REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9843

Members:

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

Promulgated:
FEB 03 2022 1:38 pm

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Orica Philippines, Inc. on May 28, 2018, seeking for a review of the denial of its administrative claim for refund and/or issuance of a Tax Credit Certificate (TCC) amounting to ₱23,817,449.47, representing alleged unutilized input Value-Added Tax (VAT) attributable to export sales for the first quarter of fiscal year (FY) ended September 30, 2016 or the period October 1, 2015 to December 31, 2015.

THE PARTIES

Petitioner Orica Philippines, Inc. is a corporation registered with the Philippine Securities and Exchange Commission. It is a VAT-registered taxpayer with Taxpayer's Identification Number 000-059-661-000.[1]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR),[2] and is authorized to decide,

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[1] Par. 1 (a) and (c), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 290.
[2] Section 3 of the National Internal Revenue Code (NIRC) of 1997 as amended, states:
"Section 3. *Chief Officials of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue, hereinafter referred to as the Commissioner and four (4) assistant chiefs to be known as Deputy Commissioners.

approve and grant applications for refund and/or issuance of tax credit certificate representing a taxpayer's excess internal revenue tax payments.[3] The CIR's power to decide refunds of internal revenue taxes is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA).[4]

THE FACTS

On December 27, 2017, petitioner filed through the Electronic Filing and Payment System (EFPS) its Amended Quarterly VAT Return (BIR Form No. 2550-Q) for the first quarter of FY 2016 or the period October 1, 2015 to December 31, 2015.[5] On April 11, 2018, petitioner filed through EFPS another Amended Quarterly VAT Return (BIR Form No. 2550-Q) for same period of FY 2016.[6] The said VAT Returns declare, among others, the following:

	December 27, 2017 Amended Return	**April 11, 2018 Amended Return**
Vatable Sales	₱ 312,786,232.15	₱312,786,232.15
Zero Rated Sales	426,387,047.94	426,387,047.94
Output Tax [on Vatable Sales]	**37,534,347.86**	**37,534,347.86**
Allowable Input Tax		
Input Tax Carried Over from Previous Period	175,982,534.30	92,961,961.39
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	1,047,511.17	1,047,511.17
Input Tax [on Current Transactions][7]	41,450,389.67	41,450,389.67
Total Available Input Tax	**218,480,435.14**	**135,459,862.23**
Less: Deductions from Input Tax		
Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	1,208,601.99	1,208,601.99
VAT Refund/TCC claimed	23,817,449.47	23,817,449.47
Total Deductions from Input Tax	**25,026,051.46**	**25,026,051.46**
Total Allowable Input Tax	**193,454,383.68**	**110,433,810.77**
Net VAT Payable	**- 155,920,035.82**	**- 72,899,462.91**

[3] Par. 1 (b), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 290.
[4] Section 4 of the National Internal Revenue Code (NIRC) of 1997 as amended, state:
"Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."
[5] Exhibits "P-4", "P-4-1" and "P-4-2", CTA Docket Vol. II, pp. 580-581.
[6] Exhibits "P-5", "P-5-1" and "P-5-2", CTA Docket Vol.II, pp. 582-583.
[7] Sum of input taxes on "Purchase of Capital Goods exceeding P1Million", "Domestic Purchases of Goods Other than Capital Goods", "Importation of Goods Other than Capital Goods", "Domestic Purchases of Services", and "Services Rendered by Non-residents."

On December 29, 2017, petitioner filed an Application for VAT Refund or issuance of a TCC (referred herein as "Administrative Claim") in the amount of ₱23,817,449.47 representing its alleged excess or unutilized input tax credits attributable to zero-rated sales covering the first quarter of FY 2016, or the period October 1, 2015 to December 31, 2015.[8]

Alleging inaction, petitioner filed the present Petition for Review on May 28, 2018,[9] which was initially raffled to the CTA Second Division.

On July 6, 2018, petitioner received a letter from the Large Taxpayers Services-Excise Large Taxpayer Audit Division I denying its request for refund.[10]

On August 28, 2018, CIR filed his Answer,[11] interposing the following Special and Affirmative Defenses:

1. Petitioner failed to substantiate its claim for refund at the administrative level. Since a decision has been rendered in this case denying its claim for failure to substantiate the same, petitioner cannot present documents before the CTA which it did not submit at the administrative level. The CTA is confined to a more limited issue of whether the substantiation was enough and whether the denial was proper; and,

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

Meanwhile, the present case was transferred to the CTA First Division in the Order of the CTA Second Division dated September 24, 2018 pursuant to CTA Administrative Circular No. 02-2018, dated September 18, 2018, "Reorganizing the Three (3) Divisions of the Court."[12]

On January 11, 2019, both parties filed their respective Pre-Trial Briefs.[13]

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[8] Par. 1 (d), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 291; Exhibits "P-19" and "P-20", CTA Docket Vol. II, pp. 610-614.
[9] CTA Docket Vol. I, pp. 10-44.
[10] Par. 1 (e), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 291.
[11] CTA Docket Vol. I, pp. 61-71.
[12] CTA Docket Vol. I, p. 81.
[13] CTA Docket Vol. I, pp. 93-105 and 287-288.

The Pre-trial proceeded on January 17, 2019 where the parties agreed to submit their Joint Stipulation of Facts and Issues (JSFI),[14] which they submitted on January 29, 2019.[15] The said JSFI was approved and the Pre-Trial was terminated in the Resolution dated February 12, 2019.[16] The Pre-Trial Order was issued on April 12, 2019.[17]

During trial, both parties presented their respective evidence.

Petitioner presented Mr. Jesson P. Cortes, petitioner's Tax Analyst; Ms. Maria Teresa Gonzales, petitioner's Tax Specialist; and, Mr. Emmanuel Y. Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA).[18]

Petitioner filed its Formal Offer of Evidence with Manifestation on November 4, 2019,[19] with respondent's Comment (Re: Formal Offer of Evidence dated 4 November 2019) filed on November 19, 2019.[20] Petitioner's offered exhibits in said Formal Offer of Evidence were admitted in the Resolution dated January 22, 2020, save for Exhibits "P-63-1" to "P-63-2", and "P-63-1" to "P-63-3" which were denied for failure to present the originals for comparison.[21] Petitioner's Manifestation concerning the adjustments of the exhibit references in the Judicial Affidavit of the ICPA was noted in the same January 22, 2020 Resolution.

On the other hand, respondent presented Revenue Officer Leonila De la Cruz Manuel,[22] and subsequently, filed a Formal Offer of Evidence on October 2, 2020,[23] *sans* comment of the petitioner as per Records Verification dated October 23, 2020.[24] Respondent's offered exhibits were admitted in the Resolution dated December 11, 2020.[25]

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[14] CTA Docket Vol. I, pp. 287-288.
[15] CTA Docket Vol. I, p. 290.
[16] CTA Docket Vol. I, p. 295.
[17] CTA Docket Vol. I, p. 310.
[18] Minutes of Hearing and Order dated May 21, 2019, CTA Docket Vol. I, pp. 368-371.
[19] CTA Docket Vol. II, pp. 543-562.
[20] CTA Docket Vol. II, p. 661.
[21] CTA Docket Vol. II, pp. 667-669.
[22] Minutes of Hearing dated September 22, 2020, CTA Docket Vol. II, p. 681-682.
[23] CTA Docket Vol. II, pp. 686-689.
[24] CTA Docket Vol. II, p. 691.
[25] CTA Docket Vol. II, p. 697.

Petitioner filed its Memorandum on February 5, 2021,[26] while respondent failed to file his memorandum as per Records Verification dated February 16, 2021.[27]

The present case was submitted for decision on March 1, 2021.[28]

On March 2, 2021, respondent's counsel filed a Manifestation stating his failure to comply with the December 11, 2020 Resolution due to voluminous workload, and begging the Court to allow respondent to adopt the arguments and discussions contained in his Answer dated August 28, 2018 as his Memorandum.[29] Respondent prays that said Manifestation be noted and that respondent's Answer be adopted as his Memorandum for the case.[30] The said Manifestation was noted in the Order dated March 4, 2021.[31]

THE ISSUE

The lone issue to be settled in this case is whether petitioner is entitled to its claim for refund and/or issuance of TCC in the amount ₱23,817,449.47 representing its excess and/or unutilized input VAT attributable to its zero-rated sales for the first quarter of FY ended September 2016 or the period October 1, 2015 to December 31, 2015.[32]

ARGUMENTS OF THE PARTIES

Petitioner contends that it is entitled to its claim for refund. It asserts the following: (i) it is a VAT-registered entity as required under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended; (ii) its administrative and judicial claims for refund were filed within the prescriptive period; (iii) it is engaged in zero-rated or effectively zero-rated transactions and that the sales were paid for in acceptable foreign currency and the proceeds have been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*; (iv) the input taxes due from the purchases of goods and services directly attributable to its zero-rated

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[26] CTA Docket Vol. II, pp. 699-734.
[27] CTA Docket Vol. II, p. 735.
[28] CTA Docket Vol. II, p. 737.
[29] CTA Docket Vol. II, p. 738.
[30] CTA Docket Vol. II, p. 739.
[31] CTA Docket Vol. II, p. 743.
[32] Stipulation of Issues, JSFI; Pre-Trial Order, CTA Docket Vol. I, p. 291.

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sales were duly supported by VAT invoices or official receipts; (v) the claimed input VAT payments were not applied against any output tax in the succeeding periods; (vi) the excess input tax carried over from previous quarter as reflected in the first quarter of FY 2016 amounting to ₱92,961,961.39 was duly accounted, and the excess and unutilized input tax as of fourth quarter of FY 2015 (as of September 30, 2015) which was used as deduction from output VAT payable in the first quarter of FY 2016 was duly supported; (vii) the alleged outstanding liabilities amounting to ₱20,559,923.17 has already been settled by petitioner; and, (viii) it was able to present pieces of evidence supporting its claim for refund.[33]

Respondent counter-argues that (i) petitioner failed to substantiate its claim for refund at the administrative level; (ii) petitioner cannot present before the CTA documents which it did not submit at the administrative level since a decision has been rendered in this case denying its claim for failure to substantiate; thus, the CTA is confined to the resolution of the issues of whether the documents submitted at the administrative level are sufficient and whether the denial of the claim was proper; and, (iii) claims for refund are construed strictly against the taxpayer and in favor of the government. In short, respondent prays for the denial of the Petition for Review and/or for its dismissal for failure of the petitioner to substantiate its claim.[34]

THE COURT'S RULING

The Court has jurisdiction over the case; the Petition for Review was timely filed

Section 112 of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, provides for the legal basis to claim for refund or issuance of a TCC of input VAT, including the taxpayer's remedy to appeal to the CTA the adverse decision or the inaction of the CIR thereon, *viz.:*

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

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[33] Discussions/Arguments in petitioner's Memorandum, CTA Docket Vol. II, pp. 702-733.
[34] CTA Docket Vol. I, p. 62-70.

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

xxx xxx xxx

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

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

Section 112 (C) of the NIRC of 1997, as amended, speaks of two (2) periods:

(1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit; and,

(2) the 30-day period, which refers to the period for filing a judicial claim with the CTA.[35]

Complementing Section 112 of the NIRC of 1997, as amended, is RA No. 1125,[36] as amended by RA No. 9282,[37] which vests exclusive appellate jurisdiction to the CTA to review by appeal the decision or

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[35] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015.
[36] An Act Creating the Court of Tax Appeals.
[37] 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

inaction of the CIR in cases involving refunds of internal revenue taxes, *viz.*:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> 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 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 relations 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 of action, in which case the inaction shall be deemed a denial[.]"

RA No. 1125, as amended by RA No. 9282, categorically states that a party adversely affected by a decision or inaction of the CIR may file an appeal before the CTA within 30 days after receipt of such decision or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2).[38]

Stated otherwise, the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, **or** it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR.[39] It bears to emphasize, however, that the judicial claim must be filed within a period of 30 days after the receipt of the CIR's decision or ruling or after the expiration of the 120-day period, **whichever is sooner.**[40]

The inaction of the CIR on a claim during the 120-day period is, by express provision of law, **"deemed a denial"** of a claim, and the taxpayer has 30 days from the expiration of the 120-day period to file

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[38] Sec. 11, RA No. 1125 as amended by RA 9282.
[39] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14, 2015, *citing Commissioner of Internal Revenue v.* San *Roque Power Corporation, G.R. No. 187485, 12 February 2013.*
[40] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, G.R. No. 182737, March 02, 2016.

its judicial claim with the CTA; otherwise, its failure to do so renders the "deemed a denial" decision of the CIR final and inappealable.[41]

To emphasize, when the 120-day period lapses and there is inaction on the part of the CIR, **the taxpayer must no longer wait for the CIR to come up with a decision as his inaction is the decision itself.** The taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.[42] Any claim filed beyond the 120+30-day period provided by the NIRC is outside the jurisdiction of the CTA.[43]

Petitioner filed its administrative claim for refund on December 29, 2017. Counting 120-days therefrom, respondent had until April 28, 2018 within which to decide on the claim. Records show that no decision was rendered by respondent on or before April 28, 2018. The **inaction** of the respondent on the administrative claim for refund is, by express provision of law, "deemed a denial" of the claim, and petitioner had 30 days from the expiration of the 120-day period on April 28, 2018 or until May 28, 2018 to file its judicial claim with the CTA.

Petitioner's filing of its Petition for Review on May 28, 2018 is clearly on time. The Court has acquired jurisdiction to take cognizance of the present case.

Belated denial decision of the BIR after the 120-day period

Anent the BIR Large Taxpayers Services-Excise Large Taxpayer Audit Division I Letter denying petitioner's administrative claim for refund, which was received by petitioner on July 6, 2018[44] or after the lapse of the 120-day period and after filing of its Petition for Review, the same is inconsequential. At the risk of being repetitive, the CIR's inaction after the lapse of the 120-day period is deemed a denial of taxpayer's administrative claim. Thus, petitioner correctly filed the Petition for Review with the CTA within 30 days from the lapse of the 120-day waiting period to appeal the CIR's inaction.

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[41] CIR vs. San Roque Power Corporation, G.R. No. 187485, February 12, 2013.
[42] Rohm Apollo Semiconductor Philippines vs. CIR, G.R. No. 168950, January 14,2015.
[43] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, G.R. No. 182737, March 02, 2016.
[44] Par. 1 (e), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 291.

Discussion on petitioner's entitlement to the refund or issuance of TCC

Based on the provision of Section 112 of the NIRC of 1997, as amended, in order to be entitled to refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:[45]

1. The administrative claim was filed within two years after the close of the taxable quarter when such sales were made *[and the subsequent judicial claim was filed on time[46]]*;

2. The taxpayer-claimant must be VAT-registered;

3. There must be zero-rated or effectively zero-rated sales;

4. Input taxes were incurred or paid;

5. Such input taxes are attributable to zero-rated or effectively zero-rated sales, or if not directly or entirely attributable, it shall be allocated proportionately on the basis of volume of sales;

6. The input taxes are not transitional input taxes; and,

7. The input taxes were not applied against any output VAT liability during and in the succeeding quarters.

The administrative and judicial claims for refund were filed on time

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

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[45] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.
[46] Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, G.R. No. 182737, March 02, 2016, declares that the judicial claim must be filed within a period of 30 days after the receipt of the CIR's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

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The present claim covers the first quarter (or the period October 1 to December 31, 2015) of petitioner's FY ending September 30, 2016. Counting two (2) years from December 31, 2015, petitioner had until December 31, 2017 within which to file an administrative claim for refund or issuance of TCC. Petitioner filed its administrative claim for the said quarter on December 29, 2017,[47] thus it was seasonably filed.

Regarding the judicial claim, as previously discussed petitioner timely filed the same on May 28, 2018 or within 30 days from the lapse of the 120-day period on April 28, 2018.

Petitioner is a VAT-registered entity

To prove that petitioner is a VAT taxpayer registered with the BIR, it formally offered its BIR Certificate of Registration[48] with Taxpayer Identification No. 000-059-661-00000 with filing start date for VAT on January 1, 1997.

Petitioner has proven its zero-rated sales during the subject period but only in the amount of ₱67,748,596.02

As stated in its Amended Articles of Incorporation, petitioner's primary purpose is to "engage in the manufacture of industrial explosives, nitroglycerine, ammonium nitrate, black powder, nitrocellulose including gun cotton, detonators, detonating fuses, safety fuses, and other substances or things, and to purchase, sell at wholesale and generally deal in industrial explosives, and all materials, substances, and things required for or incidental to the manufacture, preparation, adaptation, use or working of industrial explosives, or the packing, storing, firing, carrying, or disposition thereof and all other substances and things required for or incidental to the carrying out of the above objects or any of them."[49]

Petitioner maintains that it conducted two types of sale transaction that merit VAT zero-rating, namely: (1) **actual export sales**; and (2) **sales of goods to entities registered with the Board of Investments (BOI)**, during the period October 1, 2015 to December

[47] Par. 1 (d), Stipulation of Facts, JSFI, CTA Docket Vol. I, p. 291; Exhibits "P-19" and "P-20", CTA Docket Vol. II, pp. 610-614.
[48] Exhibit "P-3", CTA Docket, Vol. II, pp. 578-579.
[49] Exhibits "P-2" and "P-2-1", CTA Docket, Vol. II, pp. 565-577.

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31, 2015, pursuant to Sections 106(A)(2)(a)(1),(3), and (5) of the NIRC of 1997, as amended.

Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended, states:

> "**SEC. 106**. ***Value-Added Tax on Sale of Goods or Properties***. -
>
> (A) *Rate and Base of Tax* - xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales*.- The term **'export sales'** means:
>
> (1) **The sale and actual shipment of goods from the Philippines to a foreign country**, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and **paid for in acceptable foreign currency or its equivalent in goods or services**, and **accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**;
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> xxx xxx xxx
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> (5) **Those considered export sales under** Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and **other special laws**." (*Boldfacing supplied*)

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

> "**SEC. 4.106-5**. ***<u>Zero-Rated Sales of Goods or Properties</u>***. - xxx
>
> 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**

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for in acceptable foreign currency or its equivalent in goods and services, and **accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*** (BSP);

xxx xxx xxx

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

'***Considered export sales under Executive Order No. 226***' shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

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

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Export Sales

Pursuant to the foregoing provisions, in order for an export sale to qualify as VAT zero-rated, the following conditions must be present, to wit:

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

2) The sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

3) The payment was accounted for in accordance with the rules and regulations of the BSP.

To prove the foregoing conditions, petitioner submitted: (1) sales invoices;[50] and (2) proof of bank inward remittances of export sales.[51]

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by the NIRC of 1997, as amended, and its implementing regulations.[52] It is thus incumbent upon petitioner to prove that its export transactions complied with the invoicing requirements.

Section 113(B)(2)(c) of the NIRC of 1997, as amended, provides that VAT invoices or official receipts covering zero-rated sales should indicate such fact, as follows:

> "**SEC. 113**. ***Invoicing and Accounting Requirements for VAT-Registered Persons***. –
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> xxx xxx xxx
>
> (B) ***Information Contained in the VAT Invoice or VAT Official Receipt*** - The following information shall be indicated in the VAT invoice or VAT official receipt:
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> xxx xxx xxx

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[50] Exhibits "P-55-1" to "P-55-33".
[51] Exhibits "P-57-1" to "P-57-5".
[52] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

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

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, **the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt**[.]" (*Boldfacing supplied*)

In this case, however, all of the sales invoices submitted by petitioner did not indicate therein that the sales were zero-rated. The term "zero-rated sale" was not written or printed prominently on the said invoices. As such, the invoices did not comply with Section 113(B)(2)(c) of the NIRC of 1997, as amended.

Moreover, the bank inward remittances of export sales only prove petitioner's compliance with the second and third requisites for the zero-rating of export sales, namely, that the sales were paid for in acceptable foreign currency and the payment was accounted for in accordance with the rules and regulations of the BSP. The bank remittances do not, however, establish compliance with the first requisite, *i.e.*, the fact that there was **actual sale and shipment of goods** from the Philippines to a foreign country.

Article 23 of Executive Order No. 226 dated July 16, 1987, otherwise known as the "Omnibus Investments Code of 1987", defines export sales as follows:

"Article 23. **"Export sales"** shall mean the Philippine port F.O.B. value, **determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported** directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: ***Provided*, That sales of export products** to another producer or to an export trader **shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents**: *Provided, further*, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the

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> Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.
>
> Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales." (*Boldfacing supplied*)

Evidently, export sales are not only determined from the sales invoices, but also from bills of lading, inward letters of credit, landing certificates, and other commercial documents of exports, provided that they shall only be deemed to be **actually exported if evidenced by landing certificates or similar commercial documents**. In *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*,[53] the Supreme Court illustrated the pieces of evidence required to prove the actual exportation of goods, *viz.*:

> "In this connection, petitioner, **in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period**. In addition, petitioner's Certificate of Registration with RDO Control No. 96-540-000713 issued by the BIR and Certificate of Registration No. 95-133 issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.
>
> To the mind of the Court, **these documentary evidence submitted by petitioner, *e.g.,* summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the "sale and actual shipment of goods from the Philippines to a foreign country**." In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity." (*Boldfacing supplied*)

In this case, however, petitioner did not present any landing certificates or similar commercial documents such as airway bills and

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[53] G.R. No. 166732, April 27, 2007.

export declarations to prove that the goods sold were actually exported to foreign countries. Absent such crucial pieces of evidence, the Court is constrained to disallow the purported export sales in the amount of ₱257,688,546.18 for failure to comply with the requirements under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, and Section 4.106-5(a)(1) of RR No. 16-2005, as amended.

Sale of Goods to BOI-registered Entities

Section 106(A)(2)(a)(5) of the 1997 NIRC, as amended, and as implemented by Section 4.106.5 of RR No. 16-2005, as amended by RR No. 04-07, provides that the sale of goods to BOI-registered manufacturer/producer whose products are 100% exported are considered export sales, thus, accorded automatic zero-rating treatment. Stated differently, sales made to a BOI-registered buyer are considered as export sales subject to VAT zero-rating if the following conditions are met: (1) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and, (3) the BOI certified that the buyer exported 100% of its products.[54] Thus, the BOI certification is vital for petitioner to avail of the benefits of VAT zero-rating.

To prove its sales to its BOI-registered clients, petitioner offered in evidence (1) sales invoices;[55] and (2) Certificates of BOI registration.[56]

Upon review of petitioner's evidence, the Court finds that the following clients of petitioner are registered with the BOI with corresponding BOI Certifications that their products are 100% exported:

CLIENTS	PROOF OF VAT ZERO-RATING	EXHIBIT NO.	COVERED PERIOD
CARMEN COPPER CORPORATION	Confirmation letter from BOI dated February 5, 2016; Certificate No. 2016-008	P-58-1	January 1 to December 31, 2015
GREENSTONE RESOURCES CORPORATION	Confirmation letter from BOI dated September 2, 2016; Certificate No. 2016-10	P-58-2	July 1, 2015 to June 30, 2016

[54] *Commissioner of Internal Revenue vs. Filminera Resources Corporation*, G.R. No. 236325, September 16, 2020.
[55] Exhibits "P-56-1" to "P-56-92".
[56] Exhibits "P-58-1" to "P-58-5".

LEPANTO CONSOLIDATED MINING CO.	Confirmation letter from BOI dated February 10, 2016; Certificate No. 2016-015	P-58-3	January 1 to December 31, 2015
OCEANAGOLD (PHILIPPINES), INC.	Confirmation letter from BOI dated January 25, 2016; Certificate No. 2016-012	P-58-4	January 1 to December 31, 2015
PHILEX MINING CORPORATION	Certificate No. 2015-006	P-58-5	January 1 to December 31, 2015

It is important to note that **ALL** the certifications issued by the BOI to the above-listed clients of petitioner state that said clients exported 100% of their goods during the **period covering the subject claim herein**, *i.e.*, the 1st quarter of FY ending September 30, 2016, or from October 1 to December 31, 2015. As held by the Supreme Court in *Commissioner of Internal Revenue vs. Filminera Resources Corporation*,[57] what is crucial is not the period of validity of the certifications, but the period when the clients actually exported 100% of their goods as attested by the BOI certification. Thus, the sales made by petitioner to the abovementioned clients shall be treated as VAT zero-rated sales.

In its first quarterly VAT Return[58] for FY ending September 30, 2016, petitioner reported total sales of ₱739,173,280.09 which included zero-rated sales in the amount of ₱426,387,047.94, as shown below:

VATable Sales	₱ 312,786,232.15
Zero-rated Sales	426,387,047.94
Total Sales	₱ 739,173,280.09

The ICPA noted that there are unaccounted zero-rated sales in the amount of ₱563,917.51. This amount is the difference between the total zero-rated sales per quarterly VAT return (₱426,387,047.94) and the total zero-rated sales per supporting schedule (₱425,823,130.43). Agreeing with the ICPA's findings, the Court shall disallow the unaccounted zero-rated sales of ₱563,917.51 for petitioner's failure to substantiate such sales.

Upon review of the sales invoices offered in evidence by petitioner, the Court noted that the purported zero-rated sales in the

57 *Id.*
58 Exhibit "P-4" to "P-4.2", CTA Docket, pp. 155-156.

amount of ₱100,385,988.23 were made to "OCEANAGOLD DIDIPIO OPERATIONS". Petitioner, however, presented a confirmation letter and Certification from the BOI[59] stating a different name, *i.e.*, "OCEANAGOLD (PHILIPPINES), INC." Sans any proof that OCEANAGOLD DIDIPIO OPERATIONS and OCEANAGOLD (PHILIPPINES), INC are one and the same entity. Thus, the Court shall disallow the following zero-rated sales made to OCEANAGOLD DIDIPIO OPERATIONS in the total amount of ₱100,385,988.23, as follows:[60]

DATE	EXHIBIT NO.	SUPPORTING DOCUMENT	CLIENT	AMOUNT
10/23/15	P-56-62	SI No. 30029803	Oceanagold Didipio Operations	₱ 1,949,456.41
10/23/15	P-56-63	SI No. 30029804	Oceanagold Didipio Operations	278,580.00
10/23/15	P-56-64	SI No. 30029805	Oceanagold Didipio Operations	269,294.00
10/27/15	P-56-65	SI No. 30029801	Oceanagold Didipio Operations	2,545,496.25
10/27/15	P-56-66	SI No. 30029802	Oceanagold Didipio Operations	27,290,514.35
10/27/15	P-56-67	SI No. 30029807	Oceanagold Didipio Operations	1,158.97
11/26/15	P-56-68	SI No. 30029940	Oceanagold Didipio Operations	2,737,951.89
11/26/15	P-56-69	SI No. 30029941	Oceanagold Didipio Operations	31,062,881.18
11/26/15	P-56-70	SI No. 30029943	Oceanagold Didipio Operations	272,321.60
11/26/15	P-56-71	SI No. 30029944	Oceanagold Didipio Operations	1,971,373.62
12/28/15	P-56-72	SI No. 30030059	Oceanagold Didipio Operations	273,731.00
12/28/15	P-56-73	SI No. 30030060	Oceanagold Didipio Operations	1,981,576.47
12/28/15	P-56-74	CM No. 32200484	Oceanagold Didipio Operations	(44,786.64)
12/28/15	P-56-75	CM No. 32200485	Oceanagold Didipio Operations	(490,199.36)
12/28/15	P-56-76	SI No. 30030061	Oceanagold Didipio Operations	2,665,800.61
12/28/15	P-56-77	SI No. 30030062	Oceanagold Didipio Operations	27,620,837.88
Total				**₱ 100,385,988.23**

In sum, out of the reported zero-rated sales of ₱426,387,047.94, only the amount of ₱67,748,596.02 shall be considered as valid zero-rated sales for the first quarter of FY ending September 30, 2016, detailed below:

PARTICULARS	AMOUNT
Total Reported Zero-rated Sales	₱ 426,387,047.94

[59] Exhibit "P-58.4".
[60] Annex "A-5", ICPA Report.

Less: Sales denied of VAT zero-rating	
Zero-rated sales without proof of actual exportation	257,688,546.18
Unaccounted zero-rated sales	563,917.51
Zero-rated sales to client without BOI certification	100,385,988.23
Valid Zero-rated Sales	₱ **67,748,596.02**

The Court shall now proceed to the determination of the valid input taxes of petitioner in relation to its refund claim.

The input taxes being claimed do not appear to be transitional input taxes

For the first quarter of FY ending September 30, 2016, petitioner reflected a total amount of ₱41,289,298.85 allowable input VAT arising from its amortization of input VAT on purchases of capital goods exceeding ₱1 million, domestic purchases and importation of goods other than capital goods, domestic purchases of services and services rendered by non-residents, detailed as follows:

INPUT TAX AS PER QUARTERLY VAT RETURN	AMOUNT
Input Tax Deferred on Capital Goods exceeding 1M from Previous Quarter (Line 20B)	₱ 1,047,511.17
Add: Input Tax on Current Purchase of Capital Goods exceeding 1M (Line 21D)	271,714.28
Less: Input Tax on Purchases of Capital Goods exceeding 1M deferred for succeeding period (Line 23A)	1,208,601.99
Input Tax Amortized for the Period	110,623.46
Add: Current Input Taxes from:	
Domestic Purchases of Goods Other Capital Goods (Line 21F)	5,015,075.90
Importation of Goods Other than Capital Goods (Line 21H)	27,778,976.11
Domestic Purchase of Services (Line 21J)	7,593,039.41
Services Rendered by Non-Residents	791,583.97
Total Current Input Tax	41,178,675.39
Total Input Taxes for the Period	₱ **41,289,298.85**

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The above input VAT does not appear to be transitional input taxes as provided under Section 111(A) of the NIRC of 1997, as amended, which states that:

> "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, whichever is higher, which shall be creditable against the output tax. Xxx"

As the Supreme Court explained, "the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer."[61]

Since there is no showing that the claimed input VAT is transitional input VAT, the Court shall proceed to determine whether petitioner complied with the other requisites pertaining to the input VAT being claimed for refund or issuance of a tax credit certificate.

Petitioner incurred/paid a portion of input taxes but only in the amount of ₱29,292,589.79

In support of its total reported input taxes of ₱41,289,298.85 as found above, petitioner offered in evidence various official receipts,[62] sales invoices,[63] Import Entry and Internal Revenue Declarations (IEIRDs),[64] Statement of Settlement of Duties and Taxes (SSDTs) and Bureau of Customs (BOC) ORs,[65] BOC Certification of Importation

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[61] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 158885, October 2, 2009; *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue et al.*, G.R. No. 170680, October 2, 2009.
[62] Exhibits "P-59-1" to "P-59-112"; Exhibits "P-59-113" to "P-59-116".
[63] Exhibits "P-60-1" to "P-60-182"; "P-60-183"; "P-66-1" to "P-66-2"
[64] Exhibits "P-64-1A" to "P-64-76A"; "P-64-77A"; "P-64-78A".
[65] Exhibits "P-64-1B" to "P-64-76B"; "P-64-77B"; "P-64-78B".

Documents,[66]and other related documents,[67] which were examined by the ICPA.

Sections 113(A) and (B) of the NIRC of 1997, as amended, provides for the invoicing requirements for VAT-registered persons, to wit:

> "**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); and
>
> (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 known 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 involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the

[66] Exhibit "P-65".
[67] Exhibits "P-61-1" to "P-61-9"; "P-62-1" to "P-62-268"; "P-63-1" to "P-63-3"; "P-67-1" to "P-67-3".

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

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

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

Similarly, the same invoicing requirements are provided for under Section 4.113.1 of RR No. 16-2005, as amended, *viz*.:

"**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 "VAT Invoice" or "VAT official receipt". All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

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

(B) Information Contained in 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 TIN; and

(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 known as a separate item in the invoice or receipt;

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(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 involved 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 known on the invoice or receipt: *Provided*, That the seller may 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 pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

Upon examination of the said documents, the ICPA noted exceptions in the total amount of ₱7,645,749.75, as detailed below, which the Court shall disallow for failure to meet the substantiation and invoicing requirements under Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-05, as amended:

EXHIBIT NO.	EXCEPTIONS	AMOUNT
1) Input Tax on Domestic Purchases of Goods other than Capital Goods and Domestic Purchases of Services		
Annex B-4	Difference of input tax per schedule of domestic purchase of services and input tax per supporting ORs	₱ 194,301.29
Annex B-5	Difference of input tax per schedule of domestic purchase of goods and input tax per supporting invoices	9,000.00
Annex B-3	Domestic purchase of services supported by documents other than VAT ORs	21,785.70
Annex B-6	Domestic purchase of services and goods supported by VAT ORs or VAT Invoices but dated outside the period of claim	2,880,911.65
Annex B-8	Domestic purchase of services and goods supported only by photocopied or scanned VAT ORs or VAT Invoices	15,629.12
Annex B-7	Domestic purchase of services and goods which were recorded twice	55,670.59

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Annex B-9	Domestic purchase of services and goods without supporting documents	848,735.16
Table 5, ICPA Report	Discrepancy on schedule of local purchases vs. VAT Return [unaccounted purchases]	3,619,716.24
Subtotal - Input Tax on Domestic Purchases of Goods other than Capital Goods and Domestic Purchases of Services		7,645,749.75
Total ICPA Disallowance		**₱ 7,645,749.75**

Moreover, upon further verification, the Court disallows the following input VAT on domestic purchase of goods and services, importation of goods other than capital goods, purchase of capital goods exceeding ₱1 Million, and services rendered by non-residents in the total amount of ₱4,350,959.02 for failure to comply with invoicing requirements in accordance with Section 113 of the NIRC of 1997, as amended, and implemented by Section 4.113-1 of RR No. 16-2005, as amended, as follows:

SUPPLIER	EXHIBIT NO.	AMOUNT
A) Input Tax on Domestic Purchases of Goods Other than Capital Goods		
1) Input Tax on Domestic Purchases of Goods Other than Capital Goods supported by VAT Invoice with unreadable VAT amount		
NEWTON INTEGRATED SOLUTIONS, INC.	P-60-78	₱ 1,535.46
POWERSTAR TRADING INC.	P-60-108	10,607.14
Subtotal - Input Tax on Domestic Purchases of Goods Other than Capital Goods supported by VAT Invoice with unreadable VAT amount		12,142.60
Total - Input Tax on Domestic Purchases of Goods Other than Capital Goods		**12,142.60**
B) Input Tax on Domestic Purchases of Services		
1) Input Tax on Domestic Purchases of Services supported by VAT OR where the indicated payor therein does not match the taxpayer's name		
JURASSIC FREIGHT SERVICES	P-59-26	49,320.00
JURASSIC FREIGHT SERVICES	P-59-27	28,200.00
JURASSIC FREIGHT SERVICES	P-59-29	222,535.71
RAJJA SECURITY SERVICES CORPORATION	P-59-78	1,875.00
Subtotal - Input Tax on Domestic Purchases of Services supported by VAT OR where the indicated payor therein does not match the taxpayer's name		301,930.71
2) Input Tax on Domestic Purchase of Service supported by VAT OR with unreadable TIN		
PEOPLE'S AIR CARGO AND WAREHOUSING CO., INC.	P-59-44	3,603.60
Subtotal - Input Tax on Domestic Purchase of Service supported by VAT OR with unreadable TIN		3,603.60

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3) Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is not properly indicated		
ODD CUBES, INC.	P-59-38	1,971.43
Subtotal - Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is not properly indicated		1,971.43
4) Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is in US Dollars without conversion value in Peso		
SYCIP SALAZAR HERNANDEZ & GATMAITAN	P-59-105	9,468.12
Subtotal - Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is in dollars without conversion value in peso		9,468.12
Total - Input Tax on Domestic Purchases of Services		**316,973.86**
C) Input Tax on Importation of Goods other than Capital Goods		
1) Input Tax on Importation of goods other than capital goods supported by Import Entry and Internal Revenue Declarations and one (1) BOC Official Receipt but payment of VAT does not match or cannot be clearly traced in the submitted BOC Official Receipt		
MINOVA ASIA PACIFIC TRADING LTD	P-64-15A; P-64-15B	32,299.49
QUEENSLAND PLASTICS PTY LTD	P-64-16A; P-64-16B	77,848.85
MEGA CHEM (UK) LTD	P-64-17A; P-64-17B	59,837.18
TIPPER TIE INC	P-64-20A;P-64-20B	25,876.16
AXIEO OPERATIONS (AUSTRALIA) PTY LTD	P-64-21A; P-64-21B	84,400.28
CHOWDARY UDYOG	P-64-22A; P-64-22B	121,811.37
DALIAN TUOWIE INTERNATIONAL TRADING	P-64-23A; P-64-23B	85,952.26
DALIAN TUOWIE INTERNATIONAL TRADING	P-64-24A; P-64-24B	179,427.51
EDWARD COHEN ASSOCIATES INC	P-64-25A; P-64-25B	78,354.44
EVOLUTION RESOURCES GROUP PTY LTD	P-64-26A; P-64-26B	27,837.90
HOESCH GRANULES GMBH	P-64-27A; P-64-27B	151,216.69
MFU	P-64-28A; P-64-28B	8,563.84
NIPPON SEIRO CO LTD	P-64-29A; P-64-29B	140,242.18
ORICA AUSTRALIA PTY LTD	P-64-30A; P-64-30B	143,652.40
ORICA AUSTRALIA PTY LTD	P-64-31A; P-64-31B	144,563.11

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ORICA AUSTRALIA PTY LTD	P-64-32A; P-64-32B	174,815.92
ORICA AUSTRALIA PTY LTD	P-64-33A; P-64-33B	366,722.65
ORICA INTERNATIONAL PTE LTD	P-64-34A; P-64-34B	8,834.97
ORICA INTERNATIONAL PTE LTD	P-64-35A; P-64-35B	20,565.18
ORICA WENHAI EXPLOSIVES CO LTD	P-64-36A; P-64-36B	86,375.47
POTTERS INDUSTRIES PTY LTD	P-64-37A; P-64-37B	100,029.68
POTTERS INDUSTRIES PTY LTD	P-64-38A; P-64-38B	100,030.96
POTTERS INDUSTRY PTY LTD	P-64-39A; P-64-39B	100,029.74
QUEENSLAND PLASTIC PTY LTD	P-64-40A; P-64-40B	31,572.64
QUEENSLAND PLASTICS PTY LTD	P-64-41A; P-64-41B	49,575.71
SHANXI JIAOCHENG HONGXING CHEMICALS	P-64-42A; P-64-42B	31,322.80
SHANXI JIAOCHENG HONGXING CHEMICALS	P-64-43A; P-64-43B	52,719.64
SHANXI JIAOCHENG HONGXING CHEMICALS	P-64-44A; P-64-44B	52,720.23
SPECIALISED PLASTIC EXTRUSION PTY LTD	P-64-45A; P-64-45B	12,508.03
SPECIALISED PLASTIC EXTRUSION PTY LTD	P-64-46A; P-64-46B	24,514.22
SPECIALISED PLASTIC EXTRUSION PTY LTD	P-64-47A; P-64-47B	48,465.49
XINJIANG GREENLAND INTERNATIONAL	P-64-48A; P-64-48B	7,814.76
YATAI ELECTROCHEMISTRY CO LTD	P-64-49A; P-64-49B	179,028.74
YATAI ELECTROCHEMISTRY CO LTD	P-64-50A; P-64-50B	179,035.17
ORICA INTERNATIONAL PTE LTD	P-64-78A; P-64-78B	131,069.48
Subtotal - Input Tax on Importation of goods other than capital goods supported by Import Entry and Internal Revenue Declarations and one (1) BOC Official Receipt but payment of VAT cannot be clearly traced in the submitted BOC Official Receipt		3,119,635.14
Total - Input Tax on Importation of Goods other than Capital Goods		**3,119,635.14**
D) Input Tax on Capital Goods Exceeding 1M Amortized for the Period		

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1) Input Tax on Capital Goods Exceeding 1M Amortized for the Period without supporting documents	Annex B-13	110,623.46
Subtotal - Input Tax on Capital Goods Exceeding 1M Amortized for the Period without supporting documents		110,623.46
Total - Input Tax on Capital Goods Exceeding 1M Amortized for the Period		**110,623.46**
E) Input Tax on Services Rendered by Non-Residents		
1) Input Tax on Services Rendered by Non-Residents supported by BIR Form No. 1600 where the forms do not indicate the name of the non-resident supplier		
Non-resident Supplier	P-67-1	246,598.35
Non-resident Supplier	P-67-2	330,117.17
Non-resident Supplier	P-67-3	214,868.45
Subtotal - Input Tax on Services Rendered by Non-Residents supported by BIR Form No. 1600 where the forms do not indicate the name of the non-resident supplier		791,583.96
Total - Input Tax on Services Rendered by Non-Residents		**791,583.96**
Total Input Taxes Not Properly Substantiated		**₱ 4,350,959.02**

In addition, the Court finds that the following amounts of input VAT claimed by petitioner were higher than the amounts reflected in the VAT Invoices, thus, the difference of ₱0.29 should likewise be disallowed:

SUPPLIER	EXHIBIT NO.	INPUT VAT PER SCHEDULE (ANNEX B-2)	INPUT VAT PER INVOICE	EXCESS INPUT VAT CLAIMED
CHARLAND TRADING	P-60-10	₱ 4,028.57	₱ 4,028.37	₱ 0.20
GRIMALKIN CORPORATION	P-60-20	23,435.94	23,435.86	0.08
MONIC & COMPANY, INC.	P-60-74	₱ 3,991.46	₱ 3,991.45	₱ 0.01
Total Excess Input VAT Claimed				**₱ 0.29**

Thus, the total disallowances per the Court's further verification of petitioner's input taxes is ₱4,350,959.31, computed as follows:

COURT'S DISALLOWANCES	AMOUNT
Disallowances for failure to comply with invoicing requirements	₱ 4,350,959.02
Variance in Input VAT Claimed	0.29
Total Disallowances per Court's further verification	**₱ 4,350,959.31**

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In view of the foregoing disallowances, the total valid input taxes of petitioner subject for allocation amounts to ₱29,292,589.79 only, as shown below:

PARTICULARS	AMOUNT
Total Common Input Tax for Allocation	**₱ 41,289,298.85**
Less:	
Disallowances per ICPA Exceptions	7,645,749.75
Disallowances per Court's further verification	4,350,959.31
Total Valid Common Input Tax for Allocation	**₱ 29,292,589.79**

Input taxes are attributable and/or allocable to zero-rated or effectively zero-rated sales

Considering that petitioner is engaged in taxable sales subject to 0% and 12% VAT, and its input VAT cannot be directly or entirely attributed to any of the transactions, the valid common input VAT of ₱29,292,589.79 shall be proportionately allocated on the basis of the volume of its sales in accordance with Section 112(A) of the NIRC of 1997, as amended, thus:

Total VATable Sales per VAT Return	₱ 312,786,232.15
Divided by the Total Declared Sales per Quarterly VAT Returns	739,173,280.09
Multiplied by the Total Valid Input VAT	29,292,588.79
Input VAT Allocated to Total VATable Sales	**12,395,359.84**
Total Zero-rated Sales per VAT Return	426,387,047.94
Divided by the Total Declared Sales per Quarterly VAT Returns	739,173,280.09
Multiplied by the Total Valid Input VAT	29,292,588.79
Input VAT Allocated to Zero-rated Sales	**₱ 16,897,229.95**

The input VAT allocated to zero-rated sales amounting to ₱16,897,229.95 shall be further allocated between the valid zero-rated sales and the remaining balance of the zero-rated sales per VAT return. Thus, the input VAT allocated to valid zero-rated sales which may be refunded to petitioner is ₱2,684,799.20, as follows:

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Valid Zero-rated Sales	₱ 67,748,596.02
Divided by the Total Zero-rated Sales per VAT Return	426,387,047.94
Multiplied by the Input VAT Allocated to Zero-rated Sales	16,897,229.95
Input VAT Allocated to Valid Zero-rated Sales	**₱ 2,684,799.20**

Input taxes were not applied against any output VAT liability during and in the succeeding quarters

Having determined that petitioner had valid input VAT attributable to its valid zero-rated sales in the amount of ₱2,684,799.20, the Court shall determine whether the same was not applied against its output VAT liability.

After deducting the input tax attributable to VATable sales in the amount of ₱12,395,359.84 from its output VAT liability of ₱37,534,347.86, petitioner still has a net output VAT payable of ₱25,138,988.02, computed below:

Output VAT Per Returns	₱ 37,534,347.86
Input VAT Allocated to VATable Sales	12,395,359.84
Net Output VAT Payable	**₱ 25,138,988.02**

Since petitioner's input VAT attributable to VATable sales is not enough to cover its output VAT liability, the input tax credits carried over from previous period shall be used to cover the net output VAT payable of ₱25,138,988.02.

The balance of input taxes which was carried over to the second quarter of FY ending September 30, 2016 is ₱72,899,462.91, as computed below:

PARTICULARS	AMOUNT
Balance of Input Tax from 2nd Quarter of 2014 and prior	₱ 39,750,559.42
Balance of Input Tax from 3rd Quarter of 2014	29,839,880.64
Balance of Input Tax from 4th Quarter of 2014	23,349,188.25
Balance of Input Tax from 3rd Quarter of 2015	22,333.08
Input Tax Carried Over from Previous Period (Line 20A)	**92,961,961.39**

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Add: Input Tax for 1st Quarter of 2016		41,289,298.85
Total Input Taxes		134,251,260.24
Less: Input Tax to be Refunded (Line 23D)		23,817,449.47
Output VAT (Line 15B)		37,534,347.86
Balance of Input Tax to be Carried Over to 2nd Quarter of 2016 (Line 25)	**₱**	**72,899,462.91**

Out of the ₱92,961,961.39 input taxes carried over from periods prior to the subject period of claim or prior to the first quarter of the FY ending September 30, 2016, petitioner opted to submit documents allegedly supporting input taxes from third and fourth quarters of FY ending September 30, 2014, in the total amount of ₱76,114,506.29.

To stress, prior year's excess input taxes may be carried over and utilized for the payment of current period output tax for as long as they are not subject of a refund claim and that they are substantiated by VAT invoices or official receipts in accordance with Sections 110(A)(1) and (B) of the NIRC of 1997, as amended.

The ICPA determined the following exceptions to input taxes in the amount of ₱34,637,714.87 for not being properly substantiated, thus:

EXCEPTIONS	EXHIBIT NO.	AMOUNT
Purchase of capital goods exceeding ₱1 Million without supporting documents	Annex C-3	₱ 594,428.58
Domestic purchase of goods without supporting documents	Annex C-7	7,386,570.47
	Annex C-4	368,003.54
Domestic purchase of services without supporting documents	Annex C-8	10,198,318.00
Difference between input tax per schedule and input tax per supporting statement of settlement of duties and taxes ("SSDT") or BOC import entry and internal revenue declaration ("IE&IRD")	Annex C-2	9,804.00
Importation of goods other than capital goods with no supporting document	Annex C-9	16,080,590.28
Total ICPA Disallowance		**₱ 34,637,714.87**

The Court finds the observations of the ICPA proper. Thus, the amount of ₱34,637,714.87 shall be disallowed from petitioner's prior period input taxes.

Moreover, upon further verification, the Court disallows the following input VAT on domestic purchase of goods and services, purchase of capital goods exceeding ₱1 Million, and services rendered by non-residents in the total amount of ₱4,232,897.71 for failure to comply with the invoicing requirements, as follows:

SUPPLIER	EXHIBIT NO.	AMOUNT
A) Input Tax on Domestic Purchases of Goods Other than Capital Goods		
1) Input Tax on Domestic Purchases of Goods Other than Capital Goods supported by VAT Invoice dated outside the period (3rd and 4th Quarters of FY ending September 30, 2014)		
ASIAPRIME PHILIPPNES CORPORATION	P-76-1	₱ 10,275.00
ATEC PETROLEUM PRODUCTS	P-76-4	29,635.71
ATEC PETROLEUM PRODUCTS	P-76-5	29,635.71
Hi-Tech Box Export Manufacturing Inc.	P-76-6	9,788.14
Hi-Tech Box Export Manufacturing Inc.	P-76-7	1,907.40
Hi-Tech Box Export Manufacturing Inc.	P-76-8	9,936.43
Hi-Tech Box Export Manufacturing Inc.	P-76-9	17,417.41
Hi-Tech Box Export Manufacturing Inc.	P-76-10	9,837.06
Hi-Tech Box Export Manufacturing Inc.	P-76-11	9,042.15
Hi-Tech Box Export Manufacturing Inc.	P-76-12	6,064.29
Hi-Tech Box Export Manufacturing Inc.	P-76-13	9,699.11
Hi-Tech Box Export Manufacturing Inc.	P-76-14	1,013.52
Hi-Tech Box Export Manufacturing Inc.	P-76-15	8,276.79
Hi-Tech Box Export Manufacturing Inc.	P-76-16	8,556.38
Hi-Tech Box Export Manufacturing Inc.	P-76-17	3,210.45
Hi-Tech Box Export Manufacturing Inc.	P-76-18	3,756.70
Hi-Tech Box Export Manufacturing Inc.	P-76-19	7,551.69
Hi-Tech Box Export Manufacturing Inc.	P-76-20	12,470.22
Hi-Tech Box Export Manufacturing Inc.	P-76-21	9,932.14
Monic & Company, Inc.	P-76-48	30,926.45
Monic & Company, Inc.	P-76-49	33,503.65
Monic & Company, Inc.	P-76-50	30,926.45
Monic & Company, Inc.	P-76-51	25,772.04
Monic & Company, Inc.	P-76-52	18,408.60
Monic & Company, Inc.	P-76-53	3,681.72
Monic & Company, Inc.	P-76-54	35,344.51
Monic & Company, Inc.	P-76-55	7,179.35
Monic & Company, Inc.	P-76-56	25,035.70
NitroAsia Company Inc.	P-76-72	465.00
NitroAsia Company Inc.	P-76-73	139,980.00

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NitroAsia Company Inc.	P-76-74	55,992.00
NitroAsia Company Inc.	P-76-75	186.00
Polymaster Industrial Corporation	P-76-78	9,673.39
Polymaster Industrial Corporation	P-76-79	48,366.96
Polymaster Industrial Corporation	P-76-80	17,486.52
Polymaster Industrial Corporation	P-76-81	15,998.30
Polymaster Industrial Corporation	P-76-82	4,360.70
Polymaster Industrial Corporation	P-76-83	1,245.54
Polymaster Industrial Corporation	P-76-84	13,729.02
Polymaster Industrial Corporation	P-76-85	1,275.00
Polymaster Industrial Corporation	P-76-86	5,989.29
Polymaster Industrial Corporation	P-76-87	4,607.14
Polymaster Industrial Corporation	P-76-88	19,718.84
Polymaster Industrial Corporation	P-76-89	117.86
Polymaster Industrial Corporation	P-76-90	4,917.86
Polymaster Industrial Corporation	P-76-91	5,925.00
Polymaster Industrial Corporation	P-76-92	29,392.23
SAG F INDUSTRIAL SALES	P-76-104	29,625.21
SAG F INDUSTRIAL SALES	P-76-105	1,446.43
SAG F INDUSTRIAL SALES	P-76-106	25,859.68
SAG F INDUSTRIAL SALES	P-76-107	6,696.43
SAG F INDUSTRIAL SALES	P-76-108	33,015.00
SAG F INDUSTRIAL SALES	P-76-109	1,232.14
SAG F INDUSTRIAL SALES	P-76-110	5,090.36
SAG F INDUSTRIAL SALES	P-76-111	2,855.89
SAG F INDUSTRIAL SALES	P-76-112	1,478.57
SAG F INDUSTRIAL SALES	P-76-113	5,483.57
SAG F INDUSTRIAL SALES	P-76-114	2,571.43
SAG F INDUSTRIAL SALES	P-76-115	4,660.71
SAG F INDUSTRIAL SALES	P-76-116	102.86
SAG F INDUSTRIAL SALES	P-76-117	13.93
SAG F INDUSTRIAL SALES	P-76-118	1,125.00
SAG F INDUSTRIAL SALES	P-76-119	739.29
SAG F INDUSTRIAL SALES	P-76-120	1,979.46
SAG F INDUSTRIAL SALES	P-76-121	3,028.93
SAG F INDUSTRIAL SALES	P-76-122	37.50
SAG F INDUSTRIAL SALES	P-76-123	1,757.14
SAG F INDUSTRIAL SALES	P-76-124	1,742.14
SAG F INDUSTRIAL SALES	P-76-125	1,006.07

SAG F INDUSTRIAL SALES	P-76-126	139.29
SAG F INDUSTRIAL SALES	P-76-127	47.14
SAG F INDUSTRIAL SALES	P-76-128	1,350.00
SAG F INDUSTRIAL SALES	P-76-129	1,301.79
SAG F INDUSTRIAL SALES	P-76-130	3,693.75
SAG F INDUSTRIAL SALES	P-76-131	940.71
SAG F INDUSTRIAL SALES	P-76-132	32,416.07
SAG F INDUSTRIAL SALES	P-76-133	137.14
SAG F INDUSTRIAL SALES	P-76-134	361.61
SAG F INDUSTRIAL SALES	P-76-135	173.57
SAG F INDUSTRIAL SALES	P-76-136	4,017.86
SAG F INDUSTRIAL SALES	P-76-137	375.00
SAG F INDUSTRIAL SALES	P-76-138	4,821.43
SAG F INDUSTRIAL SALES	P-76-139	5,625.00
SAG F INDUSTRIAL SALES	P-76-140	94.29
SAG F INDUSTRIAL SALES	P-76-141	2,144.46
SAG F INDUSTRIAL SALES	P-76-142	4,564.29
SAG F INDUSTRIAL SALES	P-76-143	1,402.82
SAG F INDUSTRIAL SALES	P-76-144	565.71
SAG F INDUSTRIAL SALES	P-76-145	1,478.57
SAG F INDUSTRIAL SALES	P-76-146	235.71
SAG F INDUSTRIAL SALES	P-76-147	380.36
SAG F INDUSTRIAL SALES	P-76-148	948.21
SAG F INDUSTRIAL SALES	P-76-149	842.14
SAG F INDUSTRIAL SALES	P-76-150	1,301.79
Sytengco Philippines Corporation	P-76-184	9,642.86
Sytengco Philippines Corporation	P-76-185	2,678.57
Sytengco Philippines Corporation	P-76-186	65,207.14
Sytengco Philippines Corporation	P-76-187	32,795.36
Total (Philippines) Corporation	P-76-188	66,450.03
Total (Philippines) Corporation	P-76-189	65,700.03
Jabee Plastic Products	P-76-195	17,183.62
Jabee Plastic Products	P-76-196	17,878.78
Jabee Plastic Products	P-76-197	21,492.29
Jabee Plastic Products	P-76-198	26,410.10
Jabee Plastic Products	P-76-199	8,747.67
Jabee Plastic Products	P-76-200	13,780.40
Jabee Plastic Products	P-76-201	13,439.06
Jabee Plastic Products	P-76-202	20,306.39

Jabee Plastic Products	P-76-203	18,288.24
Jabee Plastic Products	P-76-204	14,987.24
Jabee Plastic Products	P-76-205	21,062.98
Jabee Plastic Products	P-76-206	47,059.59
Jabee Plastic Products	P-76-207	12,059.61
Jabee Plastic Products	P-76-208	16,298.17
Jabee Plastic Products	P-76-209	18,575.98
Packagemakers, Inc.	P-76-216	52,285.71
Packagemakers, Inc.	P-76-217	13,071.43
Packagemakers, Inc.	P-76-218	28,928.57
SIMPEX MACHINERIES INC	P-76-219	107,038.80
Unicon MFG., Co., Inc.	P-76-229	1,350.00
Unicon MFG., Co., Inc.	P-76-230	2,700.00
Unicon MFG., Co., Inc.	P-76-231	2,700.00
Unicon MFG., Co., Inc.	P-76-232	4,050.00
Unicon MFG., Co., Inc.	P-76-233	2,700.00
Unicon MFG., Co., Inc.	P-76-234	6,750.00
Unicon MFG., Co., Inc.	P-76-235	1,350.00
Unicon MFG., Co., Inc.	P-76-236	7,103.57
Unicon MFG., Co., Inc.	P-76-237	7,650.00
Unicon MFG., Co., Inc.	P-76-238	7,650.00
Unicon MFG., Co., Inc.	P-76-239	7,650.00
Unicon MFG., Co., Inc.	P-76-240	7,650.00
Unicon MFG., Co., Inc.	P-76-241	7,650.00
Unicon MFG., Co., Inc.	P-76-242	7,650.00
Unicon MFG., Co., Inc.	P-76-243	5,464.29
Unicon MFG., Co., Inc.	P-76-244	9,857.14
Unicon MFG., Co., Inc.	P-76-245	9,857.14
Unicon MFG., Co., Inc.	P-76-246	9,857.14
Unicon MFG., Co., Inc.	P-76-247	9,857.14
Unicon MFG., Co., Inc.	P-76-248	9,857.14
Unicon MFG., Co., Inc.	P-76-249	9,857.14
Unicon MFG., Co., Inc.	P-76-250	9,857.14
Unicon MFG., Co., Inc.	P-76-251	9,857.14
Unicon MFG., Co., Inc.	P-76-252	6,750.00
Unicon MFG., Co., Inc.	P-76-253	2,700.00
Unicon MFG., Co., Inc.	P-76-254	4,050.00
Unicon MFG., Co., Inc.	P-76-255	6,750.00
Unicon MFG., Co., Inc.	P-76-256	6,750.00

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Unicon MFG., Co., Inc.	P-76-257	9,450.00
Unicon MFG., Co., Inc.	P-76-258	9,450.00
Unicon MFG., Co., Inc.	P-76-259	10,800.00
Unicon MFG., Co., Inc.	P-76-260	9,450.00
Unicon MFG., Co., Inc.	P-76-261	6,750.00
Unicon MFG., Co., Inc.	P-76-262	6,750.00
Unicon MFG., Co., Inc.	P-76-263	5,400.00
Unicon MFG., Co., Inc.	P-76-264	13,500.00
Unicon MFG., Co., Inc.	P-76-265	10,800.00
Unicon MFG., Co., Inc.	P-76-266	2,700.00
Unicon MFG., Co., Inc.	P-76-267	8,100.00
Subtotal – Input Tax on Domestic Purchases of Goods Other than Capital Goods supported by VAT Invoice dated outside the period of claim		1,999,561.49
Total – Input Tax on Domestic Purchases of Goods Other than Capital Goods		**1,999,561.49**
B) Input Tax on Domestic Purchases of Services		
1) Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is not separately indicated		
PENINSULA ELECTRIC COOPERATIVE INC	P-75-6	101,512.71
Subtotal – Input Tax on Domestic Purchase of Service supported by VAT OR where the VAT amount is not separately indicated		101,512.71
Total – Input Tax on Domestic Purchases of Services		**101,512.71**
C) Input Tax on Capital Goods Exceeding 1M Amortized for the Period		
1) Input Tax on Capital Goods Exceeding 1M Outside the Period of Claim		
TOYOTA PASONG TAMO INC	P-74	160,178.57
Subtotal – Input Tax on Capital Goods Exceeding 1M Outside the Period of Claim		160,178.57
Total – Input Tax on Capital Goods Exceeding 1M Amortized for the Period		**160,178.57**
D) Input Tax on Services Rendered by Non-Residents		
1) Input Tax on Services Rendered by Non-Residents supported by BIR Form No. 1600 where the forms do not indicate the name of the non-resident supplier		
Non-resident Supplier	P-77-1A; P-77-1B	252,556.07
Non-resident Supplier	P-77-2A; P-77-2B	249,174.06
Non-resident Supplier	P-77-3A; P-77-3B	441,979.04
Non-resident Supplier	P-77-4A; P-77-4B	232,026.93
Non-resident Supplier	P-77-5A; P-77-5B	377,495.02
Non-resident Supplier	P-77-6A; P-77-6B	418,413.82

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Subtotal – Input Tax on Services Rendered by Non-Residents supported by BIR Form No. 1600 where the forms do not indicate the name of the non-resident supplier	1,971,644.94
Total – Input Tax on Services Rendered by Non-Residents	**1,971,644.94**
Total Input Taxes Not Properly Substantiated	**₱ 4,232,897.71**

In addition, the Court finds that the following amounts of input VAT claimed by petitioner were higher than the amounts reflected in the VAT Invoices, thus, the difference of ₱0.11 should likewise be disallowed:

SUPPLIER	EXHIBIT NO.	INPUT VAT PER SCHEDULE (ANNEX C-5)	INPUT VAT PER OR	EXCESS INPUT VAT CLAIMED
Neslin Construction and General Services	P-75-13	₱ 88,392.86	₱ 88,392.85	₱ 0.01
Neslin Construction and General Services	P-75-14	85,765.81	85,765.71	0.10
Total Excess Input VAT Claimed				**₱ 0.11**

Thus, the total disallowances per the Court's further verification of petitioner's prior input taxes is ₱4,232,897.82, computed as follows:

COURT'S DISALLOWANCES	AMOUNT
Disallowances for failure to comply with invoicing requirements	₱ 4,232,897.71
Variance in Input VAT Claimed	0.11
Total Disallowances per Court's further verification	**₱ 4,232,897.82**

In view of the foregoing disallowances, the total valid prior input taxes of petitioner which shall be used to cover the remaining net output VAT payable of ₱25,138,988.02 is ₱37,243,893.60, as shown below:

PARTICULARS	AMOUNT
Total Input Tax for 3rd and 4th Quarters of FY 2014	**₱ 76,114,506.29**
Less:	
Disallowances per ICPA Exceptions	34,637,714.87
Disallowances per Court's further verification	4,232,897.82
Total Valid Prior Input Tax	**₱ 37,243,893.60**

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Petitioner has input VAT available for refund in the amount of ₱2,684,799.20

Considering that petitioner has submitted evidence proving sufficient prior input taxes in the amount of ₱37,243,893.60 which is more than enough to cover the net output VAT payable of ₱25,138,988.02 for the current period, the current period input taxes of ₱2,684,799.20 may be refunded to petitioner.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[68] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[69] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[70] However, when the claim for refund has clear legal basis and is sufficiently supported by evidence, as in the present case, then the Court shall not hesitate to grant the same.[71]

In fine, petitioner has proven that it is entitled to the refund of valid input VAT allocated to valid zero-rated sales in the amount of ₱2,684,799.20.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Orica Philippines, Inc. on May 28, 2018 is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is ordered to **REFUND** or issue a Tax Credit Certificate in favor of petitioner Orica Philippines, Inc. the amount of **₱2,684,799.20** representing its excess and unutilized input value-added tax attributable to zero-rated sales for the first quarter of fiscal year ending September 30, 2016 or the period October 1, 2015 to December 31, 2015.

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[68] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[69] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[70] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.
[71] San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009 citing Philippine Airlines v. Commissioner of Internal Revenue, G.R. No. 180043, 14 August 2009.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice