quarterly VAT Return[6]	October 16, 2014
2nd Quarter 2013	Original Quarterly VAT Return[7]	July 22, 2013
	Amended Quarterly VAT Return[8]	October 16, 2014
3rd Quarter 2013	Original Quarterly VAT Return[9]	October 21, 2013
	Amended Quarterly VAT Return[10]	January 20, 2014
	Amended Quarterly VAT Return[11]	October 17, 2014
4th Quarter 2013	Original Quarterly VAT Return[12]	January 20, 2014
	Amended Quarterly VAT Return[13]	April 22, 2014
	Amended Quarterly VAT Return[14]	October 17, 2014

On February 18, 2015, petitioner filed its Applications for Tax Credits/Refunds (BIR Form No. 1914) for its input VAT credits for 2013 in the aggregate amount of ₱19,565,102.30,[15] to wit:

Period	Amount of Claim
1st Quarter 2013	₱ 4,749,783.49
2nd Quarter 2013	₱ 4,906,683.44
3rd Quarter 2013	₱ 5,954,485.22
4th Quarter 2013	₱ 3,954,150.15
Total	**₱ 19,565,102.30**

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[3] Par. 4, Stipulation of Facts, JSFI, Docket, p. 155.
[4] Par. 2, Stipulation of Facts, JSFI, Docket, p. 155.
[5] Exhibit "P-14".
[6] Exhibit "P-14-1".
[7] Exhibit "P-14-2".
[8] Exhibit "P-14-3".
[9] Exhibit "P-14-4"
[10] Exhibit "P-14-5".
[11] Exhibit "P-14-6".
[12] Exhibit "P-14-7".
[13] Exhibit "P-14-8".
[14] Exhibit "P-14-9".
[15] Exhibits "P-6" to "P-9", Docket, pp. 388 to 391.

On the same date, petitioner submitted the complete required documents in support of the said Applications.[16]

Subsequently, petitioner filed the instant *Petition for Review* on July 20, 2015, praying that this Court: (1) grant petitioner's claim for tax credit of input VAT in the amount of ₱19,565,102.30; and (2) issue an order requiring respondent to issue in favor of petitioner a tax credit certificate in the same amount, representing its input VAT claims for the year 2013.

On November 9, 2015, respondent filed his *Answer*,[17] interposing the following special and affirmative defenses, to wit:

> "SPECIAL AND AFFIRMATIVE DEFENSES
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> 4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.
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> **THE INSTANT PETITION FOR REVIEW SHOULD NOT STAND CONSIDERING THAT THERE IS NO CAUSE ACTION FOR FAILURE TO IMPLEAD THE PROPER PARTY.**
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> 5. Respondent respectfully submits that the instant Petition for Review should not prosper considering that said Petition failed to state a cause of action.
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> 6. Rule 2, Section 2 of the Rules of Court defined cause of action as: A cause of action is the act or omission by which a party violates a right of another.
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> 7. The Supreme Court provided the essential requisites of cause of action in its Decision in the case of *'Emilio S. Samson vs. Spouses Jose and Guillermina Gabor, et al.'*,[18] to wit:
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> > *As defined in Section 2, Rule 2 of the Rules of Court , a cause of action is the act or omission by which a party violates the right of another. Its essential elements are as follows:*

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[16] Exhibit "P-10", Docket, p. 413.
[17] Docket, pp. 76 to 84.
[18] G.R. No. 182970, July 23, 2014.

1. A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

*2. **An obligation on the part of the named defendant to respect or not to violate such right**; and*

3. Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.' (Emphasis and italics ours)

8. In relation there to, Section 2, Rule 3 of the Rules of Court provides that:

> *'A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real part in interest.' (Italics ours)*

9. The determination of who the real party-in-interest is requires going back to the elements of a cause of action. A cause of action involves the existence of a right and a violation of such right. Evidently, the owner of the right violated stands to be the real party in interest as plaintiff and the person responsible for the violation is the real party in interest as defendant.

10. A perusal in the Petition for Review shows that the alleged input VAT claimed by the petitioner arise from importations of capital and consumable goods, considering that the tax sought to be credited derived from taxes paid to the Bureau of Customs (BOC) the authority to issue tax credit certificate if granted reside with the Bureau of Customs.

11. Therefore, the real party in interest in this case is the Commissioner of Bureau of Customs not the respondent. As provided under Section 1708 of Presidential Decree No. 1464 or The Tariff and Customs Code which states that:

> *'Sec. 1708. Claim for Refund of Duties and Taxes and Mode of Payment. – All claims for refund of duties shall be made in writing, and forward to the Collector to whom such duties are paid, who upon receipt of such claim, shall verify the same by the records of his Office, and if found to be correct and in*

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> *accordance with law, shall certify the same to the Commissioner with his recommendation together with all the necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct.*
>
> *If as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the excess taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue.'* (Italics Ours)

THERE IS NO ERROR ON THE PART OF THE RESPONDENT WHEN IT DENIED BY INACTION THE TAX CREDIT APPLICATION OF PETITIONER.

12. The instant Petition for Review is hinged on the inaction allegedly committed 'by respondent on the petitioner's application for tax credit notwithstanding the latter's alleged compliance with the requisites relative to said application.

13. Respondent strongly disagrees with the abovementioned allegation. To begin with, the grant of tax credit is not a ministerial function of the respondent, bearing in mind that tax refunds or credits just like tax exemptions are strictly construed against taxpayers; the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund or credit. As such, submission of documents will not *motu proprio* grant its application, as careful evaluation and verification is needed by the respondent to ascertain if petitioner complied with the requirements in applying for tax credit.

14. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit as enunciated by the Supreme Court in the case of San Roque Power Corporation vs. Commissioner of Internal Revenue[19] to wit:.

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[19] G.R. No. 180345, November 25, 2009.

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> *'To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) 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 BSP rules and regulations; (8) 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; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.' (Italics ours)*

15. Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor. Section 110(A)(1)31 of the NIRC provides that creditable input taxes must be evidenced by a VAT invoice or official receipt, which must, in turn, comply with Sections 237 and 238 of the same law, as well as Section 4.108.134 of RR 7-95. The foregoing provisions require, inter alia, that an invoice must reflect, as required by law: (a) the BIR Permit to Print; (b) the TIN-V of the purchaser; and (c) the word 'zero-rated' imprinted thereon. In this relation, failure to comply with the said invoicing requirements provides sufficient ground to deny a claim for tax refund or tax credit.

16. Furthermore, the invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchase of goods or services attributable to zero-rated sales. A 'VAT invoice' is an invoice that meets the requirements of Section 4.108-1 of RR 7-95. Contrary to *Microsoft's* claim. RR 7-95 expressly states that 'All purchases covered by invoice other than a VAT invoice shall not give rise to any input tax. *Microsoft's* invoice,

lacking the word 'zero-rated,' is not a 'VAT invoice,' and thus cannot give rise to any input tax.

17. Revenue Regulations 7-95 provides for the substantiation requirement to claim for input VAT.

> *SECTION 4.104-5. Substantiation of claims for input tax credit. – (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.*
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> *A cash-register machine tape issued to a VAT-registered buyer by a VAT-registered seller form a machine duly registered with the BIR in lieu of the regular sales invoice, shall constitute valid proof of substantiation of tax credit only if the name and TIN of the purchaser is indicated in the receipt and authenticated by a duly authorized representative of the seller.*
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> *(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.*
>
> *(c) Presumptive input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.*
>
> *(d) Input tax on 'deemed sale' transactions shall be substantiated with the required invoices.*
>
> *(e) Input tax from payments made to non-residents shall be supported by a copy of the VAT declaration/return filed by the resident licensee/lessee in behalf of the non-resident licensor/lessor evidencing remittance of the VAT due. (Italics ours)*

18. And finally, Section 113 of the NIRC further provides that:

> *Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –*
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> *(A) Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an invoice or*

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receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

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

(B) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Section 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance. (Italics ours)

19. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit[20] as enunciated by the Supreme Court in the case of San Roque Power Corporation vs. Commissioner of Internal Revenue[21] to wit:

'To claim refund or tax credit under Section 112(A), petitioner must comply with the following criteria: (1) the taxpayer is VAT registered; (2) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (3) the input taxes are due or paid; (4) the input taxes are not transitional input taxes; (5) the input taxes have not been applied against output taxes during and in the succeeding quarters; (6) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (7) 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 BSP rules and regulations; (8) 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

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[20] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.

[21] G.R. No. 180345, November 25, 2009.

volume; and (9) the claim is filed within two years after the close of the taxable quarter when such sales were made.' (Italics ours)

20. A perusal of the Bureau of Internal Revenue records reveal that the evidence submitted by petitioner cannot be considered exempt under the subject criteria under Section 112 (A) of the NIRC since the said evidence submitted does not fall under Statement of Settlement of Duties and Taxes (SSID); Import Entry Declaration (IED); not in company's (petitioner's) name; and income payments which are not subject to tax (i.e. local sales).

21. To reiterate, petitioner alleged in its Petition as *'Ground Relied upon for the Granting of the Petition.'* That respondent committed palpable error in denying by inaction petitioner's application for tax credit despite compliance of petitioner's tax credit application. However, aside from its bare allegations petitioner failed to present any evidence to show any palpable error which can be attributed to the respondent with regards to the former's tax credit application. Moreover, said error which is the basis of the instant Petition for review was based on mere allegations without any basis to stand on. As such, in the case of *Government Service Insurance System vs. Prudential Guarantee and Assurance Inc., et al.,*[22] Supreme Court mentioned that, to wit:

xxx It is hornbook doctrine that mere allegations do not constitute proof. As held in Real v. Belo, 'it is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.' xxx (Italics ours)"

After the Pre-Trial Conference held on April 7, 2016,[23] the parties filed their *Joint Stipulation of Facts and Issues* on April 22, 2016.[24] The same was approved by the Court in its Resolution dated May 2, 2016.[25] Subsequently, the Court issued the Pre-trial Order dated May 24, 2016.[26]

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[22] G.R. No. 165585, November 20, 2013.
[23] Minutes of Hearing, April 7, 2016, Docket, pp. 147 to 149
[24] Docket, pp. 154 to 158.
[25] Docket, pp. 164 to 165.
[26] Docket, pp. 187 to 194.

During trial, petitioner presented the following witnesses: (1)Teofilo Sacpa ; (2) Cherry H. Tan; and (3) Court commissioned, Independent CPA, Katherine O. Constantino. [27]

Petitioner filed its *Formal Offer of Evidence*[28] and *Supplemental Formal Offer of Evidence*[29] on October 20, 2016 and October 24, 2016, respectively. Except for Exhibits "P-5" and P-10", the Court admitted petitioner's Exhibits in the Resolution dated April 4, 2017.[30]

Petitioner then filed a *Motion to Re-Offer Exhibit* on May 17, 2017, praying that it be allowed to re-offer as evidence, the certified true copy of Exhibit "P-10".[31] In the interest of justice, the Court granted the said *Motion*.[32] Thus, on June 9, 2016, petitioner filed its *Supplemental Formal Offer of Evidence*,[33] praying for the admission of Exhibit "P-10".

In the Resolution dated August 3, 2017,[34] the Court admitted petitioner's Exhibit "P-10" and gave the parties a period of thirty (30) days from receipt thereof to file their respective memorandum, taking into consideration the manifestation of respondent's counsel during the hearing held on September 20, 2016[35] that respondent will not present evidence in this case.

On September 15, 2017, petitioner filed its *Memorandum*;[36] and on September 26, 2017, respondent filed his *Memorandum*.[37] In the Resolution dated October 2, 2017,[38] the instant case was considered submitted for decision.

Hence, this Decision.

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[27] Exhibit "P-54", Docket, pp. 219 to 230; Exhibit "P-56", Docket, pp. 262 to 267; Exhibit "P-57", Docket, pp. 286 to 293; respectively

[28] Docket, pp. 305 to 316.
[29] Docket, pp. 384 to 387.
[30] Docket, pp. 408 to 409.
[31] Docket, pp. 410 to 412.
[32] Resolution dated May 29, 2017, Docket, p. 416.
[33] Docket, pp. 418 to 419.
[34] Docket, pp. 439 to 440.
[35] Minutes of the Hearing dated September 20, 2016, Docket, pp. 296 to 297
[36] Docket, pp. 451 to 474.
[37] Docket, pp. 481 to 489.
[38] Docket, p. 498.

THE ISSUES

As stipulated by the parties, the following issues are submitted for this Court's resolution, to wit:

> "1. Whether or not petitioner is entitled to a tax credit refund in the total amount of PhP 19,565,102.30 consisting of: (a) 1st quarter of 2013 amounting to PhP 4,749,783.49; 2nd quarter of 2013 amounting to PhP 4,906,683.44; 3rd quarter of 2013 amounting to PhP 5,954,485.22 and 4th quarter of 2013 amounting to PhP 3,954,150.15
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> 2. Whether or not the petition should be dismissed outright for failure of petitioner to implead the proper party."[39]

Petitioner's arguments:

Petitioner argues that its claim for tax credit/refund in this case complied with all the criteria laid down by the Supreme Court in *San Roque Power Corporation vs. Commissioner of Internal Revenue*[40].

Specifically, petitioner avers that it is VAT-registered; that it is engaged in zero-rated or effectively zero-rated sales; that the input VAT are due or paid; that the input VAT are not transitional input taxes; that the input VAT have not been applied against output taxes during and in the succeeding quarters; that the input VAT claimed are attributable to zero-rated or effectively zero-rated sales; that its zero-rated sales is paid for in acceptable foreign currency and have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules and regulations; that the rule regarding the proportionate allocation on the basis of the sales volume does not apply to petitioner, considering that its input VAT being claimed are directly and entirely attributable to its zero-rated sales; and that the claim was filed within two-years after the close of the taxable quarter when such sales were made.

Respondent's counter-arguments:

Respondent counter-argues that the instant *Petition for Review* should be dismissed for failure to state a cause of action; and that petitioner is not entitled to its claim for refund.

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[39] Issues, JSFI, Docket, p. 155.
[40] G.R. No. 180345, November 25, 2009.

Allegedly, the real party in interest in this case is the Commissioner of the Bureau of Customs and not respondent as provided under Section 1708 Presidential Decree No. 1464 or the Tariff and Customs Code.

Moreover, as regards the refund claim, petitioner is allegedly not entitled thereto for failure to strictly comply with legal requirements.

THE COURT'S RULING

For an orderly disposition of the instant case, We shall first resolve the second issue as to whether or not the petition should be dismissed outright for failure of petitioner to implead the proper party, which is tantamount to failure to state a cause of action.

The* Petition for Review *states a cause of action.

According to respondent, the real party in interest in this case is the Commissioner of the Bureau of Customs (BOC) considering that the tax sought to be credited is derived from taxes paid to the BOC, the authority to issue tax credit certificate, if granted, reside therewith.

We do not agree.

It is basic that a cause of action is the act or omission by which a party violates a right of another. Its elements are the following: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right.[41]

If the allegations of the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[42] Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court.[43]

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[41] *NM Rothschild & Sons (Australia) Limited vs. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011.
[42] *Macaslang vs. Zamora*, G.R. No. 156375, May 30, 2011
[43] *Supra.*

In this case, upon a cursory examination of the instant *Petition for Review*, We find the allegations therein sufficient. *First*, the said *Petition for Review* adequately alleges petitioner's right to the refund of its input VAT for 2013; *second*, the same *Petition* avers the correlative duty of respondent to grant the said refund; and *third*, the supposed inaction of respondent to the said refund claim which may be construed as a violation of the right of petitioner to the said refund.

Contrary to the contention of respondent Commissioner of Internal Revenue, it is respondent who is the real party in interest, and not the Commissioner of the BOC.

Rule 3, Section 2 of the Rules of Court defines who is a *"real party in interest"*, to wit:

> "SEC. 2. *Parties in interest.* — **A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.** Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." *(Emphasis supplied)*

As the Commissioner of Internal Revenue, respondent is the party who will benefit from or be injured by a judgment in the instant case. Specifically, respondent will benefit from a judgment of denial by this Court in the instant case; and inversely, he stands to be injured by a judgment of the same Court granting, whether partially or wholly, of the subject claim for refund of input VAT.

Sections 4 and 112(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[44] provide as follows, to wit:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – xxx
>
> **The power to decide** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, **or other matters arising under this Code or other laws or portions thereof administered by the Bureau of**

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

Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — **In proper cases, the Commissioner shall grant a refund or issue a 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." *(Emphases supplied)*

Based on the foregoing provisions, it is the mandate of respondent to grant a refund or issue a tax credit certificate for input VAT credits, in proper cases. As a corollary, it is respondent who is empowered to deny any claim for tax refund or tax credit, or even not to act on the said claim, subject to the remedy of the applicant to appeal before this Court any of his denial or inaction.

It was therefore an error for respondent to assume that the Commissioner of the BOC is the real party in interest in this case, on the basis of Section 1708 of Presidential Decree No. 1464 or The Tariff and Customs Code, which provides as follows:

"Sec. 1708. *Claim for Refund of Duties and Taxes and Mode of Payment.* – All claims for refund of duties shall be made in writing, and forward to the Collector to whom such duties are paid, who upon receipt of such claim, shall verify the same by the records of his Office, and if found to be correct and in accordance with law, shall certify the same to the Commissioner with his recommendation together with all the necessary papers and documents. Upon receipt by the Commissioner of such certified claim he shall cause the same to be paid if found correct.

If as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the excess taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue."

This must be so because the first paragraph of the above-quoted Section 1708 merely speaks of *"claims for refund of duties"*, which apparently does not include claims for the refund of input VAT, such as is being refunded in the instant case. Neither can respondent find solace in the second paragraph of the same provision, simply because it refers to a case where a grant of a refund of customs duties necessarily resulted in *"a corresponding refund of internal revenue taxes on the same importation"*. Relative thereto, this is not the case here.

The fact that it was the BOC which collected the subject input VAT allegedly arising from petitioner's importations of capital and consumable goods is of no moment, because notably, VAT is an internal revenue tax, pursuant to Section 21 of the NIRC of 1997, to wit:

"SEC. 21. *Sources of Revenue.* — **The following taxes, fees and charges are deemed to be national internal revenue taxes**:

(a) Income tax;
(b) Estate and donor's tax;
(c) **Value-added tax**;
(d) Other percentage taxes;
(e) Excise taxes;
(f) Documentary stamp taxes; and
(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue." (Emphases supplied)

In collecting the subject input VAT from petitioner in this case, the Commissioner of the BOC acted as a mere collecting agent of national internal revenue taxes on imported goods, such as the **VAT on importation**, pursuant to Section 12 of the NIRC of 1997, to wit:

"SEC. 12. *Agents and Deputies for Collection of National Internal Revenue Taxes.* — **The following are hereby constituted agents of the Commissioner**:

(a) **The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods**;

(b) The head of the appropriate government office and his subordinates with respect to the collection of energy tax; and

(c) Banks duly accredited by the Commissioner with respect to receipt of payments of internal revenue taxes authorized to be made thru banks.

Any officer or employee of an authorized agent bank assigned to receive internal revenue tax payments and transmit tax returns or documents to the Bureau of Internal Revenue shall be subject to the same sanctions and penalties prescribed in Sections 269 and 270 of this Code." *(Emphases)*

Thus, there is no merit in respondent's argument that it is the Commissioner of the BOC who is the real party in interest in this case.

Requisites for the credit/refund of input VAT.

In an action claiming for the refund or issuance of tax credit certificate for input taxes such as the instant petition, Section 112 of the NIRC of 1997, as amended by RA No. 9337,[45] provides:

"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

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

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: xxx.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue a 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."

In addition to the foregoing provisions, certain requisites have been developed by jurisprudence which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and said requisites may be classified into certain categories, to wit:

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

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were

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made;[46]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[47]

<u>With reference to the taxpayer's registration with the BIR</u>:

3. the taxpayer is VAT registered;[48]

<u>In relation to the taxpayer's output VAT</u>:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[49]
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 BSP rules and regulations;[50]

<u>As regards the taxpayer's input VAT being refunded</u>:

6. the input taxes are due or paid;[51]
7. the input taxes are not transitional input taxes;[52]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;[53]
9. 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

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[46] *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.*, G.R. No. 182364, August 3, 2010.

[47] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

allocated on the basis of sales volume;[54] and

10. the input taxes have not been applied against output taxes during and in the succeeding quarters.[55]

First and second requisites: Timeliness of the filing of the administrative and judicial claims.

The ***first*** requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR.

The present claims cover the four (4) quarters of 2013. Counting two years from the end of each quarter for the same year, petitioner had until March 31, 2015, June 30, 2015, September 30, 2015, and December 31, 2015, respectively, within which to file its administrative claims for issuance of tax credit certificate for its input VAT. Thus, petitioner's administrative claims for the said quarters filed on February 18, 2015 were timely filed, as shown below:

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim
1st Quarter of 2013	March 31, 2013	March 31, 2015	February 18, 2015
2nd Quarter of 2013	June 30, 2013	June 30, 2015	
3rd Quarter of 2013	September 30, 2013	September 30, 2015	
4th Quarter of 2013	December 31, 2013	December 31, 2015	

The ***second*** requisite is taken from the above-quoted Section 112(C) of the NIRC of 1997, as amended by RA No. 9337, and enunciates the 120+30 mandatory and jurisdictional periods. Applying this provision, it appears that petitioner's judicial claim was not in accordance with the said periods, as shown below:

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

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

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Date of Filing of Administrative Claim (with supporting documents)	End of 120 days for the BIR Commissioner to decide on the claim	End of 30 days from the expiration of the 120 days	Date of Filing of the *Petition for Review*
February 18, 2015	June 18, 2015	July 18, 2015 (Saturday)	July 20, 2015 (Monday)

However, the said judicial claim may still be considered as timely filed, pursuant to Section 1, Rule 22 of the Rules of Court, to wit:

> "SEC. 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.**" *(Emphasis supplied)*

Based on the foregoing, where the last day of the period for doing any act required by law falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

In this case, the last day for the filing of the subject judicial claim, *i.e.*, July 18, 2015, fell on a Saturday. Thus, since the next working day is July 20, 2015, the filing of the said judicial claim on this date was timely made.

Correspondingly, the first and second requisites are complied with.

Third requisite: Petitioner is VAT registered.

Petitioner has shown compliance with the ***third*** requisite by presenting its Certificate of Registration issued by BIR with TIN 000-160-247-000, indicating that it is liable to the VAT.[56]

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[56] Exhibit "P-4", Docket, p. 237.

<u>Fourth and fifth requisites: Petitioner was engaged in zero-rated or effectively zero-rates sales.</u>

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 Section 106(A)(2)(a)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC of 1997, as amended by RA No. 9337, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner claims that all of its gold and metal production in 2013 and in prior years were directly exported, sold and shipped to Hongkong specifically to Hereaus. To prove the same, petitioner presented the Certification issued by the BOI, indicating therein that it exported 100% of its sales for the year 2013.[57] By virtue thereof, petitioner maintains that its export sales are subject to VAT at zero percent (0%), pursuant to Section 106(A)(2)(a)(1) 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.* – x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Relative thereto, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-

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[57] Exhibits "P-11" and "P-11-1". ✓

1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, require that a VAT taxpayer, like herein petitioner, shall for every sale, issue a VAT invoice which must contain the following information:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;"
>
> "SEC. 4.113-1. *Invoicing Requirements.* —
>
> (A) A VAT-registered person shall issue: —
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> xxx xxx xxx
>
> Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a

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'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

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

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

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

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

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

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

"SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis supplied)*

Thus, pursuant to the afore-quoted provisions of Sections 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;
2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In its Quarterly VAT Returns for year 2013, petitioner declared zero-rated sales in the total amount of ₱2,025,213,108.33, broken down as follows:

Exhibit	Period Covered (2013)	Zero-Rated Sales
P-14-1	1st Qtr	₱ 513,606,363.15
P-14-3	2nd Qtr	426,791,099.56
P-14-6	3rd Qtr	538,032,783.03
P-14-9	4th Qtr	546,782,862.59
Total		**₱ 2,025,213,108.33**

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To substantiate the foregoing, petitioner presented its Summary List of Sales[58], Zero-rated Provisional Invoices[59], Zero-rated Final Invoices[60], Export Declarations[61], Airway Bills[62], Bank Credit Memos[63] and Bank Certificate of Inward Remittances[64].

Upon verification, the Court finds that out of the declared zero-rated sales of ₱2,025,213,108.33, only the amount of ₱1,973,536,097.63 is duly supported by documents as required by law, detailed as follows:

	PROVISIONAL INVOICE	ZERO-RATED FINAL INVOICE	EXPORT DECLARATION	AIRWAY BILL	CREDIT MEMO	TOTAL $ VALUE	TOTAL AMOUNT IN PESO
Current Quarter Deliveries							
01-13 Bar#3056-3057	P-17	P-18	P-19	P-20	P-21-1 P-21	241,096.33	9,815,217.77
02-13 Bar#3058-3061	P-17-1	P-18-1	P-19-1	P-20-1	P-21-2 P-21	639,387.73	26,029,968.48
03-13 Bar#3062-3065	P-17-2	P-18-2	P-19-2	P-20-2	P-21 P-21-3	706,396.33	28,757,939.19
04-13 Bar#3066-3068	P-17-3	P-18-11	P-19-3	P-20-3	P-21-4 P-21-3	463,008.10	18,849,416.94
05-13 Bar#3069-3074	P-17-4	P-18-3	P-19-4	P-20-4	P-21-5 P-21-3	803,039.71	32,692,366.70
06-13 Bar#3075-3078	P-17-5	P-18-4	P-19-5	P-20-5	P-21-6 P-21-7	1,073,525.56	43,662,431.39
07-13 Bar#3079-3081	P-17-6	P-18-5	P-19-6	P-20-6	P-21-8 P-21-7	806,644.44	32,807,842.76
08-13 Bar#3082-3083	P-17-7	P-18-6	P-19-7	P-20-7	P-21-9 P-21-7	533,509.19	21,698,885.74
09-13 Bar#3084-3087	P-17-8	P-18-7	P-19-8	P-20-8	P-21-7 P-21-10	740,350.11	30,111,520.00
10-13 Bar#3088-3092	P-17-9	P-18-8	P-19-9	P-20-9	P-21-11 P-21-10	996,331.36	40,522,788.89
11-13 Bar#3093-3096	P-17-10	P-18-9	P-19-10	P-20-10	P-21-12 P-21-10	887,429.93	36,141,471.31
12-13 Bar#3097-3100	P-17-11	P-18-10	P-19-11	P-20-11	P-21-10 P-21-14	977,712.82	39,818,332.57

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58 Exhibit "P-15".
59 Exhibits "P-17" to "P-17-66".
60 Exhibits "P-18" to "P-18-66".
61 Exhibits "P-19" to "P-19-66".
62 Exhibits "P-20" to "P-20-66".
63 Exhibits "P-21" to "P-21-65"
64 Exhibits "P-22" to "P-22-22".

13-13 Bar#3101-3102	P-17-12	P-18-12	P-19-12	P-20-12	P-21-13 P-21-14	542,056.65	22,075,799.10
14-13 Bar#3103-3106	P-17-13	P-18-13	P-19-13	P-20-13	P-21-15 P-21-14	837,333.48	34,101,243.36
15-13 Bar#3107-3109	P-17-14	P-18-14	P-19-14	P-20-14	P-21-16 P-21-14	796,067.27	32,420,635.71
16-13 Bar#3110-3115	P-17-15	P-18-15	P-19-15	P-20-15	P-21-14 P-21-21	1,276,235.12	51,975,951.58
17-13 Bar#3116	P-17-16	P-18-16	P-19-16	P-20-16	P-21-17 P-21-21	290,401.55	11,826,893.68
Sub-total - 1st Quarter						***12,610,525.68***	***513,308,705.17***
Adjustment - Prior Quarter							
16-13 Bar#3110-3115	P-17-15	P-18-15	P-19-15	P-20-15	P-21-14 P-21-21	(5,924.38)	(241,276.32)
17-13 Bar#3116	P-17-16	P-18-16	P-19-16	P-20-16	P-21-17 P-21-21	6,632.09	270,098.37
Current Quarter Deliveries							
17-13 Bar#3117-3118	P-17-16	P-18-16	P-19-16	P-20-16	P-21-17 P-21-21	451,003.73	18,559,705.61
18-13 Bar#3119-3121	P-17-17	P-18-17	P-19-17	P-20-17	P-21-18 P-21-21	571,690.19	23,526,194.83
19-13 Bar#3122-3126	P-17-18	P-18-18	P-19-18	P-20-18	P-21-19 P-21-21	936,563.50	38,541,461.35
20-13 Bar#3127-3129	P-17-19	P-18-19	P-19-19	P-20-19	P-21-20 P-21-24	554,297.18	22,810,437.73
21-13 Bar#3130-3132	P-17-20	P-18-20	P-19-20	P-20-20	P-21-21 P-21-24	529,972.28	21,809,419.37
22-13 Bar#3133-3135	P-17-21	P-18-21	P-19-21	P-20-21	P-21-22 P-21-24	763,478.17	31,460,231.04
23-13 Bar#3137-3141	P-17-22	P-18-22	P-19-22	P-20-22	P-21-23 P-21-24	1,047,965.45	43,335,467.33
24-13 Bar#3142-3146	P-17-23	P-18-23	P-19-23	P-20-23	P-21-24 P-21-25	912,860.02	37,748,587.55
25-13 Bar#3147-3149	P-17-24	P-18-24	P-19-24	P-20-24	P-21-26 P-21-25	509,771.98	21,080,090.76
26-13 Bar#3150-3153	P-17-25	P-18-25	P-19-25	P-20-25	P-21-27 P-21-25	669,187.92	27,672,258.97
27-13 Bar#3154-3155	P-17-26	P-18-26	P-19-26	P-20-26	P-21-28 P-21-25	429,180.46	17,898,174.75
28-13 Bar#3157-3160	P-17-27	P-18-27	P-19-27	P-20-27	P-21-25 P-21-33	538,306.86	23,125,124.33
29-13 Bar#3161-3166	P-17-28	P-18-28	P-19-28	P-20-28	P-21-29 P-21-33	1,081,170.74	46,446,013.92
30-13 Bar#3167-3171	P-17-29	P-18-29	P-19-29	P-20-29	P-21-30 P-21-33	638,667.41	27,436,513.26

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31-13 Bar#3172-3176	P-17-30	P-18-30	P-19-30	P-20-30	P-21-31 P-21-33	589,226.86	25,312,596.71
Sub-total - 2nd Quarter						***10,224,050.46***	***426,791,099.56***
Adjustment - Prior Quarter							
28-13 Bar#3157-3160	P-17-27	P-18-27	P-19-27	P-20-27	P-21-25 P-21-33	47.08	2,022.43
29-13 Bar#3161-3166	P-17-28	P-18-28	P-19-28	P-20-28	P-21-29 P-21-33	3,676.26	157,928.44
30-13 Bar#3167-3171	P-17-29	P-18-29	P-19-29	P-20-29	P-21-30 P-21-33	(18,632.13)	(800,417.51)
31-13 Bar#3172-3176	P-17-30	P-18-30	P-19-30	P-20-30	P-21-31 P-21-33	(16,959.77)	(728,574.57)
Current Quarter Deliveries							
32-13 Bar#3177-3178	P-17-31	P-18-31	P-19-31	P-20-31	P-21-32 P-21-33	388,799.24	16,861,056.50
33-13 Bar#3179-3184	P-17-32	P-18-32	P-19-32	P-20-32	P-21-33 P-21-36	908,156.85	39,384,037.90
34-13 Bar#3185-3186	P-17-33	P-18-33	P-19-33	P-20-33	P-21-34 P-21-36	346,601.21	15,031,054.55
35-13 Bar#3187-3191	P-17-34	P-18-34	P-19-34	P-20-34	P-21-35 P-21-36	838,431.79	36,360,271.57
36-13 Bar#3192-3196	P-17-35	P-18-35	P-19-35	P-20-35	P-21-36 P-21-38	575,086.06	24,939,757.16
37-13 Bar#3197-3199	P-17-36	P-18-36	P-19-36	P-20-36	P-21-37 P-21-38	533,048.73	23,116,724.18
38-13 Bar#3200-3204	P-17-37	P-18-37	P-19-37	P-20-37	P-21-38 P-21-42	786,212.99	34,536,764.41
39-13 Bar#3205-3207	P-17-38	P-18-38	P-19-38	P-20-38	P-21-39 P-21-42	604,720.74	26,564,172.69
40-13 Bar#3208-3213	P-17-39	P-18-39	P-19-39	P-20-39	P-21-40 P-21-41	1,319,911.57	57,981,075.35
41-13 Bar#3214-3217	P-17-40	P-18-40	P-19-40	P-20-40	P-21-42 P-21-41	787,775.63	34,605,407.72
42-13 Bar#3218-3221	P-17-41	P-18-41	P-19-41	P-20-41	P-21-43 P-21-41	556,457.91	24,444,082.84
43-13 Bar#3222-3224	P-17-42	P-18-42	P-19-42	P-20-42	P-21-44 P-21-41	747,836.42	32,818,225.82
44-13 Bar#3227-3230	P-17-43	P-18-43	P-19-43	P-20-43	P-21-41 P-21-48	765,061.48	33,495,156.45
45-13 Bar#3231-3235	P-17-44	P-18-44	P-19-44	P-20-44	P-21-45 P-21-48	645,782.27	28,272,992.87
46-13 Bar#3236-3238	P-17-45	P-18-45	P-19-45	P-20-45	P-21-46 P-21-47	504,526.23	22,088,662.27
47-13 Bar#3239-	P-17-46	P-18-46	P-19-46	P-20-46	P-21-48 P-21-47	797,718.56	34,924,916.32

3242							
48-13 Bar#3243-3246	P-17-47	P-18-47	P-19-47	P-20-47	P-21-49 P-21-50	625,654.48	27,391,778.81
49-13 Bar#3247-3250	P-17-48	P-18-48	P-19-48	P-20-48	P-21-47 P-21-50	607,242.57	26,585,686.83
Sub-total - 3rd Quarter						***12,307,156.17***	***538,032,783.03***
Adjustment - Prior Quarter							
48-13 Bar#3243-3246	P-17-47	P-18-47	P-19-47	P-20-47	P-21-49 P-21-50	231.91	10,153.43
49-13 Bar#3247-3250	P-17-48	P-18-48	P-19-48	P-20-48	P-21-47 P-21-50	(1,734.73)	(75,948.27)
Current Quarter Deliveries							
50-13 Bar#3251-3253	P-17-49	P-18-49	P-19-49	P-20-49	P-21-51 P-21-50	524,007.08	22,620,337.83
51-13 Bar#3254-3257	P-17-50	P-18-50	P-19-50	P-20-50	P-21-52 P-21-53	754,283.54	32,560,912.24
52-13 Bar#3258-3261	P-17-51	P-18-51	P-19-51	P-20-51	P-21-50 P-21-53	713,517.47	30,801,122.26
53-13 Bar#3262-3265	P-17-52	P-18-52	P-19-52	P-20-52	P-21-54 P-21-53	794,185.91	34,283,417.27
54-13 Bar#3266-3271	P-17-53	P-18-53	P-19-53	P-20-53	P-21-53 P-21-60	670,089.73	28,926,433.46
55-13 Bar#3272-3275	P-17-54	P-18-54	P-19-54	P-20-54	P-21-55 P-21-60	619,182.18	26,728,856.37
56-13 Bar#3276	P-17-55	P-18-55	P-19-55	P-20-55	P-21-56 P-21-60	853,188.26	37,112,680.19
57-13 Bar#3281-3283	P-17-56	P-18-56	P-19-56	P-20-56	P-21-57 P-21-60	550,807.04	24,004,171.07
58-13 Bar#3284-3287	P-17-57	P-18-57	P-19-57	P-20-57	P-21-58 P-21-59	597,500.61	26,039,076.76
59-13 Bar#3288-3292	P-17-58	P-18-58	P-19-58	P-20-58	P-21-60 P-21-59	858,428.88	37,410,330.30
60-13 Bar#3293-3295	P-17-59	P-18-59	P-19-59	P-20-59	P-21-61 P-21-62	594,108.66	25,891,255.55
61-13 Bar#3296-3301	P-17-60	P-18-60	P-19-60	P-20-60	P-21-59 P-21-62	1,006,943.43	43,882,593.55
62-13 Bar#3302-3304	P-17-61	P-18-61	P-19-61	P-20-61	P-21-63 P-21-62	571,497.69	25,225,908.19
63-13 Bar#3305-3308	P-17-62	P-18-62	P-19-62	P-20-62	P-21-62 P-44-2	871,783.32	38,480,516.08
64-13 Bar#3309-3311	P-17-63	P-18-63	P-19-63	P-20-63	P-21-64 P-44-2	593,198.04	26,183,761.39
65-13 Bar#3312-3316	P-17-64	P-18-64	P-19-64	P-20-64	P-21-65 P-44-2	800,134.40	35,317,932.20
Sub-total - 4th Quarter						***11,371,353.42***	***495,403,509.87***

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TOTAL	**46,513,085.73**	**1,973,536,097.63**

The remaining ₱51,677,010.70 shall not be considered as VAT zero-rated for being unsupported with complete documents and where shipments made were outside the period of claim, to wit:

	Reference	$ Value	Amount in Peso
Prior years adjustments supported by final zero-rated invoices only			
Shipment No. 63-12	Exhibit "P-34" Annex 3	1,848.96	75,838.67
Shipment No. 64-12		1,404.28	57,599.35
Shipment No. 65-12		4,003.70	164,219.96
Sub-total – 1st Quarter		***7,256.94***	***297,657.98***
Shipments made outside the period of claim			
Shipment No. 66-13	Exhibits "P-20-65", "P-20-66", "P-34" Annex 3	554,895.93	24,493,106.57
Shipment No. 67-13		609,112.96	26,886,246.15
Sub-total – 4th Quarter		***1,164,008.89***	***51,379,352.72***
Total		**1,171,265.83**	**51,677,010.70**

Consequently, only the portion of the input tax claim attributable to the substantiated zero-rated sales of ₱1,973,536,097.63, as determined per quarter below, will be considered for refund.

Period Covered (2013)	Zero-rated Sales Per Returns	Disallowances	Substantiated Zero-Rated Sales
1st Quarter	₱ 513,606,363.15	₱ 297,657.98	₱ 513,308,705.17
2nd Quarter	426,791,099.56		426,791,099.56
3rd Quarter	538,032,783.03		538,032,783.03
4th Quarter	546,782,862.59	51,379,352.72	495,403,509.87
Total	**₱2,025,213,108.33**	**₱51,677,010.70**	**₱1,973,536,097.63**

<u>Petitioner complied with the sixth, seventh, eighth, ninth and tenth requisites.</u>

After having resolved that petitioner has a substantiated VAT zero-rated sales in the amount of ₱1,973,536,097.63, the Court shall proceed to jointly determine whether petitioner complied with the following remaining requisites, to wit:

a) *sixth requisite*: the input taxes are due or paid;
b) *seventh requisite*: the input taxes are not transitional input taxes;
c) *eighth requisite*: the input taxes claimed are attributable to

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zero-rated or effectively zero-rated sales;

d) *ninth requisite*: 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; and

e) *tenth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Based on its Quarterly VAT Returns for the year 2013, petitioner's excess and unutilized input VAT amounted to ₱19,565,102.32,[65] arising from its purchases of capital goods exceeding ₱1 Million and importations of goods other than capital goods, which is the subject of the present claim, as determined below:

	1st Qtr 2013	2nd Qtr 2013	3rd Qtr 2013	4th Qtr 2013	Total
	P-14-1	P-14-3	P-14-6	P-14-9	
Input tax deferred on capital goods exceeding ₱1M from previous quarter	₱ 5,113,251.76	₱ 5,472,067.65	₱ 6,759,141.45	₱ 6,712,704.87	₱24,057,165.73
Purchase of Capital goods exceeding ₱1M	801,374.00	1,788,865.00	500,606.00	-	3,090,845.00
Total	₱ 5,914,625.76	₱ 7,260,932.65	₱ 7,259,747.45	₱ 6,712,704.87	₱27,148,010.73
Less: Input tax on purchase of capital goods exceeding ₱1M deferred for the succeeding period	5,472,067.65	6,759,141.45	6,712,704.88	6,148,975.42	25,092,889.40
Amortization of Capital Goods Exceeding ₱1M	**₱ 442,558.11**	**₱ 501,791.20**	**₱ 547,042.57**	**₱ 563,729.45**	**₱ 2,055,121.33**
Importation of goods other than capital goods	5,072,738.00	5,530,362.00	6,031,337.00	5,720,466.00	22,354,903.00
Total Input tax during the period	**₱ 5,515,296.11**	**₱ 6,032,153.20**	**₱ 6,578,379.57**	**₱ 6,284,195.45**	**₱24,410,024.33**
Less: Output Tax	765,512.61	1,125,469.75	623,894.36	2,330,045.29	4,844,922.01
Excess Input VAT	**₱ 4,749,783.50**	**₱ 4,906,683.45**	**₱ 5,954,485.21**	**₱ 3,954,150.16**	**₱19,565,102.32**

The above input taxes claimed are not transitional input taxes, which Section 112(A) of the NIRC of 1997, as amended, defines as input taxes allowed on the beginning inventory of goods, materials and supplies.

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[65] With discrepancy of ₱0.02 as against the instant claim for refund which is ₱19,565,102.30.

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<u>*Purchases of capital goods exceeding ₱1 Million*</u>

Pursuant to Section 110(A) of the NIRC of 1997, as amended, and as implemented by Section 4.110-3 of RR No. 16-2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1 Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed ₱1 Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

In support of its purchases of capital goods exceeding ₱1 Million, petitioner submitted its *Schedule of Importation of Capital Goods Exceeding ₱1 Million*[66], *Import Entry and Internal Revenue Declarations* (IEIRDs)[67], *Statement of Settlement of Duties and Taxes* (SSDTs)[68], *Single Administrative Documents* (SADs)[69], *Bank Certification on Payments* to BOC[70] and *Bank Validated Debit Memos*[71].

Upon verification, the Court finds that the foregoing documents pertain to current purchases only. As such, the amortization of input VAT pertaining purchases of capital goods exceeding ₱1Million of prior periods/years which are not supported by any documents cannot be validly claimed as input tax credits by petitioner. Accordingly, only the amortization of input VAT of ₱418,372.55 on purchases made in the year 2013 may be claimed by petitioner as valid input tax credits for the same year, as determined below:

Date	Input VAT	Useful Life	No. of Months Amortized	Amortization of Input VAT	IEIRD Exhibit No.	SSDT Exhibit No.	SAD Exhibit No.
1st Quarter 2013							
Jan 2013	₱ 205,483.00	60	3	₱ 10,274.15	P-49	P-50	P-51
Jan 2013	74,812.00	60	3	3,740.60	P-49-1	P-50-1	P-51-1
Jan 2013	43,026.00	60	3	2,151.30	P-49-2	P-50-2	P-51-2
Jan 2013	76,186.00	60	3	3,809.30	P-49-3	P-50-3	P-51-3
Feb 2013	401,867.00	60	2	13,395.57	P-49-4	P-50-4	P-51-4
Amortization for the 1st Quarter				***₱ 33,370.92***			
2nd Quarter 2013							
Jan 2013	₱ 205,483.00	60	3	₱ 10,274.15	P-49	P-50	P-51

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[66] Exhibit "P-28".
[67] Exhibits "P-49" to "P-49-1".
[68] Exhibits "P-50" to "P-50-17".
[69] Exhibits "P-51" to "P-51-17".
[70] Exhibits "P-23-2" to "P-23-5".
[71] Exhibits "P-41" to "P-41-8".

Jan 2013	74,812.00	60	3	3,740.60	P-49-1	P-50-1	P-51-1
Jan 2013	43,026.00	60	3	2,151.30	P-49-2	P-50-2	P-51-2
Jan 2013	76,186.00	60	3	3,809.30	P-49-3	P-50-3	P-51-3
Feb 2013	401,867.00	60	3	20,093.35	P-49-4	P-50-4	P-51-4
sub-total				***₱ 40,068.70***			
Apr 2013	₱ 116,213.00	60	3	₱ 5,810.65	P-49-5	P-50-5	P-51-5
Apr 2013	34,331.00	60	3	1,716.55	P-49-6	P-50-6	P-51-6
May 2013	53,339.00	60	2	1,777.97	P-49-7	P-50-7	P-51-7
May 2013	141,695.00	60	2	4,723.17	P-49-8	P-50-8	P-51-8
May 2013	842,488.00	60	2	28,082.93	P-49-9	P-50-9	P-51-9
May 2013	24,643.00	60	2	821.43	P-49-10	P-50-10	P-51-10
Jun 2013	174,254.00	60	1	2,904.23	P-49-11	P-50-11	P-51-11
Jun 2013	278,409.00	60	1	4,640.15	P-49-12	P-50-12	P-51-12
Jun 2013	123,493.00	60	1	2,058.22	P-49-13	P-50-13	P-51-13
sub-total				***₱ 52,535.30***			
Amortization for the 2nd Quarter				***₱ 92,604.00***			
3rd Quarter 2013							
Jan 2013	₱ 205,483.00	60	3	₱ 10,274.15	P-49	P-50	P-51
Jan 2013	74,812.00	60	3	3,740.60	P-49-1	P-50-1	P-51-1
Jan 2013	43,026.00	60	3	2,151.30	P-49-2	P-50-2	P-51-2
Jan 2013	76,186.00	60	3	3,809.30	P-49-3	P-50-3	P-51-3
Feb 2013	401,867.00	60	3	20,093.35	P-49-4	P-50-4	P-51-4
sub-total				***₱ 40,068.70***			
Apr 2013	₱ 116,213.00	60	3	₱ 5,810.65	P-49-5	P-50-5	P-51-5
Apr 2013	34,331.00	60	3	1,716.55	P-49-6	P-50-6	P-51-6
May 2013	53,339.00	60	3	2,666.95	P-49-7	P-50-7	P-51-7
May 2013	141,695.00	60	3	7,084.75	P-49-8	P-50-8	P-51-8
May 2013	842,488.00	60	3	42,124.40	P-49-9	P-50-9	P-51-9
May 2013	24,643.00	60	3	1,232.15	P-49-10	P-50-10	P-51-10
Jun 2013	174,254.00	60	3	8,712.70	P-49-11	P-50-11	P-51-11
Jun 2013	278,409.00	60	3	13,920.45	P-49-12	P-50-12	P-51-12
Jun 2013	123,493.00	60	3	6,174.65	P-49-13	P-50-13	P-51-13
sub-total				***₱ 89,443.25***			
Sep 2013	₱ 11,087.00	60	1	₱ 184.78	P-49-14	P-50-14	P-51-14
Sep 2013	273,662.00	60	1	4,561.03	P-49-15	P-50-15	P-51-15
Sep 2013	17,925.00	60	1	298.75	P-49-16	P-50-16	P-51-16
Sep 2013	197,932.00	60	1	3,298.87	P-49-17	P-50-17	P-51-17
sub-total				***₱ 8,343.43***			
Amortization for the 3rd Quarter				***₱ 137,855.38***			
4th Quarter 2013							
Jan 2013	₱ 205,483.00	60	3	₱ 10,274.15	P-49	P-50	P-51
Jan 2013	74,812.00	60	3	3,740.60	P-49-1	P-50-1	P-51-1
Jan 2013	43,026.00	60	3	2,151.30	P-49-2	P-50-2	P-51-2
Jan 2013	76,186.00	60	3	3,809.30	P-49-3	P-50-3	P-51-3
Feb 2013	401,867.00	60	3	20,093.35	P-49-4	P-50-4	P-51-4
sub-total				***₱ 40,068.70***			
Apr 2013	116,213.00	60	3	₱ 5,810.65	P-49-5	P-50-5	P-51-5
Apr 2013	34,331.00	60	3	1,716.55	P-49-6	P-50-6	P-51-6
May 2013	53,339.00	60	3	2,666.95	P-49-7	P-50-7	P-51-7
May 2013	141,695.00	60	3	7,084.75	P-49-8	P-50-8	P-51-8
May 2013	842,488.00	60	3	42,124.40	P-49-9	P-50-9	P-51-9
May 2013	24,643.00	60	3	1,232.15	P-49-10	P-50-10	P-51-10
Jun 2013	174,254.00	60	3	8,712.70	P-49-11	P-50-11	P-51-11
Jun 2013	278,409.00	60	3	13,920.45	P-49-12	P-50-12	P-51-12
Jun 2013	123,493.00	60	3	6,174.65	P-49-13	P-50-13	P-51-13
sub-total				***₱ 89,443.25***			
Sep 2013	₱ 11,087.00	60	3	₱ 554.35	P-49-14	P-50-14	P-51-14

Sep 2013	273,662.00	60	3	13,683.10	P-49-15	P-50-15	P-51-15
Sep 2013	17,925.00	60	3	896.25	P-49-16	P-50-16	P-51-16
Sep 2013	197,932.00	60	3	9,896.60	P-49-17	P-50-17	P-51-17
sub-total				***₱ 25,030.30***			
Amortization for the 4th Quarter				***₱ 154,542.25***			
Total Amortization of Input VAT on Capital Goods exceeding ₱1 Million for year 2013				**₱418,372.55**			

<u>*Importations of goods other than capital goods*</u>

To substantiate its importations of goods other than capital goods with corresponding input VAT of ₱22,354,903.00, petitioner submitted its Import Entry and Internal Revenue Declarations (IEIRDs)[72], Statement of Settlement of Duties and Taxes (SSDTs)[73], Single Administrative Documents (SADs)[74], Bank Certification on Payments to BOC[75], and Bank Validated Debit Memos[76], which were examined by the Court-Commissioned ICPA, Katherine O. Constantino, of Constantino Guadalquiver & Co. The ICPA summarized her findings as follows:

Properly Supported Input Tax	**Reference**	**Input VAT Amount**
Vatable purchase of imported goods supported by SADs, SSDTs and manual IEIRD. SSDT amounts further supported with Bank Validated Memo/Debit Advice and/or Bank Certificate/Bank Validated LC Opening Advice	Annex 12-a	₱ 22,129,372.00
Other Findings		
1 Vatable purchase of imported goods supported by SAD. E2m Assessment Notice in lieu of SSDT and manual IEIRD. Assessment amount further supported with Bank Validated Debit Memo/Debit Advice and/or Bank Certificate.	Annex 12-b	₱ 6,276.00
2 Vatable purchase of imported goods supported by BC Form No. 38-A in lieu of SSDT and manual IEIRD but without SAD	Annex 12-c	27,452.00
3 Vatable purchase of imported goods supported by BC Form No. 38-A in lieu of SSDT but without SAD and manual IEIRD	Annex 12-d	158,045.00
4 Vatable purchase of imported goods supported by BC Form No. 38-A and Informal Import Declaration and Entry (IIDAE) in lieu of SSDT and manual IEIRD but without SAD	Annex 12-e	33,758.00
sub-total		*₱ 225,531.00*
Total		**₱ 22,354,903.00**

[72] Exhibits "P-24" to "P-24-157".
[73] Exhibits "P-25" to "P-25-169".
[74] Exhibits "P-26" to "P-26-156".
[75] Exhibits "P-23" to "P-23-5".
[76] Exhibits "P-42" to "P-42-90".

In her Report dated July 25, 2016,[77] the ICPA disallowed the amount of ₱225,531.00 (under Other Findings). However, upon verification of the purported supporting documents, the Court finds that the same may be claimed by petitioner since the corresponding VAT was determined to be validly paid by petitioner.

Based on the foregoing, petitioner's properly substantiated input VAT for the four quarters of the year 2013 amounted only to ₱22,773,275.55, determined as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Amortization of Input VAT on Capital Goods exceeding ₱1 Million	₱ 33,370.92	₱ 92,604.00	₱ 137,855.38	₱ 154,542.25	₱ 418,372.55
Input VAT on Importations of Goods Other than Capital Goods	5,072,738.00	5,530,362.00	6,031,337.00	5,720,466.00	22,354,903.00
Total Substantiated Input VAT	**₱5,106,108.92**	**₱5,622,966.00**	**₱6,169,192.38**	**₱5,875,008.25**	**₱22,773,275.55**

A portion, however, of the substantiated input VAT of ₱22,773,275.55 shall be applied against petitioner's reported output VAT liability for the four quarters of 2013 in the total amount of ₱4,844,922.01[78]. Consequently, only the remaining input VAT of ₱17,928,353.54 can be attributed to the total amount of declared zero-rated sales of ₱2,025,213,108.33 and only the input VAT of ₱17,592,729.68 is attributable to the substantiated zero-rated sales of ₱1,973,536,097.63, as computed below:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Valid Input VAT	₱ 5,106,108.92	₱ 5,622,966.00	₱ 6,169,192.38	₱ 5,875,008.25	₱ 22,773,275.55
Less: Output VAT	765,512.61	1,125,469.75	623,894.36	2,330,045.29	4,844,922.01
Excess Input VAT	**₱4,340,596.31**	**₱4,497,496.25**	**₱5,545,298.02**	**₱3,544,962.96**	**₱17,928,353.54**

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[77] Exhibit "P-34", p. 30.

[78]

Exhibit	Period Covered (2013)	Output Tax
P-14-1	1st Quarter	₱ 765,512.61
P-14-3	2nd Quarter	1,125,469.75
P-14-6	3rd Quarter	623,894.36
P-14-9	4th Quarter	2,330,045.29
Total		**₱ 4,844,922.01**

Divided by Total Declared Zero-Rated Sales	513,606,363.15	426,791,099.56	538,032,783.03	546,782,862.59	2,025,213,108.33
Multiply by Substantiated Zero-Rated Sales	513,308,705.17	426,791,099.56	538,032,783.03	495,403,509.87	1,973,536,097.63
Excess Input VAT allocated to Substantiated Zero-Rated Sales	**₱4,338,080.74**	**₱4,497,496.25**	**₱5,545,298.02**	**₱3,211,854.67**	**₱17,592,729.68**

Although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[79], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Quarterly VAT Return for the 3rd quarter of 2014[80], preventing the carry-over or application of the claimed input VAT in the next taxable quarters. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱21,410,409.94[81] as of the 3rd quarter of 2014 which was carried over/applied to the succeeding 4th quarter of 2014.[82]

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of TCC in the amount of ₱17,592,729.68, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of the year 2013.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱17,592,729.68** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2013.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[79] Exhibits "P-52" to "P-52-2".
[80] Exhibits "P-52-2".
[81] Line 29, Exhibit "P-52-2".
[82] Line 20A, Exhibit "P-52-3".

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
(With Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,* -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	CTA CASE No. 9101 Members: DEL ROSARIO, P.J., *Chairperson* UY, and MINDARO-GRULLA, *JJ.* Promulgated: SEP 04 2018 1:39 pm

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DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect to my esteemed colleagues, it is my submission that although the Commissioner of Internal Revenue (CIR) is a real party in interest in this case, as it is the one who validates claims for refund of importation value-added taxes (VAT), it is the Commissioner of Customs (COC) that is authorized to refund or issue a tax credit certificate for the amount being claimed and validated by the CIR. Thus, the Court cannot order the COC, over which the Court did not acquire jurisdiction, to order the refund or issuance of a tax credit certificate in favor of Lepanto Consolidated Mining Company (LCMC).

As to the issue that the input VAT on importation was actually paid to the Bureau of Customs (BOC), Sections 112(C) and (D) of the NIRC of 1997 states:

"xxx xxx xxx

(C) *Period within which Refund or Tax Credit or Input Taxes shall be Made.* In proper cases, <u>the</u>

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.

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(D) *Manner of Giving Refund.* Refund shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission an Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this paragraph shall be subject to post audit by the Commission on Audit." (Underlinings supplied.)

However, Customs Memorandum Order No. 28-2014 issued by the Bureau of Customs specifically states therein:

"**II. Coverage**

These rules shall cover all claims for refund on input VAT on importations attributable to zero-rated transactions under Section 112 of the NIRC, as amended.

III. Operational Provisions

A. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following supporting documents are attached to the docket forwarded by the BIR:

xxx xxx xxx

B. If the supporting documents are found to be complete, the entire docket of the claim shall be endorsed to the Chief, Revenue Accounting Division (RAD) this Bureau for verification of payments of

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duties and taxes, using Tax Credit or if cash payments, it must have been remitted to the Bureau of Treasury (BTr).

xxx xxx xxx

D. Upon receipt of the docket from FMO with the corresponding Evaluation Report, the Secretariat shall determine whether the claimant will avail of cash refund or for issuance of TCC.

E. The Secretariat shall then prepare the corresponding endorsement for signature of the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the cash refund or issuance of Tax Credit Certificate based on the amount computed or recommended by the FMO. The signer resolution/endorsement authorizing payment shall be forwarded to the Accounting Division, FMO for the preparation of cash refund or issuance of TCC.

IV. Manner of Payment for Cash Refund

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F. Within five (5) days from receipt of the Endorsement authorizing payment of the cash refund, the FMO shall prepare the request for issuance of Notice of Allocation (NCA) from the DBM, supported with a certification from BTr that the corresponding amount is available under BOC's trust liabilities account, including the following:

1) Endorsement signed by the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the cash refund;

2) Copy of the claimant's application for VAT refund pursuant to Sec. 112 of the NIRC, as amended;

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3) BIR endorsement to the BOC containing the BIR's determination of the validity of the claim for the VAT refunds on importation pursuant to Section 112 of the NIRC as amended, with the corresponding Authority for the BOC to issue the refund;

4) Certification of payments issued by RAD; and

5) Computation of the final amount of cash refund as computed by the Accounting Division, FMO.

G. Upon receipt of the NCA from the DBM, the Accounting Division, FMO shall prepare the Disbursement Voucher and forward the same to the BOC Cashier.

xxx xxx xxx" (Underlinings Supplied.)

That being said, since the claim for refund in this case is VAT on importation, it is the COC that must be ordered to refund or to issue a tax credit certificate in favor of LCMC.

Since in this case, the COC or the BOC was not impleaded as a party to the claim for refund of LCMC, this Court did not acquire jurisdiction over the former. Consequently, this Court cannot order the COC or the BOC to refund or issue a tax credit certificate with respect to the amount of ₱17,592,729.68 representing the input VAT on importation paid by LCMC to the BOC.

In view of the foregoing, I vote to DENY the Petition for Review for lack of merit.

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