CTA Form No. 8

20-000458-0064

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10434

MONTE SOLAR ENERGY INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam. P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & BERNARDO
Units 815-816, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **January 18, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 18, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MONTE SOLAR ENERGY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10434

Members:
DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO *JJ.*

Promulgated:
JAN 18 2024; 11:00AM

x---x

DECISION

REYES-FAJARDO, *J.*:

This Petition for Review[1] filed on December 29, 2020, by Monte Solar Energy Inc. against the Commissioner of Internal Revenue, seeks to refund or issuance a tax credit certificate (TCC) in the amount of ₱4,600,672.57, representing the former's alleged unutilized input value-added taxes (VAT) paid and incurred on its domestic purchases of goods and services, attributable to its zero-rated sales of power generated from renewable sources of energy, for the 1st to 4th quarters of Calendar Year (CY) 2018.

[1] Docket- Vol. I, pp. 7 to 22.

PARTIES

Petitioner Monte Solar Energy, Inc. is a domestic corporation, duly organized and existing under Philippine laws,[2] with the following primary purpose:

> To carry on the business of exploring, developing and utilizing renewable energy resources, such as but not limited to biomass, biogas, hydropower, wind, solar energy, including operating, managing, maintaining and rehabilitating solar energy systems, to include bulk procurement, marketing and setting up of arrangements and brokerage of the same solar energy systems as necessary for the generation, transmission, distribution and sale and delivery of electricity to domestic, commercial, industrial users or distribution companies, and the acquisition and/or lease of franchises from private and/or government entities and such other rights and activities incidental thereto, or for the purpose set forth herein.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) - Revenue District Office (RDO) No. 076 as a VAT taxpayer, under Taxpayer Identification Number (TIN) 008-828-119-000.[4] It is also registered with the Department of Energy (DOE)[5] and the Board of Investments (BOI) as a Renewal Energy (RE) Developer of an 18 MW DC Monte Solar Energy Project[6] (Bais Solar Power Plant) under Republic Act (RA) No. 9513, otherwise known as the "Renewable Energy Act." Likewise, the Energy Regulatory Commission (ERC) certified that petitioner owns and operates the Bais Solar Power Plant located in Barangay Tamisu, Bais City, Negros Occidental,[7] which generates energy from renewable resources.[8]

On the other hand, respondent is the duly appointed Commissioner of the BIR, vested under the law with the authority to

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2 Exhibit "P-1" (Certificate of Filing of Amended Articles of Incorporation issued by the SEC on March 11, 2016), Docket – Vol. II, p. 688.

3 Paragraph (Par.) 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. I, p. 247.

4 Par. 2, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibit "P-2," Docket – Vol. II, p. 726.

5 Par. 3, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibit "P-3," Docket – Vol. II, p. 727.

6 Par. 3, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibit "P-4," Docket – Vol. II, p. 728.

7 Exhibit "P-5," Docket – Vol. II, p. 737.

8 Par. 4, Stipulated Facts, JSFI, Docket – Vol. I, p. 248.

carry out the duties of said office, including among others, the power to decide, approve, and grant refunds of unutilized input VAT. He may be served summons, pleadings, and other processes of this Court at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[9]

FACTS

For the 1st to 4th Quarters of CY 2018, petitioner, through the BIR's Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Returns (BIR Form No. 2550-Q), detailed below:

CY 2018	Return Type	Filling Reference No.	Date of Filing
1st quarter	Original	101800024903551	April 25, 2018
2nd quarter	Original	101800026200514	July 25, 2018
3rd quarter	Original	101800027278415	October 15, 2018
4th quarter	Original	101900028723997	January 25, 2019[10]
4th quarter	Amended	101900029715577	March 29, 2019[11]

On June 30, 2020, petitioner filed with the BIR – Excise Audit Division 1, an administrative claim for refund of its unutilized input VAT in the amount of ₱4,600,672.57, for the 1st to 4th quarters of CY 2018.[12]

On December 4, 2020, petitioner received a Notice of Denial signed by Mr. Manuel V. Mapoy, OIC – Assistant Commissioner, Large Taxpayers Service (ACIR Mapoy), denying its administrative claim for refund. In so ruling, ACIR Mapoy explained:

> ...
>
> Relative thereto, please be informed that pursuant to Republic Act (RA) No. 9513 being a Renewable Energy (RE) Developer, your local purchases of goods and services are free of VAT or subject to VAT rate of 0%. Thus, any input VAT paid to

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9 Par. 3, The Parties, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket – Vol. I, pp. 8 and 119, respectively.

10 Par. 5, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibits "P-6-1" to "P-6-4," Docket – Vol. II, pp. 744 to 751.

11 Par. 6, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibit "P-6-5," Docket – Vol. II, pp. 752 to 753.

12 Par. 7, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibits "P-7" to "P-7-8," Docket – Vol. II, pp. 754 to 764.

> your suppliers of goods and services cannot be claimed from our Office, instead, your company's recourse is to seek reimbursement of the alleged input VAT paid from your suppliers of goods and services (CTA Case No. 8931 Hedcor, Inc. vs. CIR dated October 3, 2017). Hence, your claim is denied for lack of legal basis.[13]

On December 29, 2020, petitioner filed its Petition for Review,[14] docketed as CTA Case No. 10434, to which respondent posted his Answer[15] on March 15, 2021.

On July 15, 2021, the pre-trial conference was held.[16]

On August 3, 2021, the parties posted their Joint Stipulation of Facts and Issue (JSFI),[17] which was approved through Resolution dated October 25, 2021.[18] On the basis thereof, a Pre-Trial Order (PTO) dated February 7, 2022,[19] was issued. Upon petitioner's motion,[20] said PTO was amended on March 29, 2022.[21]

Trial ensued. Petitioner presented as its witnesses: (1) Ms. Katherine O. Constantino,[22] the Court-commissioned Independent Certified Public Accountant (ICPA Constantino);[23] and, (2) Ms. Shela Syed S. Imran, petitioner's Acting Chief Finance Officer.[24]

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13 Exhibit "P-8." Docket – Vol. II, p. 765.
Par. 8, Stipulated Facts, JSFI, Docket – Vol. I, pp. 248 to 249.

14 Docket – Vol. I, pp. 7 to 22.

15 Docket – Vol. I, pp. 119 to 128.

16 Notice of Resetting dated June 1, 2021, Docket – Vol. I, p. 191; Minutes of the hearing held on, and Order dated, July 15, 2021, Docket – Vol. I, pp. 199 to 199-C, and 200 to 202, respectively. Notice of Pre-Trial Conference dated April 27, 2021, Docket – Vol. I, pp. 135 to 137.

17 Docket – Vol. I, pp. 247 to 256.

18 Docket – Vol. I, p. 301.

19 Docket – Vol. II, pp. 587 to 600.

20 *Omnibus Motion (I) To Amend Pre-Trial Order, and (II) To Set a Commissioner's Hearing to Correct the Marked Exhibits* filed on February 22, 2022, Docket – Vol. II, pp. 619 to 622.

21 Amended Pre-Trial Order dated March 29, 2022, Docket – Vol. II, pp. 648 to 661. Refer also to the Resolution dated March 14, 2022, Docket – Vol. II, p. 639.

22 Exhibit "P-14," Docket – Vol. II, pp. 626 to 634; Minutes of the hearing held on, and Order dated, March 17, 2022, Docket – Vol. II, pp. 640 to 643.

23 *Oath of Commission* dated October 26, 2021, Docket – Vol. I, p. 316; Minutes of the hearing held on, and Order dated, October 26, 2021, Docket – Vol. I, pp. 306 to 310.

24 Exhibit "P-13," Docket – Vol. I, pp. 335 to 347; Minutes of the hearing held on, and Order dated, March 17, 2022, Docket – Vol. II, pp. 640 to 643.

On April 22, 2022, petitioner filed its Formal Offer of Evidence,[25] to which respondent filed his Comment (Re: Formal Offer of Evidence dated 22 April 2022) on April 27, 2022.[26]

Under Resolution dated June 20, 2022,[27] the Court admitted the pieces of evidence offered by petitioner, except: Exhibits "P-22-1 (Page 2 of 3, Page 3 of 3)," "P-22-2 (Page 3 of 4, Page 4 of 4)," "P-22-3 (Page 3 of 4, Page 4 of 4)," "P-22-4 (Page 3 of 4, Page 4 of 4)," "P-22-5 (Page 3 of 4, Page 4 of 4)," "P-22-6 (Page 3 of 4, Page 4 of 4)," "P-22-7 (Page 3 of 4, Page 4 of 4)," "P-22-8 (Page 3 of 4, Page 4 of 4)," "P-22-9 (Page 3 of 4, Page 4 of 4)," "P-22-10 (Page 3 of 4, Page 4 of 4)," "P-22-11 (Page 3 of 4, Page 4 of 4)," "P-22-12 (Page 3 of 4, Page 4 of 4)," "P-23 to P-59," "P-108 (Page 1 of 2)," "P-112 to P-131," "P-132 (Page 1 of 2)," "P-133," "P-206 (Page 1 of 2)," "P-247 (Page 1 of 2)," "P-307 (Page 3 of 3)," "P-345 (Page 1 of 2)," "P-420 (Page 1 of 2)," "P-422," "P-424 to P-426," "P-427 (Page 2 of 2)," "P-428 (Page 2 of 2)," "P-429 (Page 2 of 2)," "P-458 (Page 1 of 2)," "P-459," "P-462," "P-621 (Page 1 of 2)," "P-657 (Page 1 of 2)," and "P-661," for failure to present the originals thereof for comparison.

On July 8, 2022, petitioner filed a Motion for Reconsideration (Re: Resolution dated June 20, 2022),[28] to which respondent filed his Comment (Re: Motion for Reconsideration [Re: Resolution dated 20 June 2020]) on July 20, 2022.[29]

Through Resolution dated August 25, 2022,[30] petitioner's Motion for Reconsideration was denied. Petitioner then rested its case.

Respondent presented Revenue Officer Criscela M. Lacsamana[31] as his witness.

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25 Docket – Vol. II, pp. 667 to 687.

26 Docket – Vol. II, pp. 785 to 787.

27 Docket – Vol. II, pp. 791 to 792.

28 Docket – Vol. II, pp. 802 to 806.

29 Docket – Vol. II, pp. 809 to 811.

30 Docket – Vol. II, pp. 814 to 819.

31 Exhibit "R-6," Docket – Vol. I, pp. 169 to 175; Minutes of the hearing held on, and Order dated, July 5, 2022, Docket – Vol. II, pp. 797 to 801.

On August 31, 2022, respondent filed his Formal Offer of Evidence,[32] to which petitioner filed its Comment (Re: Respondent's Formal Offer of Evidence dated August 31, 2022) on September 12, 2022.[33]

By Resolution dated October 19, 2022, [34] the pieces of evidence offered by respondent were admitted.[35]

Under Minute Resolution dated December 19, 2022,[36] this case was submitted for decision, considering respondent's Memorandum filed on November 18, 2022,[37] and petitioner's Memorandum, filed on November 28, 2022.[38]

ISSUE

Is petitioner entitled to a refund in the amount of ₱4,600,672.57 representing its unutilized input VAT for CY 2018?[39]

ARGUMENTS

Petitioner maintains that it had satisfied all the requisites for the grant of refund of unused input VAT pivoted on Section 112 (A) and (C) of the 1997 National Internal Revenue Code, as amended by Republic Act (RA) No. 10963 (NIRC, as amended).[40] In particular: 1) its administrative and judicial claims for input VAT refund were timely filed; 2) it is a VAT-registered person; 3) its sale of power

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32 Docket - Vol. II, pp. 820 to 823.
33 Docket - Vol. II, pp. 825 to 827.
34 Docket - Vol. II, pp. 829 to 830.
35 Docket - Vol. II, pp. 829 to 830.
36 Minute Resolution dated December 19, 2022, Docket - Vol. II, p. 871.
37 Docket - Vol. II, pp. 831 to 841.
38 Docket - Vol. II, pp. 843 to 869.
39 Issues, JSFI, Docket - Vol. I, p. 249.
40 Tax Reform for Acceleration and Inclusion (TRAIN).
AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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generated through the Bais Solar Power Plant is subject to zero percent (0%) VAT; 4) the input taxes it claimed are not transitional input taxes; 5) it had duly substantiated its input taxes; 6) said substantiated input taxes are attributable to its zero-rated sales of power generated from renewable sources of energy; and, 7) such substantiated input taxes were not applied to its output VAT.

Petitioner points out that the BIR erred in relying on *Hedcor, Inc. v. Commissioner of Internal Revenue (Hedcor),*[41] since it does not constitute a binding precedent.

Respondent counters that: *one,* petitioner is not the proper party to seek the refund citing *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue* (*Coral Bay*);[42] *two,* tax refunds are subject to administrative routinary investigation; and, *three,* claims for refund are in the nature of tax exemption, which are construed strictly against the taxpayer.

RULING

The Petition is partially granted.

Section 112 (A) and (C) of the NIRC, as amended,[43] provides:

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

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41 CTA Case No. 8931, October 3, 2017.

42 G.R. No. 190506, June 13, 2016.

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

> 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.
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> ...
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof:
>
> ...
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Jurisprudence has laid down requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT, as follows:

> As to the timeliness of the filing of the administrative and judicial claims:
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> 1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[44]

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

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[45]

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

3. the taxpayer is a VAT-registered person;[46]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[47]

5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[48]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[49]

7. the input taxes are due or paid;[50]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[51] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[52]

Refer to *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue v. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

46 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra.

52 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation v. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc.*, supra.

Moreover, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[53]

Significantly, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[54]

First and Second Requisites: petitioner timely filed its administrative and judicial claims for input VAT refund.

Section 112(A) of the NIRC, as amended, commands the taxpayer to file an administrative claim for input VAT refund, within two (2) years, following the close of the taxable quarter when the sales were made.

Section 112(C) of the same Code grants respondent a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund. At present, said invoices, official receipts, and other supporting documents are submitted upon the filing the taxpayer's administrative claim for input VAT refund.[55] In turn, the taxpayer, may appeal to the Court, within thirty (30) days: a) from receipt of respondent's adverse decision within said 90-day period; or b) after the lapse of said 90-day period, whichever is earlier.

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53 *Team Energy Corporation v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

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

55 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue (CIR)*, G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the documents are deemed complete upon filing of the taxpayer's administrative claim for input VAT refund.

Petitioner's input VAT refund claim covers the 1st to 4th quarters of CY 2018. Counting two (2) years from the close of the four (4) quarters of CY 2018, the respective last days for the filing of its administrative claim are as follows:

Quarter (CY 2018)	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim for Refund**
1st Quarter	March 31, 2018	March 31, 2020
2nd Quarter	June 30, 2018	June 30, 2020
3rd Quarter	September 30, 2018	September 30, 2020
4th Quarter	December 31, 2018	December 31, 2020

Pursuant to Section 4(z) of RA No. 11469,[56] the Secretary of Finance (SOF) issued Revenue Regulations (RR) No. 7-2020 dated March 27, 2020,[57] which extended the deadline for Application for VAT Credit/Refund Claims to April 30, 2020, and RR No. 11-2020 dated April 29, 2020,[58] which further extended said deadline to May 30, 2020 or thirty (30) days from the date of the lifting of the quarantine,[59] whichever comes later.

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56 AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECIDED NATIONAL POLICY AND FOR OTHER PURPOSES.

...

SEC. 4. *Authorized Powers.-*

...

(z) Move statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine;

57 Implementing Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act," particularly on the extension of statutory deadlines and timeliness for the filing and submission of any document and the payment of taxes.

58 Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4 (z) of RA No. 11469, otherwise known as "Bayanihan to Heal As One Act."

59 The term "quarantine" used herein shall mean any announcement by the National Government resulting to limited operations and mobility, including, but not limited to, *community quarantine, enhanced community quarantine, modified community quarantine, and general community quarantine.* (Section 2, RR No. 11-2020).

RR No. 16-2020 dated June 19, 2020[60] extended the filing due date by taxpayer-claimants of claims for VAT refund for calendar quarter ending March 31, 2018 to July 15, 2020 in places declared to be in GCQ state.[61]

As petitioner's administrative claim for the 1st to 4th quarters of CY 2018 was filed on June 30, 2020,[62] the same was timely made within the above prescribed and extended period.

Respondent had ninety (90) days from June 30, 2020, or until September 28, 2020 to act on said administrative claim.

Pursuant to Section 4(tt) of RA No. 11494,[63] the SOF issued RR No. 27-2020 dated October 6, 2020,[64] which suspended the ninety (90)-day period for processing of input VAT refund claims in Section 112(C) of the NIRC, as amended, during the effectivity of RA No. 11494 or until the next adjournment of the Eighteenth Congress on December 19, 2020.[65]

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60 Regulations Further Suspending the Due Dates in the Application of the Ninety (90)-Day Period to Process Value Added Tax (VAT) Refund/ Claim Pursuant to Section 112 of the Tax Code of 1997, as Amended by RA No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency.

61 Section 2, RR No. 16-2020.

62 Exhibits "P-7" and "P-7-1," Docket – Vol. II, pp. 754 to 756.

63 AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, otherwise known as *"Bayanihan to Recover As One Act."*

...
Section 4.
...

(tt) Moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under CQ;

...

64 Regulations Suspending the Filing and Ninety (90)- Day Processing of VAT Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4 (tt) of RA No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act."

65 R.A. No. 11494 became effective on September 11, 2020, before the lapse of respondent's 90-day period to act on petitioner's administrative claim for refund on September 30, 2020.

On December 4, 2020, petitioner received ACIR Mapoy's denial of its administrative claim.[66] Counting thirty (30) days from December 4, 2020, petitioner had until January 4, 2021[67] to seek judicial redress. The timely filing of petitioner's Petition for Review on December 29, 2020,[68] clothed the Court with jurisdiction over CTA Case No. 10434.

Third Requisite: Petitioner is a VAT-registered person.

Petitioner is registered with the BIR as a VAT taxpayer with TIN 008-828-119-000 per Certificate of Registration effective October 24, 2014.[69]

Fourth Requisite: Petitioner was able to establish, and partially substantiate that it is engaged in zero-rated sales during the 1st to 4th quarters of CY 2018.

Section 15(g) of RA No. 9513,[70] provides that the sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) VAT, as follows:

> CHAPTER VII
> GENERAL INCENTIVES
>
> SECTION 15. *Incentives for Renewable Energy Projects and Activities.* – **RE Developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE**, in consultation with the BOI, **shall be entitled** to the following incentives:

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66 Exhibit "P-8," Docket – Vol. II, p. 765.
67 January 3, 2021 fell on a Sunday.
68 Docket – Vol. I, pp. 7 to 22.
69 Exhibit "P-2," Docket – Vol. II, p. 726. Par. 2, Stipulated Facts, JSFI, Docket – Vol. I, p. 248.
70 Renewable Energy Act of 2008.

...

(g) Zero Percent Value Added-Tax Rate. – **The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.**[71]

Relative thereto, Section 108(B)(7) of the NIRC, as amended, states:

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**

...

(7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, **solar**, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

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71 Boldfacing supplied.
Part III, Rule 5, Section 13.G, of the Implementing Rules and Regulations (IRR) of RA No. 9513 provides:

...

SEC. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

...

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) **Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to,** biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;

To implement the foregoing provision, Section 4.108-3(f) of RR No. 16-2005 provides:

> SEC. 4.108-3. Definitions and Specifics Rules on Selected Services. -
>
> ...
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[72] VAT on their gross receipts; *Provided*, That **sale of power or fuel generated through renewable sources of energy such as, but not limited to,** biomass, **solar**, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT.**
>
> ***'Generation companies'* refers to persons or entities authorized by the Energy Regulatory Commissioner (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA).** They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.
>
> ...

Petitioner satisfied the foregoing conditions for VAT zero-rating under Section 108 (B)(7) of the NIRC, as amended because: *first*, DOE Certificate of Registration No. SESC 2014-09-090 issued pursuant to RA No. 9513 dated May 26, 2015,[73] stating that petitioner is an RE Developer of Solar Energy Resources registered with the DOE; and *second*, BOI Certificate of Registration No. 2015-218 dated October 15, 2015,[74] stating that petitioner is a Renewable Energy Developer of 18 MW DC Monte Solar Energy Project. Additionaly, ERC Certificate of Compliance No. 17-02-M-00103V dated February 6, 2017,[75] recognized too, that petitioner owns and operates the Bais Solar Power Plant with 18 MWp DC capacity located in Barangay Tamisu, Bais City, Negros Occidental which generates energy from renewable resources.[76]

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73 Par. 2, Stipulated Facts, JSFI, Docket - Vol. I, p. 248; Exhibit "P-3," Docket - Vol. II, p. 727.

74 Exhibit "P-4," Docket - Vol. II, p. 728.

75 Exhibit "P-5," Docket - Vol. II, pp. 737 to 743.

76 Par. 2 to 4, Stipulated Facts, JSFI, Docket - Vol. I, p. 248.

Nonetheless, petitioner must show compliance with the pertinent invoicing and substantiation requirements, under Sections 113(A) and (B), and 237 of the NIRC, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[77] which respectively state:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided,* That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt:

---

77 Consolidated Value-Added Tax Regulations of 2005.

Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

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

...

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

....

SEC. 4.113-1. *Invoicing Requirements.* —

(A) A VAT-registered person shall issue: —

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

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

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT official receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

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

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

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

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

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

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

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

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

In its Quarterly VAT Returns for the four (4) quarters of CY 2018, petitioner reported zero-rated sales/receipts in the total amount of ₱333,120,883.93, broken down as follows:[78]

Exhibit No.	Period Covered	Amount
"P-6-1"	1st Quarter	₱ 106,034,064.20
"P-6-2"	2nd Quarter	83,029,140.82
"P-6-3"	3rd Quarter	65,485,369.61
"P-6-5"	4th Quarter	78,572,309.30
Total zero-rated sales		**₱ 333,120,883.93**

To substantiate its zero-rated sales, petitioner presented its schedule of zero-rated sales,[79] summary list of sales,[80] as well as the

[78] Exhibits "P-6-1" to "P-6-4," Docket – Vol. II, pp. 744 to 751.

[79] Exhibit "P-20-1," USB marked as Exhibit "P-15-2."

related ORs,[81] which were all examined by the Court-commissioned ICPA, Ms. Katherine O. Constantino (ICPA Constantino) of Constantino and Partners.

Upon examination, ICPA Constantino noted the following findings:

	Description	Annex Ref[82]	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
I. Properly Supported							
1	Zero-rated sales/receipts properly supported by original VAT Reg. TIN official receipts (ORs)	1-1Q-a 1-2Q-a 1-3Q-a 1-4Q-a	₱ 105,210,163.02	₱ 81,832,521.68	₱ 64,542,543.80	₱ 77,699,963.19	₱ 329,285,191.69
	Subtotal		105,210,163.02	81,832,521.68	64,542,543.80	77,699,963.19	329,285,191.69
II. Other Findings							
1	Interest income classified as zero-rated sales supported by original zero-rated ORs	1-1Q-b 1-2Q-b 1-3Q-b 1-4Q-b	808,254.73	1,195,370.47	943,412.33	874,933.51	3,821,971.04
2	Cancelled original zero-rated ORs	1-1Q-c 1-3Q-c 1-4Q-c	-	-	-	-	-
3	Unreconciled difference between quarterly VAT returns and Schedule of zero-rated Sales		15,646.45	1,248.67	(586.52)	(2,587.40)	13,721.20
	Subtotal		823,901.18	1,196,619.14	942,825.81	872,346.11	3,835,692.24
Total			₱106,034,064.20	₱83,029,140.82	₱65,485,369.61	₱78,572,309.30	₱ 333,120,883.93

Upon further verification, the Court finds the foregoing in order.

Therefore, out of petitioner's declared total zero-rated sales of ₱333,120,883.93 for the subject periods of claim, only the amount of ₱329,285,191.69 duly supported by zero-rated official receipts qualifies as zero-rated sales under Section 108(B)(7) of the NIRC of 1997, as amended.

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80 Exhibit "P-20-2," USB marked as Exhibit "P-15-2."

81 Exhibit "P-21-1" to "P-21-97," USB marked as Exhibit "P-15-2."

82 *Annex 1 to the ICPA Report*, Exhibit No. "P-15," USB marked as Exhibit "P-15-2."

Fifth Requisite: Petitioner need not comply with the fifth requisite, since its VAT zero-rating was made pursuant to Section 108(B)(7) of the 1997 NIRC, as amended, and not under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2) of the same Code.

Sixth requisite: the input VAT being claimed are not transitional input taxes.

In its Quarterly VAT Returns for the CY 2018, petitioner declared total input VAT of ₱4,600,672.51 from its domestic purchases of goods and services, as shown below:

VAT	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Domestic Purchase of Goods Other Than Capital Goods	₱ 13,707.02	₱ 191,962.48	₱ 53,383.16	₱ 23,996.03	₱ 283,048.69
Domestic Purchase of Services	1,432,757.08	440,983.67	2,177,082.63	266,800.44	4,317,623.82
Total Current Purchases	**₱1,446,464.10**	**₱632,946.15**	**₱2,230,465.79**	**₱290,796.47**	**₱4,600,672.51**

Said input taxes are not transitional input taxes. Section 111(A)[83] of the NIRC, as amended, states that transitional input taxes are realized when: *one,* a person not previously liable for VAT, becomes liable for said tax; and *two,* on newly VAT-registered persons. Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT

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83 SEC. 111. *Transitional/Presumptive Input Tax Credits.* –

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

d

status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[84]

Thus, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Seventh requisite: petitioner had input taxes due and paid.

To recall, petitioner sought to refund input VAT for the 1st to 4th quarters of CY 2018 in the amount of ₱4,600,672.57. Petitioner states that its input VAT arose from its domestic purchases of goods and services, attributable to its sales of power generated from renewable sources of energy.[85]

In this regard, Section 15 (g) of RA No. 9513 declares that a Renewable Energy (RE) Developers' purchases of local supply of goods, properties, and services needed for the development, construction and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors, shall be entitled zero percent (0%) VAT:

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84 See *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 173425, September 4, 2012.

85 Par. 55, Memorandum, Docket – Vol. II, pp. 843-869; Exhibit P-13, Sworn Statement of Ms. Shela Syed S. Imran to Questions propounded by Atty. F. Alfontino A. Solmirano, Docket – Vol. I, pp. 335-347:

....

Q20: You mentioned earlier that this case involves the Company's claim for refund of excess and unutilized input VAT for the four quarters of CY 2018 amounting to P4,600,672.57 attributable to its zero-rated sales of power generated from renewable sources of energy. How did the Company incur these input VAT credits?

A: The Company incurred these input VAT credits on its domestic purchases of goods and services in the course of generating and selling renewable energy.

Q21: What is your basis for saying that the Company has excess and unutilized input VAT in the amount of P4,600,672.57 in CY 2018?

A: Based on the Company's Quarterly VAT Returns for the four quarters of CY 2018, the Company accumulated input VAT credits on its domestic purchases of goods and services for the four quarters of CY 2018, amounting to ₱4,600,672.57. (Boldfacing supplied).

...

CHAPTER VII

GENERAL INCENTIVES

Section 15. ***Incentives for Renewable Energy Projects and Activities.*** - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as **duly certified by the DOE, in consultation with the BOI**, shall be entitled to the following incentives:

...

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.[86]

Before an RE Developer's local purchases of goods, properties, and services be conferred 0% VAT under Section 15(g) of RA No. 9513, said developer must be certified by the DOE, in consultation with the BOI. Sections 25 and 26 thereof highlight the need for said DOE certification:

Section 25. Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment. - RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau.

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86 Boldfacing supplied.

> **Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.**
>
> **Section 26. Certification from the Department of Energy. - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.**
>
> ...[87]

Apart from the DOE Certification, a BOI Certificate of Endorsement is as well required. Part III, Rule 5, Section 13.G, of the Implementing Rules and Regulations (IRR) of RA No. 9513[88] confirmed:

> **PART III.**
>
> **INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES**
> **RULE 5.**
>
> **GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT**
>
> SECTION 13. Fiscal Incentives for Renewable Energy Projects and Activities -
>
> DOE-certified of RA 9513 existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:
>
> ...
>
> **G. Zero Percent Value-Added Tax Rate**
>
> The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

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87 Boldfacing supplied.

88 Department Circular No. DC2009-05-0008 dated May 25, 2009 issued by the Department of Energy (DOE).

(a)

...

(b) **Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers**; and

(c) **Whole process of exploration and development of RE sources up to its conversion into power**, including, but not limited to, the services performed by subcontractors and/or contractors.

The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms/guidelines to implement this provision.

...

SECTION 18. Conditions for Availment of Incentives and Other Privileges. —

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

(1) DOE Certificate of Registration — issued to an RE Developer holding a valid RE Service/Operating Contract. ...

...

B. Registration with the Board of Investments (BOI)

...

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

...[89]

[89] Boldfacing supplied.

As culled from the afore-quoted provisions, the following conditions must be present to accord 0% VAT on petitioner's local purchases of goods, properties and services: *first,* the production of the DOE and BOI Certificates of Registration; and *second,* the purchases are needed for the development, construction, and installation of the plant facilities of RE Developers and the whole process of exploration and development of RE sources up to its conversion into power.

For the *first* condition, petitioner presented both these documents. To be precise, the records, and the parties' stipulations reveal that: *one,* the DOE issued a Certificate of Registration No. SESC 2014-09-090 pursuant to RA No. 9513 dated May 26, 2015,[90] attesting that petitioner is an RE Developer of Solar Energy Resources registered with the DOE; *two,* the BOI issued a Certificate of Registration No. 2015-218 dated October 15, 2015,[91] attesting that petitioner is an RE Developer of an 18 MW DC Monte Solar Energy Project (the "Bais Solar Power Plant") under R.A. No. 9513, otherwise known as the Renewable Energy Act of 2008;[92] and, *three,* petitioner is certified by the ERC that at the time of the issuance of the Certificate of Compliance,[93] it owns and operates the Bais Solar Power Plant with 18 MWp DC capacity located in Barangay Tamisu, Bais City, Negros Occidental which generates energy from renewable resources.[94]

For the *second* condition, petitioner presented its Schedule of Local Purchases with Input Tax for CY 2018,[95] Summary List of Purchases for CY 2018,[96] and various documents purportedly supporting its input VAT on domestic purchases of goods and services for the 1st to 4th quarters of CY 2018.[97]

Having presented sufficient proof that petitioner is a RE Developer, it enjoys 0% VAT on its local purchases of goods, properties and services needed for the development, construction,

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90 Par. 2, Stipulated Facts, JSFI, Docket – Vol. I, p. 248; Exhibit "P-3," Docket – Vol. II, p. 727.
91 Exhibit "P-4," Docket – Vol. II, p. 728.
92 Par. 3, Stipulated Facts, JSFI, Docket – Vol. I, p. 248.
93 Exhibit "P-5," Docket – Vol. II, pp. 737 to 743.
94 Par. 4, Stipulated Facts, JSFI, Docket – Vol. I, p. 248.
95 Exhibit "P-20-3."
96 Exhibit "P-20-4."
97 Exhibits "P-23" to "P-663."

and installation of the plant facilities of RE Developers and the whole process of exploration and development of RE sources up to its conversion into power.

Thus, to refund input VAT on its local purchases of goods, properties, and services, petitioner must show that its local purchases do **not** fall under Section 15(g) of RA No. 9513. This is because it is only then that its local suppliers may legally shift or pass VAT to petitioner.

Here, petitioner's input taxes in the total amount of ₱4,600,672.57 arose from local purchases of fuel, air fare, internet, audit fee, success fee, spare parts, management fee, office supplies, aircon maintenance, SAP implementation, car maintenance, rent, security services, room accommodation, software subscription and labor and materials.[98]

Of these items of local purchases, the Court finds: (1) petitioner's local purchase of fuel and Spare Parts should be denied

outright, and, (2) petitioner's local purchases of goods, properties and services not needed for the development, construction and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power shall be considered for refund. The respective reasons for which are essayed below.

(1) Petitioner's local purchase of fuel and Spare Parts.

Petitioner is not entitled to its refund claim of input VAT on purchases of goods other than capital goods, which pertains to purchases of fuel and spare parts, to the extent of ₱48,061.49.[99] Petitioner's bare allegations, unsubstantiated by evidence, are not equivalent to proof.[100]

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98 Annexes 2-1Q-a, 2-2Q-a, 2-3Q-a, 2-4Q-a, summarized in Annex 2 of the ICPA Report.

99 *Id.*

100 See *Lauro Cardinez, et al. v. Spouses Prudencio and Cresencia Cardinez,* G.R. No. 213001, August 04, 2021.

Petitioner failed to point out if these purchases were not needed for the development, construction, and installation of the plant facilities of RE Developers and the whole process of exploration and development of RE sources up to its conversion into power. Thus, it cannot be determined with certainty whether petitioner's local suppliers of fuel and spare parts erroneously shifted and passed VAT on petitioner's local purchases.

For this reason, respondent is correct in denying the refund of the VAT on petitioner's local purchases pertaining to fuel and spare parts.

(2) Petitioner's local purchases of goods, properties and services not needed for the development, construction and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power.

Petitioner's input VAT that arose from local purchases of goods, properties and services not needed for the development, construction and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power shall not be subject to 0% VAT.

To be considered for refund, the input VAT claimed must be duly substantiated by supporting documents prescribed under Section 110(A) of the NIRC of 1997, as amended, and Section 4.110-8 of RR No. 16-2005. Moreover, the invoicing requirements under Sections 113(A) and (B), and 237 of the NIRC of 1997, as amended, and implemented by Section 4.113-1(A) and (B) of RR No. 16-2005 must be observed:

SEC. 110. *Tax Credits.-*

(A) *Creditable Input Tax.* -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

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

(iii) For use as supplies m the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

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

Section 110(A) of the NIRC, as amended, is implemented by Section 4.110-1 and 4.110-2 of RR No. 16-2005:

SEC. 4.110-1. *Credits for Input Tax.* - ...

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

(a) Purchase or importation of goods

(1) For sale; or

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

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

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

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

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

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

...

SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* - The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(a) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(b) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

Further, Section 4.110-8 of RR No. 16-2005, as amended, provides for the substantiation requirements of input tax credits on purchases of goods, properties, and services, as follows:

SECTION 4.110-8. *Substantiation of Input Tax Credits.*

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties, or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods- import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods and properties - invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property - public instrument i.e., deed of absolute sale, deed of conditional sale, contract/ agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services - official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code. ...

Petitioner presented its Schedule of Local Purchases with Input Tax for CY 2018,[101] Summary List of Purchases for CY 2018,[102] and various documents purportedly supporting its input VAT on domestic purchases of goods and services for the 1st to 4th quarters of CY 2018,[103] which were subjected to the examination of the ICPA.

However, ICPA Constantino observed that the input VAT in the total amount of ₱375,938.49 must be disallowed for petitioner's failure to meet the substantiation and invoicing requirements prescribed under Sections 110(A), 113(A) and (B), and 237 of the NIRC, as amended, as implemented by Sections 4.110-1, 4.110-2, 4.110-8, 4.113-1(A) and (B) of RR No. 16-2005, as amended, as detailed below:

	Description	Annex Reference	1st Quarter CY 2018	2nd Quarter CY 2018	3rd Quarter CY 2018	4th Quarter CY 2018	Total
A. Purchase of Goods other than Capital Goods					-	-	-
1	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices	2-1Q-k 2-4Q-c	₱ 1,218.19	₱ -	₱ -	₱ 24.18	₱ 1,242.37

101 Exhibit "P-20-3."
102 Exhibit "P-20-4."
103 Exhibits "P-23" to "P-663."

	dated not within the period of claim					
2	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered date	2-3Q-c 2-4Q-d	-	-	251.89	111.03	362.92
3	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered Petitioner's name, TIN and address	2-3Q-i 2-4Q-f	-	-	22.91	232.49	255.40
4	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with abbreviated Petitioner's name	2-1Q-l 2-2Q-k	98.12	108.99	-	-	207.11
5	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim and with altered VAT	2-2Q-m 2-4Q-g	-	380.67	-	227.66	608.33
6	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim and with underclaimed VAT	2-3Q-n 2-4Q-i	-	-	222.01	711.71	933.72
7	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and with underclaimed VAT	2-1Q-m 2-2Q-o 2-4Q-j	209.20	903.66	-	1,639.21	2,752.07
8	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and with underclaimed VAT	2-1Q-n 2-2Q-p	228.67	1,115.16	-	-	1,343.83
9	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period	2-2Q-q 2-3Q-o 2-4Q-k	-	1,497.67	995.58	1,022.96	3,516.21

	of claim						
10	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with abbreviated Petitioner's name	**2-2Q-t** **2-4Q-l**	-	596.86	-	620.38	1,217.24
11	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's address and with overclaimed VAT	**2-1Q-o** **2-2Q-u** **2-4Q-m**	397.72	107.14	-	24.56	529.42
12	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and with overclaimed VAT	**2-2Q-v** **2-3Q-q** **2-4Q-n**	-	540.84	242.99	480.84	1,264.67
13	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered and underclaimed VAT	**2-1Q-q** **2-2Q-ac** **2-3Q-u** **2-4Q-o**	227.20	540.74	144.24	212.29	1,124.47
14	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices with altered Petitioner's address	**2-2Q-ad** **2-4Q-p**	-	189.96	-	25.42	215.38
15	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered and underclaimed VAT	**2-3Q-v** **2-4Q-q**	-	-	380.03	251.57	631.60
16	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered date and Petitioner's name	**2-1Q-c**	206.86	-	-	-	206.86
17	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered date	**2-1Q-d**	96.41	-	-	-	96.41

18	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered Petitioner's name, TIN and address	2-1Q-e	248.53	-	-	-	248.53
19	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim and with altered Petitioner's TIN	2-1Q-f	237.90	-	-	-	237.90
20	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim and with altered VAT	2-1Q-g	207.10	-	-	-	207.10
21	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim and with underclaimed VAT	2-1Q-h	590.89	-	-	-	590.89
22	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim and with overclaimed VAT	2-1Q-i	529.54	-	-	-	529.54
23	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices dated not within the period of claim	2-1Q-j	2,593.67	-	-	-	2,593.67
24	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices with altered Petitioner's address	2-1Q-p	22.59	-	-	-	22.59
25	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices	2-1Q-r	2,113.38	-	-	-	2,113.38

26	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the quarter but within the period of claim and with underclaimed VAT	2-2Q-c	-	7,071.97	-	-	7,071.97
27	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered date, Petitioner's name, Petitioner's TIN, and address	2-2Q-d	-	268.30	-	-	268.30
28	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and address	2-2Q-e	-	223.12	-	-	223.12
29	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices not in the name of the Petitioner	2-2Q-f	-	108.88	-	-	108.88
30	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name, Petitioner's TIN, address and VAT	2-2Q-g	-	125.49	-	-	125.49
31	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name, Petitioner's TIN and address	2-2Q-h	-	133.87	-	-	133.87
32	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name, Petitioner's address and VAT	2-2Q-i	-	21.80	-	-	21.80
33	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name and address	2-2Q-j	-	121.29	-	-	121.29

34	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and altered and inserted Petitioner's address	2-2Q-l	-	22.31	-	-	22.31
35	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's TIN and with altered and underclaimed VAT	2-2Q-n	-	308.66	-	-	308.66
36	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with inserted Petitioner's TIN	2-2Q-r	-	223.12	-	-	223.12
37	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. billing statement with Petitioner's TIN written on a different ink, inserted Petitioner's address and without VAT breakdown and support not valid for claiming input VAT	2-2Q-s	-	33,421.54	-	-	33,421.54
38	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with inserted Petitioner's address and with underclaimed VAT	2-2Q-w	-	195.27	-	-	195.27
39	Input VAT on domestic purchase of services included in the schedule of purchases of goods other than capital goods supported by original VAT REG TIN NO. ORs with incorrect Petitioner's address	2-2Q-x	-	29,106.00	-	-	29,106.00
40	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. billing statements and support is not valid for claiming input VAT	2-2Q-y	-	101,700.00	-	-	101,700.00
41	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with underclaimed VAT but correct per computation and wrong presentation of VAT	2-2Q-z	-	259.35	-	-	259.35

42	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with underclaimed VAT but correct per computation	2-2Q-aa	-	195.43	-	-	195.43
43	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered VAT	2-2Q-ab	-	1,246.13	-	-	1,246.13
44	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered date and Petitioner's address and with incorrect Petitioner's TIN	2-3Q-d	-	-	85.71	-	85.71
45	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered date and VAT without countersign, with incomplete Petitioner's TIN, and with incorrect address	2-3Q-e	-	-	1,007.14	-	1,007.14
46	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with abbreviated and altered Petitioner's name and with altered and underclaimed VAT	2-3Q-f	-	-	23.04	-	23.04
47	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name, TIN and address	2-3Q-g	-	-	335.33	-	335.33
48	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with altered Petitioner's name and TIN and underclaimed VAT	2-3Q-h	-	-	114.56	-	114.56
49	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. tape receipts with written Petitioner's name, TIN and address on a computer printed tape receipts	2-3Q-j	-	-	315.00	-	315.00

50	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with abbreviated Petitioner's name and altered Petitioner's address	2-3Q-k	-	-	164.74	-	164.74
51	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with abbreviated Petitioner's name and altered VAT	2-3Q-l	-	-	111.97	-	111.97
52	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with incorrect Petitioner's TIN	2-3Q-m	-	-	251.03	-	251.03
53	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. invoices with inserted Petitioner's TIN and altered VAT	2-3Q-p	-	-	33,421.54	-	33,421.54
54	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with inserted Petitioner's address	2-3Q-r	-	-	28.07	-	28.07
55	Input VAT on domestic purchase of goods other than capital goods supported by photocopied VAT REG TIN NO. ORs	2-3Q-s	-	-	127.50	-	127.50
56	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with wrong presentation of VAT	2-3Q-t	-	-	406.46	-	406.46
57	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not with the quarter but within the period of claim, with inserted Petitioner's name without countersign, with altered TIN without countersign, and with incomplete address	2-4Q-e	-	-	-	250.55	250.55
58	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices dated not within the period of claim, with inserted	2-4Q-h	-	-	-	287.62	287.62

	Petitioner's name without countersign, and with incomplete TIN and address						
59	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with inserted Petitioner's name without countersign, with incomplete and incorrect TIN, with incomplete address and with underclaimed VAT	2-4Q-r	-	-	-	257.13	257.13
60	Input VAT on domestic purchase of goods other than capital goods supported by original VAT REG TIN NO. invoices with inserted Petitioner's name without countersign, with incomplete and altered TIN without countersign, and with incomplete address	2-4Q-s	-	-	-	255.30	255.30
61	Difference due to net overclaimed VAT		13.35	-	460.34	-	473.69
62	Difference due to net underclaimed VAT		-	(384.64)	-	(348.58)	(733.22)
63	Difference due to rounding off		(0.07)	-	-	-	(0.07)
	Subtotal		**9,239.25**	**180,349.58**	**39,112.08**	**6,286.32**	**234,987.23**
B. Purchase of Services				-	-	-	
1	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. ORs with incorrect Petitioner's address	2-1Q-t 2-4Q-w	12,474.00	-	-	312.00	12,786.00
2	Input VAT on domestic purchase of services supported by photocopied VAT REG TIN NO. tape receipts with Petitioner's TIN and address written on a computer printed tape receipts	2-1Q-s 2-2Q-ae 2-3Q-y 2-4Q-u	20,155.08	13,750.44	21,087.01	21,220.32	76,212.85
3	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. collection receipts without VAT breakdown and with underclaimed VAT, support is not valid for claiming input VAT and without reason for payment	2-2Q-af 2-4Q-x	-	266.25	-	205.18	471.43
4	Input VAT on domestic purchase of services supported by photocopied VAT REG TIN NO. ORs with altered VAT	2-1Q-u	48.00	-	-	-	48.00

5	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. collection receipts without VAT breakdown and with overclaimed VAT, support is not valid for claiming input VAT and without reason for payment	2-2Q-ag	-	81.43	-	-	81.43
6	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. invoices with overclaimed VAT and support is not valid for claiming input VAT	2-2Q-ah	-	156.96	-	-	156.96
7	Input VAT on domestic purchase of services supported by original invoice without Petitioner's TIN and date, not in the name of Petitioner written in the printed invoice, with Petitioner's TIN and address written on a printed invoice, and without BIR Permit to print and printing date indicated	2-3Q-w	-	-	593.60	-	593.60
8	Input VAT on domestic purchase of services supported by VAT REG TIN NO. ORs with altered Petitioner's TIN and with underclaimed VAT	2-3Q-x	-	-	493.39	-	493.39
9	Input VAT on domestic purchase of services supported by photocopied VAT REG TIN NO. ORs with incorrect Petitioner's address and underclaimed VAT	2-3Q-z	-	-	216.00	-	216.00
10	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. collection receipts without VAT breakdown, with underclaimed VAT and support is not valid for claiming input VAT	2-3Q-aa	-	-	850.18	-	850.18
11	Input VAT on domestic purchase of services supported by photocopied VAT REG TIN NO. ORs without reason for payment	2-3Q-ab	-	-	21,001.68	-	21,001.68
12	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. ORs dated not within the period of claim and without reason for payment indicated	2-4Q-t	-	-	-	144.00	144.00

13	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. collection receipts with altered Petitioner's address, without VAT breakdown and support is not valid for claiming of input VAT	2-4Q-v	-	-	-	3,550.32	3,550.32
14	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. collection ORs without VAT breakdown and without reason for payment indicated	2-4Q-y	-	-	-	3,750.00	3,750.00
15	Input VAT on domestic purchase of services supported by photocopied VAT REG TIN NO. ORs with altered VAT	2-4Q-z	-	-	-	18,900.00	18,900.00
16	Input VAT on domestic purchase of services supported by original VAT REG TIN NO. ORs recorded twice in the schedule	2-4Q-aa	-	-	-	144.00	144.00
18	Difference due to net overclaimed VAT		-	384.11	1,200.40	-	1,584.51
19	Difference due to net underclaimed VAT		-	-	-	(32.69)	(32.69)
20	Difference due to rounding off		(0.39)	-	-	-	(0.39)
	Subtotal		32,676.69	14,639.19	45,442.26	48,193.13	140,951.26
TOTAL - OTHER FINDINGS			**₱41,915.94**	**₱194,988.77**	**₱84,554.33**	**₱ 54,479.45**	**₱375,938.49**

Thus, out of the total declared input VAT of ₱4,600,672.51, only the amount of ₱4,176,672.53 represents petitioner's valid input VAT for the 1st to 4th quarters of CY 2018, as computed below:

Input VAT claimed for refund		₱4,600,672.51
Less: Disallowances		
Per ICPA Findings	₱375,938.49	
Per this Court's Findings	48,061.49	423,999.98
Valid Input VAT		**₱4,176,672.53**

Eighth requisite: petitioner had input taxes due and paid which are attributable to its zero-rated sales.

Section 112(A) of the NIRC, as amended, requires that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, the same provision recognizes that where there are zero-rated or effectively zero-rated sale and taxable sales or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on the total sales volume.

Considering that petitioner had only zero-rated sales, its valid input VAT of ₱4,176,672.53 is attributable thereto. Out of petitioner's declared zero-rated sales in its Quarterly VAT Returns of ₱333,120,883.93, only the amount of ₱329,285,191.69 is its *valid* zero-rated sales. Consequently, petitioner's refund of valid input VAT, attributable to said valid zero-rated sales, to the extent of ₱4,128,580.59, must be allowed, computed as follows:

Valid Input VAT	₱ 4,176,672.53
Divide by Declared Zero-Rated Sales	333,120,883.93
Multiply by Valid Zero-Rated Sales	329,285,191.69
Valid Input VAT attributable to Valid Zero-Rated Sales	**₱ 4,128,580.59**

Ninth requisite: Input taxes claimed were not applied against output taxes during and in the succeeding quarters.

Since petitioner had no 12% VATable sales for the four (4) quarters of CY 2018, it had no output VAT against which the claimed input VAT of ₱4,600,672.57 may be applied or credited.

Further, although the claimed input VAT amount of ₱4,600,672.57, which necessarily includes the valid input VAT of ₱4,176,672.53, was carried over by petitioner in the succeeding quarters[104], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed"[105] in its Quarterly VAT Return for the 3rd quarter of CY 2019. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱654,626.11[106] as of the end of the 3rd quarter of CY 2019. Such being the case, the claimed input VAT could not have been carried over or utilized in the succeeding quarter of CY 2019.

In fine, petitioner is entitled to refund of unutilized input VAT, due to its zero-rated sales for the 1st and 4th Quarters of CY 2018, to the extent of ₱4,128,580.59.

WHEREFORE, the Petition for Review[107] filed on December 29, 2020, by Monte Solar Energy Inc. is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱4,128,580.59**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of CY 2018.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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104 Exhibits "P-9-1," "P-17-15," "P-17-49."
105 Exhibit "P-17-49," Line 23D.
106 Exhibit "P-17-49," Line 29.
107 Docket- Vol. I, pp. 7 to 22.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice