REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION, Petitioner,	CTA Case No. 7895
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 1 2014 8:59 p.m.

x- x

DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review,[1] petitioner Coral Bay Nickel Corporation prays for refund or issuance of tax credit certificate in the amount of TWENTY-TWO MILLION FIVE HUNDRED TWENTY-TWO THOUSAND EIGHT HUNDRED SEVENTY-EIGHT PESOS AND EIGHTY-SIX CENTAVOS (₱22,522,878.86), allegedly representing unutilized input value-added tax (VAT) incurred from its purchases of goods and services attributable to its VAT zero-rated sale for the period covering January 1, 2007 up to December 31, 2007.

The facts as appearing on the record are as follows:

Petitioner Coral Bay Nickel Corporation is a Philippine corporation registered with and licensed by the Securities and Exchange Commission (SEC) to engage in the

[1] Docket, pp. 1-11.

manufacture and exportation of nickel/cobalt mixed sulfide, with principal office address at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is a VAT-registered entity with Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019300 VAT and Taxpayer's Identification Number (TIN) 005-961-540-000. [2] It is also registered with the Philippine Economic Zone Authority (PEZA) as indicated in its PEZA Registration Certificate No. 02-072 dated December 27, 2002.[3]

Respondent, on the other hand is the Commissioner of Internal Revenue (CIR) empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner claims that, as a PEZA registered entity, it is entitled to tax incentives such as Income Tax Holiday; tax and duty-free importation of merchandise which include raw materials, capital equipment, machineries and spare parts; exemption from wharfage dues and export tax; VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements; and exemption from payment of any and all local government imposts, fees, licenses or taxes except real estate tax.

On September 1, 2004, petitioner entered into an Off-Take Agreement[4] with Sumitomo Metal Mining Co., Ltd. (SMMC), a Japanese corporation, for the export of nickel cobalt mixed sulfide.

Pursuant to the said agreement, petitioner exported nickel cobalt mixed sulfide to SMMC during the 1st, 2nd, 3rd and 4th quarters of taxable year 2007 in the amounts of ₱4,284,213,687.40, ₱3,669,203,503.70, ₱3,336,098,698.16 and ₱2,254,998,860.43, respectively.[5]

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[2] Exhibits "F" and "G", docket, pp. 422 and 423.
[3] Exhibits "B" and "C", docket, pp. 424 and 425-426.
[4] Exhibits "XXX" and "XXX-1", docket, pp. 648-660.
[5] Par. 7, Petition for Review, docket, p. 4.

During the same period, petitioner purchased goods and services which were consumed and rendered outside the PEZA Zone, to which it incurred input VAT in the amount of ₱22,522,878.86.

As a qualified Large Taxpayer, petitioner filed all its Quarterly VAT Returns for the taxable year 2007, as well as amendments thereto, through the Electronic Filing and Payment System (EFPS) of the BIR on the following dates:

PERIOD COVERED (2007)		**DATE FILED**	**EXHIBIT**
First Quarter	Original return	April 23, 2007	"H^{4}-1"
	First amendment	April 25, 2007	"I^{4}-1"
	Second amendment	April 30, 2007	"J^{4}-1"
	Third amendment	May 2, 2007	"K^{4}-1"
	Fourth amendment	January 15, 2009	"L^{4}-1"
	Fifth amendment	January 28, 2009	"M^{4}-1"
	Sixth amendment	March 30, 2009	"K"
Second Quarter	Original return	July 23, 2007	"L"
	First amendment	July 24, 2007	"M"
	Second amendment	March 30, 2009	"N"
Third Quarter	Original return	October 22, 2007	"O"
	Amended return	March 30, 2009	"P"
Fourth Quarter	Original return	January 23, 2008	"Q"
	Amended return	March 30, 2009	"R"

On March 31, 2009, petitioner filed its administrative claim[6] for tax credit certificate/refund for the unutilized input VAT for taxable year 2007 in the amount of ₱22,522,878.86 along with the attached Application for Tax Credits/Refunds (BIR Form No. 1914) and all supporting documents with the Large Taxpayers Service - Large Taxpayer Audit and Investigation Division II (Revenue District Office No. 121).[7]

Petitioner also filed on the same day, March 31, 2009, the instant Petition for Review before this Court.

In her Answer[8] filed on May 22, 2009, respondent interposed the following special and affirmative defenses, thus:

[6] Exhibit "D", docket, pp. 427-457.
[7] Par. 4, Admitted Facts, JSFI, docket, p. 133.
[8] Docket, pp. 104-110.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

5. The amount of ₱22,522,878.86 being claimed by petitioner as alleged unutilized input VAT for the period January 1, 2007 to December 31, 2007 was not properly documented.

6. Petitioner must prove that it has complied with the provisions of Section 112 (A) and (D) of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claims for VAT refund/credit.

7. Petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being mere pro-forma.** Further, Section 112 (D) of the 1997 Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. Petitioner must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to the provisions of Revenue Regulations 7-95.

9. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal revenue v. Manila Jockey Club, Inc., 98 Phil. 670)**;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and** as such; they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**.

11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of petitioner to comply with the provisions of Section 112 (D) of the 1997 Tax Code which provides, thus:

> Section 112. *Refunds or Tax credits of Input Tax –*
>
> xxx xxx xxx
>
> (D) *Period within which refund or Tax Credit of Input Taxes shall be Made* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof**.
>
> In case of full or partial denial 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.** (Emphasis supplied).

> 12. As stated in the petition, petitioner filed the administrative and judicial claim for refund with respondent on the same day, March 31, 2009. Obviously the 120 days given to respondent to decide on the claim had not yet lapsed when the petition was filed. The petition was prematurely filed, hence, it must be dismissed for lack of jurisdiction.

After the issues were joined and the pre-trial was terminated, petitioner presented four (4) witnesses, namely: (1) Ivan V. Hilario, its General Accountant; (2) Enrico T. Pizarro, the Court-commissioned Independent Certified Public Accountant; (3) John S. Barrientos, QS/CSR Manager of SMCC Philippines, Inc.; and (4) Julio D. Lichauco, Municipal Engineer of the Municipality of Bataraza, Palawan, all of whom executed a judicial affidavit as their direct testimony.

Ivan V. Hilario testified that he is petitioner's general accountant and as such he is responsible in the payment of petitioner's tax liabilities with the BIR, as well as in the submission of reportorial requirements to other government entities like PEZA, where petitioner is also registered. Petitioner is principally engaged in the business of owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in, and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any small ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market, and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof.

This case is for the refund of petitioner's excess and unutilized input VAT for the four quarters of taxable year 2007 in the amount of ₱22,522,878.86 incurred on its domestic purchases of taxable goods and services which were consumed and rendered outside the ecozone. The unutilized input VAT is attributable to petitioner's export sales of nickel cobalt mixed sulfide to SMMC which qualify as zero-rated in accordance with Section 106(A)(2)(a) of the NIRC of 1997.

On March 31, 2009, petitioner filed with the Large Taxpayers Service – Excise Group of the BIR its administrative claim for refund of cited unutilized input VAT for the four quarters of taxable year 2007. To prove that petitioner had excess unutilized input VAT for the four quarters of taxable year 2007, witness Hilario presented the petitioner's original and the amended quarterly VAT Returns for the four quarters of taxable year 2007.

Commissioned Independent Certified Public Accountant (ICPA) **Enrico T. Pizarro** declared that based on his examination and validation of petitioner's pertinent documents, the allowable input tax refund attributable to zero-rated sales is ₱20,062,585.75.

John S. Barrientos testified that he is the QS/CSR Manager of SMCC Philippines, Inc. (SMCC) whose services was secured by petitioner for the construction of: (1) JTA dormitory; (2) Clubhouse Renovation; (3) Gymnasium; (4) Nickel Nook; (5) Vendor's House; (6) Concreting of New Access Road; (7) Macadam Road & PUV Terminal Concrete; (8) Road Humps; and (9) V-Ditch for RTN Heavy Equipment Parking.

He further stated that petitioner paid VAT on its purchases of goods and services from SMCC as appearing in the receipts/invoices since the goods and services were consumed and performed outside the ecozone.

Lastly, **Julio D. Lichauco** declared that as the Municipal Engineer of the Municipality of Bataraza, Palawan, he issued the Certificates of Occupancy for the buildings that SMCC constructed for petitioner outside the ecozone.

To prove her defense, respondent presented her lone witness Revenue Officer III **Jesus DS. Reyes**, who stated that he examined and verified petitioner's supporting documents and in the process discovered that the original documents, including receipts and invoices, failed to comply with the invoicing requirements to qualify for the grant of refund. Precisely in Memorandum[9] dated October 15, 2012, which his group prepared, they recommended to disallow the input tax and refund of petitioner. Consequently, in the letter[10] dated November 9, 2012, petitioner's claim for refund of unutilized input VAT was denied.

Respondent rested her case after filing her Formal Offer of Documentary Evidence on March 1, 2013. [11]

On October 14, 2013,[12] respondent tendered the excluded evidence, specifically Exhibits "4-a", "4-b", "4-c", "4-d", "4-e", "4-f", "4-g", and "4-h", which the Court deemed as part of the record of the case.[13]

THE ISSUES

The parties submitted the following issues for the resolution of the Court:

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[9] Exhibit "35", pp. 829-831.
[10] Exhibit "36", p. 828.
[11] Docket, pp. 796-812.
[12] Tender of Excluded Evidence, docket, p. 907.
[13] Resolution dated November 28, 2013, docket, pp. 1006-1007.

1. Whether or not the Honorable Court has jurisdiction over the case.

2. Whether or not Petitioner is entitled to refund or issue tax credit certificate in the amount of TWENTY THREE MILLION SIXTY THOUSAND SEVEN HUNDRED THIRTY SIX PESOS (Php23,060,736.00).

RULING OF THE COURT

The instant petition is partly meritorious.

In its amended Quarterly VAT Returns for the period covering January 1, 2007 to December 31, 2007 filed with the BIR, petitioner indicated the following:

	1st Quarter	2nd Quarter
	(Exhibit "K")	*(Exhibit "N")*
Zero-Rated Sales/Receipts	₱ 4,284,213,687.40	₱ 3,669,203,503.70
Output tax due	₱ -	₱ -
Less: Allowable input tax		
Input Tax Carried Over from Previous Quarter	₱ 5,823,983.35	₱ 8,593,416.43
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	-	139,955.36
Total	₱ 5,823,983.35	₱ 8,733,371.79
Current Transactions		
Purchase of Capital Goods not exceeding P1M	₱ 104,839.28	₱ -
Purchase of Capital Goods exceeding P1M	147,321.43	-
Domestic Purchase of Goods Other than Capital Goods	236,477.31	169,951.65
Domestic Purchase of Services	4,734,893.21	5,278,806.86
Total	₱ 5,223,531.23	₱ 8,733,371.79
Total Available Input Tax	₱ 11,047,514.58	₱ 14,182,130.30
Less: Deductions from Input Tax		
Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	₱ 139,955.36	₱ 132,589.29
VAT Refund/TCC claimed	2,314,142.79	-
Total	₱ 2,454,098.15	₱ 132,589.29
Total Allowable Input Tax	₱ 8,593,416.43	₱ 14,049,541.01
Net VAT Overpayment	₱ **8,593,416.43**	₱ **14,049,541.01**

	3rd Quarter	4th Quarter	Total
	(Exhibit "P")	*(Exhibit "R")*	
Zero-Rated Sales/Receipts	₱ 3,336,098,698.16	₱ 2,254,998,860.43	₱ 13,544,514,749.69
Output tax due	-	-	-
Less: Allowable input tax			
Input Tax Carried Over from Previous Quarter	₱ 14,049,541.01	₱ 23,289,614.76	₱ 5,823,983.35
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	132,589.29	567,723.21	-
Total	₱ 14,182,130.30	₱ 23,857,337.97	₱ 5,823,983.35
Current Transactions			
Purchase of Capital Goods not exceeding P1M	₱ -	₱ -	₱ 104,839.29
Purchase of Capital Goods exceeding P1M	450,000.00	-	597,321.43
Domestic Purchase of Goods Other than Capital Goods	297,010.34	165,293.90	868,733.19
Domestic Purchase of Services	8,928,197.33	2,547,944.69	21,489,842.09
Total	₱ 9,675,207.67	₱ 2,713,238.59	₱ 23,060,736.00
Total Available Input Tax	₱ 23,857,337.97	₱ 26,570,576.56	₱ 28,884,719.35
Less: Deductions from Input Tax			
Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	₱ 567,723.21	₱ 537,857.14	₱ 537,857.14
VAT Refund/TCC claimed	-	₱ -	2,314,142.79
Total	₱ 567,723.21	₱ 537,857.14	₱ 2,851,999.93
Total Allowable Input Tax	₱ 23,289,614.76	₱ 26,032,719.42	₱ 26,032,719.42
Net VAT Overpayment	₱ **23,289,614.76**	₱ **26,032,719.42**	₱ **26,032,719.42**

As shown in the returns, petitioner's unutilized input VAT arising from the amortization of input VAT on purchases of capital goods exceeding ₱1,000,000.00, purchase of capital goods not exceeding ₱1,000,000.00, domestic purchases of goods other than capital goods, and domestic purchase of services for the four quarters of 2007 amounted to ₱22,522,878.86, broken down as follows:

	1st Quarter	2nd Quarter
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	-	₱ 139,955.36
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	₱ 147,321.43	-
Total Unamortized Input Tax on Capital Goods exceeding ₱1 Million	147,321.43	139,955.36
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	139,955.36	132,589.29
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	7,366.07	7,366.07

Add: Input Tax on		
Purchase of Capital Goods not exceeding ₱1 Million	104,839.28	-
Domestic Purchases of Goods Other than Capital Goods	236,477.31	169,951.65
Domestic Purchase of Services	4,734,893.21	5,278,806.86
Total Allowable Input Tax Due	5,083,575.87	5,456,124.58
Less: Output Tax Due	-	-
Unutilized Input Tax	**₱5,083,575.87**	**₱5,456,124.58**

	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 132,589.29	₱ 567,723.21	-
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	450,000.00	-	₱ 597,321.43
Total Unamortized Input Tax on Capital Goods exceeding ₱1 Million	582,589.29	567,723.21	597,321.43
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	567,723.21	537,857.14	537,857.14
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	14,866.08	29,866.07	59,464.29
Add: Input Tax on:			
Purchase of Capital Goods not exceeding ₱1 Million	-	-	104,839.29
Domestic Purchases of Goods Other than Capital Goods	297,010.34	165,293.90	868,733.19
Domestic Purchase of Services	8,928,197.33	2,547,944.69	21,489,842.09
Total Allowable Input Tax Due	9,240,073.75	2,743,104.66	22,522,878.86
Less: Output Tax Due	-	-	-
Unutilized Input Tax	**₱9,240,073.75**	**₱2,743,104.66**	**₱22,522,878.86**

The unutilized input tax of ₱22,522,878.86 is the subject of the present claim for refund/tax credit certificate.

Section 112(A) and (C) of the NIRC of 1997, as amended, relevantly provides that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of

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

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or

> the unacted claim with the Court of Tax Appeals.

Thus, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

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

The timeliness of the filing of both the administrative and judicial claims for refund/tax credit must first be determined.

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

The present claim covers the four taxable quarters of 2007 which closed on March 31, 2007; June 30, 2007; September 30, 2007 and December 31, 2007. Counting two years from the said dates, petitioner had until March 31, 2009; June 30, 2009; September 30, 2009 and December

31, 2009, respectively, within which to file its administrative claim for tax credit/refund. Evidently, the administrative claim for refund[14] filed on March 31, 2009 with the BIR's Large Taxpayers Audit and Investigation Division II, Excise Tax Group, in the amount of ₱22,522,878.86 was well within the two-year prescriptive period.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has 120 days from the date of submission of complete documents in support of the application for refund/tax credit within which to grant or deny the claim. In case of full or partial denial by the CIR or the inability of the CIR to act on the claim within the 120-day period, the taxpayer may appeal with this Court within 30 days from receipt of the adverse decision or the expiration of the 120-day period without any action on the part of the CIR.

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the relevant dates to petitioner's claim for refund/tax credit:

YEAR 2007	DATE OF FILING ADMINISTRATIVE CLAIM	END OF 120 DAYS WITHIN WHICH TO DECIDE THE CLAIM	END OF 30 DAYS FROM EXPIRATION OF 120 DAYS	DATE OF FILING OF JUDICIAL CLAIM
1st Quarter	3/31/2009	7/29/2009	8/28/2009	3/31/2009
2nd Quarter				
3rd Quarter				
4th Quarter				

Evident from the table that petitioner's judicial claim for the four quarters of 2007 was prematurely filed in violation of the mandatory and jurisdictional nature of the "120-30" day period under Section 112(C) of the NIRC of 1997, as amended.

However, in the consolidated case of *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal*

[14] Exhibit "D".

Revenue, and Philex Mining Corporation vs. Commissioner of Internal Revenue[15], the Supreme Court *En Banc* ruled that the mandatory and jurisdictional nature of the 120-30-day period does not apply on claims for refund that were filed from December 10, 2003 to October 6, 2010. The Supreme Court *En Banc* held that BIR Ruling No. DA-489-03, expressly stating that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review", is a general interpretative rule which can be relied upon by all taxpayers from the time of its issuance on December 10, 2003 up to its reversal by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[16] on October 6, 2010. By virtue of the said ruling, petitioner's judicial claim for the four quarters of 2007 is deemed seasonably filed.

Anent the first requisite, petitioner's primary purpose per its Articles of Incorporation[17] is to "own, hold, sell, exchange, lease, mortgage or otherwise dispose of, deal in, and operate plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof."

For the four quarters of 2007, petitioner exported nickel cobalt mixed sulfide to SMMC, a Japanese corporation which exportations were allegedly subject to zero percent (0%) VAT rate pursuant to with Section 106(A)(2)(a) of the NIRC of 1997, as amended, which reads:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties. –*

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[15] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[16] G.R. No. 184823, October 6, 2010.
[17] Exhibit "A-2"

(A) *Rate and Base of Tax. -*

xxx xxx xxx

(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);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

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

> (6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations.

Thus, for an export sale to qualify as zero-rated, the following conditions must concur:

> 1. that there was sale and actual shipment of goods from the Philippines to a foreign country;
>
> 2. that the sale was made by a VAT-registered person;
>
> 3. that the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
>
> 4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, as amended, provides that a VAT taxpayer, such as petitioner, shall for every sale, barter or exchange of goods or properties, 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;

xxx xxx xxx

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

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 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.
>
> VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.
>
> **(B) Information contained in VAT invoice or VAT official receipt**. - The following information shall be indicated in VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his TIN;
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:
>
> xxx xxx xxx
>
> (c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; *(Emphasis supplied)*

In addition, the invoice or receipt 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 and transfer of merchandise or

> for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered** receipts or **sale** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx *(Emphasis supplied)*
>
> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices*. - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

Pursuant to the foregoing provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238 of the same Code, and Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (1) sales invoice as proof of sale of goods; (2) export declaration and 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 must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Admittedly, petitioner is registered with the BIR as a VAT taxpayer.[18] For the four quarters of 2007, it actually shipped its products of nickel cobalt mixed sulfide to its foreign buyer, Sumitomo Metal Mining Co., Ltd of Japan and generated export sales as shown in its provisional and final zero-rated VAT invoices and bills of lading, summarized as follows:

PROVISIONAL INVOICE			BILL OF LADING		FINAL INVOICE		
Exhibit	**Date**	**Amount**	**Exhibit**	**Date**	**Exhibit**	**Date**	**Amount**
Y.1.2	10-Jan-07	$ 25,192,262.08	Y.3.1	25-Jan-07	Y.1.1	01-Jun-07	$ 35,811,341.43
Y.1.4	21-Feb-07	31,511,460.75	Y.3.2	28-Feb-07	Y.1.3	01-Jul-07	41,085,821.57
Y.1.6	22-Mar-07	30,270,304.74	Y.3.3	29-Mar-07	Y.1.5	01-Aug-07	31,529,992.72
Y.1.8	21-Apr-07	35,140,227.19	Y.3.4	25-Apr-07	Y.1.7	01-Sep-07	27,001,901.74
Y.1.10	16-Jun-07	37,611,493.05	Y.3.5	21-Jun-07	Y.1.9	01-Oct-07	23,200,726.00
Y.1.12	16-Jul-07	31,826,141.98	Y.3.6	20-Jul-07	Y.1.11	01-Nov-07	23,441,576.41
Y.1.14	23-Aug-07	25,943,805.30	Y.3.7	30-Aug-07	Y.1.13	01-Jan-08	23,860,928.15
Y.1.16	13-Sep-07	15,377,439.48	Y.3.8	20-Sep-07	Y.1.15	01-Jan-08	16,867,536.06
Y.1.18	16-Oct-07	20,944,241.19	Y.3.9	21-Oct-07	Y.1.17	01-Feb-08	21,065,156.92
Y.1.20	19-Nov-07	18,618,980.69	Y.3.10	23-Nov-07	Y.1.19	01-Apr-08	19,113,200.97
Y.1.22	19-Dec-07	24,744,518.61	Y.3.11	24-Dec-07	Y.1.21	01-Apr-08	25,772,318.70
Total		**$297,180,875.06**			**Total**		**$288,750,500.67**

On the other hand, petitioner's amended Quarterly VAT Returns for the four quarters of 2007 reflected zero-rated sales in the total amount of ₱13,544,514,749.69. These export sales, as noted by the ICPA, have US dollar value of $291,094,389.05, broken down as follows:[19]

[18] Exhibit "F".
[19] Exhibit "DDDD".

Year 2007	Zero-rated Sales in US Dollars	Zero-rated Sales in Philippine Peso
1st Quarter	$ 88,603,540.45	₱ 4,284,213,687.40
2nd Quarter	77,952,644.51	3,669,203,503.70
3rd Quarter	72,481,491.41	3,336,098,698.16
4th Quarter	52,056,712.68	2,254,998,860.43
Total	**$ 291,094,389.05**	**₱13,544,514,749.69**

A comparison of the reported zero-rated sales of US$291,094,389.05 with the amount of US$288,750,500.67 covered by final invoices shows a discrepancy of US$2,343,888.38 which amount should be denied VAT zero-rating for being unsupported with final invoices.

To prove that the foreign currency proceeds of its reported zero-rated sales for 2007 were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP), petitioner presented the Statements[20] of Account issued by the Bank of Tokyo-Mitsubishi UFJ, Manila branch, which the ICPA examined.

However, out of the $288,750,500.67 export sales covered with final invoices, the amount of $11,768,972.96, as computed below, shall be denied VAT zero-rating for petitioner's failure to prove remittance of the foreign currency proceeds thereof:

Shipments made on:	Provisional Invoice (Representing 90% Initial Amount Due) (a)	Should be Adjustment C = (a - b)	Final Invoice (b)	Foreign Currency Remittance (d)	Exhibit	Difference (Representing Zero-rated Sales without corresponding Foreign Currency Remittance) (b - c)
				$ 22,673,035.87	Y.2.1.1	
Jan. 2007	$ 22,673,035.87	$ 13,138,305.56	$ 35,811,341.43	13,055,185.04	Y.2.2.1	$ 83,120.52
				28,360,314.68	Y.2.3.1	
Feb. 2007	28,360,314.68	12,725,506.90	41,085,821.57	12,656,737.85	Y.2.4.1	68,769.04
				27,243,274.27	Y.2.5.1	
Mar. 2007	27,243,274.27	4,286,718.45	31,529,992.72	4,282,689.11	Y.2.6.1	4,029.34

[20] Exhibits "Y.2.1.1"," Y.2.2.1", "Y.2.3.1", "Y.2.4.1", "Y.2.5.1", "Y.2.6.1", "Y.2.7.1", "Y.2.8.1", "Y.2.9.1", "Y.2.10.1", "Y.2.11.1", "Y.2.12.1", "Y.2.13.1", and "Y.2.14.1".

Apr. 2007	31,626,204.47	(4,624,302.73)	27,001,901.74	31,626,204.47	Y.2.7.1	-
Jun. 2007	33,850,343.75	(10,649,617.75)	23,200,726.00	33,850,343.75	Y.2.8.1	-
Jul. 2007	28,643,527.78	(5,201,951.37)	23,441,576.41	28,643,527.78	Y.2.9.1	-
Aug. 2007	23,349,424.77	511,503.38	23,860,928.15	23,349,424.77	Y.2.10.1	511,503.38
Sep. 2007	13,839,695.53	3,027,840.53	16,867,536.06	13,839,695.53	Y.2.11.1	3,027,840.53
Oct. 2007	18,849,817.07	2,215,339.85	21,065,156.92	18,849,817.07	Y.2.12.1	2,215,339.85
Nov. 2007	16,757,082.62	2,356,118.35	19,113,200.97	16,757,082.62	Y.2.13.1	2,356,118.35
Dec. 2007	22,270,066.75	3,502,251.95	25,772,318.70	22,270,066.75	Y.2.14.1	3,502,251.95
	$267,462,787.55	**$21,287,713.12**	**$288,750,500.67**	**$297,457,399.55**		**$11,768,972.96**

Therefore, out of the ₱13,544,514,749.69 zero-rated sales reported by petitioner in its 2007 Quarterly VAT Returns, only the amount of ₱12,887,848,507.31 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, computed as follows:

Declared Zero-Rated Sales in US$		US$291,094,389.05
Less: Disallowances		
Export sales not covered by Final Invoices	US$ 2,343,888.38	
Export sales without foreign currency remittances	11,768,972.96	14,112,861.34
Valid Zero-Rated Sales in US$		US$276,981,527.71
Multiplied by Average peso to dollar rate:		
Declared Zero-Rated Sales in PhP	₱13,544,514,749.69	
Declared Zero-Rated Sales in US$	291,094,389.05	
Average peso to dollar rate		₱ 46.5296318276
Valid Zero-Rated Sales in PhP		**₱12,887,848,507.31**

Next to determine is whether input taxes were incurred or paid in connection with such export sales and if said input taxes were not applied against any output VAT liability of petitioner.

As stated earlier, petitioner reflected a total amount of ₱22,522,878.86 input VAT in its amended Quarterly VAT Returns for the year 2007, to wit:

YEAR 2007	INPUT VAT
1st Quarter	₱ 5,083,575.87
2nd Quarter	5,456,124.58
3rd Quarter	9,240,073.75
4th Quarter	2,743,104.66
TOTAL	**₱ 22,522,878.86**

To substantiate the amount of ₱22,522,878.86 input taxes, petitioner submitted its Extracts from the Portion of General Ledger of Input VAT[21], Summary List of Purchase Transactions (Datafile from Electronic Filing and Payment System)[22] and the related invoices and official receipts[23], all of which formed part of the audit conducted by the ICPA.

The ICPA's Report, together with petitioner's supporting documents, shows that input taxes in the amount of ₱2,257,648.76 should be disallowed from petitioner's claim for refund/credit as they were not properly supported by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-05, as amended. Below is the breakdown of the input taxes of ₱2,257,648.76:

		EXH.	INPUT VAT
1.	Summary of documents with non-VAT supporting documents of suppliers	Z.3	₱ 8,359.50
2.	Summary of documents where input VAT are not dated within the quarter but within the taxable year with incomplete documentation	Z.4	32,116.90
3.	Summary of documents where input VAT on local purchases of goods and services with supporting documents not dated within the quarter of claim and not within the taxable year	Z.5	244,567.77
4.	Summary of documents where input VAT on local purchases of goods and services with supporting documents not named after the petitioner or incomplete name of the petitioner	Z.6	86,743.12
5.	Summary of documents where input VAT on local purchases where VAT in the supporting documents are not separately shown	Z.7	348,857.20
6.	Summary of invoices where input VAT on local purchases with supporting documents not containing customer's address and TIN	Z.8	111,294.47
7.	Summary of invoices where input VAT on local purchases of goods and services with supporting documents not containing customer's TIN	Z.9	204,839.29
8.	Summary of invoices where input VAT on local purchases of goods and services with supporting documents not containing customer's address	Z.10	33,741.11
9.	Summary of invoices where input VAT supporting documents have not been provided	Z.11	1,075,654.44
10.	Summary of documents where input VAT is disallowed due to noted alterations in the supporting documents	Z.12	104,839.28

[21] Exhibit "U".
[22] Exhibits "V-1", "V-2", "V-3", "V-4", "V-5", "V-6", "V-7", "V-8", "V-9", and "V-10".
[23] Exhibits "Z.1.1" to "Z.1.351", "Z.2.1" to "Z.2.351", "Z.3.1" to "Z.3.2", "Z.4.1" to "Z.4.9", "Z.5.1" to "Z.5.15", "Z.6.1" to "Z.6.46", "Z.7.1" to "Z.7.95", "Z.8.1" to "Z.8.52", "Z.9.1" to "Z.9.37", "Z.10.1" to "Z.10.19", "Z.11.1" to "Z.11.5", "Z.12.1" and "Z.13.1" to "Z.13.4".

11.	Excess of over-claimed input VAT as the amount per summary list is lower than the supporting documents	Z.13	6,635.68
TOTAL			**₱2,257,648.76**

In addition, petitioner's input VAT claim in the amount of ₱14,267,753.47 related to its purchases of goods or services which are supported by VAT invoices or official receipts with alterations or additions without counter-signature or with counter-signature but cannot be ascertained whether the person who counter-signed the alterations or additions was an authorized representative of the supplier should also be disallowed, to wit:

EXHIBIT	SUPPLIER	INPUT VAT
Z.2.1	Mandarin Oriental Manila	₱ 499.52
Z.2.2	Discovery Tour, Inc.	3,630.60
Z.2.3	Johnco Commercial Inc.	1,676.79
Z.2.5	Discovery Tour, Inc.	1,737.24
Z.2.6	Century Properties Management	12,702.48
Z.2.7	Discovery Tour, Inc.	350.76
Z.2.8	Discovery Tour, Inc.	826.92
Z.2.9	Discovery Tour, Inc.	3,784.80
Z.2.10	Discovery Tour, Inc.	4,236.60
Z.2.11	Discovery Tour, Inc.	13,611.60
Z.2.12	Somerset Salcedo Makati Services Residences	20,396.76
Z.2.13	Somerset Salcedo Makati Services Residences	8,897.88
Z.2.15	City Garden Hotel	1,740.00
Z.2.16	Richworld Hotel & Resort Corp.	3,360.00
Z.2.17	City Garden Hotel	720.00
Z.2.18	City Garden Hotel	1,800.00
Z.2.19	City Garden Hotel	360.00
Z.2.20	Discovery Tour, Inc.	3,539.64
Z.2.21	Discovery Tour, Inc.	735.72
Z.2.23	Johnco Commercial Inc.	1,982.14
Z.2.24	Johnco Commercial Inc.	5,146.07
Z.2.25	Johnco Commercial Inc.	3,306.43
Z.2.26	Johnco Commercial Inc.	9,429.29
Z.2.27	Johnco Commercial Inc.	4,811.79
Z.2.28	Johnco Commercial Inc.	4,162.80
Z.2.29	Johnco Commercial Inc.	2,442.86
Z.2.30	Johnco Commercial Inc.	1,192.50
Z.2.31	Johnco Commercial Inc.	3,214.29
Z.2.32	Johnco Commercial Inc.	1,099.29
Z.2.33	Johnco Commercial Inc.	2,626.07

Z.2.34	Johnco Commercial Inc.	3,903.21
Z.2.35	Johnco Commercial Inc.	271.07
Z.2.36	Johnco Commercial Inc.	2,060.36
Z.2.37	Johnco Commercial Inc.	1,446.43
Z.2.38	Johnco Commercial Inc.	1,941.43
Z.2.39	Johnco Commercial Inc.	5,418.21
Z.2.40	KDDI Phil Corp	5,852.40
Z.2.41	Richworld Hotel & Resort Corp.	3,360.00
Z.2.42	Discovery Tour, Inc.	4,791.48
Z.2.43	Discovery Tour, Inc.	1,291.44
Z.2.44	Discovery Tour, Inc.	3,570.60
Z.2.45	Discovery Tour, Inc.	2,794.92
Z.2.46	Discovery Tour, Inc.	687.72
Z.2.47	Discovery Tour, Inc.	12,651.48
Z.2.48	Discovery Tour, Inc.	10,899.11
Z.2.50	Century Properties Management	288.00
Z.2.51	Century Properties Management	12,702.48
Z.2.52	Century Properties Management	1,980.00
Z.2.53	Century Properties Management	300.00
Z.2.54	Century Properties Management	12,702.48
Z.2.55	Century Properties Management	1,980.00
Z.2.56	Somerset Salcedo Makati Services Residences	14,796.00
Z.2.58	Mandarin Oriental Manila	1,234.46
Z.2.59	Mandarin Oriental Manila	2,177.04
Z.2.60	Richworld Hotel & Resort Corp.	3,360.00
Z.2.61	Ian Jason Construction & Supply	102,364.75
Z.2.63	Discovery Tour, Inc.	778.92
Z.2.66	Johnco Commercial Inc.	1,260.00
Z.2.67	Somerset Salcedo Makati Services Residences	11,560.20
Z.2.68	Somerset Salcedo Makati Services Residences	2,823.60
Z.2.69	Johnco Commercial Inc.	936.43
Z.2.70	Johnco Commercial Inc.	1,872.86
Z.2.71	Johnco Commercial Inc.	836.79
Z.2.74	Discovery Tour, Inc.	10,239.24
Z.2.75	Discovery Tour, Inc.	4,034.04
Z.2.76	Discovery Tour, Inc.	27,197.64
Z.2.78	Century Properties Management	651.00
Z.2.79	Somerset Salcedo Makati Services Residences	3,673.46
Z.2.80	Somerset Salcedo Makati Services Residences	795.60
Z.2.81	Somerset Salcedo Makati Services Residences	9,060.00
Z.2.82	Somerset Salcedo Makati Services Residences	397.80
Z.2.83	Somerset Salcedo Makati Services Residences	3,978.00
Z.2.84	Somerset Salcedo Makati Services Residences	6,466.80
Z.2.85	Somerset Salcedo Makati Services Residences	34,039.22
Z.2.86	Somerset Salcedo Makati Services Residences	803.40
Z.2.88	Johnco Commercial Inc.	3,225.00
Z.2.89	Discovery Tour, Inc.	3,125.28
Z.2.90	Johnco Commercial Inc.	2,627.14

Z.2.91	Johnco Commercial Inc.	3,475.71
Z.2.92	Johnco Commercial Inc.	2,050.71
Z.2.93	Johnco Commercial Inc.	1,189.29
Z.2.94	Johnco Commercial Inc.	1,029.11
Z.2.95	Johnco Commercial Inc.	3,154.71
Z.2.96	Johnco Commercial Inc.	4,923.21
Z.2.97	Johnco Commercial Inc.	2,847.86
Z.2.98	Johnco Commercial Inc.	1,494.04
Z.2.99	Century Properties Management	12,702.48
Z.2.100	Mandarin Oriental Manila	3,105.54
Z.2.102	Discovery Tour, Inc.	694.92
Z.2.104	Discovery Tour, Inc.	10,626.72
Z.2.105	Discovery Tour, Inc.	316.80
Z.2.106	Discovery Tour, Inc.	711.72
Z.2.107	Discovery Tour, Inc.	6,971.88
Z.2.108	Discovery Tour, Inc.	2,381.16
Z.2.109	Discovery Tour, Inc.	730.92
Z.2.110	Discovery Tour, Inc.	639.72
Z.2.111	Discovery Tour, Inc.	1,334.64
Z.2.112	Discovery Tour, Inc.	13,300.08
Z.2.113	Discovery Tour, Inc.	898.92
Z.2.114	Discovery Tour, Inc.	808.68
Z.2.115	Century Properties Management	300.00
Z.2.116	Somerset Salcedo Makati Services Residences	1,591.20
Z.2.117-118	Somerset Salcedo Makati Services Residences	390.00
Z.2.119	Somerset Salcedo Makati Services Residences	1,102.20
Z.2.121	Discovery Tour, Inc.	1,033.32
Z.2.122	Johnco Commercial Inc.	2,768.57
Z.2.123	Johnco Commercial Inc.	2,206.07
Z.2.124	Johnco Commercial Inc.	2,108.57
Z.2.125	Johnco Commercial Inc.	1,151.79
Z.2.126	Johnco Commercial Inc.	122.14
Z.2.127	Johnco Commercial Inc.	589.82
Z.2.128	Johnco Commercial Inc.	101.79
Z.2.129	Century Properties Management	12,702.48
Z.2.130	Century Properties Management	300.00
Z.2.132	Mandarin Oriental Manila	1,226.10
Z.2.133	City Garden Hotel	2,772.00
Z.2.134	City Garden Hotel	3,960.00
Z.2.137	Discovery Tour, Inc.	1,044.24
Z.2.138	Discovery Tour, Inc.	2,323.68
Z.2.139	Discovery Tour, Inc.	4,203.84
Z.2.140	Richworld Hotel & Resort Corp.	6,720.00
Z.2.141	Somerset Salcedo Makati Services Residences	2,293.20
Z.2.142	Somerset Salcedo Makati Services Residences	3,822.00
Z.2.143	Somerset Salcedo Makati Services Residences	1,193.40
Z.2.144	Johnco Commercial Inc.	4,264.29
Z.2.145	Century Properties Management	394.29

Z.2.146	Century Properties Management	300.00
Z.2.147	Century Properties Management	12,702.48
Z.2.148	Century Properties Management	300.00
Z.2.149	Johnco Commercial Inc.	4,097.14
Z.2.150	Johnco Commercial Inc.	3,285.00
Z.2.151	Johnco Commercial Inc.	4,622.14
Z.2.152	Johnco Commercial Inc.	5,749.29
Z.2.153	Johnco Commercial Inc.	1,173.21
Z.2.154	Johnco Commercial Inc.	8,314.29
Z.2.155	Johnco Commercial Inc.	3,053.57
Z.2.156	City Garden Hotel	720.00
Z.2.157	Mandarin Oriental Manila	1,247.60
Z.2.158	City Garden Hotel	384.00
Z.2.159	City Garden Hotel	360.00
Z.2.160	Richworld Hotel & Resort Corp.	6,720.00
Z.2.161	Discovery Tour, Inc.	606.12
Z.2.162	Discovery Tour, Inc.	414.12
Z.2.163	Discovery Tour, Inc.	4,560.96
Z.2.164	Discovery Tour, Inc.	2,532.48
Z.2.165	Discovery Tour, Inc.	1,404.24
Z.2.166	Discovery Tour, Inc.	1,032.24
Z.2.167	Discovery Tour, Inc.	6,169.80
Z.2.168	Somerset Salcedo Makati Services Residences	1,146.60
Z.2.170	Somerset Salcedo Makati Services Residences	382.20
Z.2.171	Johnco Commercial Inc.	5,072.14
Z.2.172	Johnco Commercial Inc.	2,199.64
Z.2.173	Johnco Commercial Inc.	332.14
Z.2.174	Johnco Commercial Inc.	1,387.50
Z.2.175	Johnco Commercial Inc.	5,198.57
Z.2.176	Johnco Commercial Inc.	1,831.71
Z.2.177	Johnco Commercial Inc.	5,742.86
Z.2.178	Johnco Commercial Inc.	4,117.82
Z.2.179	Century Properties Management	39,014.76
Z.2.182	Mandarin Oriental Manila	2,483.88
Z.2.183	City Garden Hotel	792.00
Z.2.184	Richworld Hotel & Resort Corp.	3,360.00
Z.2.185	Century Properties Management	300.00
Z.2.188	Discovery Tour, Inc.	6,267.00
Z.2.189	Discovery Tour, Inc.	510.12
Z.2.190	Discovery Tour, Inc.	618.12
Z.2.191	Discovery Tour, Inc.	7,856.52
Z.2.192	Discovery Tour, Inc.	968.28
Z.2.193	Discovery Tour, Inc.	218.16
Z.2.194	Discovery Tour, Inc.	2,178.24
Z.2.195	Discovery Tour, Inc.	2,935.08
Z.2.196	Discovery Tour, Inc.	2,136.48
Z.2.197	Discovery Tour, Inc.	2,589.00
Z.2.198	Century Properties Management	879.00

Z.2.201	Somerset Salcedo Makati Services Residences	390.00
Z.2.203	Somerset Salcedo Makati Services Residences	1,764.00
Z.2.204	Somerset Salcedo Makati Services Residences	2,301.00
Z.2.205	Discovery Tour, Inc.	762.12
Z.2.206	Johnco Commercial Inc.	292.50
Z.2.207	Johnco Commercial Inc.	1,676.79
Z.2.208	Johnco Commercial Inc.	1,546.39
Z.2.212	Johnco Commercial Inc.	835.71
Z.2.213	Johnco Commercial Inc.	504.64
Z.2.209	Century Properties Management	506.25
Z.2.210	Century Properties Management	25,858.62
Z.2.211	Century Properties Management	33.75
Z.2.214	Century Properties Management	31.61
Z.2.216	Johnco Commercial Inc.	3,230.36
Z.2.217	Johnco Commercial Inc.	2,228.57
Z.2.218	Johnco Commercial Inc.	1,205.36
Z.2.219	Johnco Commercial Inc.	3,088.93
Z.2.220	Johnco Commercial Inc.	10,973.57
Z.2.221	Johnco Commercial Inc.	182.36
Z.2.222	Johnco Commercial Inc.	3,300.00
Z.2.223	Johnco Commercial Inc.	910.71
Z.2.224	Johnco Commercial Inc.	2,277.32
Z.2.225	Richworld Hotel & Resort Corp.	3,360.00
Z.2.226	Discovery Tour, Inc.	4,095.12
Z.2.227	Discovery Tour, Inc.	426.12
Z.2.228	Discovery Tour, Inc.	1,170.36
Z.2.229	Discovery Tour, Inc.	426.12
Z.2.230	Discovery Tour, Inc.	378.12
Z.2.231	Discovery Tour, Inc.	2,018.64
Z.2.232	Discovery Tour, Inc.	1,874.64
Z.2.233	Somerset Salcedo Makati Services Residences	780.00
Z.2.234	Somerset Salcedo Makati Services Residences	930.00
Z.2.235	Somerset Salcedo Makati Services Residences	3,990.00
Z.2.236	Somerset Salcedo Makati Services Residences	390.00
Z.2.237	Somerset Salcedo Makati Services Residences	4,926.60
Z.2.238	Somerset Salcedo Makati Services Residences	2,175.60
Z.2.239	Johnco Commercial Inc.	2,282.14
Z.2.245	Century Properties Management	300.00
Z.2.246	Discovery Tour, Inc.	546.12
Z.2.247	Discovery Tour, Inc.	2,040.48
Z.2.248	Discovery Tour, Inc.	3,648.96
Z.2.249	Discovery Tour, Inc.	1,869.84
Z.2.250	Discovery Tour, Inc.	1,524.24
Z.2.251	Discovery Tour, Inc.	532.32
Z.2.252	Discovery Tour, Inc.	1,470.36
Z.2.253	Discovery Tour, Inc.	6,269.40
Z.2.254	Century Properties Management	25,858.62
Z.2.255	Century Properties Management	4,383.60

Z.2.256	Century Properties Management	2,880.00
Z.2.258	Somerset Salcedo Makati Services Residences	382.20
Z.2.259	Somerset Salcedo Makati Services Residences	2,381.40
Z.2.260	Somerset Salcedo Makati Services Residences	382.20
Z.2.261	Somerset Salcedo Makati Services Residences	852.60
Z.2.262	Mandarin Oriental Manila	2,774.88
Z.2.263	Richworld Hotel & Resort Corp.	3,360.00
Z.2.264	Richworld Hotel & Resort Corp.	3,360.00
Z.2.265	Discovery Tour, Inc.	16,780.92
Z.2.266	Discovery Tour, Inc.	4,474.80
Z.2.267	Discovery Tour, Inc.	844.08
Z.2.268	Discovery Tour, Inc.	642.12
Z.2.269	Discovery Tour, Inc.	3,223.56
Z.2.270	Discovery Tour, Inc.	2,778.60
Z.2.271	Discovery Tour, Inc.	144.00
Z.2.272	Discovery Tour, Inc.	738.12
Z.2.273	Discovery Tour, Inc.	750.12
Z.2.274	Century Properties Management	25,858.62
Z.2.275	Century Properties Management	337.50
Z.2.278	Somerset Salcedo Makati Services Residences	4,197.60
Z.2.279	Somerset Salcedo Makati Services Residences	5,420.40
Z.2.280	Somerset Salcedo Makati Services Residences	733.20
Z.2.281	Somerset Salcedo Makati Services Residences	733.20
Z.2.282	Somerset Salcedo Makati Services Residences	498.60
Z.2.283	Somerset Salcedo Makati Services Residences	756.60
Z.2.285	Discovery Tour, Inc.	783.72
Z.2.286	Discovery Tour, Inc.	1,243.44
Z.2.289	Discovery Tour, Inc.	1,562.64
Z.2.57	SMCC Philippines	3,218,566.02
Z.2.64	SMCC Philippines	1,092,184.56
Z.2.65	SMCC Philippines	1,570,884.21
Z.2.87	SMCC Philippines	1,228,271.05
Z.2.120	SMCC Philippines	145,608.69
Z.2.169	SMCC Philippines	1,123,865.01
Z.2.242	SMCC Philippines	1,313,079.85
Z.2.276	SMCC Philippines	6,851.79
Z.2.277	SMCC Philippines	21,605.72
Z.2.305	SMCC Philippines	1,025,023.34
Z.2.342	SMCC Philippines	2,432,975.40
Z.2.291	SQ Resources, Inc.	2,356.20
Z.2.294	Discovery Tour, Inc.	1,398.36
Z.2.297	Somerset Salcedo Makati Services Residences	382.20
Z.2.302	Johnco Commercial Inc.	4,942.50
Z.2.303	Johnco Commercial Inc.	10,973.57
Z.2.304	Johnco Commercial Inc.	105.00
Z.2.329	Somerset Salcedo Makati Services Residences	397.80
Z.2.330	Somerset Salcedo Makati Services Residences	4,399.80
Z.2.331	Somerset Salcedo Makati Services Residences	4,615.80

Z.2.332	Somerset Salcedo Makati Services Residences	1,146.60
Z.2.333	Somerset Salcedo Makati Services Residences	1,411.20
Z.2.334	Somerset Salcedo Makati Services Residences	6,262.20
Z.2.335	Somerset Salcedo Makati Services Residences	1,528.00
Z.2.336	Somerset Salcedo Makati Services Residences	6,174.00
Z.2.337	Somerset Salcedo Makati Services Residences	582.00
Z.2.338	Somerset Salcedo Makati Services Residences	1,170.00
Z.2.340	Somerset Salcedo Makati Services Residences	382.20
Z.2.341	Somerset Salcedo Makati Services Residences	1,138.80
Z.2.344	Discovery Tour, Inc.	19,177.36
Z.2.347	Discovery Tour, Inc.	1,733.04
Z.2.348	Discovery Tour, Inc.	6,240.96
Z.2.349	Discovery Tour, Inc.	1,856.88
Z.2.350	Discovery Tour, Inc.	3,550.32
Z.2.351	Discovery Tour, Inc.	901.32
TOTAL		**₱14,267,753.47**

In sum, out of the ₱22,522,878.86 input VAT reported by petitioner for the year 2007, only the amount of ₱5,997,476.63 represents its valid input VAT, computed as follows:

Input VAT Claim	₱ 22,522,878.86
Less: Disallowances	
Per Independent CPA's Report	₱ 2,257,648.76
Per this Court's further verification	14,267,753.47
Total Disallowances	₱ 16,525,402.23
VALID INPUT VAT	**₱5,997,476.63**

Since petitioner's sales for the four quarters of 2007 were all direct export sales, the substantiated input VAT of ₱5,997,476.63 is entirely attributable thereto. However, the input VAT related to the export sales of US$2,343,888.38 not covered by final invoices and export sales of US$11,768,972.96 without corresponding foreign currency remittances shall be disallowed. Consequently, petitioner's duly substantiated input VAT attributable to the declared valid zero-rated sales of ₱12,887,848,507.31 amounts only to ₱5,706,706.49, computed as follows:

Valid Zero-Rated Sales	₱ 12,887,848,507.31
Divided by Total Declared Zero-Rated Sales	÷ 13,544,514,749.69

Multiplied by Valid Input VAT	×	5,997,476.63
Input VAT Attributable to Valid Zero-Rated Sales	**₱**	**5,706,706.49**

Finally, as to whether the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns for the subject period of claim[24] show that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Although the claimed amount of ₱22,522,878.86 was carried over to the succeeding first quarter of 2008[25], the same remained unutilized as petitioner still had no output tax liability for the said period. Moreover, the total claim of ₱22,522,878.86 was deducted as "VAT Refund/TCC claimed"[26] in petitioner's Quarterly VAT Return for the first quarter of 2008, preventing the carry-over or application of such input VAT in the next taxable quarter(s).

In fine, petitioner has established its entitlement to a refund or issuance of tax credit certificate but only in the reduced amount of ₱5,706,706.49.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱5,706,706.49, representing its unutilized excess input VAT for the four taxable quarters of 2007 attributable to its zero-rated sales for the same period.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[24] Exhibits "K", "N", "P", and "R".
[25] Exhibit "S".
[26] Exhibit "S", line 23D.

We Concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice