REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 8056 and 8163

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 28 2014
10:37 a.m.

x- -x

DECISION

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

In the instant consolidated *Petitions for Review* filed on March 30, 2010[1] (for CTA Case No. 8056) and September 29, 2010,[2] (for CTA Case No. 8163), petitioner Total (Philippines) Corporation prays for refund or issuance of tax credit certificate in the aggregate amount of ₱187,554,770.69, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sales for the four taxable quarters of 2008, detailed as follows:

CTA Case No.	Period Covered	Amount of Claim
8056	First and Second Quarters (2008)	₱ 98,760,987.68
8163	Third and Fourth Quarters (2008)	88,793,783.01
	TOTAL	**₱187,554,770.69**

[1] Docket, pp. 1-10.
[2] Docket, CTA Case No. 8163, pp. 1-10.

Petitioner is a Philippine corporation with principal office address at Penthouse, Total Corporate Center 1012 Triangle Drive, North Bonifacio, Bonifacio Global City, Taguig City.[3] Its primary purpose is to "acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders, any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas."[4] It is a VAT-registered entity as evidenced by Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019580 with Taxpayer's Identification Number (TIN) 005-145-964-000.[5]

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) with the authority to grant claims for refund or tax credit of taxes erroneously or illegally collected. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner alleges that during the four quarters of taxable year 2008, it sold and exported products to companies located in foreign countries and to companies in special economic and Freeport zones. During the same period, it incurred/paid input taxes on its purchases and/or importations of VATable goods and services.

Petitioner filed with the BIR its original and amended Quarterly VAT Returns for the four quarters of taxable year 2008 on the following dates:

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[3] Par. 1, Conditionally Admitted Facts, Consolidated Joint Stipulation of Facts and Issues, docket, p. 206; Exhibits "A" and "B".
[4] Exhibit "B".
[5] Exhibit "C".

PERIOD COVERED (2008)		DATE FILED	EXHIBIT
First Quarter	Original return	April 22, 2008	"EE"
	First amendment	July 24, 2009	"FF"
	Second amendment	February 5, 2010	"GG"
	Final amendment	March 30, 2010	"HH"
Second Quarter	Original return	July 23, 2008	"II"
	First amendment	July 24, 2009	"JJ"
	Second amendment	February 5, 2010	"KK"
	Final amendment	March 30, 2010	"LL"
Third Quarter	Original return	October 22, 2008	"MM"
	First amendment	July 24, 2009	"NN"
	Second amendment	February 5, 2010	"OO"
	Third amendment	February 5, 2010	"PP"
	Final amendment	March 30, 2010	"QQ"
Fourth Quarter	Original return	January 26, 2009	"RR"
	First amendment	July 24, 2009	"SS"
	Second amendment	February 5, 2010	"TT"
	Final amendment	March 30, 2010	"UU"

On account that its VAT returns showed excess input taxes, petitioner filed with respondent administrative claims[6] for refund/tax credit of its unutilized input taxes pertaining to zero-rated sales for taxable year 2008 on the following dates:

PERIOD COVERED	DATE FILED	AMOUNT
First Quarter	November 27, 2009	₱41,205,066.62
Second Quarter	November 27, 2009	₱57,555,921.06
Third Quarter	May 24, 2010	₱45,406,194,01
Fourth Quarter	May 24, 2010	₱43,387,589.00

On March 30, 2010 and September 29, 2010, petitioner filed separate Petitions for Review respectively docketed as CTA Case Nos. 8056 and 8163, alleging respondent's inaction in her level.

On May 31, 2010, respondent in her Answer[7] in CTA Case No. 8056 moved to dismiss the case citing the following special and affirmative defenses,viz, petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱98,760,987.68, allegedly representing unutilized input VAT on purchase/importations of VATable goods and

[6] Exhibits "D" and "F".
[7] Docket, pp. 72-74.

services attributable to its zero-rated sales for the 1st and 2nd quarters of taxable year 2008 were not properly and fully substantiated; the sales of goods and services to various alleged clients/affiliates do not qualify for VAT zero-rating; the amount subject of the claim for refund do not pertain in full to its input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of taxable year 2008; petitioner failed to exhaust administrative remedies for failure to comply with the legal requirements under Section 112(C) of the National Internal Revenue Code (NIRC) of 1997; and a claim for refund being in the nature of tax exemption is strictly construed against the claimant, hence, looked upon with disfavor.

On November 19, 2010, respondent filed her Answer[8] in CTA Case No. 8163 invoking Section 23 of Republic Act (RA) No. 7916 which states that an enterprise registered with Philippine Economic Zone Authority (PEZA) has the option to choose between two sets of fiscal incentives. The first, provided for under Presidential Decree (PD) No. 66, as amended, and Section 24 of RA 7916 which include the 5% preferential tax on gross income earned in lieu of national and local taxes, and the second, those under Book VI of Executive Order No. 226, including but not limited to an income tax holiday (ITH) of 4 to 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ecozone enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes. However, if the option chosen is the income tax holiday, the ecozone enterprise is only exempt from payment of the income tax but still subject to other national internal revenue taxes including the VAT. Thus, if petitioner's PEZA-registered enterprises clients availed of the income tax holiday under Executive Order No. 226, petitioner's sales of goods, property and services to them shall be subject to 12% VAT.

Further, in an action for tax refund/credit, petitioner has the burden of establishing by sufficient evidence his entitlement to refund and failure to discharge this burden is fatal to his cause. Petitioner must prove that compliance with the requirements under Section 112 (A) and (C) of the

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[8] Docket, CTA Case No. 8163, pp. 42-45.

NIRC of 1997, as amended, as well as Revenue Regulations (RR) No. 5-87, as amended by RR Nos. 3-88 and 7-95.

Lastly, claims for refund are strictly construed against the claimant for it partake the nature of exemption from taxation, thus, looked upon with disfavor.

On July 20, 2010, the parties filed their *Joint Stipulation of Facts and Issues* which was approved on July 26, 2010. [9]

On January 4, 2011, at the instance of petitioner, CTA Case Nos. 8056 and 8163 were consolidated.[10]

On April 6, 2011, the parties submitted their *Consolidated Joint Stipulation of Facts and Issues*[11] which was approved on April 19, 2011.[12]

To substantiate its allegations, petitioner presented (1) its Accounting Manager Irma V. Leong, (2) its Tax Specialist Dennis M. Odra, and (3) the Court Commissioned Independent Certified Public Accountant (ICPA) Enrico T. Pizarro.

Witness Irma V. Leong testified, by way of Judicial Affidavit, [13] that as petitioner's Accounting Manager, she reviews petitioner's financial position and compliance with the generally accepted accounting standards. She also reviews and is in custody of petitioner's tax returns filed with the BIR.

Petitioner, according to her, is principally engaged in the business of acquiring, assembling, installing, constructing, equipping, repairing, remodeling, maintaining, developing, operating, holding, owning, leasing, and otherwise dealing with oil terminals and service station networks; to develop and operate a wholesale distribution

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[9] Docket, pp. 106.
[10] Docket, p. 159.
[11] Docket, pp. 205-212.
[12] Docket, pp. 216-217.
[13] Docket, pp. 112-117.

network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders, any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas. It is also a VAT-registered entity as evidenced by BIR Certificate of Registration No. OCN 8RC0000019580 and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000.[14]

On November 27, 2009, petitioner filed an administrative claim for refund of unutilized input taxes for the 1st and 2nd quarters of taxable year 2008 in the amounts of ₱41,205,066.62 and ₱57,555,921.06, respectively, with the Large Tax Audit and Investigation Division II of the BIR.

Witness **Dennis M. Odra** elaborated the foregoing testimony in his Judicial Affidavit.[15] He declared that as petitioner's Tax Specialist, he prepared and reviewed petitioner's compliance with the tax rules and regulations. However, he had no participation in the preparation of documents and VAT returns pertaining to petitioner's administrative claims for refund as he was not yet under its employ when the taxable event for 2008 occurred. He added that as a custodian petitioner's tax returns filed with the BIR, he had access to the Filing Payment Step. In view thereof, he was able to ascertain, after comparison, that the documents supporting petitioner's claim for refund were accurate print-outs of the documents already posted.

On November 27, 2009, petitioner filed its administrative claims for refund of unutilized input taxes for the 1st and 2nd quarters of taxable year 2008 in the respective amounts of ₱41,205,066.62 and ₱57,555,921.06. On May 24, 2010, similar claims for refund for the 3rd and 4th quarters of the same year were filed in the amounts of

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[14] Exhibit "C", docket, p. 464.
[15] Docket, pp. 218-231.

₱45,406,194.01 and ₱43,287,589.00, respectively, or a total claim of ₱187,554,770.69.

The excess and unutilized input VAT was incurred from petitioner's domestic purchases and importation of taxable goods and services which were attributable to its zero-rated sales and not utilized or applied against its output VAT liabilities.

He added [16] that petitioner's amended 2006 fourth quarter VAT return [17] showed a substantial "Input Tax Carried Over from Previous Quarter/Excess Over 70% of Output VAT" in the amount of ₱411,598,506.73, which was the excess of the input tax over the output tax in the third quarter of 2006, including the 30% of the output VAT required to be paid based on the existing rules at that time.

He explained that the amount carried forward to the 2006 fourth quarter VAT return of ₱411,598,506.73 was composed of the actual excess of the creditable input tax of ₱973,424,046.57 over the output tax of ₱802,607,914.06, or ₱170,8016,132.51, plus the VAT payable of ₱240,782,374.22, which was paid in installments in the total amount of ₱236,407,695.07 after deducting the VAT withheld on sales to government of ₱186,034.11 and other tax credit of ₱4,188,645.04. Further, the zero-rated transactions refer to petitioner's sale to PEZA registered enterprise in Subic.

ICPA **Enrico T. Pizarro**, also executed a Judicial Affidavit, [18] stating that based on his examination and validation of petitioner's pertinent documents, the allowable input tax refund attributable to zero-rated sales is ₱188,943,682.91.

After petitioner rested its case,[19] respondent moved to file a memorandum[20] without presentation of any evidence.

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[16] Docket, pp. 407-412.
[17] Exhibit "PPPP".
[18] Docket, pp. 268-278.
[19] Docket, pp. 430-452.
[20] Docket, pp. 705-706.

However, despite the opportunity granted by the Court, respondent did not file any.[21]

THE ISSUES

The parties submitted the following issues per their Consolidated Joint Stipulation of Facts and Issues,[22] to wit:

A. WHETHER OR NOT THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION OVER THE INSTANT CASE.

B. WHETHER OR NOT PETITIONER'S EXPORT SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE ZERO-RATED SALES.

C. WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE 1st, 2nd, 3rd and 4th QUARTERS OF TAXABLE YEAR 2008 ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS, IN THE AGGREGATE AMOUNT OF ONE HUNDRED EIGHTY SEVEN MILLION SIX HUNDRED FIFTY FOUR THOUSAND SEVEN HUNDRED SEVENTY THOUSAND AND SIXTY NINE CENTAVOS (₱187,654,770.69).

D. WHETHER OR NOT THE ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR TAXABLE YEAR 2008 ARE PROPERLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

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[21] Docket, p. 754.
[22] Docket, pp. 208-209.

E. WHETHER OR NOT THE ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2008 ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

F. WHETHER OR NOT THE ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR THE FIRST AND SECOND QUARTERS OF TAXABLE YEAR 2008 WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

G. WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE WITHIN THE PERIOD PRESCRIBED BY LAW

H. WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR THE FIRST, SECOND, THIRD, AND FOURTH QUARTERS OF TAXABLE YEAR 2008.

The foregoing issues can be narrowed down to one main issue of whether petitioner is entitled to refund or issuance of tax credit certificate in the total amount of ₱187,554,770.69, representing petitioner's alleged unutilized input VAT for the four quarters of taxable year 2008.

THE COURT'S RULING

Section 112(A) of the NIRC of 1997, as amended, provides the basis for refunds or tax credits of input tax attributable to zero-rated or effectively zero-rated sales, viz:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax. *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *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.

Thus, to be entitled to a refund or tax credit of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, the taxpayer must satisfy the following requisites, to wit:

1. there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes were 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.

Foremost is the determination of the timeliness of the filing of the instant claim for refund.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate or refund 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 2008 which closed on March 31, 2008; June 30, 2008; September 30, 2008 and December 31, 2008. Counting two years from the said dates, petitioner had until March 31, 2010; June 30, 2010; September 30, 2010 and December 31, 2010, respectively, within which to file its administrative claim for refund or issuance of tax credit certificate. Clearly, petitioner's administrative claims for refund were seasonably filed on November 27, 2009 and May 24, 2010, as shown below:

TAXABLE QUARTER OF 2008	CLOSE OF TAXABLE QUARTER	DATE OF EXPIRATION OF THE 2-YEAR PERIOD	ACTUAL DATE OF FILING THE REFUND CLAIM WITH THE BIR
First Quarter	March 31, 2008	March 31, 2010	November 27, 2009
Second Quarter	June 30, 2008	June 30, 2010	November 27, 2009
Third Quarter	September 30, 2008	September 30, 2010	May 24, 2010
Fourth Quarter	December 31, 2008	December 31, 2010	May 24, 2010

The same is true insofar as petitioner's judicial claims for refund are concerned. Section 112(C) of the NIRC of 1997, as amended, provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue 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.

From the foregoing provision, the CIR has **120 days from the date of submission of complete documents in support of the application for refund or tax credit of input tax** to grant or deny the taxpayer's claim. Upon receipt of the adverse decision or expiration of the allowable period of 120 days without any action on part of the CIR, the taxpayer has **30 days, within which to appeal such inaction with the Court of Tax Appeals.**

Note that the prescribed period of "120+30 days" provided under Section 112(C) of the NIRC is mandatory and jurisdictional as amplified by the Supreme Court in the consolidated case of *Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue*[23], the pertinent portions of which are quoted hereunder for ready reference:

> The mandatory and jurisdictional nature of the 120+30 day periods was explained in *San Roque:*
>
> > At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: 'x x x 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.' Following the verba legis doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no 'decision' or 'deemed a denial' decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the

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[23] G.R. Nos. 193301 and 194637, March 11, 2013.

> mandatory 120-day period, and it cannot blame anyone but itself.
>
> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> > xxx 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)*
>
> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

Applying Section 112(C) of the NIRC of 1997, as amended, the pertinent dates are as follows:

Case No.	Year 2008	Date of Filing of Administrative Claim	Date of Expiration of the 120-day period	Date of Expiration of the 30-day period	Date of Filing of Judicial Claim
8056	1st Quarter	November 27, 2009	March 27, 2010	April 26, 2010	March 30, 2010

	2nd Quarter				
	3rd Quarter				
8163	4th Quarter	May 24, 2010	September 21, 2010	October 21, 2010	September 29, 2010

Clearly, petitioner's judicial claims for the four quarters of 2008 were seasonably filed on March 30, 2010 and September 29, 2010.

Going on to the other requisites, petitioner maintains that its sales of goods to companies located in foreign countries, in special economic zones, and in freeport zones qualify for VAT zero-rating pursuant to Section 106(A)(2) of the NIRC of 1997, as amended, which states:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* -
>
> (A) *Rate and Base of Tax.* – xxx
>
> (1) 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); and
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws. *(Emphasis supplied)*

Indeed, sales by a VAT-registered taxpayer from the customs territory to entities located in export processing zones are considered export sales under Executive Order (E.O.) No. 226, otherwise known as the "Omnibus Investments Code of 1987", the relevant portions of which are quoted for easy reference:

> ARTICLE 23. 'Export Sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually

> exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further,* **That without actual exportation the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones**; xxx *(Emphasis supplied)*
>
> xxx xxx xxx
>
> ARTICLE 77. *Tax Treatment of Merchandise in the Zone.* – (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.
>
> (2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.** *(Emphasis supplied)*

Since petitioner's sales of goods to entities located in export processing zones fall within the definition of "export sales" under E.O. No. 226, such sales are export sales contemplated by Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and subject to zero percent (0%) VAT.

Further, Section 4.106-5 of RR No. 16-05, as amended by RR No. 04-07, classifies as "export sales" the sales to export processing zones pursuant to RA Nos. 7916, 7903 and 7922, and other similar export processing zones; sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA No. 7227; and sales of goods, properties or services made by a VAT-registered supplier to a Board of Investments (BOI)-registered manufacturer/producer whose products are 100% exported, to wit:

> SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties*. - xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales*. - '*Export Sales*' shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter,

as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, **the following shall be considered constructively exported**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; **(2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227;** (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

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

Direct export sales of goods to foreign countries qualify as well for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, subject to the following conditions:

1. there was sale and actual shipment of goods from the Philippines to a foreign country;

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

3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4. the payment was accounted for in accordance with the rules and regulations of the BSP.

In its final amended 2008 Quarterly VAT Returns, petitioner's declared zero-rated sales amounted to ₱1,644,257,527.16, broken down as follows:

EXHIBIT	YEAR 2008	ZERO-RATED SALES
"HH"	1st Quarter	₱ 361,228,064.22
"LL"	2nd Quarter	436,914,398.18
"QQ"	3rd Quarter	375,094,587.21
"UU"	4th Quarter	471,020,477.55
TOTAL		**₱1,644,257,527.16**

However, based on petitioner's monthly summary lists of sales for the year 2008, only the amount of ₱1,641,676,587.09 was reflected, detailed as follows:

EXHIBITS	2008	AMOUNT PER MONTH	AMOUNT PER QUARTER
"AAAA-1-A"	January	₱ 122,210,087.69	
"AAAA-1-B"	February	124,360,705.84	
"AAAA-1-C"	March	114,657,270.69	₱ 361,228,064.22
"BBBB-1-A"	April	122,232,468.98	
"BBBB-1-B"	May	153,753,786.08	
"BBBB-1-C"	June	160,928,143.12	436,914,398.18
"CCCC-1-A"	July	155,330,678.50	

"CCCC-1-B"	August	71,319,837.93	
"CCCC-1-C"	September	145,863,130.71	372,513,647.14
"DDDD-1-A"	October	162,174,583.62	
"DDDD-1-B"	November	166,611,268.60	
"DDDD-1-C"	December	142,234,625.33	471,020,477.55
TOTAL		**₱1,641,676,587.09**	**₱1,641,676,587.09**

Given that the difference of ₱2,580,940.07 (₱1,644,257,527.16 less ₱1,641,676,587.09) does not have supporting documents, it shall be denied VAT zero-rating.

After review and validation of petitioner's zero-rated sales for the year 2008, ICPA Enrico T. Pizarro noted that petitioner's reported zero-rated sales for the year 2008 pertain to sales to PEZA -registered enterprises.[24]

To establish that its clients were special economic or freeport zone enterprises, petitioner submitted various Certifications/Certificates of Registration[25] from the PEZA, Clark Development Corporation (CDC), Board of Investments, and Export Processing Zone Authority (EPZA), detailed as follows:

EXHIBIT	BUSINESS NAME	ISSUING AUTHORITY	VALIDITY OF CERTIFICATION
"HHHH-1"	Phoenix Gold Energy, Inc., Sub-lessee of Philexcel Business Park, Inc.	CDC	Feb. 01, 2008 to Jan. 31, 2009
"HHHH-2"	Ichinomiya Electronics Philippines Corp.	PEZA	2008
"HHHH-3"	Tagum Agricultural Development Co., Inc.	BOI	2008
"HHHH-4"	Dunlop Slazenger (Phils.) Inc.	PEZA	2008
"HHHH-5"	NIDEC Subic Philippines Corporation	SBMA	Dec. 3, 2007 to Dec. 3, 2008
"HHHH-6"	Moog Controls Corporation (Phil. Branch)	PEZA	2008
"HHHH-7"	AGC Flat Glass Philippines, Inc.	PEZA	2008
"HHHH-8"	Metalcrest Technologies Inc.	PEZA	2008
"HHHH-9"	Wind Tunnel International, Inc.	CDC	Oct. 6, 2006 to Feb. 18, 2014
"HHHH-10"	R.D. Policarpio & Co. Inc. (Policarpio)	CDC	May 13, 2007 to May 12, 2010
"HHHH-11"	Nidec Precision Philippines Corporation	PEZA	2008
"HHHH-13"	Davao Agricultural Ventures Corp.	BOI	2009

[24] Exhibit "J[4]", Results of Procedures Performed, no. 1(a) and (e), pages 4 and 9.
[25] Exhibits "HHHH-1" to "HHHH-13".

Since the period covered by the instant claim is taxable year 2008, only the Certifications attesting to the fact that the named entities therein are duly registered with the PEZA or BOI or CDC for the year 2008 shall be considered valid for purposes of determining petitioner's zero-rated sales for the year 2008.

Thus, petitioner's sales to Davao Agricultural Ventures Corporation for the year 2008 amounting to ₱5,108,320.00, which is broken down as follows:

EXHIBIT	BUSINESS NAME	TAX BASE AMOUNT
"EEEE-5.2231"	Davao Agri. Ventures Corp.	₱ 370,539.20
"EEEE-5.2232"	Davao Agri. Ventures Corp.	370,539.20
"EEEE-5.2233"	Davao Agri. Ventures Corp.	422,620.80
"EEEE-5.2234"	Davao Agri. Ventures Corp.	357,019.20
"EEEE-5.2235"	Davao Agri. Ventures Corp.	432,540.80
"EEEE-5.2236"	Davao Agri. Ventures Corp.	450,140.80
"EEEE-5.2237"	Davao Agri. Ventures Corp.	450,140.80
"EEEE-5.2249"	Davao Agri. Ventures Corp.	370,539.20
"EEEE-5.2250"	Davao Agri. Ventures Corp.	370,539.20
"EEEE-5.2251"	Davao Agri. Ventures Corp.	402,539.20
"EEEE-5.2252"	Davao Agri. Ventures Corp.	1,111,161.60
TOTAL		**₱5,108,320.00**

shall be denied VAT zero-rating because the validity period indicated in the BOI Certification is January 1 to December 31, 2009, which is outside the period of claim.

Petitioner's sales to Nidec Subic Philippines Corporation from December 4, 2008 to December 31, 2008 and Phoenix Gold Energy, Inc. from January 1, 2008 to January 31, 2008 should likewise be denied VAT zero-rating as the Certifications do not show that these entities were registered with the CDC and SBMA for the said respective periods. Hence, petitioner's sales to Phoenix Gold Energy, Inc. for January 2008 amounting to ₱104,605,712.60[26] as well as to Nidec Subic Philippines Corporation for the period December 4 to 31, 2008 in the amount of ₱566,328.00[27] shall be disallowed. The same with petitioner's sales to Subic

[26] Exhibit "AAAA-1-A", page 4 of 96.
[27] Exhibit "DDDD-1-C", page 1 of 114.

Shipyard and Engineering amounting to ₱42,670.00[28] for petitioner's failure to submit certification stating that in the year 2008, such entity was a special economic or freeport zone enterprise, or to present other documents to prove that such sales were VAT zero-rated.

In fine, only the sales by petitioner to Ichinomiya Electronics Philippines Corp., Tagum Agricultural Development Co., Inc., Dunlop Slazenger (Phils.), Inc., Moog Controls Corporation (Phil. Branch) (Moog), AGC Flat Glass Philippines, Inc., Metalcrest Technologies Inc. (MTI), Wind Tunnel International, Inc. (WTII), R.D. Policarpio and Co., Inc. (Policarpio), Nidec Precision Philippines Corporation (NPPC), Phoenix Gold Energy, Inc., Sub-lessee of Philexcel Business Park, Inc. (Phoenix) for the period February 1 to December 31, 2008, and Nidec Subic Philippines Corporation for the period January 1 to December 3, 2008, all duly supported by PEZA/CDC Certifications and VAT zero-rated sales invoices in the total amount of ₱1,531,397,312.49, will qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. The amount of ₱1,531,397,312.49 is computed below:

	EXHIBIT	**AMOUNT**
(A) List of Zero-Rated Sales with No Exceptions	EEEE-5	₱ 1,671,783,457.25
(B) List of Zero-Rated Sales with unprovided debit/credit memos	EEEE-6	(27,561,695.40)
(C) List of Zero-Rated Sales reported in 2008 where documents have not been provided	EEEE-7	35,851.31
Total		₱ 1,644,257,613.16[29]
Less: Disallowances		
Difference in Zero-Rated Sales Per VAT Returns and Per Monthly Lists of Sales		2,580,940.07
Reported Zero-Rated Sales to the following entities which do not have proof of registration as special economic or freeport zone enterprise for the following periods:		
Phoenix Gold Energy (January 2008)		104,604,712.60
Nidec Subic Phil. Corp. (December 4 to 31, 2008)		566,328.00
Davao Agricultural Ventures Corp. (2008)		5,108,320.00
TOTAL Valid Zero-Rated Sales		**₱1,531,397,312.49**

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated sales of ₱1,531,397,312.49 will be considered for refund. The rate to be applied is based on the substantiated zero-rated sales

[28] Exhibit "EEEE-5.749".
[29] Exhibit "J[4]", page 5.

over the total amount of reported zero-rated sales, computed as follows:

Substantiated Zero-Rated Sales	=	1,531,397,312.49	=	5.43550873833%
Total Sales		8,173,946,289.33		

The Court will now determine whether petitioner incurred excess input taxes in connection with the foregoing finding.

In support of the input taxes reflected in its 2008 Quarterly VAT Returns, petitioner submitted its suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts which upon verification, the Independent CPA reported as follows: [30]

Total Amount of Input VAT being claimed in the taxable year 2008			**3,296,835,908.58**
Summary of Findings	**Exhibit Reference**	**Amounts**	
No Exceptions:			
Local Goods and Services	FFFF-5	₱ 473,347,695.48	
Importations	FFFF-1	2,764,296,624.39	₱3,237,644,319.87
Exceptions Noted:			
a. Supporting documents were not yet provided:			
Local Goods and Services	FFFF-11	39,790,922.38	
Importations	FFFF-4	7,180,878.38	
b. Supporting documents without appropriate supporting documents:			
Local Goods and Services	FFFF-7	761,380.99	
Importations	FFFF-3	269,357.00	
c. Supporting documents were dated outside the period of claim			
Local Goods and Services	FFFF-6	5,516,237.48	
Importations	FFFF-2	842,838.00	
d. Supporting documents that did not show the amount of input VAT in the face of the documents	FFFF-8	47,789.86	
e. Supporting documents with no TPC TIN of the company	FFFF-9	3,412,500.16	
f. Supporting documents not in the name of the company	FFFF-10	1,369,684.46	59,191,588.71
Total amount of input VAT without exceptions			**₱3,296,835,908.58**

[30] Exhibit "J[4]", page 14.

It is worth to note that the total input VAT of ₱3,296,835,908.58 examined by the ICPA is higher by ₱625,748.38 when compared with the ₱3,296,210,160.14 total input VAT upon which petitioner computed its refundable claim. Thus, the Court shall have as reference point the lower input VAT of ₱3,296,210,160.14 in the determination of petitioner's refundable claim.

The total amount of ₱59,191,588.71 input VAT excepted by the ICPA should be disallowed for they are not properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005, as amended.

In addition, petitioner's input VAT claim on importation of goods in the amount of ₱2,083,964,047.62 which do not have supporting machine-validated IEIRDs, Bureau of Customs or bank official receipts or are supported by IEIRDs with no machine validation shall be denied pursuant to Section 110(A)(1)(b) of the NIRC of 1997, as amended, and Section 4.110-8(a)(1) of RR No. 16-2005, as amended. Below is the breakdown of the disallowed input VAT of ₱2,083,964,047.62:

SUPPLIER'S NAME	EXHIBIT	INPUT TAX	REASON FOR DISALLOWANCE
TOTSA	"FFFF-1.1"	₱ 11,738,155.00	NO IEIRD
TOAPPL	"FFFF-1.15"	140,769.00	No Machine Validation
TOAPPL	"FFFF-1.17"	118,517.00	No Machine Validation
TOAPPL	"FFFF-1.29"	234,152.00	No Machine Validation
TOAPPL	"FFFF-1.31"	168,706.00	No Machine Validation
TOAPPL	"FFFF-1.32"	234,148.00	No Machine Validation
TOAPPL	"FFFF-1.33"	249,140.00	No Machine Validation
Total Fluides	"FFFF-1.43"	129,535.00	No Machine Validation
TOTSA	"FFFF-1.47"	19,545,093.25	No Machine Validation
TOTSA	"FFFF-1.48"	32,439,479.91	No Machine Validation
TOTSA	"FFFF-1.49"	42,831,565.01	No Machine Validation
TOTSA	"FFFF-1.53"	105,041,313.79	No Machine Validation
TOTSA	"FFFF-1.54"	31,355,991.96	No Machine Validation
TOTSA	"FFFF-1.55"	74,620,176.25	No Machine Validation
TOTSA	"FFFF-1.57"	125,189,255.24	No Machine Validation
TOTSA	"FFFF-1.60"	30,638,476.50	No Machine Validation
TOTSA	"FFFF-1.62"	16,310,941.00	No Machine Validation
TOTSA	"FFFF-1.63"	48,950,434.50	No Machine Validation
TOAPPL	"FFFF-1.64"	425,450.00	No Machine Validation
TOAPPL	"FFFF-1.65"	405,584.00	No Machine Validation

TOAPPL	"FFFF-1.76"	609,856.00	No Machine Validation
TOAPPL	"FFFF-1.78"	759,346.00	No Machine Validation
TOAPPL	"FFFF-1.79"	403,511.00	No Machine Validation
TOAPPL	"FFFF-1.81"	126,216.00	No Machine Validation
TOAPPL	"FFFF-1.83"	547,540.00	No Machine Validation
TOAPPL	"FFFF-1.84"	394,321.00	No Machine Validation
TOAPPL	"FFFF-1.86"	256,639.00	No Machine Validation
TOAPPL	"FFFF-1.87"	261,719.00	No Machine Validation
TOAPPL	"FFFF-1.90"	413,812.00	No Machine Validation
TOTSA	"FFFF-1.94"	18,096,018.00	NO IEIRD
TOTSA	"FFFF-1.95"	43,426,010.92	No Machine Validation
TOTSA	"FFFF-1.96"	115,137,919.63	No Machine Validation
TOTSA	"FFFF-1.97"	77,766,312.20	No Machine Validation
TOAPPL	"FFFF-1.120"	277,146.00	No Machine Validation
TOTSA	"FFFF-1.123"	281,443.00	No Machine Validation
TOTSA	"FFFF-1.124"	26,357,007.30	No Machine Validation
TOTSA	"FFFF-1.125"	48,359,241.30	No Machine Validation
TOTSA	"FFFF-1.126"	28,149,045.41	No Machine Validation
TOTSA	"FFFF-1.127"	29,973,010.29	No Machine Validation
TOTSA	"FFFF-1.128"	42,014,419.21	No Machine Validation
TOTSA	"FFFF-1.134"	46,327,531.30	NO IEIRD
TOTSA	"FFFF-1.136"	19,590,671.85	NO IEIRD
TOTSA	"FFFF-1.137"	36,507,642.89	No Machine Validation
Total Fluides	"FFFF-1.138"	6,644,628.20	No Machine Validation
TOTSA	"FFFF-1.139"	21,970,139.54	NO IEIRD
TOTSA	"FFFF-1.140"	10,352,870.00	NO IEIRD
TOTSA	"FFFF-1.141"	64,260,334.40	No Machine Validation
TOTSA	"FFFF-1.142"	23,838,085.91	No Machine Validation
TOTSA	"FFFF-1.143"	61,105,848.64	No Machine Validation
TOTSA	"FFFF-1.144"	6,176,415.93	NO IEIRD
TOTSA	"FFFF-1.145"	2,945,617.00	NO IEIRD
TOTSA	"FFFF-1.149"	4,532,217.00	NO IEIRD
TOTSA	"FFFF-1.150"	13,836,905.00	NO IEIRD
TOTSA	"FFFF-1.151"	33,279,441.66	No Machine Validation
TOTSA	"FFFF-1.152"	24,123,448.54	No Machine Validation
TOTSA	"FFFF-1.158"	13,334,985.00	NO IEIRD
TOTSA	"FFFF-1.159"	36,109,214.58	No Machine Validation
TOTSA	"FFFF-1.160"	32,630,390.48	No Machine Validation
TOTSA	"FFFF-1.161"	34,083,313.08	NO IEIRD
TOTSA	"FFFF-1.162"	10,049,940.00	NO IEIRD
TOTSA	"FFFF-1.163"	16,752,167.61	No Machine Validation
TOTSA	"FFFF-1.164"	7,028,987.00	NO IEIRD
TOTSA	"FFFF-1.165"	14,332,061.59	NO IEIRD
TOTSA	"FFFF-1.166"	61,240,089.98	NO IEIRD
TOTSA	"FFFF-1.167"	32,159,497.92	No Machine Validation
TOTSA	"FFFF-1.169"	6,092,413.76	NO IEIRD
TOTSA	"FFFF-1.170"	3,295,881.84	NO IEIRD
TOTSA	"FFFF-1.171"	23,838,085.91	No Machine Validation
TOTSA	"FFFF-1.176"	7,066,922.29	NO IEIRD
TOTSA	"FFFF-1.177"	21,577,205.00	No Machine Validation
TOTSA	"FFFF-1.178"	3,394,921.81	NO IEIRD
TOTSA	"FFFF-1.179"	26,486,261.63	No Machine Validation
TOTSA	"FFFF-1.181"	6,195,053.00	NO IEIRD
TOTSA	"FFFF-1.182"	6,408,487.00	NO IEIRD
TOTSA	"FFFF-1.183"	24,535,523.35	No Machine Validation
TOTSA	"FFFF-1.186"	7,579,235.56	NO IEIRD
TOTSA	"FFFF-1.187"	15,525,126.91	NO IEIRD

TOTSA	"FFFF-1.188"	11,666,157.23	NO IEIRD
TOTSA	"FFFF-1.189"	10,769,382.44	NO IEIRD
TOTSA	"FFFF-1.190"	5,772,737.00	NO IEIRD
TOAPPL	"FFFF-1.197"	332,389.00	No Machine Validation
TOTSA	"FFFF-1.203"	19,725,340.45	NO IEIRD
TOTSA	"FFFF-1.204"	1,471,345.88	NO IEIRD
TOTSA	"FFFF-1.205"	8,200,740.00	NO IEIRD
TOTSA	"FFFF-1.206"	47,873,828.40	No Machine Validation
TOTSA	"FFFF-1.207"	15,836,380.00	NO IEIRD
TOTSA	"FFFF-1.208"	13,081,612.15	NO IEIRD
TOTSA	"FFFF-1.209"	5,617,013.00	NO IEIRD
TOTSA	"FFFF-1.210"	32,159,497.92	No Machine Validation
TOTSA	"FFFF-1.214"	42,217,716.86	No Machine Validation
TOTSA	"FFFF-1.215"	4,552,461.95	NO IEIRD
TOTSA	"FFFF-1.216"	3,558,326.16	NO IEIRD
TOTSA	"FFFF-1.217"	1,540,196.50	NO IEIRD
TOTSA	"FFFF-1.218"	27,716,748.90	NO IEIRD
TOTSA	"FFFF-1.219"	7,806,074.00	NO IEIRD
TOTSA	"FFFF-1.220"	3,383,920.00	NO IEIRD
TOTSA	"FFFF-1.221"	6,416,935.95	No Machine Validation
SGEI	"FFFF-1.223"	46,402,092.00	No Machine Validation
TOTSA	"FFFF-1.226"	8,278,172.00	No Machine Validation
TOTAL		**₱2,083,964,047.62**	

Thus, out of petitioner's claimed total input tax of ₱3,296,210,160.20, only the amount of ₱1,153,054,523.81, as computed below, represents petitioner's valid input tax:

Total Input VAT Claim	₱ 3,296,210,160.14
Less: Disallowances	
Per Independent CPA's report	59,191,588.71
Per this Court's further verification	2,083,964,047.62
Total disallowances	2,143,155,636.33
Properly substantiated input tax	**₱1,153,054,523.81**

At this juncture, the output taxes reported by petitioner in its Quarterly VAT Returns for the year 2008 shall be compared with the foregoing substantiated input taxes, to wit:

	1st Qtr	**2nd Qtr**	**3rd Qtr**	**4th Qtr**	**Total**
	Exhibit "HH"	Exhibit "LL"	Exhibit "QQ"	Exhibit "UU"	
Output tax	811,711,422.45	997,171,706.98	760,118,722.05	614,560,801.74	₱ 3,183,562,653.22
Properly substantiated input tax					**1,153,054,523.81**
Output tax still due					**₱2,030,508,129.41**

As shown above, petitioner's properly substantiated input taxes for the year 2008 are not sufficient to cover its output taxes for the same year. While petitioner reflected in its Quarterly VAT Return[31] for the first quarter of 2008 the amount of ₱205,081,910.96 as "Input Tax Carried Over from Previous Period", it however failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input tax carry-over of ₱205,081,910.96 cannot be validly applied against petitioner's output tax pursuant to Section 110(A) and (B) of the NIRC of 1997, as amended, which states as follows:

> 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:
>
> xxx xxx xxx
>
> (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. xxx

Since there is no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate under Section 112(A) of the NIRC of 1997, as amended, the instant claim must be denied.

It is a cardinal rule in taxation that a claim for tax refund partakes the nature of a tax exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption

[31] Exhibit "HH".

from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge the burden is fatal to the claim.[32]

WHEREFORE, the Petitions for Review separately filed by petitioner Total (Philippines) Corporation for refund or issuance of tax credit certificate are hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

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

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[32] *Emmanuel and Zenaida Aguilar vs. Commissioner of Internal Revenue*, CA-G.R SP 16432, March 30, 1990.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice