REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TETRA PAK PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10113**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 23 2022 11:30 A.M.

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DECISION

REYES-FAJARDO, J.:

THE CASE

This is a Petition for Review filed by petitioner Tetra Pak Philippines, Inc. against respondent Commissioner of Internal Revenue (CIR) on July 12, 2019, praying that judgment be rendered ordering respondent to refund or issue in favor of petitioner a tax credit certificate (TCC) in the amount of ₱25,188,945.26, representing its excess and/or unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first (1st) quarter of calendar year (CY) 2017.[1]

[1] Statement of the Case, Pre-Trial Order dated January 23, 2020, Docket – Vol. I, p. 496.

THE PARTIES

Petitioner Tetra Pak Philippines, Inc. is a corporation organized and existing under the laws of the Republic of the Philippines,[2] and is registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number (TIN) 000-169-584-000, with address at 19th floor, Twenty-Five Seven Mckinley, 25th Street corner 7th Avenue, Fort Bonifacio, Taguig City.[3]

Respondent is the Commissioner of the BIR, who is empowered by law to act upon and approve claims for refund, tax credit certificates, and other matters involving the enforcement of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations. He may be served with summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner filed an administrative claim for refund of its unutilized creditable input VAT for the first quarter of CY 2017 in the amount of ₱25,188,945.26, with the Large Taxpayers Audit Division III of the BIR, which was denied by the latter[4] through a denial letter received by petitioner on June 13, 2019.[5]

On July 12, 2019, petitioner filed the present Petition for Review.[6]

On September 23, 2019, respondent filed an Answer,[7] interposing the following special and affirmative defenses, to wit: (1) the Petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; and (2) petitioner is not entitled to the claim for refund or issuance of tax credit certificate.

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2 Exhibit "P-1", Docket - Vol. I, pp. 199 to 210.
3 Exhibit "P-2", Docket - Vol. II, p. 742; Exhibit "P-3", Docket - Vol. I, p. 213.
4 Par. 1.1, Stipulation of Facts, JSFI, Docket - Vol. I, p. 438.
5 Pars. 3.1.3 and 4.9, Petition for Review, vis-à-vis Par. 2, Answer, Docket - Vol. I, pp. 14, 15, and 87, respectively. Refer also to Exhibit "P-33", Docket - Vol. I, pp. 39 to 41.
6 Docket - Vol. I, pp. 12 to 36.
7 Docket - Vol. I, pp. 87 to 96.

On October 10, 2019, petitioner filed its Reply.[8]

On October 22, 2019, respondent transmitted the BIR Records for this case, consisting of forty-four (44) folders.[9]

On November 22, 2019, the parties filed their respective Pre-Trial Briefs.[10] On November 28, 2019, the Pre-Trial Conference was held.[11]

On December 18, 2019, the parties filed their Joint Stipulation of Facts and Issue[12] which the Court approved in its Resolution dated January 9, 2020,[13] thereby terminating the Pre-Trial. Thereafter, the Pre-Trial Order dated January 23, 2020 was issued.[14]

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of its witnesses, namely: (1) Mr. Russel A. Magallanes,[15] petitioner's Reporting and Tax Analyst; and (2) Mr. George V. Villaruz,[16] the Court-commissioned independent certified public accountant (ICPA),[17] who submitted his Report and Supplemental Report on March 2, 2020[18] and on July 27, 2020[19], respectively.

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8 Docket - Vol. I, pp. 102 to 112.
9 Docket - Vol. I, pp. 116 to 119.
10 Docket - Vol. I, pp. 132 to 153, and 155 to 157, respectively.
11 Notice of Pre-Trial Conference dated October 23, 2019, Docket - Vol. I, pp. 121 to 122; Minutes of the hearing held on, and Order dated, November 28, 2019, Docket - Vol. I, pp. 421 to 428.
12 Docket - Vol. I, pp. 438 to 444.
13 Docket - Vol. I, pp. 492 to 493.
14 Docket - Vol. I, pp. 496 to 504.
15 Exhibit "P-41", Docket - Vol. I, pp. 164 to 197; Order dated October 6, 2020, Docket - Vol. II, pp. 709 to 710.
16 Exhibit "P-44", Docket - Vol. II, pp. 627 to 649; Order dated October 6, 2020, Docket - Vol. II, pp. 709 to 710.
17 Oath of Commission dated January 30, 2020, Docket - Vol. I, p. 509; Minutes of the hearing held on, and Order dated, January 30, 2020, Docket - Vol. I, pp. 506 to 508, and 510 to 511, respectively.
18 Exhibit "P-36", Docket - Vol. I, pp. 528 to 576.
19 Exhibit "P-40", Docket - Vol. II, pp. 597 to 619.

On October 21, 2020, petitioner filed a Formal Offer of Evidence.[20] Respondent then filed a Comment (On Petitioner's Formal Offer of Evidence) on November 6, 2020.[21] In the Resolution dated December 1, 2020,[22] the Court admitted petitioner's offered exhibits, except for the following:

1. Exhibits "P-10", "P-11", "P-12", "P-13", "P-14", and "P-15," for failure to present the originals for comparison;

2. Exhibit "P-33," for failure to submit the duly marked exhibit;

3. Exhibit "P-38-96", "P-38-97", "P-38-98", "P-38-99", "P-38-100", "P-38-101", "P-38-149", "P-38-151", "P-38-128", "P-38-150", "P-37-280" to "P-37-330", "P-37-358" to "P-37-359.2", "P-37-331" to "P-37-357", "P-37-360" to "P-37-362.2", "P-37-363", and "P-37-364", there being no indication that the ICPA was able to compare the copies of documents with their originals;

4. Exhibits "P-38-121" and "P-38-124," for being mere photocopies; and

5. Exhibit "P-42," there being no indication of such marking in the document described as "CD containing the soft copies of the documents examined by the ICPA in the execution of the ICPA Report dated 28 February 2020."

Consequently, on December 23, 2020, petitioner sent, through electronic mail, its Motion for Partial Reconsideration of Resolution dated December 1, 2020,[23] praying for admission of Exhibits "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-33", "P-38-96", "P-38-97", "P-38-98", "P-38-99", "P-38-100", "P-38-101", "P-38-149", "P-38-151", "P-38-128", "P-38-150", "P-37-280" to "P-37-330", "P-37-358" to "P-37-359.2", "P-37-331" to "P-37-357", "P-37-360" to "P-37-362.2", "P-37-363", "P-37-364", "P-38-121", "P-38-124", and "P-42". On January

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20 Docket - Vol. II, pp. 717 to 741.
21 Docket - Vol. II, pp. 746 to 748.
22 Docket - Vol. II, pp. 752 to 754.
23 Docket - Vol. II, pp. 755 to 775.

29, 2021, respondent filed a Comment/Opposition (Re: Motion for Partial Reconsideration of the Resolution dated December 1, 2020).[24]

In the Resolution dated May 18, 2021,[25] the Court partially granted petitioner's Motion for Partial Reconsideration, and admitted Exhibits "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-38-121", "P-38-124", "P-38-96", "P-38-97", "P-38-98", "P-38-99", "P-38-100", "P-38-101", "P-38-128", "P-38-149", "P-38-150", "P-38-151", "P-37-363", and "P-33," but still denied Exhibits "P-37-280" to "P-37-330", "P-37-358" to "P-37-359.2", "P-37-331" to "P-37-357", "P-37-360" to "P-37-362.2", and "P-42." Petitioner then posted its Tender of Excluded Evidence on October 21, 2021.[26]

In the meantime, respondent presented documentary and testimonial evidence. Respondent offered the testimony of Revenue Officer Maria Gracielle Cecilia S. Anaban.[27]

On June 11, 2021, respondent filed a Formal Offer of Evidence.[28] Thereafter, petitioner filed a Comment/Opposition (To Respondent's Formal Offer of Evidence).[29] In the Resolution dated July 14, 2021,[30] the Court admitted all of respondent's offered evidence.

Subsequently, on October 27, 2021, respondent filed a Manifestation to adopt the arguments raised in his Answer as his Memorandum. On the same date, petitioner filed its Memorandum.[31]

On December 16, 2021, the present case was submitted for decision.[32]

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24 Docket - Vol. II, pp. 969 to 972.
25 Docket - Vol. II, pp. 979 to 985.
26 Docket - Vol. II, pp. 1064 to 1071.
27 Exhibit "R-5", Docket - Vol. I, pp. 406 to 410; Minutes of the hearing held on, and Order dated, June 1, 2021, Docket - Vol. II, pp. 990 to 995.
28 Docket - Vol. II, pp. 998 to 1002.
29 Docket - Vol. II, pp. 1005 to 1011.
30 Docket - Vol. II, p. 1018.
31 Docket - Vol. II, pp. 1022 to 1048.
32 Resolution dated December 16, 2021, Docket - Vol. II, pp. 1236 to 1237.

THE ISSUE

The issue to be resolved in this case is whether or not Tetra Pak Philippines, Inc. is entitled to a refund or to the issuance of TCC in the amount of ₱25,188,945.26, representing excess and/or unutilized input VAT attributable to zero-rated sales of goods and services for the 1st quarter of CY 2017 based on the documents submitted.[33]

Petitioner's arguments:

Petitioner argues that it is entitled to the refund or issuance of TCC in the amount of ₱25,188,945.26, representing input VAT attributable to its zero-rated sales for the 1st quarter of CY 2017. In support thereof, petitioner points out that it is a VAT-registered taxpayer; that its sales of ₱212,506,470.49 for the 1st quarter of CY 2017 are zero-rated; that the input taxes paid by petitioner are directly attributable and allocable to its zero-rated sales for the 1st quarter of CY 2017; that petitioner had excess input taxes for the 1st quarter of CY 2017 that were not applied against any output VAT liability, nor utilized for any subsequent quarter; that petitioner timely filed its administrative claim for refund within two (2) years from the close of the taxable quarter when the zero-rated sales were made; and that petitioner filed its judicial claim for refund within thirty (30) days from the receipt of respondent's decision denying the claim on June 13, 2019.

Moreover, petitioner posits that respondent's denial of its claim for refund for the 1st quarter of CY 2017 is incorrect and without basis; that its importations were properly substantiated; that petitioner's excess input taxes attributable to zero-rated sales were properly substantiated by official receipts (ORs) and invoices in accordance with the invoicing requirements under Sections 113 and 237 of the NIRC of 1997, as amended, and Revenue Regulations (Rev. Regs.) No. 16-2005; that petitioner's vendors and/or suppliers have valid TIN and are VAT-registered; that the presentation of Board of Investments (BOI), Philippine Economic Zone Authority (PEZA), Tourism Infrastructure and Enterprise Zone Authority (TIEZA) registration certificates and annual letters of incentives is not

[33] JSFI, Docket - Vol. I, p. 439.

required in a claim for refund; that petitioner completely and properly declared and reported its sales; and that the amounts of sales declared in the amended summary list of sales and the amended Quarterly VAT Return filed on March 29, 2019, for the 1st quarter of CY 2017 are equal.

Petitioner also contends that it should not be barred from presenting further evidence to substantiate its claim; that the rule that claims for refund are strictly construed against the taxpayer only applies when the taxpayer fails to meet the quantum of evidence required to prove entitlement to the refund; and that the input VAT, noted by the ICPA as exceptions, should be allowed and recognized.

Respondent's counter-arguments:

Respondent counter-argues that petitioner failed to substantiate its administrative claim for refund; and that petitioner is not entitled to the claim for refund or issuance of tax credit certificate.

THE COURT'S RULING

The Petition for Review lacks merit.

In every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claim; hence, it is imperative for a taxpayer, in a judicial claim for refund or tax credit, to show that its administrative claim should have been granted in the first place. In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue,*[34] the Supreme Court discussed the requisites for a successful judicial claim for refund, as follows:

> **When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for**

[34] G.R. No. 207112, December 8, 2015.

> **refund or tax credit to show that its administrative claim should have been granted in the first place.** Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.[35]

In an appeal of an unsuccessful administrative claim, two (2) conditions must be established: (1) **the satisfaction of all documentary and evidentiary requirements at the administrative level**, and (2) **the taxpayer's entitlement to the claim for refund or tax credit under substantive law**. The first condition entails the Court's exercise of its appellate jurisdiction in reviewing whether respondent has basis in fact and/or in law in denying the administrative claim; while the second condition entails a determination of petitioner's compliance with the requisites established by law.

As will be thoroughly explained in the ensuing paragraphs, the Court finds that petitioner failed to establish the two (2) conditions discussed above.

I. Petitioner failed to satisfy all documentary and evidentiary requirements at the administrative level.

Respondent denied petitioner's claim for refund on the following grounds:

Import Entry and Internal Revenue Declaration (IEIRD)/ Single Administrative Document (SAD)/ Statement of Settlement of Duties and Taxes (SSDT) with discrepancy and/or unofficial copy	₱28,277,564.00
Improper invoicing	1,368,918.04
Computer-Assisted Audit Tools and Techniques (CAATTs) TIN Verification	1,575,233.11
Zero-rated sales should be subject to 12% VAT	5,750,945.81
Undeclared sales per Summary List of Sales (SLS) vs. Undeclared sales per Audit	17,102,294.67

35 Boldfacing supplied.

Information, Tax Exemption and Incentives Division (AITEID)	
Sales not subject to VAT (VAT Return vs. SLS)	5,478,735.34
Total Disallowances	**₱59,553,690.97**

The Court finds that respondent has partial basis in fact and in law in denying the claim amounting to ₱25,188,945.26. The merits of each ground are discussed below.

a. ₱9,296,325.00 was properly disallowed due to IEIRD / SAD / SSDT discrepancy and unofficial stamp.

Based on the Memorandum of OIC-Assistant Commissioner (ACIR) of the Large Taxpayers Service, Teresita M. Dizon,[36] the following summarizes the BIR's findings which led to the disallowance of ₱28,277,564.00 input VAT on importations:[37]

SSDT unofficial copy only	₱6,402,360.00
No back portion of IEIRD	2,003,181.00
No SSDT attached	2,794,324.00
No IEIRD & suppliers invoice attached	5,898,399.00
No IEIRD, SSDT & suppliers invoice attached	88,090.00
No SSDT & supplier's invoice	7,239.00
No supplier's invoice attached	11,079,659.00
Not in file	4,312.00
Total	**₱28,277,564.00**

Relevant to claiming input tax credits arising from importation of goods, Section 110(A)(2)(b) of the NIRC of 1997, as amended, provides that the input tax on importation of goods or properties by a VAT-registered person shall be creditable to the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs (BOC). On the other hand, Section 4.110-8(a)(1) of Rev. Regs. No. 16-05 provides that input taxes for the importation of goods must be substantiated and supported by

36 Exhibit "R-2", BIR Records – Main Folder, pp. 546 to 551.
37 Exhibit "R-3", BIR Records – Main Folder, pp. 485 to 507.

import entry **or other equivalent document** showing actual payment of VAT on the imported goods.

The foregoing provisions do not lay down an all-inclusive list of requirements in substantiating input VAT in order to be creditable against output VAT. The use of the terms *"or"* and *"other equivalent document"* in the above provision connotes that documents may be presented in the alternative and does not require that all documents pertaining to the importation of goods and properties must be presented. Accordingly, what is essential is that the document presented shows the actual payment of VAT on imported goods.

At the time petitioner made importation of goods in CY 2017, the document issued by the BOC that proves successful and completed payment of import taxes and duties, including VAT, is the SSDT, pursuant to Customs Administrative Order (CAO) No. 10-2008 dated November 12, 2008.

CAO No. 10-2008 implements the Payment Application Secure System Version 5.0 (PASS5), which provides that the duties, taxes and fees payable, both advanced and final, will be transmitted to the Authorized Agent Bank (AAB) via a payment gateway through a secured communication channel and collected by debit from designated bank accounts following the procedures described in the Order.[38]

As briefly summarized in Customs Memorandum Order (CMO) No. 6-2009 dated February 6, 2009, which implements CAO No. 10-2008, the e2m Customs System shall compute the final tax payable due on the importation based on the particulars contained in the Single Administrative Document - Import Entry and Internal Revenue Declaration (SAD-IEIRD) and submitted to the Customs via an accredited Virtual Asset Service Provider (VASP). e2m Customs shall generate a final payment instruction (FPI) and transmit the same to the AAB nominated in the SAD-IEIRD via the BOC Bankers Association of the Philippines (BAP)/Philippine Clearing House Corporation (PCHC) Payment Gateway. The respective AAB internal system shall cause the debit of the amount stated in the FPI from the nominated account, generate the Final Payment Confirmation (FPC)

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[38] Sections 3.1, CAO No. 10-2008.

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and electronically transmit this to the BOC thru the Payment Gateway.[39]

The AAB shall then credit the account of the BOC maintained with the collecting bank and remit to BSP for the account of BOC following the guidelines of the existing BAP-BOC Memorandum of Agreement.[40] The BOC on the other hand shall issue SSDT for completely processed declaration of importers.[41]

The PASS5 payment system under CAO No. 10-2008 has been adopted in CMO No. 27-2009 dated July 24, 2009, which provides for the Procedures for the Implementation of e2m Customs System – Phase 3: Import Assessment System (IAS) in all Customs Ports Nationwide. According thereto, payment of duties, taxes and other charges must comply with CAO 10-2008 and CMO 6-2009.[42]

Considering the foregoing, the most crucial document that petitioner must present in order to be entitled to claim input tax credit from importation of goods is the SSDT as it is the document which serves as proof of actual payment of VAT. Provided that an SSDT is presented, all other importation documents, or any defect or infirmities thereto, are dispensable.

As such, respondent's disallowances amounting to ₱18,981,239.00 due to the following grounds are improper:

No back portion of IEIRD	₱2,003,181.00
No IEIRD & suppliers invoice attached	5,898,399.00
No supplier's invoice attached	11,079,659.00
Total	**₱18,981,239.00**

With respect to respondent's disallowance of ₱6,402,360.00 input VAT from importation on the ground that the SSDT presented in support thereof is only an unofficial copy, the Court finds the same to be proper and in order.

39 Section 3.4, CMO No. 6-2009.
40 Section 5.5.3, CAO No. 10-2008.
41 Section 5.3.3, CAO No. 10-2008.
42 Section 4.4.2, CMO No. 27-2009.

CMO No. 07-2019 dated February 14, 2019 provides for the guidelines on the use of BOC Logos and Marks by Third Parties. Section 5 thereof provides that:

> 5.1. All forms or documents, whether in printed or electronic format, that are issued by third parties in relation to BOC processes and transactions, should contain a disclaimer statement in plain and clear language, stating in the following or similar terms, that:
>
> > 'This copy is for information purposes only. This is not an official document of the Bureau of Customs and **may not be used or relied upon as a basis for compliance with any legal requirement**.'
>
> 5.2. The disclaimer statement must appear visibly in the top or bottom of every page of the document in text no smaller than the font used for the majority of the rest of the content.
>
> 5.3. The said form or document must **likewise bear** a **visible watermark on every page** stating the following or similar words: **'Unofficial Copy' or 'Draft Only' or 'Not an official BOC document'**.[43]

The foregoing provisions of CMO No. 07-2019 requires that a disclaimer statement and a visible watermark be present in any document issued by third parties in relation to BOC processes and transactions. Moreover, the disclaimer statement clearly provides that said document *"may not be used or relied upon as a basis for compliance with any legal requirement"*.

Thus, an *"Unofficial Copy"* of an SSDT may not be used or relied upon as a basis for compliance with the legal requirement of proving actual payment of VAT on imported goods and properties. Hence, respondent has legal basis to disallow the amount of ₱6,402,360.00 input VAT from importations for being supported by unofficial SSDTs.

Lastly, with respect to the remaining grounds for disallowance of ₱2,893,965.00 input VAT, as detailed below, the Court likewise finds the same to be proper and in order:

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[43] Boldfacing supplied.

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No SSDT attached	₱2,794,324.00
No IEIRD, SSDT & suppliers invoice attached	88,090.00
No SSDT & supplier's invoice	7,239.00
Not in file	4,312.00
Total	**₱2,893,965.00**

Relying on Revenue Memorandum Circular (RMC) No. 017-18 which provides that failure on the part of the taxpayer-claimant to submit the relevant vital document/s in support of its application for refund shall result to non-acceptance of the application, petitioner asserts that had respondent found that the documents it submitted incomplete, respondent should have denied receipt of the application or at least notified petitioner to submit additional supporting documents.

The Court finds petitioner's interpretation of the foregoing provision of RMC No. 017-18 misplaced. Non-acceptance of the application for refund results only when there is failure to submit the **relevant vital document/s** in support of the taxpayer's claim, not the complete documents. These relevant vital documents are in fact enlisted in the Revised Checklist of Mandatory Requirements.

To imply that the above provision requires absolute completeness of documents in support of a taxpayer's application for refund before it is accepted by the BIR shall not only be impractical, but shall render nugatory the ninety-day (90) day period to act upon the taxpayer's claim in accordance with Section 112(C) of the NIRC of 1997, as amended.[44]

Upon receipt of the application for refund, the BIR cannot then and there determine the absolute completeness of the documents submitted by the taxpayer. It necessitates time for the BIR to study the merits of the application and the veracity of the documents submitted by the taxpayer in support of its application. This is the

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44 SEC. 112. Refunds or Tax Credits of Input Tax. –

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(C) Period within which Refund or Tax Credit 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.

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very reason why the 90-day period to act upon the claim was provided in the NIRC of 1997, as amended.

Petitioner's assertion that the BIR should have at least notified it to submit additional supporting documents is likewise misplaced. Upon filing its application for refund, petitioner submitted a Sworn Certification[45] attesting to the completeness and authenticity of the documents (e.g., IEIRD, SAD, SSDT, and Commercial Invoices[46]) presented in support of the claim for refund. Verily, said Sworn Statement renders it unnecessary for the BIR to notify petitioner to submit additional documents.

Indeed, respondent has legal and factual bases to disallow ₱2,893,965.00 input VAT from importation for petitioner's failure to substantiate the same.

In sum, out of the ₱28,777,564.00 input VAT disallowance on the ground of IEIRD/SAD/SSDT with discrepancy/unofficial stamp, only the amount of ₱9,296,325.00 was properly disallowed by respondent while the amount of ₱18,981,239.00 lacks legal basis for disallowance.

b. ₱1,368,918.04 was properly disallowed due to improper invoicing.

In relation to substantiation requirements for local transactions, respondent found that the supplier's invoices and/or ORs submitted by petitioner failed to comply with the invoicing requirements under Sections 113 and 237 of the NIRC of 1997, as amended, and Rev. Regs. No. 16-2005. Consequently, the corresponding input taxes were disallowed and deducted from the amount claimed for VAT refund.[47]

The Court finds such disallowance proper.

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45 Exhibit "P-5", Docket - Vol. I, p. 222.
46 Exhibit "P-5", Docket - Vol. I, p. 223.
47 Exhibit "P-33", Docket - Vol. I, p. 40.

In respondent's Schedule of Local Purchases with Input Tax in support of the Memorandum of OIC-ACIR Dizon, the specific grounds leading to the disallowance of the amount of ₱1,368,918.04 are summarized as follows:[48]

Statement of Account only	₱346,741.46
Bank deposit slip not valid doc for input tax	36,850.72
No TIN	19,903.72
VAT not separately billed	900,065.30
Billing Statement only	1,671.59
No TIN and address	7,426.77
Provisional Receipt only	3,991.09
No address	52,267.39
Total	**₱1,368,918.04**

In order for an input tax be a valid credit against output tax, petitioner must comply with the pertinent invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> SEC. 113. Invoicing and Accounting Requirements for VAT-registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person shall issue:
>
> (1) **A VAT invoice for every sale, barter or exchange of goods or properties**; and
>
> (2) **A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.**
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

48 Exhibit "R-3", BIR Records - Main Folder, pp. 508 to 513.

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(a) **The amount of the tax shall be shown as a separate item in the invoice or receipt;**

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, **address and Taxpayer Identification Number (TIN) of the purchaser**, customer or client.[49]

These provisions of the NIRC of 1997, as amended, are further implemented by Section 4.113-1(A) and (B) of Rev. Regs. No. 16-05, as amended, to wit:

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

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official

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49 Boldfacing supplied.

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:

(a) **The amount of tax shall be shown as a separate item in the invoice or receipt**;

(b) If the sale is exempt from VAT, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, **address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.**[50]

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[50] Boldfacing supplied.

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

> SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. . . .[51]

Indeed, respondent's specific grounds for disallowing input VAT in the amount of ₱1,368,918.04 are consistent with the aforementioned provisions.

c. ₱1,575,233.11 disallowance based on the Computer-Assisted Audit Tools and Techniques (CAATTs) TIN Verification was improper.

Respondent's validation of the submitted Schedule of Purchases attached to petitioner's application thru CAATTs showed that there were suppliers with invalid TIN and/or TIN not VAT registered per BIR Integrated Tax System (ITS). Consequently, the corresponding input taxes were disallowed and deducted from the amount claimed for VAT refund.[52]

Petitioner, again, refutes the disallowance asserting that respondent failed to provide specific details as to which of the suppliers of petitioner have an invalid TIN or are not VAT-registered, and that there is a violation of petitioner's right to due process, for there is deprivation of the opportunity to disprove this claim.

The Court finds the disallowance improper.

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[51] Boldfacing and underlining supplied.
[52] Exhibit "P-33", Docket - Vol. I, p. 40.

With respect to claiming input tax credits, Section 110(A)(1) of the NIRC of 1997, as amended, provides that:

> SEC. 110. Tax Credits. -
>
> A. Creditable Input Tax. -
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113** hereof on the following transactions **shall be creditable against the output tax**:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has been actually paid.[53]

Based on the foregoing provision, for an input tax to be creditable against output tax, all that a taxpayer needs to present is a VAT invoice or OR issued in accordance with Section 113 of the NIRC of 1997, as amended. Neither the law nor the implementing Rev. Regs. No. 16-05 requires that the taxpayer should verify first its supplier's VAT registration before the input taxes derived from purchases from them be considered valid credits against output tax.

Unless an invalid TIN or a non-VAT TIN is apparent from the invoices and ORs submitted by petitioner to substantiate its input taxes, respondent cannot disallow input taxes amounting to

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[53] Boldfacing supplied.

₱1,575,233.11 on the mere ground that it was derived from suppliers with invalid TIN and/or TIN not VAT registered per BIR ITS based on the CAATTs verification procedure.

d. Disallowances relating to: zero rated sales should be subjected to 12% VAT amounting to ₱5,750,945.81; undeclared sales per SLS vs. AITEID amounting to ₱17,102,294.67; and sales not subject to VAT (VAT Return vs. SLS) amounting to ₱5,478,735.34, were improper.

Respondent's denial letter on petitioner's claim for refund explains the following disallowances in the aggregate amount of ₱28,331,975.82 as follows:[54]

"**VT-4 ZERO RATED SALES SHOULD BE SUBJECT TO 12% VT**

In relation to the declared Zero-Rated Sales, you are required to provide updated BOI/PEZA/TIEZA with latest Annual Letter of Incentives pursuant to the provisions of RMC No 17-2018. However, upon scrutiny of documents submitted it was noted that certain customers, with sales declared as Zero-rated, have no supporting BOI/PEZA/TIEZA Registration Certificate and Annual Letter of Incentives. Consequently, these Zero-rated Sales transactions are subjected to 12% VAT and the corresponding output taxes are deducted from the amount claimed for VAT refund. Please see details below:

TIN	CUSTOMER NAME	PESO AMOUNT	REMARKS
000-282-561	PETER PAUL COCONUT WATER	43,671,486.62	NO PROOF OF ZERO-RATED
000-253-648	SUPERSTAR COCONUT PRODUCT	3,081,587.58	NO PROOF OF ZERO-RATED
493-001-870	TETRA PAK PACKAGING SOLUTION	268,956.01	NO PROOF OF ZERO-RATED
486-875-289	Tetra Pak South East Asia Pte Ltd	521,698.64	NO PROOF OF ZERO-RATED
486-746-466	TETRA PAK VIETNAM JOINT	380,819.58	NO PROOF

[54] Exhibit "P-33", Docket – Vol. I, p. 40 to 41.

	STOCK		OF ZERO-RATED

TOTAL ZERO-RATED SALES W/OUT PROOF	₱47,924,548.43
VAT RATE	12%
OUTPUT TAX	₱5,750,945.81

VT-5 UNDECLARED SALES PER SLS VS. AITEID

Matching of sales from Schedule of Sales (as attached to the application) compared to the pre-processed data provided by the AITEID (Third-party Information) on a line-by-line or per customer basis resulted in discrepancies treated as under declaration of sales. To further corroborate this procedure, third-party confirmation letters were sent to TTPI's customers to validate the AITIED data. The Revenue District Office having jurisdiction over the customers with noted discrepancies were also duly informed of the findings. Consequently, these Sales transactions are subjected to 12% VAT and the corresponding output taxes are deducted from the amount claimed for VAT refund.

VT-6 SALES NOT SUBJECTED TO VAT (VAT RETURN VS. SLS)

Scrutiny of your VAT returns revealed that on March 29, 2019, you had amended your 1st Quarter 2017 VAT Returns to reflect a reduced amount of Sales. It was also noted that the Summary List of Sales (SLS) which were attached to the VAT returns also reflect a different amount of Sales. Comparison of these two (2) declarations revealed undeclared sales subject to VAT pursuant to Sec. 32 of the NIRC of 1997, stating that "gross income means all income derived from whatever source..." and Sec. 106 of the Tax Code and RR No. 16-2005 and RR 4-2007, which states that Value Added Tax is imposed and collected on every sale transactions at the rate of twelve percent (12%). Consequently, this discrepancy is subjected to 12% VAT and the corresponding output taxes are deducted from the amount claimed for VAT refund. Please see details below.

RECON ON SALES:	PER SLS	PER VAT RETURNS	DISCREPANCY
VATABLE SALES	660,532,380.11	624,425,792.35	₱36,106,587.76
ZERO-RATED SALES	225,056,010.57	215,506,470.49	9,549,540.08
		SALES NOT SUBJECTED TO VAT	45,656,127.84
		VAT RATE	12%
		OUTPUT TAX	₱5,478,735.34

The Court finds the deduction of the foregoing amounts aggregating ₱28,331,975.82 from petitioner's claim for refund improper.

d

As can be gleaned from respondent's denial letter, the amounts deducted from the amount claimed for refund by petitioner comprise of 12% output VAT imposed on sales which were found by respondent as allegedly not subjected to output VAT.

As correctly pointed out by petitioner, such outright deduction of ₱28,331,975.82 from the amount claimed for refund is already tantamount to an assessment of deficiency VAT, which cannot be made by respondent without following the proper procedures for an assessment pursuant to Rev. Regs. No. 12-99, as amended, (i.e., issuance of Letter of Authority, Assessment Notices, and opportunity to file protest). It would be unfair to allow respondent to use a claim for refund under Section 112 of the NIRC of 1997, as amended, as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed.[55]

While respondent, in view of the foregoing findings, did not actually collect the output VAT imposed on sales which petitioner allegedly did not subject to VAT, his act of deducting the imposed output VAT from the amount claimed for refund by petitioner nevertheless produces the same effect, and ultimately resulted to the denial of petitioner's claim for refund and a deprivation of petitioner's right to the amount which should have been refundable.

Verily, out of respondent's total disallowances amounting to ₱59,553,690.97, only the amount of ₱10,665,243.04 must be upheld for having legal and factual bases, while the amount ₱48,888,447.93 must be set aside for failure of respondent to provide legal basis for its disallowance. Thus:

	BIR Disallowances	***Less:*** **Disallowances Without Legal/Factual Basis**	**Disallowances Upheld by the Court**
IEIRD/SAD/SSDT WITH DISCREPANCY/UNOFFICIAL	₱28,277,564.00	₱18,981,239.00	₱9,296,325.00
IMPROPER INVOICING	1,368,918.04	-	1,368,918.04
CAATTS TIN VERIFICATION	1,575,233.11	1,575,233.11	-
ZERO RATED SALES	5,750,945.81	5,750,945.81	-

55 *Commissioner of Internal Revenue v. Toledo Power Company, et seq.*, G.R. Nos. 196415 and 196451, December 2, 2015.

SHOULD BE SUBJECT TO 12% VAT			
UNDECLARED SALES PER SLS VS. AITEID	17,102,294.67	17,102,294.67	-
SALES NOT SUBJECT TO VAT (VAT RETURN VS. SLS)	5,478,735.34	5,478,735.34	-
Total Disallowances	**₱59,553,690.97**	**₱48,888,447.93**	**₱10,665,243.04**

Considering the foregoing, it is apparent that respondent was only partially correct in disallowing input VAT to the extent of ₱10,665,243.04, and ostensibly, granting the claim for refund to the extent of ₱14,523,702.22,[56] subject to the fulfillment of the second condition.

Verily, the amount of ₱14,523,702.22 is still subject to the second condition — the fulfillment of requisites to a valid claim for refund or tax credit under substantive law, pursuant to the Supreme Court's ruling in *Pilipinas Total Gas.* As will be exhaustively discussed in the succeeding paragraphs, petitioner failed to establish this second condition.

II. Petitioner failed to establish its entitlement to the claim for refund or tax credit under substantive law.

Section 112 of the NIRC of 1997, as amended by RA No. 10963,[57] provides 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

56 ₱25,188,945.26 claim for refund less ₱10,665,243.04 BIR disallowances upheld by the Court.

57 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.

> when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> . . .
>
> (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.

On the basis of the foregoing provision, jurisprudence laid down requisites to successfully obtain an input VAT credit/refund. Said requisites may be classified into 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;[58]

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 of the ORs or invoices and other documents in support of the application, the judicial claim shall be filed with the 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;[59]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[60]
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;[61]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[62]
7. the input taxes are due or paid;[63]
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;[64] and
9. the input taxes have not been applied against output

58 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 *Id.*

taxes during and in the succeeding quarters.[65]

Jurisprudence also holds that cases filed before the Court are litigated *de novo;* thus, party-litigants must prove every minute aspect of their case.[66] Absence of any of the above requisites is a valid ground to deny the refund claim.

In this case, after a thorough examination of the records and the pieces of evidence presented by petitioner, the Court finds that not all of the foregoing requisites were complied with.

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 1st quarter of CY 2017, which closed on March 31, 2017. Counting two (2) years from the said date, petitioner had until March 31, 2019 within which to file its administrative claim for refund. Thus, petitioner's administrative claim was timely filed on March 29, 2019, complying with the first requisite.[67]

The *second* requisite necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 90-day period under Section 112(C) of the NIRC of 1997, as amended. Thus, from the filing of

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65 *Id.*

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

67 Exhibits "P-5" and "P-7", Docket - Vol. II, p. 744 to 745; and Exhibit "P-6", Docket - Vol. I, pp. 224 to 228.

petitioner's administrative claim on March 29, 2019, respondent had ninety (90) days or until June 27, 2019, to act on the said claim.

Respondent acted on petitioner's administrative claim within the ninety (90)-day period when OIC-ACIR Teresita M. Dizon issued the letter denying petitioner's application for VAT refund which was received by the latter on June 13, 2019.[68] Counting from this date, the present Petition for Review filed on July 12, 2019,[69] was timely made within the prescribed 30-day period.

Petitioner is a VAT-registered taxpayer.

Petitioner likewise complied with the *third* requisite, considering that it is shown that it is registered with the BIR as VAT taxpayer, with TIN 000-169-584-000.[70]

Petitioner had zero-rated sales for the 1st quarter of CY 2017, but only in the amount of ₱60,245,907.68.

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

In its Amended Quarterly VAT Return,[71] covering the 1st quarter of CY 2017, petitioner reported total sales of ₱839,932,262.84 consisting of VATable sales of ₱624,425,792.35 and zero-rated sales of ₱215,506,470.49, as shown below:

	Amount
VATable Sales	₱624,425,792.35
Zero-Rated Sales	215,506,470.49

68 Exhibit "P-33", Docket - Vol. I, pp. 377 to 379; and Exhibit "R-3", BIR Records, pp. 552 to 554.
69 Docket - Vol. I, pp. 12 to 35.
70 Exhibit "P-2", Docket - Vol. II, p. 742; Exhibit "P-3", Docket - Vol. I, p. 213.
71 Exhibit "P-8", Docket - Vol. I, pp. 231 to 232.

Total sales	**₱839,932,262.84**

Petitioner's alleged zero-rated sales amounting to ₱215,506,470.49 and its supporting documents were examined by the Court-commissioned ICPA, Mr. George V. Villaruz, and found that the zero-rated sales consisted of the following:[72]

	Annexed to Exhibit "P-36"	Amount
BOARD OF INVESTMENT	**D_1**	₱175,289,104.94
PHILIPPINE ECONOMIC ZONE AUTHORITY	**D_2**	35,964,303.74
EXPORT MARKETING BUREAU	**D_3**	3,081,587.58
Sub total		214,334,996.26
NON-RESIDENT FOREIGN AFFILIATE	**D_4**	1,171,474.23
Total		**₱215,506,470.49**

Upon further scrutiny of petitioner's pieces of evidence, the Court finds that the zero-rated sales amounting to ₱215,506,470.49 is further broken down as follows:

Sales of Goods:	
Export sale of goods to export-oriented enterprise whose export sales exceed 70% of total annual production	₱109,437,227.40
Considered export sale of goods to Board of Investment (BOI)-registered entities	65,851,877.54
Considered export sale of goods to Philippine Economic Zone Authority (PEZA)-registered entities	35,964,303.74
Considered export sale of goods to Export Marketing Bureau (EMB)-registered entities	3,081,587.58
Subtotal	***₱214,334,996.26***
Sales of Services to non-resident affiliates	***₱1,171,474.23***
Total zero-rated sales	**₱215,506,470.49**

[72] Exhibit "P-36", p. 9, Docket - Vol. I, p. 538.

Export sale of goods to export-oriented-enterprise whose export sales exceed 70% of total annual production amounting to ₱109,437,227.40.

Petitioner allegedly made the following zero-rated sales to export-oriented enterprises:

Axelum Resources Corporation	₱49,191,319.72
Century Pacific Agricultural Ventures, Inc.	60,245,907.68
Total sales to export-oriented enterprise	**₱109,437,227.40**

Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, states:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties. -
>
> (A) Rate and Base of Tax. –
>
> . . .
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. - The term 'export sales' means:
>
> . . .
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
>
> . . .

Based on the foregoing, in order for the sale of goods to an export-oriented enterprise whose export sales exceed 70% of total annual production be qualified as zero-rated sales, the following essential elements must be met:

1.) the sale was made by a VAT-registered person;

2.) the buyer must be considered as an export-oriented enterprise; and, 3.) the goods sold must be used as raw materials or packaging materials for the goods exported by the export-oriented enterprise.

As for the *first* essential element, it is settled that petitioner is a VAT-registered person.

In relation to the *second* essential element, Section 4.106-5(a)(3) of Rev. Regs. No. 16-05 provides that any enterprise whose export sales exceed 70% of the total annual production of the preceding CY shall be considered an export-oriented enterprise.

Petitioner presented the respective BOI Letter Endorsement for VAT zero-rating of the above-mentioned customers to prove that they are export-oriented enterprises whose export sales exceed 70% of the total annual production of the preceding CY, with details shown as follows:[73]

Export-Oriented Enterprise	**Percentage of Export Sales to Total Sales**	**Period When Export Sales Were Made**
Axelum Resources Corporation	82.00%	January to November 2016
Century Pacific Agricultural Ventures, Inc.	79.04%	January 1 to December 31, 2016

The above information provided in the BOI Letters that the export sales of Axelum Resources Corporation ("Axelum") indeed exceeded 70% of its total production in 2016, the year preceding the CY 2017 when petitioner's sales were made to Axelum. However, the period when the export sales were made by Axelum only covers the months of January to November 2016 and not the whole CY 2016.

Without the information for December 2016, the Court cannot ascertain whether Axelum indeed made export sales exceeding 70% of its **total annual production** of the preceding CY 2016. As such,

[73] Exhibits "P-10" and "P-12", Docket – Vol. I, pp. 237 and 239, respectively.

ơ

Axelum cannot be considered an export-oriented enterprise for purposes of VAT zero-rating.

Consequently, petitioner's sales to Axelum in the amount of ₱49,191,319.72 do not qualify as zero-rated sales.

On the other hand, Century Pacific Agricultural Ventures, Inc. ("Century Pacific") is indeed considered an export-oriented enterprise for making export sales exceeding 70% of its total annual production of the preceding CY 2016, thus, qualifying petitioner's sales thereto amounting to ₱60,245,907.68 during the 1st quarter of CY 2017 to VAT zero-rating.

Lastly, as for the *third* essential element, a VAT-registered person claiming VAT zero-rated sale of goods to export-oriented enterprise whose export sales exceed 70% of total annual production must present the following:

1.) the SI as proof of sale of goods; and

2.) the goods sold must be used as raw materials or packaging materials for the goods ultimately exported by the export-oriented enterprise.

With respect to the first item, in proving its zero-rated sales, petitioner must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, and Rev. Regs. No. 16-05.

In order for petitioner's export sales to qualify for VAT zero-rating under Section 106(A)(2)(a)(3) of the NIRC of 1997, as amended, it is required that VAT SIs should be issued for each sale of goods, the information contained therein must be in compliance with the applicable provisions previously cited, such as the imprinted word *"zero-rated"*, the taxpayer's TIN, VAT number, the buyer's TIN, address, and the nature of goods sold or services rendered.

A perusal of petitioner's SIs issued to Century Pacific[74] during the 1st quarter of CY 2017 shows that the same accordingly complied with the invoicing requirements laid down in Section 113 of the NIRC of 1997, as amended, and Rev. Regs. No. 16-05.

With respect to the second item, petitioner must present proof that the goods sold to the export-oriented enterprise are used as raw materials or packaging materials of the goods ultimately exported by the latter.

A perusal of the SIs issued to Century Pacific indicates the description of the goods sold as various packaging materials, in satisfaction of the second item under the *third* essential element.

Verily, out of the ₱109,437,227.40 reported total export sale of goods to export-oriented-enterprise whose export sales exceed 70% of total annual production, only the amount of ₱60,245,907.68 satisfied the essential elements to qualify as VAT zero-rated sales.

"Considered export sales" to BOI-registered entities, PEZA-registered entities, and EMB-registered entities amounting to ₱65,851,877.54, ₱35,964,303.74, and ₱3,081,587.58, respectively.

Petitioner allegedly made the following *"considered export sales"*:

Sale of goods to BOI-registered entities	₱65,851,877.54
Sale of goods to PEZA-registered entities	35,964,303.74
Sales of goods to EMB-registered entities	3,081,587.58
Total considered export sales	**₱104,897,768.86**

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

SEC. 106. Value-Added Tax on Sale of Goods or Properties. –

74 Exhibits "P-38-9", "P-38-16", "P-38-17", "P-38-37", "P-38-41" to "P-38-47", "P-38-56", "P-38-63" to "P-38-77", and "P-38-84" to "P-38-85".

(A) Rate and Base of Tax. -

. . .

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

(a) Export Sales. - The term 'export sales' means:

. . .

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

From the foregoing provision, in order for a *"considered export sale"* to qualify as zero-rated, the following essential elements must be present:

1.) the sale was made by a VAT registered person; and,

2.) the sale qualifies as zero-rated sales under the Omnibus Investment Code (OIC) or other special laws.

As for the *first* essential element, it is already settled that petitioner is a VAT-registered person.

As for the *second* essential element, any VAT registered person claiming VAT zero-rated *"considered export sales"* must present, among others, the following documents:

1. the SI as proof of sale of goods; and,
2. proof of entitlement to zero-rating under the OIC or other special laws.

As for the first type of document, petitioner presented the SIs for its alleged *"considered export sales"* to the following customers:

		SIs
Sale of goods to BOI-registered entities:		
Celebes Coconut Corp.	₱22,180,390.92	Exhibits "P-38-1" to "P-38-8", "P-38-13" to "P-38-15", "P-38-18" to "P-38-19", "P-38-22" to "P-38-30", "P-
Peter Paul Coconut Water Corp.	43,671,486.62	

Subtotal	*65,851,877.54*	38-33" to "P-38-34", "P-38-40", "P-38-48" to "P-38-55", "P-38-55", "P-38-57" to "P-38-62", "P-38-78" to "P-38-83", "P-38-86" to "P-38-88", and "P-38-94" to "P-38-95"
Sale of goods to PEZA-registered entity Del Monte Philippines, Inc.	*35,964,303.74*	Exhibits"P-38-102" to "P-38-120",
Sale of goods to EMB-registered entity Superstar Coconut Products Co. Inc.	*3,081,587.58*	Exhibits"P-38-125" to "P-38-127"
Total considered export sales	**₱104,897,768.86**	

A perusal of the SIs supporting petitioner's *"considered export sales"* to an EMB-registered entity amounting to ₱3,081,587.58 shows that the same are fully compliant with the invoicing requirements under Section 113(B)(4) of the NIRC of 1997, as amended, and Section 4.113-1(B)(3) of Rev. Regs. No. 16-05, while the *"considered export sales"* to BOI-registered entities and PEZA-registered entity amounting to ₱65,851,877.54 and ₱35,964,303.74, respectively, are not as they fail to indicate the TINs of the customers in the SIs.

Consequently, petitioner's *"considered export sales"* to BOI-registered entities and PEZA-registered entity in the total amount of ₱101,816,181.28 must be disallowed outright for failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and Rev. Regs. No. 16-05. This leaves the *"considered export sales"* to EMB-registered entity amounting to ₱3,081,587.58, as valid zero-rated sale insofar as satisfying the invoicing requirements under the first type of document.

As for the second type of document, the required proof of entitlement to VAT zero-rating depends under which regime the alleged zero-rated sales fall, *viz.*: (1) sales under the OIC, or (2) sales under other special laws.

In this case, petitioner claims that its sales to an EMB-registered entity Superstar Coconut Product Co. Inc. ("Superstar") are considered export sales entitled to VAT zero-rating under R.A. No. 7844, otherwise known as the Export Development Act. In support thereto, petitioner presented the Certificate of Accreditation No. EMB-1712 of Superstar as an eligible exporter issued by the EMB on May 16, 2017 and valid until May 15, 2018.[75]

It is readily apparent, however, that said Certificate of Accreditation cannot be used as valid proof of entitlement to VAT zero-rating of petitioner's sales because said Certificate was issued only on May 16, 2017, way beyond the period when petitioner made its sales to Superstar in the 1st quarter of CY 2017 or for the period January to March 2017.

In sum, none of the *"considered export sales"* of petitioner for the 1st quarter of CY 2017 qualify as zero-rated export sales for input VAT refund purposes.

Sale of services to non-resident affiliates amounting to ₱1,171,474.23.

Petitioner alleges that its gross receipts from its non-resident foreign affiliates for the 1st quarter of CY 2017 pertain to service fees for services it rendered in the Philippines as incidents to its supply of machines and equipment which are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended,[76] which provides as follows:

> SEC. 108.Value-added Tax on Sale of Services and Use or Lease of Properties. —
>
> . . .
>
> (B)Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> . . .
>
> (2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are

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75 Exhibit "P-15", Docket - Vol. I, p. 242.
76 Petitioner's Memorandum (Par. 4.10), Docket - Vol. II, p. 1028.

performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

Based on the foregoing provision, essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

1. The services fall under any of the categories under Section 108(B)(2),[77] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[78]

2. The recipient of the services is a foreign corporation, and the aforesaid corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[79]

3. The services must be performed in the Philippines[80] by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[81]

Petitioner allegedly made effectively zero-rated sales of services to its non-resident affiliates amounting to US$23,306.77 or ₱1,171,474.23 for the 1st quarter of CY 2017, as follows:

	Sales in USD	**Sales in PHP**
Tetra Pak Packaging Solutions S.P.A.	$5,375.23	₱268,956.01
Tetra Pak Vietnam Joint Stock Co.	7,564.95	380,819.58

77 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

78 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007.

79 *Sitel Philippines Corporation (Formerly ClientlogicPhils., Inc.) v. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue,* G.R. No. 190102, July 11, 2002.

80 *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

81 *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.

Tetra Pak South East Asia Pte Ltd.	10,366.59	521,698.64
Total sales to non-resident affiliates	**$23,306.77**	**₱1,171,474.23**

With respect to the *first* essential element which requires that the sale of services pertain to services other than "*processing, manufacturing or repacking goods*", petitioner is found to satisfy the same as disclosed in its 2017 Audited Financial Statements that the service fees it earned for the year 2017 pertain to services rendered as incidents to supply of machines and equipment.[82]

As for the *second* essential element, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a Certification of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission (SEC), **and** proof of incorporation/registration in a foreign country (e.g., Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate).

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*,[83] the Supreme Court explained the necessity of presenting the said documents to prove the second essential element, to wit:

> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, **the SEC Certifications of Non-Registration show that these affiliates [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates [clients] are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**[84]

In this case, petitioner merely presented the *Certification of Non-Registration of Corporation/Partnership* from the SEC for each of its clients.[85] Petitioner failed to present proof of incorporation/registration in a foreign country (*e.g.*,

82 *Id.* at p. 298.
83 G.R. No. 234445, July 15, 2020.
84 Boldfacing supplied.
85 Exhibits "P-38-129" to "P-38-135" and "P-38-139" to "P-38-142".

Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate) for each of its clients; hence, petitioner's sales for the 1st quarter of CY 2017 in the amount of ₱1,171,474.23 cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

In view of petitioner's non-compliance with the *second* essential element, the Court finds it unnecessary to determine petitioner's compliance with the *third* and *fourth* essential elements.

To summarize the foregoing, petitioner satisfactorily established that it had zero-rated sales for the 1st quarter of CY 2017, but only to the extent of ₱60,245,907.68, out of the total reported amount of ₱215,506,470.49, determined as follows:

Sales of Goods:	**Zero-Rated Sales Reported for the 1st Quarter of CY 2017**	*Less:* **Disallowances for failure to establish the essential elements to qualify as zero-rated sales**	**Qualified Zero-Rated Sales**
Export sale of goods to export-oriented enterprise whose export sales exceed 70% of total annual production	₱109,437,227.40	₱49,191,319.72	₱60,245,907.68
Considered export sale of goods to BOI-registered entities	65,851,877.54	65,851,877.54	-
Considered export sale of goods to PEZA-registered entities	35,964,303.74	35,964,303.74	-
Considered export sales of goods to EMB-registered entities	3,081,587.58	3,081,587.58	-
Subtotal	***₱214,334,996.26***	***₱154,089,088.58***	***₱60,245,907.68***
Sales of Services to non-resident affiliates	₱1,171,474.23	₱1,171,474.23	₱ -
Total zero-rated sales	**₱215,506,470.49**	**₱155,260,562.81**	**₱60,245,907.68**

Having found that petitioner had VAT zero-rated sales in the total amount of ₱60,245,907.68 for the subject period of claim, the Court shall proceed to determine whether petitioner complied with the following remaining requisites:

a. *sixth requisite*: the input taxes are not transitional input taxes;
b. *seventh requisite*: the input taxes are due or paid;
c. *eighth requisite*: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
d. *ninth requisite*: the input taxes have not been applied against output taxes during and in the succeeding quarters.

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

Section 111(A) of the NIRC of 1997, as amended, provides:

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

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[86]

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

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

Not all input VAT being claimed are due or paid.

Anent the *seventh* requisite in claiming VAT refund, it is indispensable for petitioner to provide supporting documents proving that the input taxes claimed during the 1st quarter of CY 2017 were actually due and paid in accordance with Section 110(A) of the NIRC of 1997, as amended, to wit:

> SEC. 110. Tax Credits. –
>
> (A) Creditable Input Tax. –
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> (a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

The above provision is implemented by Sections 4.110-1 to 4.110-3 of Rev. Regs. No. 16-05, to wit:

SECTION 4.110-1. Credits For Input Tax. —

. . .

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions 'deemed sale' under Sec. 106 (B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

> (g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

Moreover, Section 4.110-8 of Rev. Regs. No. 16-05 provides for the substantiation requirements of input tax credits, as follows:

> SECTION 4.110-8. Substantiation of Input Tax Credits. –
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> (2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
>
> (3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
>
> (4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.
>
> (b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
>
> (c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a

ge

> copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.
>
> (e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

It is categorically stated that in order to be entitled to input tax credits, the same must be evidenced by a VAT SI or OR issued in accordance with Sections 113 and 237 of the NIRC of 1997, as amended, which were quoted earlier.

Thus, in order to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of Rev. Regs. No. 16-05, but more importantly, these documents must comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of Rev. Regs. No. 16-05.

Accordingly, petitioner submitted VAT SIs and ORs [87] to support its input taxes from domestic purchases of goods and services, and SAD or Assessment Notices, and SSDT[88] issued by the BOC to support its importations.

The ICPA's examination of the aforesaid documents disclosed that only the following input taxes aggregating ₱29,710,179.66 were accounted for and substantiated by petitioner:

Input VAT on importation of goods other than capital goods[89]	₱22,445,997.48
Input VAT on domestic purchases of goods other than capital goods and services[90]	7,264,182.18
Total input VAT for the 1st quarter of CY 2017, as accounted for by petitioner	**₱29,710,179.66**

87 Exhibits "P-37-136" to "P-37-279".
88 Exhibits "P-37-1" to "P-37-135".
89 Exhibit "P-36", Annex B, Docket - Vol. I, p. 548.
90 Exhibit "P-36", Annex C, Docket - Vol. I, p. 556.

The ICPA's detailed findings on the substantiation of the above input taxes are as follows:[91]

	Annexed to Exhibit "P-36"	Amount
INPUT VAT ON IMPORTATION OF GOODS DULY SUPPORTED BY **ORIGINAL COPIES OF DOCUMENTS** WHICH ARE COMPLIANT WITH THE SUBSTANTIATION REQUIREMENTS	B_1	₱7,326,837.00
INPUT VAT ON IMPORTATION OF GOODS THAT ARE SUPPORTED BY **SCANNED COPIES OF DOCUMENTS**	B_2	9,237,275.00
INPUT VAT ON IMPORTATION OF GOODS **WITHOUT** SUPPORTING STATEMENT OF SETTLEMENT OF DUTIES AND TAXES (**SSDT**) ISSUED BY THE BOC	B_3	5,726,987.48
INPUT VAT CLAIMS ON IMPORTATION OF GOODS **WITHOUT ANY** SUPPORTING **DOCUMENTS** PRESENTED FOR EXAMINATION	B_4	154,898.00
	TOTAL	**₱22,445,997.48**

Particulars	Annexed to Exhibit "P-36"	Amount
INPUT VAT ON LOCAL PURCHASES DULY SUPPORTED BY ORIGINAL DOCUMENTS WHICH ARE COMPLIANT WITH THE SUBSTANTIATION REQUIREMENTS OF REV. REGS. 16-2005	C_1	₱5,067,291.93
INPUT VAT SUPPORTED WITH PHOTOCOPY OR SCANNED COPY DOCUMENTS	C_2	817,135.17
INPUT VAT SUPPORTED BY DOCUMENTS THAT ARE NOT COMPLIANT WITH THE SUBSTANTIATION REQUIREMENTS	C_3	1,311,766.72
VARIANCE NOTED BETWEEN INPUT VAT PER DOCUMENT VS THE AMOUNT CLAIMED FOR REFUND	C_4	67,988.36
	TOTAL	**₱7,264,182.18**

[91] Exhibit "P-36", Annexes B and C, Docket - Vol. I, pp. 548 and 556.

Based on the ICPA report, the following input taxes amounting to ₱17,388,908.93 must be disallowed outright:

Particulars	Amount
Input VAT on importation of goods that are supported by **scanned copies of documents**	₱9,237,275.00
Input VAT on importation of goods **without** supporting **SSDT** issued by the BOC	5,726,987.48
Input VAT claims on importation of goods **without any** supporting **documents** presented for examination	154,898.00
Input VAT on local purchases supported with **photocopy or scanned copy documents**	817,135.17
Input VAT on local purchases supported by **documents that are not compliant with the substantiation requirements**	1,311,766.72
Overclaimed input VAT on local purchases[92]	140,846.56
Total	**₱17,388,908.93**

Upon further verification, the Court finds that input taxes in the amount of ₱2,858,088.39, as detailed below, must likewise be disallowed for failure to indicate in the OR the nature of service rendered as required under Section 113(B)(3) of the NIRC of 1997, as amended, *viz.*:

Exhibit No.	Supplier	OR No.	OR Date	Input VAT Amount
"P-37-138"	PETER PAUL COCONUT WATER CORPORATION	0007	06February 2017	₱396,328.98
"P-37-140"	NORTHLAND MECHANICAL ENGINEERING SERVICES	1095	17 February 2017	370,764.00
"P-37-142"	NORTHLAND MECHANICAL ENGINEERING SERVICES	1108	24March 2017	615,732.00
"P-37-144"	ANGARA ABELLO CONCEPCION REGALLA & CRUZ LAW OFFICES	114884	8March 2017	2,051.58
"P-37-146"	RENTOKIL INITIAL (PHILIPPINES), INC.	266655	27January 2017	483.84
"P-37-148"	RENTOKIL INITIAL	265491	20January	483.84

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92 Exhibit "P-36", Annex C4, Docket - Vol. I, p. 567.

	(PHILIPPINES), INC.		2017	
"P-37-152"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9001	10February 2017	33,416.83
"P-37-154"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9020	24February 2017	5,808.00
"P-37-156"	P&A GRANT THORNTON OUTSOURCING, INC.	0011279	10 February 2017	4,761.00
"P-37-158"	SAFARI RENT A CAR, INC.	043387	03 February 2017	13,432.00
"P-37-160"	SAFARI RENT A CAR, INC.	044051	24 February 2017	3,120.00
"P-37-162"	VIVENTIS INTERIM MANAGEMENT, INC.	000730	17 February 2017	50,571.72
"P-37-164"	BENDED INDUSTRIAL SERVICES	0040	10 March 2017	172,399.32
"P-37-166"	RGC TECHNICAL CONSULTANCY SERVICES	0000005	31 January 2017	75,477.51
"P-37-172"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9028	3 March 2017	3,517.62
"P-37-174"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9038	17 March 2017	265,487.00
"P-37-177"	PHILIPPINE PORTS AUTHORITY	NL-L5935972-3	02 February 2017	93.49
"P-37-179"	MIASCOR LOGISTICS CORPORATION	WHOR176649	27 January 2017	1,921.68
"P-37-180"	RAFAEL B. MARZAN MACHINE SHOP & METAL FABRICATION	1278	24 March 2017	12,273.60
"P-37-182"	RAFAEL B. MARZAN MACHINE SHOP & METAL FABRICATION	1277	2 March 2017	180,000.00
"P-37-184"	JDP TRADING AND ELECTROMECH SYSTEMS AND CONTROL	003852	3 March 2017	57,483.03
"P-37-190"	NORTHLAND MECHANICAL ENGINEERING SERVICES	1104	10 March 2017	110,016.00
"P-37-192"	P&A GRANT THORNTON OUTSOURCING, INC.	0011426	9 March 2017	3,864.00
"P-37-194"	REDSCOPE COMMUNICATIONS, INC.	138	24 February 2017	23,716.54
"P-37-196"	RGC TECHNICAL CONSULTANCY SERV	0000007	17 March 2017	32,266.93
"P-37-200"	SGV & CO.	MK00069685	17 February 2017	37,563.60
"P-37-203"	VIVENTIS INTERIM MANAGEMENT, INC.	000760	17 March 2017	35,595.73

"P-37-207"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9055	31 March 2017	2,243.71
"P-37-209"	CILBERLIFT FREIGHT INTERNATIONAL, INC.	9056	31 March 2017	1,080.00
"P-37-212"	DHL SUPPLY CHAIN PHILS., INC.	0049838	24 March 2017	3,174.00
"P-37-220"	BENDED INDUSTRIAL SERVICES	0043	31 March 2017	15,474.96
"P-37-222"	FIESTA TOURS AND TRAVEL CORPORATION	26440	27 January 2017	489.31
"P-37-224"	FIESTA TOURS AND TRAVEL CORPORATION	28228	24 March 2017	8,781.86
"P-37-226"	FIESTA TOURS AND TRAVEL CORPORATION	28229	24 March 2017	196.43
"P-37-228"	ALLPORT FREIGHT CONSOLIDATOR, INC.	10726	20 January 2017	8,210.42
"P-37-230"	JDP TRADING AND ELECTROMECH SYSTEMS AND CONTROL	003853	3 March 2017	309,807.86
			Total	**₱2,858,088.39**

Considering the foregoing, out of the ₱29,710,179.66 input VAT accounted for by petitioner, only the amount of ₱9,463,182.34 is properly substantiated in accordance with the invoicing and substantiation requirements under the NIRC of 1997, as amended, and Rev. Regs. No. 16-05, computed as follows:

Total input VAT for the 1st quarter of CY 2017 accounted for by petitioner	₱29,710,179.66
Less:Disallowances	
Per ICPA report	17,388,908.93
Per the Court's further verification	2,858,088.39
Total Disallowances	*20,246,997.32*
Input VAT properly substantiated by petitioner	**₱9,463,182.34**

Hence, petitioner complied with the *seventh* requisite, i.e., the input taxes are due or paid, but only in the amount of ₱9,463,182.34.

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

To reiterate, the *eight* requisite is to the effect that the input VAT 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.

In this case, for the 1st quarter of CY 2017, aside from zero-rated sales of ₱215,506,470.49, petitioner declared VATable sales of ₱624,425,792.35. However, since petitioner's valid input VAT for the same quarter in the amount of ₱9,463,182.34 cannot be identified to specific sales, this Court shall proportionately allocate the said input VAT on the basis of the volume of petitioner's sales, thus:

	1st Quarter
Sales per VAT Return	
VATable Sales	₱624,425,792.35
Zero-Rated Sales	215,506,470.49
Total Sales	₱839,932,262.84
Allocation Factor (Percentage of each type of sales to total sales)	
VATable Sales	74.3423988%
Zero-Rated Sales	25.6576012%
	100.0000000%
Valid Input VAT	₱9,463,182.34
Input VAT Allocation per each type of sales/receipts (Allocation factor multiplied by valid input VAT):	
VATable Sales	**₱7,035,156.75**
Zero-Rated Sales	**2,428,025.59**
	₱9,463,182.34

Thus, for purposes of the *eight* requisite, the input VAT attributable to petitioner's declared zero-rated sales only amounted to ₱2,428,025.59, as computed above.

Petitioner had no unutilized input taxes available for refund.

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

After deducting the amount of ₱7,035,156.75 input tax attributable to VATable sales from its output VAT liability of ₱74,931,095.08 on the said sales, petitioner still has a net output VAT payable of ₱67,895,938.33, as computed below:

	1st Quarter of 2017
Output VAT per return[93]	₱74,931,095.08
Less: Input VAT attributable to VATable sales	7,035,156.75
Net Output VAT Payable	**₱67,895,938.33**

Since petitioner's input VAT attributable to VATable sales is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales of ₱2,428,025.59 is lower than the net output VAT payable of ₱67,895,938.33. Consequently, petitioner still has net output VAT still due of ₱65,467,912.74, computed as follows:

	1st Quarter of 2017
Net Output VAT Payable	₱67,895,938.33
Less: Input VAT attributable to zero-rated sales	2,428,025.59
Net Output VAT Still Due	**₱65,467,912.74**

It bears stressing that the *ninth* requisite under Section 112(A) of the Tax Code, i.e., the input taxes have not been applied against output taxes during and in the succeeding quarters, must be read and applied in conjunction with Section 110(B) thereof which provides as follows:

> SECTION 110. Tax Credits. —
>
> . . .

[93] Exhibit "P-8", Line15B, Docket – Vol. I, p. 231.

> (B) Excess Output or Input Tax. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, however, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

It is evident from the foregoing that when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. But when input tax attributable to zero-rated sales exceeds the output tax, the excess input tax may be refunded or credited against other internal revenue taxes. Hence, for input tax attributable to zero-rated sales, it is only when input tax exceeds the output tax and the same is unapplied/unutilized against any output tax, that a refund or credit is proper.

There being no excess input VAT as a result of zero-rated sales of petitioner, the said *ninth* requisite is likewise not complied with by the latter.

Apropos, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictly scrutinized and must be duly proven. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[94]

In view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT, in the amount of ₱25,188,945.26, the Court must deny the present claim for refund.

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[94] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

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

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice