REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PURE ESSENCE INT'L., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10411

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *and*
ANGELES, *JJ.**

Promulgated: APR 08 2024

x- x

10:10 a.m.

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] praying for the refund of the amount of ₱256,185,384.47, allegedly representing petitioner's excess and disallowed utilization of input value-added tax (VAT) for the calendar year (CY) ended December 31, 2018.[2]

THE PARTIES

Petitioner Pure Essence Int'l, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[3] It is registered with the Department of Energy (DOE) as a Renewable Energy (RE) Developer of Biomass Resources with a Certificate of Registration No. RE-B2013-08-029 dated September 5, 2013.[4] The DOE likewise accredited petitioner as a manufacturer of biodiesel for a period of five (5) years from the said date.[5]

---

* Special Member per Memorandum dated March 7, 2024.
[1] Docket, pp. 8-36.
[2] Summary of the Case, Pre-Trial Order dated November 17, 2021, Docket – Vol. I, p. 372.
[3] Exhibit "P-1", Docket – Vol. I, pp. 258-265.
[4] Exhibit "P-6", Docket – Vol. II, p. 625.
[5] Exhibit "P-8", Docket – Vol. II, p. 626.

Petitioner is also registered with the Board of Investments (BOI) as a New Export Producer of Coconut Methyl Ester (CME) or coco-diesel and other by-products such as crude glycerin, soap noodles, and toilet soaps.[6]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with the authority to act as such, including the power to assess and collect internal revenue taxes, as well as the power to decide disputed assessments and claims for refunds of internal revenue taxes erroneously paid, among others, subject to the exclusive appellate jurisdiction of the Court. He is holding office at the BIR National Office Building, BIR Road, Diliman, Quezon City, Metro Manila, where he may be served with summons, orders, notices, and other legal processes of the Court.[7]

THE FACTS AND PROCEEDINGS

On January 3, 2020, petitioner filed with the BIR's VAT Credit Audit Division (VCAD) an application for a VAT refund, representing unutilized input taxes on purchases of goods and services amounting to ₱257,150,311.51, for the period from January 1 to 31, 2018.[8]

Input taxes on current purchases	₱267,651,315.70[9]
Add: Deferred input taxes amortized in TY 2018	507,249.35[10]
Total Current Input Taxes for TY 2018	₱268,158,565.05

[6] Exhibit "P-5", Docket – Vol. II, p. 616.
[7] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 356.
[8] Refer to Exhibit "R-4", BIR Records, pp. 430-441.
[9] Sum of Line 21F, Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98.

Exhibit	Docket, Vol. I, pp.	TY 2018	Line 21F
"P-12"	91	1st Quarter	₱ 49,367,028.39
"P-12-a"	93	2nd Quarter	66,259,800.51
"P-12-b"	95	3rd Quarter	67,187,670.72
"P-12-c"	97	4th Quarter	84,836,816.08
		Total	**₱267,651,315.70**

[10] Total of deferred input tax of ₱753,154.48 (*sum of Line 20B, Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98*) less Total input tax deferred for the succeeding period of ₱245,905.13 (*sum of Line 23A, Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98*).

Exhibit	Docket, Vol. I, pp.	TY 2018	(a) Line 20B	(b) Line 23A	(a) less (b)
"P-12"	91 to 92	1st Quarter	₱507,249.35	₱172,386.42	₱334,862.93
"P-12-a"	93 to 94	2nd Quarter	172,386.42	56,416.92	115,969.50
"P-12-b"	95 to 96	3rd Quarter	56,416.92	17,101.79	39,315.13
"P-12-c"	97 to 98	4th Quarter	17,101.79	-	17,101.79
		Total	**₱753,154.48**	**₱245,905.13**	**₱507,249.35**

x--x

Less: Output tax due for the period	11,008,253.57[11]
Balance of input tax as of TY 2018	**₱257,150,311.48**[12]

Thereafter, respondent issued the letter dated September 16, 2020, informing petitioner that its application for a VAT refund for the said period was denied for lack of factual and legal basis.

Petitioner filed the instant *Petition for Review* on November 25, 2020.[13]

Within the extended time granted by the Court,[14] respondent posted his *Answer*[15] on February 5, 2021, interposing the following special and affirmative defenses, to wit:

a. in an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

b. petitioner must show that it has complied with the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, on the prescriptive period for claiming tax refund/credit;

c. the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level. It is an established fact that a decision by the Commissioner of Internal Revenue (CIR) has already been rendered, and in such case, the Supreme Court has held that the duty of the court is now limited in determining whether the decision is proper;

d. the claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 112 of the NIRC of 1997, as amended, and Revenue Memorandum Circular (RMC) No. 47-2019;

---

[11] Sum of Line 15B, Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98.

Exhibit	Docket, Vol. I, pp.	TY 2018	Line 15B
"P-12"	91	1st Quarter	₱3,820,634.46
"P-12-a"	93	2nd Quarter	5,566,875.00
"P-12-b"	95	3rd Quarter	606,780.00
"P-12-c"	97	4th Quarter	1,013,964.11
		Total	**₱11,008,253.57**

[12] Difference of ₱0.03 due to rounding-off.
[13] Docket – Vol. I, pp. 8 to 39.
[14] Respondent's *Motion for Extension of Time to File Answer*, Docket – Vol. I, pp. 167-170; Order dated January 7, 2021, Docket – Vol. I, p. 172.
[15] Docket – Vol. I, pp. 176-196.

e. petitioner is not the proper party to seek the refund; it is petitioner's suppliers who is the proper party to seek the tax refund since petitioner is registered with the Department of Energy as an RE Developer of Biomass Resources. As such, petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities, as well as the whole process of exploring and developing renewable energy sources up to its conversion into power, are also zero-rated in accordance with Sections 106(A)(2)(c) and 108(B)(3) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, in relation to Section 15(g) of RA No. 9513. Thus, no output tax should be shifted to or passed on to RE Developers, such as petitioner, in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE sources up to its conversion into power. There being no input tax to be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases; and

f. partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

Respondent transmitted the BIR Records of this case on May 28, 2021, consisting of one (1) folder.[16]

The Pre-Trial Conference was initially set on April 12, 2021, but was eventually reset to and held on July 26, 2021.[17] Prior thereto, *respondent's* and *petitioner's Pre-Trial Briefs* were filed separately on July 22, 2021.[18]

On October 20, 2021, the parties posted their *Joint Stipulation of Facts and Issues*,[19] which was approved and adopted by the Court in the Pre-Trial Order dated November 17, 2021,[20] thereby deeming the termination of the Pre-Trial.

Trial of the case then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

---

[16] *Respondent's Compliance* dated May 24, 2021, Docket – Vol. I, pp. 199-200.
[17] Order dated June 1, 2021, Docket – Vol. I, p. 202; Minutes of the hearing held on, and Order dated, July 26, 2021, Docket – Vol. I, pp. 210, and 352, respectively.
[18] Docket – Vol. I, pp. 205-208; and 212-224.
[19] Docket – Vol. I, pp. 356-363.
[20] Docket – Vol. I, p. 372-377.

Petitioner presented the testimonies of the following individuals, namely: (1) Ms. Divine C. Cailing,[21] petitioner's Executive Assistant; and (2) Mr. Adan T. Delamide,[22] the Court-commissioned Independent Certified Public Accountant (ICPA).[23]

The ICPA's *Final Report*[24] was submitted on February 8, 2022, and the Amended Annexes C and D thereto were submitted on March 9, 2022.[25]

Petitioner filed its *Formal Offer of Evidence with Manifestation* through electronic mail on April 4, 2022, with the physical copy submitted to the Court on April 5, 2022.[26] Respondent filed his *Comment (Re: Formal Offer of Evidence with Manifestation dated 04 April 2022)* on April 6, 2022.[27] In the Resolution dated June 21, 2022,[28] the Court admitted all of petitioner's exhibits, *except* for Exhibits "P-3", "P-7", "P-18-a" and "P-26", for failure to present the originals for comparison.

On July 13, 2022, petitioner filed its *Omnibus Motion (1. For Reconsideration of the Resolution dated 21 June 2022; or in the alternative, 2. For Tender of Excluded Evidence).*[29] Respondent filed his *Comment (Re: Omnibus Motion [1. For Reconsideration of the Resolution dated 21 June 2022; or in the alternative, 2. For Tender of Excluded Evidence] dated 12 July 2022)* on August 3, 2022.[30] In the Resolution dated September 7, 2022,[31] the Court denied petitioner's *Motion for Reconsideration* but granted its *Tender of Excluded Evidence*, thereby making Exhibits "P-3", "P-7", "P-18-a" and "P-26" as part of the case records.

For his part, respondent proffered the testimony of Revenue Officer Orlando B. Torre.[32]

---

[21] Exhibit "P-34", Docket – Vol. I, pp. 226-257; Order dated November 24, 2021, Docket – Vol. I, p. 400.
[22] Exhibit "P-2468", Docket – Vol. II, pp. 473-487; Minutes of the hearing held on, and Order dated, March 14, 2022, Docket – Vol. II, pp. 555-556.
[23] Order dated November 24, 2021, Docket – Vol. I, p. 400.
[24] Exhibit "P-2466", Docket – Vol. II, pp. 489-542.
[25] Docket – Vol. I, pp. 401-454.
[26] *Submission* dated April 4, 2022 and attachments, Docket – Vol. II, pp. 557-580.
[27] Docket – Vol. II, pp. 582-584.
[28] Docket – Vol. II, pp. 684-685.
[29] Docket – Vol. II, pp. 686-691.
[30] Docket – Vol. II. pp. 694-697.
[31] Docket – Vol. II, pp. 700-703.
[32] Exhibit "R-7", Docket – Vol. II, pp. 593-598; Minutes of the hearing held on, and Order dated, September 14, 2022, Docket – Vol. II, pp. 704-705; Minutes of the hearing held on, and Order dated, November 3, 2022, Docket – Vol. II, pp. 706-708.

On November 18, 2022, respondent filed his *Formal Offer of Evidence*.[33] Petitioner posted its *Comment/Opposition (To Respondent's Formal Offer of Evidence dated 18 November 2022)* on December 6, 2022.[34] The Court admitted all of respondent's exhibits in its Resolution dated January 12, 2023.[35]

On February 20, 2023, respondent filed his *Memorandum*,[36] while petitioner posted its *Memorandum* on February 27, 2023.[37]

The present case was considered submitted for decision on March 8, 2023.[38] On March 8, 2024, petitioner filed a *Manifestation*.

THE ISSUE

The parties stipulated this lone issue to be resolved by the Court: [39]

> Whether or not petitioner is entitled to a refund of its unutilized and excess input VAT in the total amount of Two Hundred Fifty-Six Million One Hundred Eighty-Five Thousand Three Eighty-Four and 47/100 Pesos (₱256,185,384.47) for the taxable year 2018.

Petitioner's arguments:

Petitioner argues that it is entitled to a refund of its unutilized input VAT in the total amount of ₱256,185,384.47 for taxable year 2018, considering that it has complied with the requirements provided under the law and pertinent jurisprudence for the allowance of its claim; that respondent's grounds denying petitioner's refund are erroneous; that the input tax in relation to transactions with Swan Lake and OO&A should be allowed; that the deferred input tax in the amount of ₱172,390.00 on capital goods exceeding ₱1,000,000.00, and deferred input tax in the amount of ₱507,249.36 should not be deducted from petitioner's claim for refund; that sale of coco-methyl ester by petitioner to Chemrez and Golden Asian Oil are VAT zero-rated transactions; that the amount of ₱71,584,344.00 should not be deducted from petitioner's claim

[33] Docket – Vol. II, pp. 709-712.
[34] Docket – Vol. II, pp. 725-729.
[35] Docket – Vol. II, pp. 733-734.
[36] Docket – Vol. II, pp. 735-754.
[37] Docket – Vol. II, pp. 760-801.
[38] Resolution dated March 8, 2023, Docket – Vol. II, p. 849.
[39] Statement of the Issues, JSFI, Docket – Vol. I, p. 361.

for refund; that the VAT zero-rated sales of biodiesel to local customers in the amount of ₱1,274,176,141.23 are properly treated as sale of goods and are sufficiently evidenced by sales invoices; that the input tax attributable to such sales should not be deducted from petitioner's claim for refund; that the amount of ₱95,283,581.50 should not have been deducted from petitioner's zero-rated sales; that the input tax in the amount of ₱379,539.66 should not have been disallowed by the respondent; that petitioner accounted for the purported 3,049 missing sales invoices; that petitioner is compliant with the other requisite for input VAT refund; and that petitioner should be allowed to pursue its claim for refund from the respondent pursuant to Section 112(A) of the NIRC of 1997, as amended.

Respondent's counter-arguments:

Respondent contends that the instant judicial claim should be denied for petitioner's failure to substantiate the claim for refund at the administrative level; that claim for refund should be denied for failure to comply with the mandatory invoicing requirements pursuant to Section 112 of the NIRC of 1997, as amended, and RMC No. 47-2019; that petitioner must prove that it has submitted valid and acceptable supporting documents to substantiate its administrative claim for refund, and without such requirement, the administrative body has sufficient reason to deny the claim; and that petitioner is not the proper party to seek the refund.

THE COURT'S RULING

The Court has jurisdiction over the present Petition for Review.

The Court shall first determine whether it has jurisdiction to entertain this petition.

Sections 7(a)(1) and (2), and 11 of RA No. 1125,[40] as amended by RA No. 9282,[41] confer jurisdiction to this Court

[40] AN ACT CREATING THE COURT OF TAX APPEALS.

[41] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

relating to decisions and inactions of respondent and states the manner of appealing them to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by** a decision, ruling, or **inaction of the Commissioner of Internal Revenue . . . may file an appeal with the CTA within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** [*Emphases supplied*]

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings, or inactions of respondent. The appeal must be filed within 30 days from receipt of such decision or ruling or after the period fixed by law for action expires.

Anent decisions of respondent and the period fixed by law for action for claims of refund for creditable input taxes, Section 112(C) of the NIRC of 1997, as amended by RA No. 10963,[42] provides as follows:

[42] 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, January 1, 2018.

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

... ...

(C) *Period within which Refund of Input Taxes shall be Made.* – **In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof**: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. [*Emphases supplied*]

The above provision vests to respondent the power to grant applications for refund for input taxes within 90 days from the date of submission of the official receipts or invoices and other documents in support of the application to act thereon.[43] In case of full or partial denial of the claim for tax refund, the taxpayer affected may appeal the decision with this Court within thirty (30) days from the receipt of the decision denying the claim.

The present claim covers the four (4) quarters of CY 2018. Counting two (2) years from the close of each of the said quarters, the pertinent dates relative to the filing of the administrative claim are as follows:

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Filing Date of Administrative Claim
January 1 to March 31,	March 31, 2018	July 15, 2020[44]	

[43] Refer to *Energy Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021.
[44] Sec. 2 of RR No. 16-2020, 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 Republic Act (R.A.) No. 10963 (TRAIN Law) For Taxable Quarters Affected by the Declaration of the National State of Emergency), June 19, 2020, states:
SEC. 2. *Filing Due Dates by Taxpayer-Claimants.* — Filing of Claims for VAT refund for the following taxable quarters shall be until the herein specified due dates:
Calendar Quarter ending March 31, 2018 — July 15, 2020
Fiscal Quarter ending April 30, 2018 — July 31, 2020
Fiscal Quarter ending May 31, 2018 — August 15, 2020
Calendar Quarter ending June 30, 2018 — August 31, 2020

Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Filing Date of Administrative Claim
2018 (1st Quarter)			January 3, 2020
April 1 to June 30, 2018 (2nd Quarter)	June 30, 2018	August 31, 2020[45]	
July 1 to September 30, 2018 (3rd Quarter)	September 30, 2018	September 30, 2020	
October to December 31, 2018 (4th Quarter)	December 31, 2018	December 31, 2020	

Petitioner filed its application for VAT refund in the amount of ₱257,150,311.51 for calendar year 2018 with the BIR's VCAD on January 3, 2020.[46] Clearly, petitioner's administrative claim was filed within the reglementary period.

As to the timeliness of petitioner's judicial claim, petitioner received the letter-denial dated September 26, 2020 on October 26, 2020.[47] Counting 30 days from such receipt, petitioner had until November 25, 2020 to file an appeal. Petitioner filed the present petition on November 25, 2020; thus, timely filed.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law

Section 112 of the NIRC of 1997, as amended by RA No. 10963,[48] provides as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

This however does not apply to areas not yet declared to be in a *general community quarantine* state. In which case, the deadline shall be thirty (30) days from the lifting of the ECQ or Modified ECQ in the affected areas of taxpayer-claimant or the above stated deadlines, whichever comes later.

[45] *Id.*

[46] Refer to Exhibits "P-21" and "R-1", BIR Records, p. 193 and Exhibit "R-4", BIR Records, pp. 430 to 441; BIR Records, p. 307.

[47] Petition for Review, pars. 2-3, Docket – Vol. I, pp. 8-9.

[48] 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.

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

Based on Section 112(a) of the NIRC of 1997, as amended, and as laid down by jurisprudence, the established requisites for a claim for tax refund are:[49]

> *<u>As to the timeliness of the filing of the administrative and judicial claims</u>:*
>
> 1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[50]
>
> 2. In case of full or partial denial of the refund claim, or the failure on the part of Respondent to act on the said claim within a period of ninety (90) days, the judicial claim must be filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;
>
> *<u>Concerning the taxpayer's registration with the BIR</u>:*
>
> 3. The taxpayer is a VAT-registered person;[51]
>
> *<u>In relation to the taxpayer's output VAT</u>:*
>
> 4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[52]

---

[49] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. No. 247918, February 1, 2023.

[50] *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; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

[51] *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.*

[52] *Id.*

5. For zero-rated sales under Sections 106(A)(2)(a)(1),(2) and (b); and 108(B)(1) and (2) of the NIRC of 1997, as amended, the payments for the sales must have been made in acceptable foreign currency duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;[53]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional;[54]

7. The input taxes are due or paid;[55]

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 based on sales volume;[56] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

The *first* and *second* requisites have been established as discussed earlier. The Court shall now determine petitioner's compliance with all the remaining requisites.

Third requisite: petitioner is a VAT-registered entity

Petitioner alleged that it is a VAT-registered entity, evidenced by its BIR Certificate of Registration (BIR Form No. 2303)[58] OCN 8RC0000734469E, with Tax Identification Number 232-837-989-00000. However, the said BIR Form No. 2303, marked as **Exhibit "P-3,"** was denied admission by the Court for petitioner's failure to present the original for comparison.

Nonetheless, petitioner presented before the Court its Authority to Print, dated August 16, 2013[59] and July 18, 2018,[60] which shows petitioner's tax type as VAT. Thus, petitioner was able to comply with the *third* requisite.

---

[53] Par. 2, Sec. 4.112-1. (a) of RR No. 16-2005, as further amended by RR No. 13-2018.
[54] *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*.
[55] *Id.*
[56] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*.
[57] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation v. Commissioner of Internal Revenue, supra*.
[58] Exhibit "P-3", Docket – Vol. I, p. 80.
[59] Exhibit "P-9", Docket – Vol. I, pp. 87 or 273.
[60] Exhibit "P-10", Docket – Vol. II, p. 627.

Fourth and fifth requisites: petitioner had zero-rated sales or effectively zero-rated sales but only in the amount of ₱1,957,246,510.23

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

In its Amended Quarterly VAT Returns for the TY 2018, petitioner reported total sales of ₱2,059,879,534.36, which include vatable sales amounting to ₱91,735,446.43, and zero-rated sales amounting to ₱1,968,144,087.93, as shown below:

Period	Vatable Sales	Zero-Rated Sales	Total
1st Quarter[61]	₱31,838,620.54	₱560,676,714.84	₱592,515,335.38
2nd Quarter[62]	46,390,625.00	545,901,003.41	592,291,628.41
3rd Quarter[63]	5,056,500.00	435,588,386.75	440,644,886.75
4th Quarter[64]	8,449,700.89	425,977,982.93	434,427,683.82
Total	**₱91,735,446.43**	**₱1,968,144,087.93**	**₱2,059,879,534.36**

Petitioner derived its zero-rated sales from the following: (1) direct export sales to non-resident foreign corporations (NRFC), (2) sales to export-oriented entities registered with Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA), and, (3) sales of biodiesel to local customers, summarized as follows:[65]

Customer	Product Sold	Amount
1. Direct Export Sales to NRFC		
Sakamoto Yakuhin Kogyo Co., Ltd. ($42,963.32 at ₱50.00 exchange rate)	Crude Glycerin	₱ 2,148,166.00
Total Export Sales to NRFC		**₱ 2,148,166.00**
2. Sales to Export Oriented Entities registered with PEZA/SBMA		
a. PEZA		
Sakamoto Orient Chemicals Corp. ($1,086,591.63 at ₱50.00 exchange rate)	Crude Glycerin	₱ 54,329,581.50

[61] Exhibit "P-12", Docket – Vol. I, pp. 91 to 92.
[62] Exhibit "P-12-a", Docket – Vol. I, pp. 93 to 94.
[63] Exhibit "P-12-b", Docket – Vol. I, pp. 95 to 96.
[64] Exhibit "P-12-c", Docket – Vol. I, pp. 97 to 98.
[65] Pars. 15 to 17, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 496 to 497; Summary of Sales, Exhibit "R-6" (BIR Records), p. 39; Schedule of Zero-Rated Sales and Inward Remittances, Annex C, Exhibit "P-2467", Docket, Vol. II, pp. 547 to 553; Annex C - Zero-Rated Sales, Exhibit "P-2467-b".

x---x

Customer	Product Sold	Amount
b. SBMA		
High Glory Subic International Logistics, Inc.	CME	29,024,000.00
ERA 1 Petroleum Corporation	CME	11,930,000.00
Total Sales to Export Oriented Entities		**₱ 95,283,581.50**
3. Sales of Biodiesel to local customers		
Chemrez Technologies, Inc.	CME	₱ 593,596,200.00
Chevron Philippines Inc.	CME	1,159,803,921.23
Filoil Logistics Corporation	CME	33,592,220.00
Golden Asian Oil Int'l Inc.	CME	2,940,000.00
Phoenix Petroleum Philippines, Inc.	CME	80,780,000.00
Total Sales of Biodiesel to local customers		**₱1,870,712,341.23**
TOTAL ZERO-RATED SALES		**₱1,968,144,088.73**[66]

The relevant provision in determining whether petitioner's sales are subject to VAT at zero percent (0%) are Sections 106(A)(2)(a)(1) and (5) of the NIRC, as amended, to wit:

> SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> (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);
>
> ... ...
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

[66] With ₱0.80 difference against total declared zero-rated sales per VAT Returns of ₱1,968,144,087.93.

Relative thereto, Section 4.106-5 of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 04-07, provides:

> SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — ...
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — 'Export Sales' shall mean:
>
> (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, paid for in acceptable foreign currency or its equivalent in goods and services, and accounted for in accordance with the rules and regulation of the Bangko Sentral ng Pilipinas (BSP);
>
> ... ...
>
> (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

Mr

> 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.

Moreover, petitioner must comply with the invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, which provides that a VAT taxpayer shall, for every sale, barter, or exchange of goods or properties, issue a VAT invoice or official receipt which must contain the following information:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* -
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> (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 breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided,* That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated component 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 (₱1,000.00) or more where the sale or transfers 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.

Section 113 of the NIRC of 1997, as amended, is implemented by Section 4.113-1 of RR No. 16-2005, as amended, which reads:

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

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. ...

M

> SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. [*Emphasis supplied*]

Thus, only the sales of goods or services supported by the SIs or ORs, having the required information, shall qualify for a VAT zero rating.

Now, We verify whether petitioner's (1) direct export sales to NRFC, (2) sales to export-oriented entities registered with PEZA and SBMA, and (3) sales of biodiesel to local customers qualify as zero-rated in accordance with the afore-quoted provisions.

1. Direct Export Sales to NRFC

For petitioner's export sales of goods to qualify as zero-rated pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following essential elements must be present:

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

Corollary thereto, any VAT-registered person claiming zero-rated sales on its export sale of goods must present at least three (3) types of documents, as follows:

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

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

Anent the *first* element, as discussed earlier, petitioner was able to prove that it is a VAT-registered person.

As to the *second* and *third* elements, petitioner adduced before this Court in support of its zero-rated sales its Sales Invoices,[67] Collection Receipts,[68] Sea Waybills,[69] Reconciliation of Export Sales, and Foreign Currency Remittances on Zero-Rated Sale of Goods[70] as can be cross-referenced with the Certification of Deposit Account issued by Metrobank Greenhills – Promenade dated August 9, 2019.[71]

Examination of the said documents clearly shows that petitioner satisfied the essential elements to qualify as VAT zero-rated sales pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Thus, the total export sales to Sakamoto Yakuhin Kogyo Co., Ltd, an NRFC, amounting to ₱2,148,166.00, qualify for VAT zero-rating.

2. Sales to Export Oriented Entities registered with PEZA/SBMA

Record shows that petitioner also derived its zero-rated sales to export-oriented entities registered with the PEZA and SBMA in the aggregate amount of ₱95,283,581.50, as follows:[72]

Customer	**Registered with**	**Amount**
Sakamoto Orient Chemicals Corp.	PEZA	₱ 54,329,581.50
High Glory Subic International Logistics, Inc.	SBMA	29,024,000.00
ERA 1 Petroleum Corporation	SBMA	11,930,000.00
Total Zero-rated Sales to Export Oriented Entities		**₱95,283,581.50**

[67] Exhibits "P-296" and "P-299".
[68] Exhibits "P-2428" and "P-2431".
[69] Exhibits "P-2332" and "P-2333".
[70] Exhibit "P-2338".
[71] Exhibit "P-2334".
[72] Par. 15, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 496; Summary of Sales, Exhibit "R-6" (BIR Records), p. 39; Schedule of Zero-Rated Sales and Inward Remittances, Annex C, Exhibit "P-2467", Docket, Vol. II, pp. 547-553; Annex C - Zero-Rated Sales, Exhibit "P-2467-b".

Pursuant to Section 106(A)(2)(a)(5) of the NIRC, as amended, and as implemented by Section 4.106-5 of RR No. 16-2005, as amended by RR No. 04-07, for a "*considered export sale*" to qualify as zero-rated, the following essential elements must be present:

1. the sale was made by a VAT registered person; and,
2. there was sale of goods or services to an entity entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987 (OIC), and other special laws.

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

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

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

As for the first type of document, petitioner presented the SIs in support of its alleged "*considered export sales*" to the following customers:[73]

Customer Name	Amount	Exhibits
Sale of goods to PEZA registered entity		
Sakamoto Orient Chemicals Corp.	₱54,329,581.50	"P-50", "P-51", "P-53", "P-54", "P-56", "P-81", "P-82", "P-89", "P-90", "P-91", "P-103" to "P-110", "P-113" to "P-115", "P-118" to "P-121", "P-135" to "P-139", "P-147" to "P-149", "P-152", "P-153", "P-156" to "P-161", "P-165" to "P-167", "P-169", "P-184" to "P-190", "P-195" to "P-197", "P-199", "P-200", "P-204" to "P-207", "P-209", "P-210", "P-217", "P-218", "P-221" to "P-223", "P-225" to "P-228", "P-236", to "P-238", "P-249", "P-250", "P-252", "P-253", "P-256", "P-257", "P-259", "P-264" to "P-267", "P-269", "P-272" to "P-274", "P-277", "P-278", "P-280", "P-281",

[73] Schedule of Zero-Rated Sales and Inward Remittances, Annex C, Exhibit "P-2467", Docket, Vol. II, pp. 547-553; Annex C - Zero-Rated Sales, Exhibit "P-2467-b".

x---x

		"P-284" to "P-286", "P-288", "P-289", "P-292" to "P-294", "P-306", "P-308", "P-310" to "P-313", "P-315", "P-319" to "P-324", "P-333" to "P-335", "P-338", "P-340" to "P-342", "P-347", "P-351", "P-353" to "P-355", "P-363", and "P-2306"
Sale of goods to SBMA registered entity		
High Glory Subic International Logistics, Inc.	29,024,000.00	"P-52", "P-70", "P-71", "P-78", "P-87", "P-88", "P-100", "P-101", "P-240", and "P-241"
ERA 1 Petroleum Corporation	11,930,000.00	"P-68", "P-69", "P-94", "P-95", "P-97", and "P-98"
Total Zero-rated Sales to Export Oriented Entities	**₱95,283,581.50**	

However, after careful examination of the SIs presented, the Court finds that SI No. 15103 [74] in the amount of ₱290,178.50 with unreadable details must be disallowed outright for failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005, as amended.

Anent the *second* essential element, to prove that the above-stated customers are duly registered with the PEZA and SBMA, petitioner submitted the Certifications issued by the following agencies:

Customer Name	Proof of VAT Zero-rating	Certification Period	Exhibit No.
Sakamoto Orient Chemicals Corporation	PEZA Certificate No. 2018-0164 issued on December 5, 2017	January 1 to December 31, 2018	"P-19"[75]
High Glory Subic Int'l Logistics, Inc.	Certificate of Registration and Tax Exemption No. 2001-0025 issued by SBMA on October 22, 2017	October 22, 2017 to October 21, 2018	"P-18"[76]

[74] Exhibit "P-319".
[75] Docket – Vol. II, p. 681.
[76] Docket – Vol. II, p. 680.

x---x

Customer Name	Proof of VAT Zero-rating	Certification Period	Exhibit No.
	Certificate of Registration and Tax Exemption No. 2001-0025 issued by SBMA on October 22, 2018	October 22, 2018 to October 21, 2021	"R-6"[77] (BIR Records)
ERA 1 Petroleum Corporation	Certificate of Registration and Tax Exemption No. 2017-0693 issued by SBMA on September 26, 2017	September 26, 2017 to September 25, 2018	"P-17"[78]

Examination shows that petitioner's "*considered export*" sales amounting to ₱94,993,403.00 satisfied the essential elements to qualify as VAT zero-rated sales pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, computed as follows:

Total Zero-rated Sales to Export Oriented Entities	₱ 95,283,581.50
Less: Disallowance due to non-compliance with the invoicing requirements • SI No. 15103 with unreadable details	290,178.50
Adjusted Zero-Rated Sales to Export Oriented Entities	**₱94,993,403.00**

3. *Sale of Biodiesel to local customers*

Petitioner claims that it manufactures CME or coco-biodiesel and that its sales transactions are subject to zero percent (0%) VAT rate pursuant to Section 15(g) of RA No. 9513, otherwise known as the "Renewable Energy Act of 2008".[79]

Section 15(g) of RA No. 9513 grants certain tax incentives to RE developers, such as petitioner. The pertinent portion of which is reproduced below:

[77] BIR Records, p. 20.
[78] Docket – Vol. II, p. 678.
[79] Par. 10, *Petition for Review*, Docket – Vol. I, p. 10.

CHAPTER VII
General Incentives

> SEC. 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.

Based on the foregoing provisions, the sale of fuel from renewable sources of energy, such as biomass, is subject to the VAT rate of zero percent (0%).

Records show that petitioner is registered with the DOE as an RE Developer of Biomass Resources with Certificate of Registration No. RE-B2013-08-029 dated September 5, 2013.[80]

Likewise, the DOE accredited petitioner as a biodiesel manufacturer for five (5) years, or until September 4, 2023.[81]

[80] Exhibit "P-6, Docket – Vol. II, p. 625.
[81] Exhibit "P-8", Docket – Vol. II, p. 626.

Moreover, petitioner is also registered with the BOI as a New Export Producer of CME or Coco-Diesel and other By-Products such as Crude Glycerin, Soap Noodles and Toilet Soaps.[82]

In support of the zero-rated sales of biodiesel to local customers amounting to ₱1,870,712,341.23, petitioner submitted its Schedule of Zero-Rated Sales and Inward Remittances[83]/ Schedule of Zero-Rated Sale of Goods,[84] as well as the related SIs, which were examined by the Court-commissioned ICPA, Atty. Adan T. Delamide, as follows:

Customer	Product Sold	Amount	SIs
Chemrez Technologies, Inc.	CME	₱ 593,596,200.00	"P-58", "P-63", "P-64", "P-67", "P-72" to "P-77", "P-80", "P-84", "P-93", "P-99", "P-102", "P-112", "P-126" to "P-131", "P-141", "P-143", "P-145", "P-150", "P-154", "P-163", "P-168", "P-174", "P-179", "P-183", "P-194", "P-201", "P-211", "P-212", "P-220", "P-230", "P-233", "P-239", "P-243", "P-244", "P-247", "P-254", "P-261", "P-262", "P-268", "P-275", "P-283", "P-287", "P-301", "P-304", "P-309", "P-318", "P-325" to "P-327", "P-330", "P-336", "P-345", "P-350", "P-356", "P-364", and "P-365"
Chevron Philippines Inc.	CME	1,159,803,921.23	"P-55", "P-60" to "P-62", "P-65", "P-66", "P-79", "P-83", "P-85", "P-86", "P-92", "P-96", "P-111", "P-116", "P-117", "P-122" to "P-125", "P-132" to "P-134", "P-140", "P-142", "P-144", "P-146", "P-151", "P-155", "P-

[82] Exhibit "P-5", Docket – Vol. II, p. 616.
[83] Annex C, Exhibit "P-2467", Docket, Vol. II, pp. 547-553; Annex C - Zero-Rated Sales, Exhibit "P-2467-b".
[84] Exhibit "P-13", Docket – Vol. II, pp. 638-646.

x--x

Customer	Product Sold	Amount	SIs
			162", "P-164", "P-170" to "P-172", "P-175" to "P-178", "P-180" to "P-182", "P-192", "P-193", "P-198", "P-202", "P-203", "P-208", "P-213" to "P-216", "P-219", "P-224", "P-229", "P-231", "P-232", "P-234", "P-235", "P-242", "P-245", "P-246", "P-248", "P-251", "P-255", "P-258", "P-260", "P-270", "P-271", "P-276", "P-279", "P-282", "P-291", "P-295", "P-298", "P-300", "P-302", "P-303", "P-305", "P-307", "P-314", "P-317", "P-328", "P-329", "P-331", "P-332", "P-337", "P-339", "P-349", "P-352", "P-357" to "P-359", "P-361", and "P-362"
Filoil Logistics Corporation	CME	33,592,220.00	"P-173", "P-191", and "P-263"
Golden Asian Oil Int'l Inc.	CME	2,940,000.00	"P-360"
Phoenix Petroleum Philippines, Inc.	CME	80,780,000.00	"P-57", "P-59", "P-297", "P-316", "P-343", "P-344", "P-346", and "P-348"
Total Sales of Biodiesel to Local Customers		**₱1,870,712,341.23**	

Examination shows that SI no. 15102[85] in the amount of ₱10,607,400.00, with unreadable details, should be disallowed due to non-compliance with the invoicing requirements. Thus, only SIs in the aggregate amount of ₱1,860,104,941.23[86] comply with invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended.

---

[85] Exhibit "P-318".
[86] ₱1,870,712,341.23 less ₱10,607,400.00.

In sum, out of petitioner's total declared zero-rated sales of ₱1,968,144,088.73[87] for the subject period of the claim, only the amount of ₱1,957,246,510.23 duly supported by zero-rated SIs qualified as zero-rated sales under Section 15(g) of RA No. 9513 pursuant to the NIRC of 1997, as amended, as determined below:

	Export Sales to NRFC	**Sales to registered PEZA/SBMA**	**Sales of Biodiesel to Local Customers**	**Total**
Reported Zero-Rated Sales	₱2,148,166.00	₱95,283,581.50	₱1,870,712,341.23	₱1,968,144,088.73
Less: Adjustments				
Disallowances for failure to establish compliance with the invoicing requirements	-	290,178.50	10,607,400.00	10,897,578.50[88]
Valid zero-rated sales	**₱2,148,166.00**	**₱94,993,403.00**	**₱1,860,104,941.23**	**₱1,957,246,510.23**

Having found that petitioner had VAT zero-rated sales in the total amount of ₱1,957,246,510.23 for the TY 2018, the Court shall proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

Sixth requisite: the input VAT being claimed does not appear to be transitional input taxes.

The claimed input VAT does not appear to be transitional input taxes, as understood under Section 111(A) of the NIRC of 1997, as amended, to wit:

> 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 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,

[87] Adjusted by the difference of ₱0.80.
[88] ₱290,178.50 plus ₱1,860,104,941.23.

whichever is higher, which shall be creditable against the output tax. [*Emphasis supplied*]

As held by the Supreme Court in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,*[89] 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 the transition period from non-VAT to VAT status, the transitional input tax credit alleviates the impact of the VAT on the taxpayer.

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

Seventh requisite: not all petitioner's input VAT being claimed for refund were duly substantiated, and petitioner's purchases of local supply of goods, properties, and services needed for the development, construction, and installation of its plant facilities are subject to VAT zero rating.

Anent the *seventh* requisite in claiming a VAT refund, petitioner must provide supporting documents to prove that the input taxes claimed for refund for TY 2018 were actually due or paid, pursuant to Section 110(A) of the NIRC, as amended, which provides:

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

[89] G.R. Nos. 158885 & 170680, April 2, 2009.

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

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

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

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

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

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

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

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

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended, which provide, as follows:

SEC. 4.110-1. *Credits for Input Tax.* — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

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 materials supplied in the sale of services; or

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

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

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

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

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

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

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

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;

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

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

SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of the capital good is five (5) years or more – The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

Construction in progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally,

M

upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made: *Provided*, that an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billing while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

(a) The amortization of the input VAT shall only be allowed until December 31, 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: *Provided*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

... ...

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated."

Relative thereto, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

SEC. 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.

Verily, in order to prove entitlement to credits for input taxes due and paid, petitioner must not only present the supporting documents prescribed under Section 4.110-8 of RR No. 16-2005, but these documents must also comply with the invoicing requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005.

Based on its Amended Quarterly VAT Returns for TY 2018,[90] petitioner reported a total input VAT of ₱268,158,565.05 from its domestic purchases of goods and services, out of which the amount of ₱256,185,384.47 is the subject of its present claim for refund, as follows:

Particulars	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input VAT on domestic purchase of goods other than capital goods	**₱49,367,028.39**	**₱66,259,800.51**	**₱67,187,670.72**	**₱84,836,816.08**	**₱267,651,315.70**
Add: Amortized input VAT on capital goods exceeding ₱1M					

[90] Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91 to 98.

x---x

Particulars	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Deferred from the previous quarter	507,249.35	172,386.42	56,416.92	17,101.79	753,154.48
Less: Deferred for the succeeding period	(172,386.42)	(56,416.92)	(17,101.79)	-	(245,905.13)
Total Input VAT	**₱49,701,891.32**	**₱66,375,770.01**	**₱67,226,985.85**	**₱84,853,917.87**	**₱268,158,565.05**
Less: Output VAT	(3,820,634.46)	(5,566,875.00)	(606,780.00)	(1,013,964.11)	(11,008,253.57)
Excess Input VAT	**₱45,881,256.86**	**₱60,808,895.01**	**₱66,620,205.85**	**₱83,839,953.76**	**₱257,150,311.48**

The ICPA accounted for the difference of ₱964,927.04 between petitioner's administrative claim of ₱257,150,311.51[91] and its judicial claim of ₱256,185,384.47, which petitioner opted not to include in its present claim,[92] to wit:

Input tax attributable to vatable sales[93]	₱ 924,098.19
Disallowed input tax on the purchase of goods with a Non-VAT invoice[94]	15,828.85
Compromise penalty	25,000.00
Total	**₱964,927.04**

On the other hand, the ICPA noted that out of the total input VAT on current transactions reported per Amended Quarterly VAT Returns[95] amounting to ₱267,651,315.70, only the total amount of ₱267,599,410.16[96] input VAT was supported by various ORs and SIs. The ICPA opined that the difference of ₱51,905.54 was primarily due to the errors in the amount of input taxes reflected in the schedule and, ultimately, in the VAT return.[97] Consequently, the said difference is disallowed for lack of substantiation.

The result of the ICPA's review of the petitioner's supporting documents is shown below:[98]

---

[91] Difference of ₱0.03 due to rounding-off.
[92] Pars. 7 and 8, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 494 and 495.
[93] Par. 60, *Petition for Review*, Docket – Vol. I, p. 29.
[94] Exhibit "P-1997".
[95] Line 21F, Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98.
[96] Annex E, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 519 to 539; Annex E - Local Purchases, Exhibit "P-2466-b" (USB).
[97] Par. 25, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 498-499.
[98] Par. 26, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 499.

	Amount
With valid supporting documents	₱ 267,187,108.91
With invalid supporting documents	359,022.85
Without supporting documents	53,278.39
TOTAL	**₱267,599,410.16**

However, being an RE developer, petitioner's 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 RE sources up to its conversion into power are entitled to zero-rated VAT pursuant to Section 15(g) of RA No. 9513, as implemented by Part III, Rule 5, Section 13.G of its Implementing Rules and Regulations (IRR).

Thus, there being no input VAT to be paid by RE developers, such as petitioner, it necessarily follows that petitioner is not entitled to a refund from the said purchases.

Consequently, out of the total input VAT examined by the ICPA amounting to ₱267,599,410.16,[99] the Court finds that the total input VAT amounting to ₱262,022,961.53 which pertains to petitioner's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing RE sources up to its conversion into power are entitled to zero-rated VAT; thus, should be disallowed, as itemized below:

Name of Supplier	Particulars	Purchase Amount	Input VAT	Total
ASIAN CHEMICAL CORPORATION	Methanol	₱8,158,000.00	₱978,960.00	₱9,136,960.00
ASTEC MATERIALS TESTING CORPORATION	Soil investigation	81,247.50	9,749.70	90,997.20
CHEMFOUR INCORPORATED	Regular fuel oil	5,467,294.63	656,075.36	6,123,369.99
CHEMI-SOURCE UNLIMITED CORPORATION	Caustic soda micro pearls tonsil optimum	2,376,116.06	285,133.93	2,661,249.99
COCOPALM AGRI GROUP, INC.	Crude coconut oil	125,958,630.36	15,115,035.64	141,073,666.00
DIFFERENTIAL PRESSURES TECHNOLOGY INC.	Filter leaves	937,500.00	112,500.00	1,050,000.00
DUMAGUETE COCONUT MILLS, INC.	Crude coconut oil	186,518,228.12	22,382,187.37	208,900,415.49

[99] Annex E, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 519 to 539; Annex E - Local Purchases, Exhibit "P-2466-b" (USB).

Name of Supplier	Particulars	Purchase Amount	Input VAT	Total
ENCOAL CORPORATION	Coal	273,075.00	32,769.00	305,844.00
FILIPINAS AGRI-MILLING CORPORATION	Crude coconut oil	11,790,326.78	1,414,839.21	13,205,165.99
FILIPINAS AGRO MARKETING ENTERPIRSES INC	Crude coconut oil	46,741,071.43	5,608,928.57	52,350,000.00
GOLD BAY CHEMICAL, INC.	Caustic soda pearl	2,777,499.99	333,300.00	3,110,799.99
HIMMEL INDUSTRIES, INC.	Methanol	23,151,785.77	2,778,214.29	25,930,000.06
ICI SYSTEM INC	Steam flowmeter	174,146.88	20,897.63	195,044.51
IGNITICA OIL ENTERPRISES	Bunker fuel oil, low sulfur fuel oil	5,594,776.77	671,373.21	6,266,149.98
JET POWER CORPORATION	Coal	6,748,453.13	809,814.38	7,558,267.51
KEMICHEM INDUSTRIES CORPORATION	Sulfuric acid, caustic soda pearl	3,778,571.42	453,428.57	4,231,999.99
LAPU-LAPU WHOLESALE TRADERS, INC.	Coconut oil	827,686,294.65	99,322,355.36	927,008,650.01
LEGASPI IMPORT AND EXPORT CORPORATION	Methanol	83,346,553.13	10,001,586.38	93,348,139.51
MABUHAY VINYL CORPORATION	Hydrochloric acid	1,825,032.38	219,003.89	2,044,036.27
MALABON SOAP AND OIL INDUSTRIAL CO., INC.	Edible oil	70,974,797.35	8,516,975.68	79,491,773.03
MATCHPOINT TRADERS & WHOLESALERS, INC.	Coconut oil	651,722,410.70	78,206,689.28	729,929,099.98
MC MAI (CEBU) TRADING CORP.	Sulfuric Acid	251,878.79	30,225.45	282,104.24
MRS TECHNOLOGIES, INC	Alfa laval brazed plate heat exchanger	1,246,205.36	149,544.64	1,395,750.00
NARCHEM INDUSTRIAL SALES (JAIME Y. NARCISO)	Caustic soda pearl Taiwan	1,662,946.42	199,553.57	1,862,499.99
NEW ASIA OIL, INCORPORATED	Crude coconut oil	50,909,152.22	6,109,098.27	57,018,250.49
PHILIPPINE GLOBAL COCONUT OIL MILL, INC.	Crude coconut oil	44,636,306.25	5,356,356.75	49,992,663.00
RMS PETROLEUM TECHNOLOGY & WASTE MANAGEMENT CORPORATION	Bunker fuel oil	3,498,013.40	419,761.61	3,917,775.01
SPRINT INDUSTRIAL AND DEVELOPMENT CORP.	Indonesian steam coal	4,074,668.77	488,960.25	4,563,629.02

m/

x--x

Name of Supplier	Particulars	Purchase Amount	Input VAT	Total
UNIVERSAL AQUARIUS, INC.	Caustic soda, sulfuric acid	6,064,680.50	727,761.66	6,792,442.16
UNIVERSAL HARVESTER, INC	Hydrochloric acid	5,099,015.65	611,881.88	5,710,897.53
TOTAL		**₱2,183,524,679.41**	**₱262,022,961.53**	**₱2,445,547,640.94**

As a result, only the total input VAT amounting to ₱5,576,448.63,[100] which represents petitioner's purchase of goods and services that are **not directly related** to the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to conversion into power may be the subject of the present claim for VAT refund. Thus, the result of ICPA's examination[101] is adjusted as follows:

	Amount
Total input taxes per VAT return	₱ 268,158,565.05
Less: Discrepancy in the input taxes per schedule and supporting documents[102]	(51,905.54)
Adjusted input taxes	₱ 268,106,659.51
Less: Unsupported deferred input taxes[103]	(507,249.35)
Balance of input VAT on current purchases	**₱267,599,410.16**
Less: Disallowance per Court's verification Purchases at zero-rated VAT (see table above)	(262,022,961.53)
Input VAT that may be refunded	**₱ 5,576,448.63**

The ICPA noted exceptions in the total amount of ₱412,301.25,[104] as summarized below, which shall be disallowed for failure to meet the substantiation requirements under Sections 113(A) and (B), 237 and 238 of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005:

	Amount
Purchases of services supported only by a billing statement	₱321,319.53
Purchases of goods supported by Non-VAT Invoice	17,148.86
VAT not separately shown in the Invoice or OR	20,554.47
Unsupported input taxes/duplicate entry	53,278.39
TOTAL	**₱412,301.25**

[100] Total input VAT with supporting documents examined by the ICPA of ₱267,599,410.16 less total input VAT at 0% rate of ₱262,022,961.53.
[101] Exhibit "P-2466" (ICPA Report), Docket – Vol. II. p. 504.
[102] Annex B, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 509.
[103] See Par. 30, Annex B, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 500.
[104] Annex G, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 541; Annex G – Disallowed Input Tax, Exhibit "P-2466-b" (USB).

The Court finds the foregoing observations of the ICPA to be in order and adopts the disallowance. However, the ₱412,301.25 input VAT exceptions per ICPA will be adjusted to reflect only the disallowances pertaining to the total input VAT that may be refunded in the amount of ₱5,576,448.63 as discussed above. The total disallowances amounting to ₱359,022.86 pertaining to the ₱5,576,448.63 total input VAT that may be refunded are itemized as follows:

Name of Supplier	Exhibit	Purchase Amount	Input VAT
GRX GRAPHICS PRINTING SERVICES (GARRY B. BUXANI)	"P-633", "P-634", and "P-1213	₱ 5,888.39	₱ 706.61
FIBERUB ENTERPRISES (DANILO P. MINIMO)	"P-1196" and "P-1197"	151,785.72	18,214.28
SUNJOICE MARKETING CORPORATION	"P-1278"	2,765.00	331.80
WEBCAST TECHNOLOGIES INC	"P-1297"	10,848.14	1,301.78
GRANEXPORT MANUFACTURING CORPORATION	"P-1344", "P-1345", and "P-1819"	2,677,662.72	321,319.53
JLRC TRADING (ROCHELLE V. CAPUNO)	"P-1997" and "P-2139"	142,907.14	17,148.86
Total		**₱2,991,857.11**	**₱359,022.86**

Upon further verification, the Court additionally disallows the following input VAT in the total amount of ₱152,366.42, to wit:[105]

Name of Supplier	Exhibit	Purchase Amount	Input VAT
1. Input VAT supported by SIs or ORs that are photocopy only			
E.S CASTILLO HAULING SERVICES	"P-747"	₱23,214.29	₱2,785.71
RUSH IMPORT & MARKETING INC	"P-1130"	44,107.14	5,292.86
BELMAN LABORATORIES	"P-1174"	2,789.29	334.71
DENOVO EXPRESS ENDEAVOURS CORPORATION	"P-1190"	803.57	96.43
HARNWELL CHEMICALS CORPORATION	"P-1215"	25,189.29	3,022.71

[105] Refer to Annex E, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 519 to 539; Annex E - Local Purchases, Exhibit "P-2466-b" (USB).

LINKBELT INDUSTRIAL CORPORATION	"P-1250"	27,708.93	3,325.07
THE FIRST ANALYTICAL SVCS & TECH COOP (F.A.S.T LAB)	"P-1281"	2,848.21	341.79
XENTRIX SOLUTIONS, INC	"P-1300", "P-1301", and "P-1939	5,884.82	706.18
ACEDLAB, INC	"P-1613"	339.29	40.71
BIZ ASIA TRADING INC	"P-1627"	1,231.25	147.75
FIRST JAPS COMML. INC.	"P-1805"	5,267.86	632.14
Sub-total		**₱139,383.94**	**₱16,726.06**
2. Input VAT supported by SIs or ORs with corrections but are not countersigned by authorized personnel			
BIZ ASIA TRADING INC.	"P-619", "P-844", "P-964", "P-970", "P-1183", "P-1315", "P-1316",	13,810.27	1,657.23
LINKBELT INDUSTRIAL CORPORATION	"P-896" and "P-1254	40,192.85	4,823.14
JOBTRACT RESOURCES & MARKETING SOLUTIONS INC	"P-1545"	22,044.79	2,645.37
XENTRIX SOLUTIONS, INC.	"P-1154"	4,971.68	596.60
Sub-total		**₱81,019.59**	**₱9,722.34**
3. Input VAT supported by Billing Invoice with a note: "Not Valid for Claim of Input Taxes."			
DYNALAB CORPORATION	"P-1640"	35,714.29	4,285.71
Sub-total		**₱35,714.29**	**₱4,285.71**
4. Input VAT supported by ORs but VAT not separately indicated			
WEBCAST TECHNOLOGIES, INC.	"P-727"	16,851.00	2,022.12
KWIK-WAY ENGINEERING WORKS (T.E.L. CONSOLIDATED WORKS, INC.)	"P-1696"	5,000.00	600.00
Sub-total		**₱21,851.00**	**₱2,622.12**
5. Input VAT supported by OR but should be supported by SI			
E & S BUILDERS, HARDWARE & GEN. MERCHANDISE CO	"P-1330"	5,800.00	696.00
Sub-total		**₱5,800.00**	**₱696.00**
6. Input VAT supported by SIs or ORs without TIN, not under the name of petitioner, or with incomplete TIN			
NEXTWAVE COMMUNICATIONS INC	"P-1716"	39,285.71	4,714.29

STANDARD INSURANCE CO., INC.	"P-808" to "P-810", "P-1459" to "P-1465", "P-2201" to "P-2203", and "P-1748" to "P-1753"	572,186.44	68,662.37
CHEMLINE SCIENTIFIC CORPORATION	"P-622"	34,992.86	4,199.14
Sub-total		**₱646,465.01**	**₱77,575.80**
7. Input VAT without supporting document			
DYNALAB		15,379.46	1,845.54
Sub-total		**₱15,379.46**	**₱1,845.54**
8. Input VAT supported by OR without indicating the nature of payment			
CO BAN KIAT HARDWARE INC.	"P-1511"	7,142.86	857.14
Sub-total		**₱7,142.86**	**₱857.14**
9. Input VAT supported by SI with invalid Authority to Print (ATP)			
NEMIE FURNITURE TRADING (RACHEL NEMIE SUN PABON)	"P-1423"	1,964.29	235.71
Sub-total		**₱1,964.29**	**₱235.71**
10. Overclaimed input VAT; Pertains to input VAT for deferral to subsequent periods			
NORTHSTAR MOTORS CORPORATION	"P-1425"		37,800.00[106]
Sub-total			**₱37,800.00**
Total			**₱152,366.42**

Considering the foregoing, out of the input VAT of ₱5,576,448.63, the Court finds that the amount of ₱5,065,059.35 was properly supported in accordance with the invoicing and substantiation requirements under the law and regulations, computed as follows:

		Amount
Total input taxes per VAT return	₱	268,158,565.05
Less: Discrepancy in the input taxes per schedule and supporting documents[107]		(51,905.54)
Adjusted input taxes	₱	268,106,659.51
Less: Unsupported deferred input taxes[108]		(507,249.35)

[106] Total input VAT of ₱42,000 divided by 60 months of useful life multiplied by 54 remaining months; Refer to Annex H, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 542.
[107] Annex B, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 509.
[108] See Par. 30, Annex B, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, p. 500.

Balance of input VAT on current purchases	**₱267,599,410.16**
Less: Disallowances per Court's verification	
Purchases at zero-rated VAT (see table above)	(262,022,961.53)
Input VAT that may be refunded	**₱ 5,576,448.63**
Less: Disallowance per ICPA	(359,022.86)
Disallowance per Court's further verification	(152,366.42)
Valid Input VAT for TY 2018	**₱ 5,065,059.35**

Hence, petitioner complied with the *seventh* requisite, *i.e.*, the input taxes are due or paid, but only in the amount of ₱5,065,059.35.

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

To reiterate, the *eighth* requisite is that the input VAT claimed is 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 based on sales volume.

As discussed earlier, petitioner declared in its Amended Quarterly VAT Returns for TY 2018[109] total sales of ₱2,059,879,534.36, consisting of vatable sales amounting to ₱91,735,446.43, and zero-rated sales amounting to ₱1,968,144,087.93.

However, since petitioner's valid input VAT for TY 2018 in the total amount of ₱5,065,059.35 cannot be identified to specific sales, the Court shall proportionately allocate the said input VAT based on the volume of petitioner's sales, thus:

Total Zero-Rated Sales per VAT Returns	₱1,968,144,087.93
Divided by the Reported Total Sales per Quarterly VAT Returns	₱2,059,879,534.36
Multiplied by Total Valid Input VAT	₱5,065,059.35

[109] Exhibits "P-12" to "P-12-c", Docket – Vol. I, pp. 91-98.

NV

Valid input VAT allocated to total zero-rated sales	**₱4,839,490.10**

Total VATable Sales per VAT Returns	₱91,735,446.43
Divided by the Reported Total Sales per Quarterly VAT Returns	₱2,059,879,534.36
Multiplied by Total Valid Input VAT	₱5,065,059.35
Valid input VAT allocated to VATable sales	**₱225,569.25**

Thus, regarding petitioner's compliance with the *eighth* requisite, only the amount of ₱4,839,490.10 represents its valid input VAT attributable to total declared zero-rated sales for the TY 2018.

Ninth requisite: petitioner had no unutilized input VAT available for refund.

With regard to the *ninth* requisite, petitioner reported output VAT from its taxable sales for the 1st to 4th quarters of TY 2018 in the aggregate amount of ₱11,008,253.57, to wit:

Exhibit[110]	**TY 2018**	**Output VAT**
"P-12"	1st Quarter	₱ 3,820,634.46
"P-12-a"	2nd Quarter	5,566,875.00
"P-12-b"	3rd Quarter	606,780.00
"P-12-c"	4th Quarter	1,013,964.11
	Total	**₱11,008,253.57**

In the case of *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue,*[111] the Supreme Court held that the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety, and such option is vested with the taxpayer-claimant, to wit:

> Thus, the input tax attributable to zero-rated sales may, **at the option of the VAT-registered taxpayer**, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund of the issuance of tax credit certificate; **or** (2) claimed

[110] Line 15B, Docket – Vol. I, pp. 91-98.
[111] G.R. No. 215159, July 5, 2022.

> <u>for refund or tax credit in its entirety</u>. It must be stressed that the **remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, **the option is vested with the taxpayer-claimant**. [*Emphases supplied*]

Applying the foregoing, records show that petitioner chose the *first* option, *i.e.,* it computed its claim for refund in the aggregate amount of ₱256,185,384.47 by offsetting its output VAT from the regular VATable sales against its available input taxes for the 1st to 4th quarters of TY 2018, as shown below:

	Input Tax
Domestic purchases of goods other than Capital Goods	₱ 267,651,315.70
Amortization of Input Tax on Capital Goods	507,249.35
Less: Output Tax	(11,008,253.57)
Net VAT Refund – Administrative Claim	**₱ 257,150,311.48**
Less: Input VAT not included by petitioner in its Judicial Claim[112]	(964,927.04)
Net VAT Refund – Judicial Claim	**₱256,185,384.44**[113]

It is clear from the foregoing that petitioner opted to claim a refund of its unutilized or "excess" input tax, which is the amount after charging the input tax allocated to zero-rated sales against its output tax liabilities.

Following the same computation, since petitioner's valid input VAT allocated to sales subject to the 12% VAT in the amount of ₱225,569.25, as earlier determined, is not enough to cover its output VAT liability amounting to ₱11,008,253.57, the output VAT still due amounting to ₱10,782,684.32[114] shall then be charged against its valid input VAT attributable to total reported zero-rated sales of ₱4,839,490.10.

However, it is noted that the input VAT attributable to zero-rated sales of ₱4,839,490.10 is lower than the output VAT still due of ₱10,782,684.32. Thus, petitioner still has a net output VAT still due of ₱5,943,194.22, as shown below:

Output VAT per return	₱11,008,253.57
Less: Valid Input VAT allocated to sales subject to 12% VAT	225,569.25
Output VAT Still Due	**₱10,782,684.32**

[112] Pars. 7 and 8, Exhibit "P-2466" (ICPA Report), Docket – Vol. II, pp. 494 and 495.
[113] Difference of ₱0.03 due to rounding-off.
[114] Difference of ₱11,008,253.57 and ₱225,569.25.

Valid input VAT allocated to zero-rated sales	₱4,839,490.10
Less: Output VAT Still Due	10,782,684.32
Net Output VAT still due	**₱5,943,194.22**

There being no excess input VAT as computed above, the *ninth* requisite is not complied with.

Settled is the doctrine that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[115] Strict adherence to the conditions prescribed by the law is required of the taxpayer.[116]

Thus, for petitioner's failure to satisfy all the requisites to be entitled to a refund of input VAT, the Court must deny its claim for refund in the amount of ₱256,185,384.47.

WHEREFORE, premises considered, the Petition for Review is **DENIED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

HENRY S. ANGELES
Associate Justice

---

[115] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.
[116] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

PURE ESSENCE INT'L., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10411

Members:

BACORRO-VILLENA, *Acting Chairperson,*
CUI-DAVID, *and*
ANGELES*, *JJ.*

Promulgated:
APR 08 2024
11:10 a.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to my esteemed colleague, Associate Justice Lanee S. Cui-David, I register my dissent to the *ponencia* as it precludes petitioner Pure Essence Int'l., Inc. (**petitioner**) of its entitlement to a partial refund in the amount of ₱4,812,693.93.

Following a recomputation of the refundable amount based on the recent Supreme Court decision in *Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*[1] (**Chevron**), it is my opinion that petitioner is entitled to a partial refund of excess and unutilized input Value-Added Tax (**VAT**) attributable to its zero-rated sales for the four quarters of calendar year (**CY**) 2018.

As the basis for the said recomputation, I hereby outline what I deem to be the correct steps for computing the refundable amount of excess and unutilized input VAT attributable to zero-rated sales when the taxpayer-claimant is engaged in mixed transactions as held in *Chevron*:

---

* Designated as Special Member.
1 G.R. No. 215159, 05 July 2022.

1. Determine the amount of substantiated or valid input VAT;

2. Deduct from the substantiated or valid input VAT any input VAT directly attributable to a specific activity to arrive at the substantiated or valid input VAT not attributable to any activity;

3. Multiply the substantiated or valid input VAT not attributable to any activity by the ratio of Valid Zero-Rated Sales over Total Sales to determine the amount of substantiated or valid input VAT attributable to valid zero-rated sales;

4. Add to the amount computed in no. 3 any substantiated or valid input VAT directly attributable to zero-rated sales to arrive at the total substantiated or valid input VAT attributable to zero-rated sales;

5. Determine the output VAT still due, which is computed by deducting against output VAT due on VATable sales the portion of the total declared input VAT (as distinguished from the substantiated or valid input VAT, which is what the Court typically uses in apportioning input VAT based on sales volume) allocated to VATable sales;

6. If the taxpayer-claimant opts to charge the input VAT attributable to zero-rated sales against output VAT, the entire amount of output VAT still due may be deemed applied against substantiated or valid input VAT directly attributable to zero-rated sales; otherwise, or if the taxpayer-claimant opts to claim for refund or tax credit in its entirety, deduct from the output VAT still due any input VAT carried over from previous period to arrive at the amount that may be deemed applied as aforesaid;

7. Determine the amount of input VAT carried-over instead; and,

8. Deduct from the total substantiated or valid input VAT attributable to zero-rated sales the amount computed in nos. 6 and 7.

Applying the foregoing steps to the case at bar, there is an excess and unutilized input VAT attributable to valid zero-rated sales (or the refundable amount) for CY 2018, as computed below:

Step 1. It is observable from the *ponencia* that the amount of substantiated or valid input VAT is ₱5,065,059.35.

Step 2. No input VAT is directly attributable to a specific activity.

Step 3. The amount of substantiated or valid input VAT attributable to valid zero-rated sales is computed as follows:

Total Valid Zero-Rated Sales	₱1,957,246,509.43
Divided by Reported Total Sales *per* CY 2018	2,059,879,534.36
Multiplied by Total Valid Input VAT	5,065,059.35
Valid Input VAT Allocated to Total Valid Zero-Rated Sales	**₱4,812,693.93**

Step 4. No input VAT is directly attributable to a specific activity.

Step 5. Output VAT still due is:

Output VAT		₱11,008,253.57
Less: Declared Input VAT Allocated to VATable sales		
Total VATable Sales	₱91,735,446.43	
Divided by Reported Total Sales	2,059,879,534.36	
Multiplied by Total Input VAT Declared[2]	267,651,315.70	11,919,683.91
Output VAT Still Due		**₱-**

Step 6. As the declared input VAT allocated to VATable sales sufficiently covered the output VAT, there is no longer any output VAT still due to be applied against substantiated or valid input VAT directly attributable to zero-rated sales.

Step 7. No input VAT deemed carried-over.

Step 8. The excess input VAT attributable to valid zero-rated sales is:

Valid Input VAT allocated to Total Valid Zero-Rated Sales	₱4,812,693.93
Less: Valid Input VAT Allocated to Total Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	-
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱4,812,693.93**

2

Input Tax During the Period of Claim	**Amount**
Amortized Input Tax on Capital Goods exceeding ₱1 million	₱-
Input Tax on Domestic Purchases of Goods other than Capital Goods	267,651,315.70
Input Tax on Importation of Goods other than Capital Goods	-
Input Tax on Domestic Purchases of Services	-
Input Tax on Services Rendered by Non-Residents	-
Total	**₱267,651,315.70**

In contrast, the computation in the *ponencia* ends at a net output VAT still due of ₱5,943,194.22 (no excess input VAT attributable to valid zero-rated sales, and consequently, no refundable amount), in the following manner:

Output VAT	₱11,008,253.57
Less: Valid Input VAT allocated to Sales subject to 12% VAT	225,569.25
Output VAT Still Due	**₱10,782,684.32**

Valid Input VAT allocated to Total *Declared* Zero-Rated Sales	₱4,839,490.10
Less: Output VAT Still Due	10,782,684.32
Net Output VAT Still Due	**₱5,943,194.22**

The key differences between the foregoing computations is the determination and treatment of the resulting **"Output VAT Still Due"** of **₱10,782,684.32** in the *ponencia*, and herein recomputed as *zero*, giving rise to a refundable amount. Applying *Chevron*, I submit that:

(1) It should be computed by deducting against "Output VAT" the portion of the **"Total Declared Input VAT"** (and *not* the **"Substantiated or Valid Input VAT"**, which is what this Court typically uses in apportioning input VAT based on sales volume) allocated to VATable sales; and,

(2) It should be deducted from the valid input VAT allocated to **total *valid* zero-rated sales** and *not* from the valid input VAT allocated to **total declared zero-rated sales.**

As elucidated in *Chevron*[3], it is not for the Court of Tax Appeals (**CTA**) to determine and rule in a judicial claim for refund under Section 112(A)[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, that the taxpayer had insufficient or unsubstantiated input VAT to pay or "cover" its output VAT and, for this reason, it is not proper to charge the taxpayer's substantiated or valid input VAT against its output VAT first and use the resultant amount as basis for computing the allowable amount for refund, *viz*:

> ...
>
> ... **[T]he input tax attributable to zero-rated sales may, <u>at the option of the VAT-registered taxpayer</u>, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must

---

[3] Supra at note 1; Citations omitted, emphasis and italics in the original text and supplied, and underscoring supplied.

[4] **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — ...

be stressed that **the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.** Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that **the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** **<u>The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes.</u>** These procedures find no basis in law and jurisprudence.

...

...[B]efore the input tax from zero-rated sales may even form part of the total allowable or creditable input taxes to be charged against the output taxes and undergo the computation of "excess output or input tax" in Section 110 (B), it may already be removed from the formula once the taxpayer opted to claim the entire amount for refund.

These were echoed by Associate Justice Japar B. Dimaampao, opining that "nowhere in Section 112 (A) does it require that the taxpayer must first offset its input tax with any output tax before its claim for refund may prosper. Notably, the word "excess" does not even appear in this section. Instead, what recurs is the refundability of input tax that has not been applied against output tax or that has simply remained unused."

Moreover, **the crediting of input taxes, including input tax attributable to zero-rated sales, from the output tax should be discretionary to the taxpayer as it is the taxpayer who is more interested in reducing its output tax payable.** In fact, the legislature put a cap on the input tax that may be deducted from the output tax to generate cash flow for the government. Therefore, to require entities engaged in zero-rated transactions to charge their input tax from zero-rated sales against their output VAT from regular twelve percent (12%) VAT-able sales would defeat the very object of the tax measure, which is to generate more income for the government.

...

Fourth, that the taxpayer failed to prove that it had sufficient creditable input taxes to cover or "pay" its output tax liability in a given period, hence, there is no refundable "excess" input tax, which is an issue distinct, separate, and independent from a claim for refund or issuance of tax credit certificate of **unutilized** input VAT attributable to zero-rated sales. For one, **the taxpayer-claimant is not asking to refund the "excess" creditable input taxes from the output tax**. To be sure, the "excess" input tax may only be carried over to the succeeding periods and cannot be refunded. But, on the other hand, **the taxpayer is asking to refund the unutilized or unused input tax from zero-rated sales.**

Next, the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, <u>it is not for the CTA and the Court to determine and rule in a judicial claim for refund</u>

> **<u>under Section 112 (A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability</u>. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.**
>
> ...
>
> **All told, it was erroneous for the CTA to charge the validated and substantiated input taxes against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund. The CTA also erred in requiring Chevron Holdings to substantiate its excess input tax carried over from the previous quarter as it is not a requirement for entitlement to a refund of unused or unutilized input VAT from zero-rated sales.**
>
> We reiterate that although the burden of proof to establish entitlement to a refund is on the taxpayer-claimant, the Court has consistently held that once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged their burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. Otherwise, we would unduly burden the taxpayer-claimant with additional requirements which have no statutory nor jurisprudential basis. In the present case, Chevron Holdings sufficiently proved compliance with all the requisites for entitlement to a refund or credit of unutilized input tax allocable to zero-rated sales under Section 112(A) of the Tax Code.
>
> ...

From the foregoing, when a taxpayer-claimant opts to *claim* for refund or tax credit *in its entirety* and it has excess input VAT carried over from previous period, it need not substantiate the same for purposes of establishing its entitlement to a refund of excess input VAT from zero-rated sales. The declared excess input tax carried over from previous period is presumed correct and is used to cover or pay for the output VAT still due in the period of claim. It is only when there is no such input tax carried over from previous period or the amount thereof is less than or insufficient to cover the output VAT still due that the difference or the remaining output VAT may be deducted from or charged against the substantiated or valid input VAT attributable to zero-rated sales.

On the other hand, when a taxpayer-claimant opts to *charge* the input VAT attributable to zero-rated sales *against output VAT*, the entire amount of output VAT still due may be deemed applied against the substantiated or valid input VAT attributable to zero-rated sales. This is because the crediting of input VAT, including that attributable to zero-rated sales, from the output VAT is at the taxpayer's discretion.

As to my first point on the computation of the "Output VAT Still Due", it is my humble opinion that it is the **"Total Declared Input VAT"** that should be used in apportioning input VAT and determining the portion allocated to VATable sales since the Supreme Court categorically held in *Chevron* that "**the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability**" and thus, "**it is not for the CTA ... to determine and rule in a judicial claim for refund under Section 112(A)[5] of the [NIRC of 1997, as amended] that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the [Bureau of Internal Revenue (BIR)] to determine in an administrative proceeding for assessment of deficiency taxes**".

To my mind, the Supreme Court's clear declaration in *Chevron* aims to correct this Court's practice concerning the use of **"Substantiated or Valid Input VAT"** in the apportionment of input VAT and in calculating the portion thereof allocable to VATable sales, which is deductible from "Output VAT". The High Court explained that this practice is akin to **the CTA itself making an assessment for deficiency output VAT liability, without prior determination from the BIR**. It must be noted that **what can be credited against the output tax** (aside from the portion of input VAT allocable to zero-rated sales charged against output tax) are those input VAT directly attributable and/or allocable to VATable sales. Thus, the same should not be reduced by this Court without a prior determination from the BIR.

Accordingly, I maintain my firm stance towards changing this Court's formula for calculating the "Output VAT Still Due" to the end that this Court veers away from reducing the amount of input VAT **directly attributable and/or allocated to VATable sales** that unwittingly sanctions a judicial assessment of output VAT.

Furthermore, as to my second point, it must be noted that the option of a VAT-registered taxpayer to charge the input VAT attributable to zero-rated sales against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of a tax credit certificate (**TCC**), or claim for refund or tax credit in its entirety, *only* applies to the substantiated input tax attributable to **valid zero-rated sales**. This can be gleaned from the following computation of the Supreme

[5] Supra at note 4.

Court in *Chevron*[6], citing Section 4.110-4[7] of Revenue Regulations (**RR**) No. 16-2005[8], as amended by RR No. 4-2007[9]:

> ...
>
> Thus, **the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt)** multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.
>
> ...
>
> Accordingly, Chevron Holdings is entitled to the refund of unutilized input tax allocable to its zero-rated sales for January 1 to December 31, 2006, in the total amount of ₱1,140,381.22, computed as follows:

---

6 Supra at note 1; Citation omitted and emphasis supplied.

7 SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — . . .

. . .

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 12%	₱	100,000.00
Sale to private entities subject to 0%		100,000.00
Sale of exempt goods		100,000.00
Sale to gov't. subjected to 5% final VAT Withholding		100,000.00
Total Sales for the month	₱	400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	₱	5,000.00
Input tax on zero-rated sales		3,000.00
Input tax on sale of exempt goods		2,000.00
Input tax on sale to government		4,000.00
Input tax on depreciable capital good **not attributable** to any specific activity (monthly amortization for 60 months)		**20,000.00**

. . .

B. *The input tax attributable to zero-rated sales for the month shall be computed as follows*:

Input tax directly attributable to zero-rated sale — ₱ 3,000.00

Ratable portion of the input tax not directly attributable to any activity:

$\frac{\text{Taxable sales (0\%)}}{\text{Total Sales}}$ x **Amount of input tax not directly attributable to any activity**

$\frac{\text{P100,000.00}}{\text{400,000.00}}$ x P20,000.00 — ₱ 5,000.00

Total input tax attributable to zero-rated sales for the month ₱ 8,000.00

8 Consolidated Value-Added Tax Regulations of 2005.

9 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005, Revenue Regulations No. 04-07.

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Valid zero-rated sales	5,762,011.70	4,669,743.23	66,091,331.71	79,131,661.58
Divided by: Total reported sales	313,164,583.06	272,400,438.61	299,500,840.65	501,152,183.16
Multiplied by: Valid input tax not directly attributable to any activity	1,276,656.14	1,650,503.65	1,860,385.53	4,294,269.68
Input tax attributable to zero-rated sales	23,489.59	28,294.48	410,534.26	678,062.88
TOTAL				**₱1,140,381.22**

...

Notably, the *ponencia* would have arrived at the same result had it *first* separated or excluded the "disallowed" portion of the input VAT allocated to *declared* zero-rated sales (*i.e.*, ₱26,796.17), as follows:

Table 1. Input VAT Allocation	Amount (a)		Allocation Factor (c) = (a) / (b)	Allocated Input VAT (e) = (c) x (d)	
Valid Zero-Rated Sales	₱1,957,246,509.43		95.02%	**₱4,812,693.93**	
Disallowed Zero-Rated Sales	10,897,578.50		0.53%	26,796.17	
VATable Sales	91,735,446.43		4.45%	225,569.25	
Total Declared Sales	**₱2,059,879,534.36**	(b)	**100.00%**	**₱5,065,059.35**	(d)

Table 2. Computation of Output VAT Still Due

Output VAT	₱11,008,253.57
Less: Declared Input VAT allocated to VATable Sales	11,919,683.91
Output VAT Still Due	**₱-**

Table 3. Refundable Excess Input VAT Attributable to *Valid* Zero-Rated Sales

Valid Input VAT allocated to *Valid* Zero-Rated Sales	₱4,812,693.93
Less: Valid Input VAT attributable to Valid Zero-Rated Sales Effectively Applied Against Output VAT Still Due	-
Less: Input VAT Deemed Carried-Over	-
Refundable Excess Input VAT attributable to Valid Zero-Rated Sales	**₱4,812,693.93**

It is noteworthy to point out that only the "Substantiated or Valid Input VAT" attributable to valid zero-rated sales of ₱4,812,693.93 may be offset against "Output VAT Still Due" where the claimant opts to charge the input VAT attributable to zero-rated sales against output, notwithstanding that it had "Input VAT Carried Over from Previous Period" sufficient to pay or "cover" the same, amounting to ₱1,176,553,800.66.[10]

---

10 Item 20A, Quarterly Value-Added Tax Return (BIR Form No. 2550-Q) for the 1st quarter of CY 2018. Exhibit "P-12", Division Docket, Volume II, p. 630.

Additionally, I am of view that the *ponencia*'s computation of deducting the "Output VAT Still Due" from the valid input VAT allocated to **total zero-rated sales,** rather than from the valid input VAT allocated to **total *valid* zero-rated sales** would result in a double tax benefit to the taxpayers, *i.e.,* input VAT allocated to total *invalid* zero-rated sales may be used to reduce the amount of output VAT and may also be claimed as an expense pursuant to Q-13 and A-13 of Revenue Memorandum Circular (**RMC**) No. 42-03[11], since the same is ultimately disallowed for VAT refund purposes.

What I perceive as a considerable flaw in the *ponencia*'s computation of the refundable amount of input VAT attributable to zero-rated sales is best illustrated by the scenario below.

Assuming that the substantiated/valid input VAT allocated to zero-rated sales is ₱1,000.00 and the output VAT still due is ₱50.00. Suppose further that the invalid zero-rated sales is ₱90.00 and the valid zero-rated sales ₱10.00, totaling ₱100.00 in declared zero-rated sales. Following the majority's computation, the refundable amount of excess input VAT attributable to zero-rated sales would then be ₱95.00.[12] In addition, pursuant to RMC No. 42-03, the amount of ₱900.00 pertaining to input VAT related to invalid zero-rated sales may either be claimed as expense or recorded as part of an asset account subject to depreciation. Moreover, the amount of ₱50.00 will be applied against the output VAT still due. Effectively, the taxpayer stands to gain a total tax benefit of ₱1,045.00[13], notwithstanding that only ₱1,000.00 is the substantiated/valid input VAT allocated to zero-rated sales.

In contrast, the proposed computation herein laid out (based on what I deem to be the proper construction of *Chevron*) aims to rectify the above-illustrated error by *only* awarding a refundable amount *if and only if* there is an excess of substantiated/valid input allocated to *valid* zero-rated sales after applying the output VAT still due. Notably, under this proposed method, the Court would only award a refund of ₱50.00[14], resulting in a potential total tax benefit of ₱1,000.00.

The principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established), as ordained in Article 8[15] of the Civil Code, enjoins adherence by this Court to doctrinal rules

---

11 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

12 Computed as: (₱1,000.00 – ₱50.00) x (₱10.00/₱100.00).

13 Computed as: ₱95.00 + ₱900.00 + ₱50.00.

14 Computed as: ₱1,000.00 x (₱10.00/₱100.00) – ₱50.00.

15 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

established by the Supreme Court in its final decisions, such as the recent pronouncement in *Chevron* regarding the proper formula for computing the refundable input tax.[16] This principle is based on the notion that once a question of law has been examined and decided, it should be considered settled and closed to further argument.[17] The High Court's interpretation of a statute becomes part of the law as of the date it was originally passed because such interpretation simply establishes the contemporaneous legislative intent that the interpreted law carries into effect.[18]

With the recomputation giving rise to a refundable excess input VAT attributable to valid zero-rated sales, following the procedure laid down in *Chevron*, petitioner is entitled to a partial refund or issuance of a TCC of ₱4,812,693.93.

All told, I vote to **GRANT** the instant Petition for Review and thereby grant a partial refund or issuance of a TCC to petitioner in the amount of ₱4,812,693.93.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

16 See *Benjamin G. Ting v. Carmen M. Velez-Ting*, G.R. No. 166562, 31 March 2009.

17 Id.

18 See *Philippine Long Distance Telephone Company v. Abigail R. Razon, et al.*, G.R. No. 179408, 05 March 2014.