Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

COLT COMMERCIAL INC.,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9340
For: Refund

Members:

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

APR 10 2019 ; 1:07 pm

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DECISION

MINDARO-GRULLA, J.:

The instant case was deemed submitted for decision on April 11, 2018.

This refers to a Petition for Review[1] filed by petitioner Colt Commercial Inc., against respondent Commissioner of Internal Revenue on April 29, 2016, which seeks that judgment be rendered ordering respondent to refund the amount of Two Million Eighty-Two Thousand Three Hundred Seventy-Six Pesos and Forty-One Centavos (₱2,082,376.41) representing unutilized input tax payments attributable to its zero-rated sales for the fourth (4th) quarter of taxable year 2013.[2]

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with Securities and Exchange Commission (SEC) Reg. No. CS201212819[3] dated July 17, 2012, having its business address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan

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[1] Docket (Vol. I), pp. 10-22.
[2] Statement of the Case, Pre-Trial Order, Docket (Vol. IV), p. 2879.
[3] Exhibit "P-1".

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Luna St., Brgy. 289 Zone 027, Binondo, Manila.[4] It is also registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Certificate of Registration No. OCN C0000579258[5] dated August 31, 2012.

Petitioner is represented by its President, Cyrus S. Chung, Jr.[6]

Respondent, on the other hand, is the government official charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner is principally engaged in the business of selling cutting tools and hardware.[7] Incidentally, majority of its clients are entities doing business within the economic zone.[8]

On December 28, 2015, petitioner filed with BIR Revenue District Office (RDO) No. 30 a letter[9] dated December 18, 2015, together with BIR Form No. 1905[10], regarding an application for VAT refund for the 4th quarter of taxable year 2013. Petitioner claims to have unutilized input tax payments attributable to zero-rated sales to its clients within the economic zone in the total amount of ₱2,082,376.41.

On April 1, 2016, petitioner received a letter[11] dated March 28, 2016 from Revenue District Officer Leonora R. Ruizol of RDO No. 30, denying its claim for VAT refund. Revenue District Officer Ruizol claims that as per verification of petitioner's VAT Returns, they disclosed that petitioner has already applied the entire amount of input tax, subject for refund, against the output tax by way of carrying it over to the first quarter of the subsequent taxable year 2014.[12]

Aggrieved, petitioner elevated the matter to this Court through the instant Petition for Review on April 29, 2016.

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[4] Exhibit "P-3".
[5] Exhibit "P-5".
[6] Exhibit "P-4".
[7] Exhibit "P-2".
[8] Exhibit "P-6".
[9] Exhibit "P-13".
[10] Exhibit "P-14".
[11] Exhibit "P-23"; Exhibit "R-3".
[12] *Ibid; See* Paragraph 1.b, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. IV), p. 2860.

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In his Answer[13], respondent interposed the following Special and Affirmative Defenses, viz.:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:

Claims for refund are construed strictly against the taxpayer and in favor of the Government.

6. It is said that taxes are essential to government's very existence hence, the dictum that "taxes are the lifeblood of the government." And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

7. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption.

As petitioner already applied input tax claimed against output tax, the claimed refund was properly denied.

8. The instant claim was properly denied through a letter dated March 28, 2016 and served to petitioner on April 1, 2016.

9. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requisites:

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[13] Docket (Vol. I), pp. 222-227.

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

10. Verification of Vat Returns of petitioner disclosed that it applied the entire amount of input tax, subject for refund against the output tax by way of carrying it over to the 1st quarter of taxable year 2014.

11. As petitioner already applied such input tax against the output tax, then it failed to satisfy the fourth requisite that the input taxes were not applied against any output VAT liability.

12. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

13. To reiterate, claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted." *(Citations Omitted)*

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On August 8, 2016, a Notice of Pre-Trial Conference[14] was issued by this Court, setting the case for pre-trial conference on October 6, 2016 at 9:00 a.m. Thereafter, respondent filed its Pre-Trial Brief[15] on September 30, 2016, while, petitioner, on the other hand, filed its Pre-Trial Brief[16] on October 3, 2016.

Pre-trial conference ensued.

On October 13, 2016, petitioner filed a Motion to Commission Independent Certified Public Accountant[17], praying that Mr. Garry S. Pagaspas, CPA, LLB, Managing Partner of GPP & Co. CPAS, be appointed as the Independent Certified Public Accountant (ICPA) for the instant case. Finding merit, this Court, in an Order[18] dated February 9, 2017, granted petitioner's Motion and commissioned Mr. Pagaspas after taking his oath as the ICPA for the present case.

On October 21, 2016, the parties filed their Joint Stipulation of Facts and Issues[19] (JSFI). Subsequently, on December 6, 2016, a Pre-Trial Order[20] was issued by this Court, adopting the parties' JSFI and, afterwards, deemed the pre-trial terminated.

During trial, petitioner offered the testimonies, by way of Judicial Affidavits, of Ms. Cherilyn R. Chung[21], its Corporate Secretary and Treasurer; Ms. Jennifer S. Mañago[22], its Accounting Head; Mr. Cyrus S. Chung, Jr.[23], its President; and Mr. Garry S. Pagaspas[24], the court-commissioned ICPA for the instant case.

After finishing their respective testimonies, petitioner filed its Formal Offer of Evidence[25] on July 25, 2017, offering Exhibits "P-1" to "P-28-B", inclusive of sub-markings, as its documentary evidence. Thus, in the Resolution[26] dated September 25, 2017, this Court

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[14] *Ibid*, pp. 228-229.
[15] *Id.*, pp. 238-242.
[16] *Id.*, pp. 252-267.
[17] Docket (Vol. IV), pp. 2815-2819.
[18] *Ibid*, pp. 2901-2902.
[19] *Id.*, pp. 2860-2868.
[20] *Id*, pp. 2879-2886.
[21] Judicial Affidavit dated February 22, 2017, *id.*, pp. 2921-2928; Exhibit "P-25".
[22] Judicial Affidavit dated February 22, 2017, *id.*, pp. 2930-2942; Exhibit "P-26".
[23] Judicial Affidavit dated February 22, 2017, *id.*, pp. 2906-2919; Exhibit "P-24".
[24] Judicial Affidavit dated March 22, 2017, *id.*, pp. 3035-3054; Exhibit "P-27".
[25] Docket (Vol. IV), pp. 3076-3099.
[26] *Ibid*, pp. 3215-3216.

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admitted all of petitioner's evidence, except for Exhibit "P-7" for its failure to present the original document for comparison. Thereafter, petitioner was deemed to have rested its case.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
P-1	Petitioner's SEC Certificate of Registration dated July 17, 2012
P-2	Petitioner's Articles of Incorporation dated June 27, 2012
P-3	Petitioner's General Information Sheet dated July 23, 2013
P-4	Petitioner's Secretary's Certificate dated August 7, 2015
P-5	BIR Certificate of Registration (BIR Form No. 2303) dated August 31, 2012
P-6	Confirmation Letter of Philippine Economic Zone Authority (PEZA) Director – General Lilia B. De Lima, dated February 16, 2016 addressed to CCI's President, Mr. Cyrus S. Chung, Jr., confirming the issuance of VAT-zero rating certifications to CCI's clients/purchasers
P-8	Schedule of Petitioner's Sales in 4th Quarter of Taxable Year 2013
P-9	Certified true copy of sales invoices
P-10	Schedule of Purchases for period of claim with the following details: Registered Name of Supplier, TIN of Supplier, Invoice No., Date of Invoice, OR No., Date of OR, Amount of Purchase, Input Tax and Total Invoice Amount
P-11	Certified true copy of sales invoices for purchase of goods
P-12	Copy of BIR Authority to use pre numbered loose-leaf form dated October 9, 2012
P-13	Cover Letter of Petitioner through Puno and Peñarroyo Law Offices dated December 18, 2015, received by the BIR RDO 30 on December 28, 2015
P-14	BIR Form No. 1905 on the request for refund received by BIR RDO 30 on December 28, 2015
P-15-A	Certification from Bureau of Customs dated September 8, 2014
P-15-B	Certification from Department of Finance – OSS dated November 17, 2014
P-16-A	1st Quarter VAT Return for Taxable Year 2013
P-16-B	2nd Quarter VAT Return for Taxable Year 2013
P-16-C	3rd Quarter VAT Return for Taxable Year 2013
P-16-D	4th Quarter VAT Return for Taxable Year 2013
P-17-A	1st Quarter VAT Return for Taxable Year 2014

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P-17-B	2nd Quarter VAT Return for Taxable Year 2014
P-17-C	3rd Quarter VAT Return for Taxable Year 2014
P-17-D	4th Quarter VAT Return for Taxable Year 2014
P-18-A	1st Quarter VAT Return for Taxable Year 2015
P-18-B	2nd Quarter VAT Return for Taxable Year 2015
P-18-C	3rd Quarter VAT Return for Taxable Year 2015
P-18-D	4th Quarter VAT Return for Taxable Year 2015
P-19	Schedule of Inward Remittance with attached Bank Certification
P-20	Import Entry and Internal Revenue Declarations duly validated by bank with O.R. and BOC receipts/Confirmation receipts evidencing payment of VAT
P-21	Schedule of Importations for period of claim with the following details: Date of Invoice, Supplier, Description of Goods Imported, AWB/BL No. IED/SM No., Date of Arrival, Total Value, Date of Payment, O.R. No. and VAT Payment
P-22	Reconciliation of Export Sales and Dollar Remittances
P-23	Letter of BIR RDO 30 dated March 28, 2016
P-24	Amended Judicial Affidavit of Cyrus S. Chung Jr. dated February 22, 2017
P-24-A	Signature of Cyrus S. Chung Jr. on his Amended Judicial Affidavit found on page 13 thereof
P-25	Amended Judicial Affidavit of Cherilyn R. Chung dated February 22, 2017
P-25-A	Signature of Cherilyn R. Chung on her Amended Judicial Affidavit found on page 7 thereof
P-26	Amended Judicial Affidavit of Jennifer S. Mañago dated February 22, 2017
P-26-A	Signature of Jennifer S. Mañago on her Amended Judicial Affidavit found on page 12 thereof
P-27	Judicial Affidavit of Garry S. Pagaspas (Independent Certified Public Accountant) dated March 22, 2017
P-27-A	Signature of Garry S. Pagaspas on his Judicial Affidavit found on page 19 thereof
P-28	Report of Independent Certified Public Accountant and its annexes dated March 13, 2017
P-28-A	Signature of Garry S. Pagaspas in Page 20 of ICPA Report thereof

For his part, respondent presented its lone witness Revenue Officer Samilo A. Cortuna, who testified, by way of Judicial Affidavit[27]. Thereafter, on October 9, 2017, respondent filed his Formal Offer of Evidence[28], offering Exhibits "R-1", Letter of Authority No. 030-2016-

[27] Judicial Affidavit of Samilo A. Cortuna for Colt Commercial Inc. vs. Commissioner of Internal Revenue CTA Case No. 9340 dated September 29, 2016, Docket (Vol. I), pp. 247-251.
[28] Docket (Vol. IV), pp. 3223-3226.

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00000020 dated January 19, 2016 with attached Checklist of Requirements, and "R-3", Letter dated March 26, 2016, as his documentary evidence. Consequently, in the Resolution[29] dated February 12, 2018, the Court admitted respondent's evidence. Furthermore, the parties were given a period of thirty (30) days within which to submit their respective memoranda.

Considering the filing of respondent's Memorandum[30] and that of petitioner's Memorandum[31], the present case was deemed submitted for decision on April 11, 2018. [32]

This Court rules.

The sole issue[33] presented to this Court for resolution is whether petitioner is entitled to a tax refund in the amount of Two Million Eighty-Two Thousand Three Hundred Seventy-Six Pesos and Forty-One Centavos (₱2,083,376.41) for the fourth quarter of taxable year 2013.

After due consideration, this Court finds partial merit in petitioner's claim. The pertinent provisions for the determination of the petitioner's claim are Sections 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, which read as follows:

> "**SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
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> (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

[29] *Ibid*, pp. 3235-3236.
[30] *Id.*, pp. 3237-3243.
[31] *Id.*, pp. 3252-3270.
[32] As per Resolution dated April 11, 2018, *id.*, p. 3247.
[33] Par. 2, JSFI, *id.*, p. 2861.

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accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

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

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

From the foregoing, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

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

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Petitioner is a VAT-registered entity.

As earlier found, petitioner is a registered VAT taxpayer with Taxpayer Identification No. 008-327-264-000, as evidenced by its Certificate of Registration[34] dated August 31, 2012.

Petitioner's administrative and judicial claims were seasonably filed.

Verily, based on Section 112(A) of the NIRC of 1997, as amended, the administrative claim for the issuance of a Tax Credit Certificate (TCC) or refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim involves the 4th quarter of taxable year 2013, which closed on December 31, 2013, thus, counting two years therefrom, petitioner had until December 31, 2015 within which to file its administrative claim for TCC or refund. By filing its administrative claim via a letter[35] dated December 18, 2015, together with BIR Form No. 1905[36], with BIR RDO No. 30 on December 28, 2015, petitioner has filed its administrative claim for refund well within the two-year prescriptive period provided for by law.

Now, with regard to petitioner's judicial appeal, Section 112(C) of the same code further provides that the respondent has one hundred twenty (120) days from the date of the submission of the complete documents, in support of the application for tax refund/credit, within which to grant or deny the claim. In case of full or partial denial, petitioner's recourse is to file an appeal, via a Petition for Review, with this Court within thirty (30) days from receipt of the respondent's decision. However, if after the lapse of the 120-day period and respondent still fails to act on the application for tax refund/credit, petitioner's remedy is to appeal the inaction of the CIR to this Court within thirty (30) days.

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[34] Exhibit "P-5".
[35] Exhibit "P-13".
[36] Exhibit "P-14".

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Perusal of the records reveal that, from the date petitioner filed its administrative claim with the BIR, which was on December 28, 2015, respondent has one hundred twenty (120) days, or until April 26, 2016, within which to act on the said claim. Since respondent, through Revenue District Officer Leonora R. Ruizol, issued a letter[37] dated March 28, 2016 denying the administrative claim, petitioner had thirty (30) days, reckoned from April 1, 2016, the date when petitioner received the said letter, or until May 2, 2016[38] within which to elevate the matter via a judicial appeal before this Court. Evidently, by filing the instant Petition for Review on April 29, 2016, petitioner have, likewise, timely filed its judicial claim.

Petitioner had zero-rated or effectively zero-rated sales.

In its Articles of Incorporation[39], it is expressly stated that petitioner is primarily incorporated for the following purposes:

> 1. To engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative, wholesale or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies, and or any all kinds of goods, wares and merchandise.
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> 2. To engage in the business of import and export as principals, factors, representatives, agents or commissioned merchants with respect to buying, selling, trading or dealing in any and all kind of goods, wares, products of all classes and description, distribution, import and export business.

As such, petitioner claims that the majority of its clients are entities doing business within the economic zone and registered with the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA), which are classified as zero-rated transactions pursuant to Section 106(A)(2)(c) of the NIRC of 1997, as amended, which reads:

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[37] Exhibit "P-23"; Exhibit "R-3".
[38] May 1, 2016 is a public holiday and also fell on a Sunday.
[39] Exhibit "P-2".

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"**SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.–*
(A) Rate and Base of Tax. – x x x

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

x x x

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate."

Relative thereto, the pertinent provision of Revenue Regulations (RR) No. 16-2005[40], as amended, states that, viz.:

"**SEC. 4.106-5.** ***Zero-Rated Sales of Goods or Properties***. – A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

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

x x x

(c) ***"Sales to persons or entities deemed tax-exempt under special law or international agreement".*** – Sales of goods or property to persons or entities who are tax exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research

[40] "CONSOLIDATED VALUE-ADDED TAX REGULATIONS OF 2005", dated September 1, 2005.

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Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."

Apparently, based on the above-quoted provisions, there is no doubt that the sales of goods to entities registered with the PEZA and SBMA are subject to VAT at zero percent (0%) rate.

Therefore, to prove that its clients are duly registered with the PEZA, petitioner submitted a confirmation letter[41] dated February 16, 2016 from the PEZA Deputy Director General for Operations, Ms. Mary Harriet O. Abordo, verifying its issuance of VAT Zero-Rating Certifications to the following enterprises:

	Name of Enterprise	Zone Location	VAT Cert. Number	VAT Cert. Date
1	ALPHA TECHNO PRECISION TOOLINGS INC.	Cavite Economic Zone	730	17-Jan-13
2	APPLIEDMACHINING CORPORATION	Laguna Technopark-SEZ Laguna Technopark-Annex SEZ	939	28-Jan-13
3	CEBU AOI DEVELOPMENT TECHNOLOGIES CORPORATION	Mactan Economic Zone	1636	24-May-13
4	CITIZEN MACHINERY PHILIPPINES, INC.	First Philippine Industrial Park-SEZ	97	11-Dec-12
5	CLAYMOUNT ASSEMBLIES PHILIPPINES INC.	Calamba Premiere International Park-SEZ	454	07-Jan-13
6	DAITOH PRECISIONS, INC.	Mactan Economic Zone	1578	22-Apr-13
7	DAIWA SEIKO PHILIPPINES CORPORATION	Laguna International Industrial Park-SEZ	448	07-Jan-13
8	DELFINGEN PH-FILIPINAS, INC FORMERLY: SOFANOU (PHILIPPINES), INC	Mactan Economic Zone II-SEZ First Cavite Industrial Estate-SEZ	1569	18-Apr-13
9	DELTA DESIGN PHILIPPINES LLC	Carmelray Industrial Park II-SEZ Baguio City Economic Zone	782	18-Jan-13
10	E N CORPORATION	Cavite Economic Zone	1259	15-Feb-13
11	EXAS PHILIPPINES, INC	Mactan Economic Zone	1358	27-Feb-13
12	FAMOUS SECRET PRECISION MACHINING INC	Daiichi Industrial Park-SEZ	362	03-Jan-13
13	FATEC CORPORATION	First Cavite Industrial Estate-SEZ	1073	01-Feb-13
14	FERUSCHE STAINLESS, INC.	Filinvest Technology Park Calamba-SEZ	1658	05-Jun-13
15	FIRSTEC METALLICS, INC.	Light Industry & Science Park I-SEZ	14	04-Dec-12
16	FUJITSU DIE-TECH CORPORATION OF THE PHILIPPINES	Laguna Technopark Inc.-SEZ	450	07-Jan-13
17	GUNMA GOHKIN PHILIPPINE CORPORATION	Light Industry & Science Park I-SEZ	313	28-Dec-12
18	HARADA AUTOMOTIVE ANTENNA (PHILIPPINES), INC. FORMERLY: NIPPON ANTENNA (PHILIPPINES) INC.	First Cavite Industrial Estate-SEZ	1173	06-Feb-13
19	HITACHI INDUSTRIAL MACHINERY PHILIPPINES CORP.	First Cavite Industrial Estate-SEZ	229	21-Dec-12

[41] Exhibit "P-6".

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20	HONDA PARTS MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	121	13-Dec-12
21	IMASEN PHILIPPINE MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	633	15-Jan-13
22	INA MICRO OPTO CORPORATION	Mactan Economic Zone II-SEZ	1367	01-Mar-13
23	JFS PRECISION TECHNOLOGY CORP.	Golden Mile Business Park-SEZ Baguio City Economic Zone	1732	09-Jul-13
24	KNOWLES ELECTRONICS (PHILIPPINES) CORPORATION	Cebu Light Industrial Park-SEZ	968	28-Jan-13
25	KODACHI SEIKI PHILIPPINES, INC.	Cavite Economic Zone	1459	13-Mar-13
26	LAGUNA AUTO-PARTS MANUFACTURING CORPORATION	Laguna Technopark Inc.-SEZ	79	10-Dec-12
27	LAGUNA METTS CORPORATION	Laguna Technopark Inc.-SEZ	266	26-Dec-12
28	MAKOTO METAL TECHNOLOGY, INC.	Mactan Economic Zone II-SEZ	167	17-Dec-12
29	MANUFACTURING AUTOMATION SOLUTIONS INTERNATIONAL, INC.	Calamba Premiere International Park-SEZ	1694	27-Jun-13
30	MEINAN PHILIPPINES, INC.	Laguna Technopark Inc.-SEZ	734	17-Jan-13
31	MENIMA CASTING PRODUCTS INC.	First Cavite Industrial Estate-SEZ	264	26-Dec-12
32	MICRO-MECHANICS TECHNOLOGY INTERNATIONAL INC.	Carmelray Industrial Park II-SEZ	1413	08-Mar-13
33	MICRON PRECISION PHILIPPINES, INC.	Calamba Premiere International Park-SEZ	839	21-Jan-13
34	MKP, INC.	Cavite Economic Zone	887	23-Jan-13
35	MTE TECHNOLOGY, INC.	Carmelray Industrial Park II-SEZ	789	18-Jan-13
36	NAKASHIMA PHILIPPINES CORPORATION FORMERLY: MIKADO PHILIPPINES CORPORATION	Cavite Economic Zone	1032	30-Jan-13
37	NEW ELECTRONICS SYSTEM CO., INC.	Cavite Economic Zone	431	07-Jan-13
38	NIDEC PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	428	07-Jan-13
39	NIDEC PRECISION PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	443	07-Jan-13
40	NUVALI STEEL PROCESSING CENTER, INC.	Laguna Technopark Annex-SEZ	1747	15-Jul-13
41	ORBIS PRECISION TECH. INC.	Laguna International Industrial Park-SEZ	306	28-Dec-12
42	PARTS PHILIPPINES, INC.	Cavite Economic Zone	1263	18-Feb-13
43	PENTA TECHNOLOGICAL PRODUCTS INC.	Laguna Technopark Inc.-SEZ	747	17-Jan-13
44	PHILIPPINE KENKO CORPORATION	Mactan Economic Zone	1552	12-Apr-13
45	PHILIPPINE NAGANO SEIKO, INC.	People's Technology Complex-SEZ	861	22-Jan-13
46	PHILIPPINE PRECISION TECHNOLOGY, INC.	Carmelray Industrial Park I-SEZ	1720	08-Jul-13
47	PHILIPPINE SANITARY FITTINGS, INC.	Light Industry & Science Park III-SEZ First Cavite Industrial Estate-SEZ	1054	31-Jan-13
48	PHILIPPINES TRC, INC.	Lima Technology Center-SEZ	879	22-Jan-13
49	PRECISE PARTS COOPERATION (PPCI) INC.	First Cavite Industrial Estate-SEZ	1907	16-Oct-13
50	PRECISE TECHNO INCORPORATED	Cavite Economic Zone	1313	20-Feb-13
51	PROPHILE SOUND INDUSTRIES, INC.	Cavite Economic Zone	165	17-Dec-12
52	SEO JIN TRONICS, INC.	First Cavite Industrial Estate-SEZ	1709	02-Jul-13
53	SHIMANO (PHILIPPINES) INC.	First Philippine Industrial Park-SEZ	1979	18-Dec-13
54	SINAG PRECISION MANUFACTURING LAGUNA, INC.	Laguna Technopark Inc.-SEZ	1827	27-Aug-13
55	SONION PHILIPPINES INC.	First Philippine Industrial Park-SEZ	1095	01-Feb-13
56	SUMINAC PHILIPPINES INC.	First Cavite Industrial Estate-SEZ	355	02-Jan-13
57	SUNNELIT PHILIPPINES CORPORATION	Laguna Technopark Inc.-SEZ	695	16-Jan-13

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58	T&S LASER SOLUTIONS, INC.	First Philippine Industrial Park-SEZ	30	05-Dec-12
59	TAMIYA (PHILIPPINES), INC.	Mactan Economic Zone II-SEZ	1939	11-Nov-13
60	TMX PHILIPPINES, INC.	Mactan Economic Zone	1001	29-Jan-13
61	TSUKUBA PHILIPPINE DIECASTING CORPORATION	Cavite Economic Zone	718	17-Jan-13
62	URE-SHII TECHNOLOGIES INC.	Golden Mile Business Park-SEZ	2036	28-Oct-14
63	VITALO PACKAGING INTERNATIONAL, INC.	Laguna Technopark-SEZ	395	04-Jan-13
64	WACKER NEUSON MANILA, INC. FORMERLY: WACKER MACHINERY PHILIPPINES, INC	First Cavite Industrial Estate-SEZ	383	04-Jan-13
65	YUTAKA MANUFACTURING (PHILIPPINES) INC.	Laguna Technopark Inc.-SEZ	769	18-Jan-13

Accordingly, only the sales made to the above-enumerated enterprises during the 4th quarter of taxable year 2013 shall be entitled to VAT zero-rating for purposes of the subject claim.

However, as to the sales made to SBMA-registered clients, petitioner, unfortunately, failed to provide similar certifications or confirmations from SBMA. As a result, sales thereto shall be denied VAT zero-rating.

As noted by the court-commissioned ICPA in his ICPA Report[42], petitioner had actual export sales in the amount of ₱2,077,110.82 which were duly supported by *(i)* airway bills/bills of lading, as proof of actual shipment of goods from the Philippines to a foreign country;[43] *(ii)* certificate of inward remittances;[44] and, *(iii)* reconciliation of export sales and dollar remittances, as proof of payment for the goods in acceptable foreign currency.[45] Thus, the ICPA considered the said amount in the computation of petitioner's zero-rated sales.[46]

Nonetheless, this Court cannot ascertain whether the airway bills submitted by petitioner actually support the purported zero-rated sales declared by petitioner as the same were unreadable. As such, the claimed actual export sales shall also be denied VAT zero-rating.

Corollary, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-05, in relation to Sections 237 and 238 of the same tax code, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

[42] Exhibit "P-28".
[43] Marked by the ICPA as Exhibit "P-32" of the ICPA Report.
[44] Marked by the ICPA as Exhibit "P-19" of the ICPA Report.
[45] Marked by the ICPA as Exhibit "P-22" of the ICPA Report.
[46] Par. F, Exhibit "P-28", Docket (Vol. IV), p. 2960.

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"**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

x x x

(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:*

x x x

(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;

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

"**SEC. 4.113-1. *Invoicing Requirements.*** –

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

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

x x x

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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 invoice/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

(B) Information contained in VAT invoice or VAT Official Receipt. – The following information shall be indicated in VAT invoice or **VAT official receipt**:

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

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

x x x

> (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; x x x" *(Emphases Supplied)*

"**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. *Provided,* x x x"

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.

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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.

x x x." *(Emphases supplied)*

In its Amended Quarterly VAT Return[47] for the fourth quarter of TY 2013, petitioner reported total sales of ₱30,065,138.71, broken down as follows:

Sales Type	Amount
Vatable Sales	₱ 6,335,479.75
Zero-Rated Sales	23,729,658.96
Total Sales	**₱ 30,065,138.71**

In support of its zero-rated sales amounting to ₱23,729,658.96 and to prove compliance with the VAT invoicing requirements as mandated by law and pertinent regulations, petitioner submitted its monthly Schedule of Sales[48] and the corresponding supporting sales invoices[49] thereto.

However, upon closer evaluation, this Court finds that the following zero-rated sales totaling in the amount of ₱2,773,125.84 should be disallowed for the reasons hereinafter stated, to wit:

Invoice No.	Client	Amount	Exhibit No.
Sales to clients without proof of PEZA registration/VAT exemption			
4258	Turu Santechno Corporation	6,120.00	P-9
4345	Delfingen West, Inc.	28,000.00	P-33.59
4428	Silan Technologies Corporation	4,530.00	P-9
4741	Silan Technologies Corporation	2,400.00	P-9
4791	Delfingen West, Inc.	12,520.00	P-33.293
4926	Turu Santechno Corporation	12,350.00	P-9
4928	Turu Santechno Corporation	3,840.00	P-9
5010	Delfingen West, Inc.	14,000.00	P-33.408

47 Exhibit "P-16-D".
48 Exhibit "P-8".
49 Exhibit "P-9"; Exhibits "P-33-1" to "P-33-780" of the ICPA Report.

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5046	Turu Santechno Corporation	52,840.00	P-9
5052	Turu Santechno Corporation	19,590.00	P-9
5194	Turu Santechno Corporation	3,900.00	P-9
5289	Delfingen West, Inc.	7,400.00	P-33.555
5292	Turu Santechno Corporation	2,600.00	P-9
5564	Silan Technologies Corporation	8,270.00	P-9
5587	Delfingen West, Inc.	15,000.00	P-33.711
5656	Delfingen West, Inc.	8,000.00	P-33.740
subtotal		***201,360.00***	
Sales to clients without proof of SBMA registration/VAT exemption			
4240	Polarmarine Incorporated	19,800.00	P-33.1
4373	Polarmarine Incorporated	202,750.00	P-33.74
4374	Polarmarine Incorporated	4,000.00	P-33.75
4375	Hitachi Terminals Mechatronics Phils. Inc	4,400.00	P-33.76
4376	Polarmarine Incorporated	4,600.00	P-33.77
4377	Hitachi Terminals Mechatronics Phils. Inc	13,100.00	P-33.78
4600	Hitachi Terminals Mechatronics Phils. Inc	40,000.00	P-33.192
4621	Hitachi Terminals Mechatronics Phils. Inc	600.00	P-33.199
4656	Polarmarine Incorporated	68,115.00	P-33.220
4658	Polarmarine Incorporated	4,000.00	P-33.222
4671	Hitachi Terminals Mechatronics Phils. Inc	29,900.00	P-33.231
4804	Polarmarine Incorporated	2,600.00	P-33.300
4805	Polarmarine Incorporated	600.00	P-33.301
5076	Polarmarine Incorporated	30,300.00	P-33.438
5173	Hitachi Terminals Mechatronics Phils. Inc	4,400.00	P-33.486
5219	Polarmarine Incorporated	28,700.00	P-33.512
5285	Polarmarine Incorporated	10,600.00	P-33.551
5286	Polarmarine Incorporated	340.00	P-33.552
5555	Polarmarine Incorporated	3,600.00	P-33.693
5558	Polarmarine Incorporated	22,250.00	P-33.694
subtotal		***494,655.00***	
Export sales without proof of actual shipments (illegible Shipment Waybills)			
4266	Premtool e.k.	219,930.64	P-33.769
4273	Euroasia Technics SDN BHD	118,869.66	P-33.770
5003	Premtool e.K.	308,425.14	P-33.771
5006	Premtool e.K.	224,281.40	P-33.772
5332	Euroasia Technics Sdn Bhd	59,378.25	P-33.773
5335	Hillmec Engineering Sdn Bhd	75,316.74	P-33.774
5377	Premtool e.k.	193,931.41	P-33.775
5381	Premtool e.k.	80,657.05	P-33.776
5605	Premtool e.K.	302,454.90	P-33.777
5617	Hillmec Engineering SDN BHD	61,770.40	P-33.778
5618	Euroasia Technics SDN BHD	105,629.40	P-33.779
5619	Premtool e.K.	326,465.85	P-33.780
subtotal		***2,077,110.84***	
TOTAL		**2,773,125.84**	

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Accordingly, only the amount of ₱20,956,533.12 represents petitioner's valid zero-rated sales, computed as follows:

Reported Zero-Rated Sales	₱ 23,729,658.96
Less: Disallowances by this Court	2,773,125.84
Valid Zero-Rated Sales	**₱ 20,956,533.12**

Thus, having resolved that petitioner had VAT zero-rated sales for the 4th quarter of taxable year 2013 in the amount of ₱20,956,533.12, this Court shall now proceed to determine the amount of input VAT attributable thereto.

Petitioner had input taxes attributable to its zero-rated and were not applied against any output VAT liability.

Again, in its Amended Quarterly VAT Return for the 4th quarter of taxable year 2013, petitioner reflected input taxes on local purchases and importations of goods other than capital goods in the total amount of ₱2,842,633.98. From the said amount, ₱2,082,376.41, net of output tax due, is the subject herein of petitioner's claim for refund, viz.:

Input Tax on Purchases of Goods Other than Capital Goods	₱ 511,365.98
Importation of Goods Other than Capital Goods	2,331,268.00
Total	**₱ 2,842,633.98**
Less: Output Tax	760,257.57
Excess input tax claimed	**₱ 2,082,376.41**

In support of its total input taxes of ₱2,842,633.98, petitioner submitted certified true copies of Sales Invoices for Purchase of Goods[50], and Bureau of Customs' Import Entry and Internal Revenue Declarations[51] (IEIRDs) with receipts/Confirmation receipts evidencing payment of VAT for imported goods.

However, upon examination of the said documents, the ICPA noted certain exceptions which failed to meet the substantiation

[50] Exhibit "P-11".
[51] Exhibit "P-20".

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requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-05, in the total amount of ₱563,809.26, broken down as follows:[52]

Description	Input VAT Amount	Reference (ICPA Report)
Printed in thermal paper	₱ 422.12	Table 6; Exh P-35
Not under CCI's complete name	20,182.50	Table 7; Exh P-36
Without or incomplete registered address of CCI	264,432.04	Table 8; Exh P-37
Without or incorrect CCI's TIN	70,133.53	Table 9; Exh P-38
Input VAT not separate in invoice	2,990.10	Table 10; Exh P-39
Out of quarter	205,648.97	Table 11; Exh P-40
Total amount not fully compliant	**₱ 563,809.26**	

Furthermore, the input VAT in the amount of ₱221,692.40 shall, likewise, be disallowed for the reasons stated hereafter:

Supplier's Name	Invoice No.	Amount	Exhibit No.	Reason for the disallowance
On Local Purchases				
G.P. Enterprises Inc.	504954	₱ 1,466.25	P-34.40	Supported by VAT invoice bu without TIN of petitioner
G.P. Enterprises Inc.	507561	384.40	P-34.41	Supported by VAT invoice bu without TIN of petitioner
Screw City Hardware	265682	6.75	P-34.127	Supported by VAT invoice but wit alteration on date withou counter-signature
subtotal		***₱ 1,857.40***		
On Importations				
Whizcut of Sweden AB	8648923485	₱ 39,983.00	P-34.183	Supported by IEIRD withou machine validation; no othe documents provided to prov payment of the claimed input VA
YG-1 Tools Aisa Pte. Ltd.	131215637	80,736.00	P-34.200	Supported by IEIRD withou machine validation; no othe documents provided to prov payment of the claimed input VA
Ehwa Diamond Ind. Co., Ltd.	8361505202	5,779.00	P-34.217	Supported by IEIRD withou machine validation; no othe documents provided to prov payment of the claimed input VA
Whizcut of Sweden AB	8659392954	93,337.00	P-34.229	Supported by IEIRD withou machine validation; no othe documents provided to prov payment of the claimed input VA

[52] Par. D, Exhibit "P-28" (ICPA Report), Docket (Vol. IV), p. 2963.

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subtotal	***₱ 219,835.00***
TOTAL	**₱ 221,692.40**

In sum, petitioner's valid input VAT for the 4th quarter of taxable year 2013 only amounts to ₱2,057,132.32, which is computed as follows:

Input VAT per Return	₱ 2,842,633.98
Less: Disallowances	
Per ICPA Report	563,809.26
Per Court's further verification	221,692.40
Total Valid Input VAT	**₱ 2,057,132.32**

Proceeding therefrom, a portion of petitioner's valid input VAT shall be applied against the output VAT liability for the 4th quarter of taxable year 2013 in the amount of ₱760,257.57. Consequently, only the remaining input VAT of ₱1,296,874.75 can be attributed to the declared zero-rated sales of ₱23,729,658.96, which means that only the input VAT of ₱1,145,317.71 is actually attributable to the zero-rated sales of ₱20,956,533.12, as seen below:

Valid input VAT	₱ 2,057,132.32
Less: Output VAT	760,257.57
Excess valid input VAT	**₱ 1,296,874.75**
Divide by declared zero-rated sales	23,729,658.96
Multiply by valid zero-rated sales	20,956,533.12
Excess input VAT attributable to valid zero-rated sales	**₱ 1,145,317.71**

All told, petitioner was able to prove that the claimed excess input VAT of ₱2,082,376.41 for the 4th quarter of taxable year 2013 was not applied against any output VAT in the succeeding quarters. The said amount remained unutilized as it was deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Returns for the 3rd quarter of taxable year 2015.[53] Apparently, the subject claim no longer formed part of the excess input VAT of ₱278,416.77[54] at the end of the said quarter of taxable year 2015 which can be carried over/applied to the succeeding quarters. Henceforth, it eliminates the possibility that the present claim would be applied to future output VAT liability.

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[53] Line 23D, Exhibit "P-18-C".
[54] Line 29, *ibid.*

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WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱1,145,317.71**, representing unutilized input VAT attributable to its zero-rated sales for the 4th quarter of taxable year 2013.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

<u>CERTIFICATION</u>

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

ROMAN G. DEL ROSARIO
Chairpersonal, Special 1st Division