REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9557

Members:

CASTAÑEDA, JR., Chairperson,
MINDARO-GRULLA, and
BACORRO-VILLENA, JJ.

Promulgated:

JAN 2 8 2020

11:30 a.m.

x- -x

DECISION

CASTAÑEDA, JR., J.:

THE CASE

Before this Court is petitioner Pilipinas Kyohritsu Inc.'s Petition for Review filed against the Commissioner of Internal Revenue, seeking to refund the amount of ₱12,274,510.00,[1] allegedly representing petitioner's unutilized, unused and/or unapplied input value-added tax (VAT) for the period of October to December 2014.

THE PARTIES

Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC), with Company Registration No. 157828.[2] It is also registered with the Board of Investments (BOI) as a New Export Producer of Weld Cap for Automotive Application by virtue of BOI Certificate of Registration

[1] In its Memorandum, petitioner reduced the amount of the claim to **P7,864,194.06**.
[2] Exhibit "P-55".

(COR) No. EP 2005-177 dated November 10, 2005[3] and as a New Export Producer of Automotive Wiring Harness by virtue of BOI COR No. 2007-060 dated March 26, 2007;[4] and with the Bureau or Internal Revenue (BIR) as a value-added taxpayer under Taxpayer Identification No. 000-269-082-000, and registered address at Km. 75 Laurel Highway Inosloban, Lipa City, Batangas, Philippines.[5]

Respondent is the duly appointed Commissioner of Internal Revenue, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, and empowered to perform the duties of his office, including the power to deny or grant tax refunds pursuant to Section 112(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.[6]

THE FACTS

On December 19, 2016, petitioner filed an Application for Tax Credits / Refunds (BIR Form No. 1914) in the amount of ₱12,274,510.00, covering the period from October 1, 2014 to December 31, 2014.[7] Petitioner also submitted the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[8] and the letter request for refund of its excess input tax credits for the said period.[9]

On March 3, 2017, petitioner received the letter dated February 3, 2017 signed by Ms. Teresita M. Angeles, OIC - Assistant Commissioner for the Large Taxpayers Service of the BIR,[10] stating that the refund claim cannot be given due course for petitioner's "failure to present proof that the subject claim was deducted from the available input tax at the time of filing the same, which is part of the mandatory requirement as enumerated under Annex 'A' of Revenue Memorandum Circular (RMC) No. 54-2014".

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[3] Exhibit "P-6", Docket, Vol. I, pp. 262 to 267.
[4] Exhibit "P-7", Docket, Vol. I, pp. 268 to 273.
[5] Exhibits "P-1" to "P-4", Docket, Vol. I, pp. 252 to 255.
[6] Par. 6, Petition for Review, Docket, Vol. I, p. 12.
[7] Exhibit "P-47", Docket, Vol. II, p. 722.
[8] Exhibit "P-46.1", Docket, Vol. II, p. 721.
[9] Exhibit "P-46", Docket, Vol. II, p. 720.
[10] Exhibit "P-53", Docket, Vol. I, p. 730.

On March 29, 2017, petitioner filed the instant Petition for Review.[11]

Respondent, however, filed a Motion for Extension of Time to File Answer on April 20, 2017.[12] This Motion for Extension was granted by the Court in the Order dated April 24, 2017.[13]

On May 10, 2017, respondent filed an Urgent Motion for Extension Time to File Answer,[14] which was likewise granted by the Court in the Resolution dated May 26, 2017.[15] Respondent was given a final and non-extendible period of thirty (30) days from May 6, 2017 or until June 5, 2017, within which to file his Answer.

On June 6, 2017, respondent filed a Final Motion for Additional Time to File Answer.[16] In the Resolution dated July 24, 2017,[17] the Court denied the same.

On August 1, 2017, petitioner filed a Motion to Declare Respondent in Default.[18] On August 24, 2017, respondent filed his Comment/Opposition (Re: Motion to Declare Respondent in Default).[19]

On September 7, 2017, respondent filed a Motion to Admit Attached Answer,[20] to which petitioner filed its Comment/Opposition to Respondent's Motion to Admit Attached Answer on September 20, 2017.[21]

In the Resolution dated January 11, 2018,[22] the Court granted petitioner's Motion to Declare Respondent in Default, and denied respondent's Motion to Admit Attached Answer pursuant to Section 3, Rule 9 of the Rules of Court.

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[11] Docket, Vol. I, pp. 10 to 29.
[12] Docket, Vol. I, pp. 146 to 148.
[13] Docket, Vol. I, p. 150.
[14] Docket, Vol. I, pp. 151 to 153.
[15] Docket, Vol. I, pp. 156 to 157.
[16] Docket, Vol. I, pp. 158 to 161.
[17] Docket, Vol. I, pp. 167 to 169.
[18] Docket, Vol. I, pp. 170 to 172.
[19] Docket, Vol. I, pp. 175 to 179.
[20] Docket, Vol. I, pp. 181 to 186.
[21] Docket, Vol. I, pp. 197 to 201.
[22] Docket, Vol. I, pp. 203 to 206.

On February 1, 2018, respondent filed a Motion for Reconsideration (Re: Resolution dated January 1, 2018).[23] However, in the Resolution dated March 20, 2018,[24] the Court denied the said Motion for Reconsideration for lack of merit.

During petitioner's *ex parte* presentation of evidence, petitioner presented the following witnesses: (1) Ms. Edna Luisa Lopez,[25] Manager of petitioner's Finance and Management Accounting Department; (2) Ms. Evelyn Ocampo,[26] Assistant Manager of petitioner's Management Accounting Section; (3) Ms. Ria Tadeo,[27] petitioner's Accounting Specialist II of Finance and Management Accounting Department; and (4) Mr. Garry S. Pagaspas,[28] the Court-commissioned Independent Certified Public Accountant (ICPA).[29]

On May 22, 2018, the Court received a copy of respondent's Petition for Certiorari (With Urgent Prayer for Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction to suspend trial before the Court of Tax Appeals, captioned as Commissioner of Internal Revenue vs. The Court of Tax Appeals-Second Division and Pilipinas Kyohritsu, Inc., filed with the Supreme Court (SC) and docketed as G.R. No. 239217.[30]

In the meantime, the ICPA Report was submitted on June 22, 2018.[31]

In its Resolution dated June 27, 2018,[32] the SC dismissed respondent's Petition for Certiorari in G.R. No. 239217, for failure to show any grave abuse of discretion on the part of the CTA in rendering the challenged resolutions. *ge*

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[23] Docket, Vol. I, pp. 207 to 216.
[24] Docket, Vol. I, pp. 230 to 233.
[25] Judicial Affidavit of Edna Luis Lopez, Docket, Vol. I, pp. 237 to 251; Minutes of the hearing held on, and Order dated, April 16, 2018, Docket, Vol. I, pp. 361 and 362, respectively.
[26] Judicial Affidavit of Evelyn Ocampo, Docket, Vol. I, pp. 399 to 407; Minutes of the hearing held on, and Order dated, May 23, 2018, Docket, Vol. II, pp. 418 and 420, respectively.
[27] Judicial Affidavit of Ria Tadeo, Docket, Vol. I, pp. 408 to 417; Minutes of the hearing held on, and Order dated, May 23, 2018, Docket, Vol. II, pp. 418 and 420, respectively.
[28] Judicial Affidavit of Garry S. Pagaspas, Docket, Vol. II, pp. 533 to 541; Minutes of the hearing held on, and Order dated, July 2, 2018, Docket, Vol. II, p. 581 and 582, respectively.
[29] Oath of Commission, Docket, Vol. II, p. 419; Minutes of the hearing held on, and Order dated, May 23, 2018, Docket, Vol. II, p. 418 and 420, respectively.
[30] Docket, Vol. II, pp. 421 to 449.
[31] Exhibit "P-82.2", Docket, Vol. II, p. 549.
[32] Docket, Vol. II, p. 641.

Consequently, on July 12, 2018, petitioner filed its Formal Offer of Evidence.[33]

Meanwhile, on September 20, 2018, the Court received a copy of respondent's Motion for Reconsideration (Re: Decision Promulgated 01 August 2018) in G.R. No. 239217 filed with the SC's Third Division.[34] In the Resolution dated January 7, 2019, the SC denied respondent's Motion for Reconsideration with finality.

On December 17, 2018, the Court issued a Resolution[35] directing petitioner to file its memorandum within thirty (30) days from notice thereof, among others.

On January 21, 2019, petitioner filed its Memorandum [For the Petitioner].[36] Thereafter, the case was deemed submitted for decision on February 7, 2019.[37]

THE ISSUE

Petitioner raised the sole issue whether it is entitled to its claim for the subject refund.

THE RULING

The Petition for Review is partially granted.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[38] provides:

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

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[33] Docket, Vol. II, pp. 583 to 595.
[34] Docket, Vol. II, pp. 731 to 745.
[35] Docket, pp. 760 to 762.
[36] Docket, Vol. II, pp. 763 to 771.
[37] Resolution dated February 7, 2019, Docket, Vol. II, p. 773.
[38] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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 1 08(8)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* **That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: xxx.**

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 a 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."*(Emphasis supplied)*

Pursuant to the foregoing provision, the following are the requisites for a successful claim for refund:

Timeliness of the filing of the administrative and judicial claims: ℱ

1. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[39]

2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[40]

Taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[41]

Taxpayer's zero-rated sales:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[42]

5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[43]

Taxpayer's input VAT claim:

6. The input taxes are not transitional input taxes;[44]

7. The input taxes are due or paid;[45]

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

[40] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

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

[42] Id.

[43] Id.

[44] Id.

[45] Id.

8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[46] and

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[47]

Petitioner's administrative and judicial claims were timely filed

The *first* requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two years from the close of the quarter when the sales were made.

The instant claim covers the third (3rd) quarter of the fiscal year (FY) ending March 31, 2015 or from October 1, 2014 to December 31, 2014. Counting two (2) years from the close of the third (3rd) quarter of FY 2015, petitioner had until December 31, 2016 within which to file its administrative claim for refund. Petitioner filed its administrative claim for refund with the BIR on December 19, 2016. Thus, the administrative claim was timely filed within the said two-year prescriptive period.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision or after the expiration of the 120-day period. In the instant case, petitioner received respondent's denial of its claim on March 3, 2017. Counting thirty (30) days therefrom, petitioner had until April 2, 2017 within which to file its judicial claim for refund. *jr*

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[46] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

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

The instant Petition for Review was filed on March 29, 2017.[48] Thus, petitioner timely filed its judicial claim.

Petitioner is a VAT-registered taxpayer

With regard to the *third* requisite, petitioner is registered with the BIR as a VAT taxpayer, with Taxpayer Identification No. 008-269-082-000.[49] Thus, petitioner has satisfied the same.

Not all of petitioner's reported zero-rated sales or effectively zero-rated sales during the 3rd Quarter of FY ending March 31, 2015 qualify as such

The *fourth* and *fifth* requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales. For zero-rated sales under Section 106(A)(2)(a)(1) and (2), 106(B), and 108(B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with the BSP rules and regulations.

Petitioner alleges that it engaged in the exportation of its products to various foreign clients. Being in the nature of export sales, the same are zero-rated for VAT purposes under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Meanwhile, petitioner was charged with and has an unutilized and/or unused input VAT and paid the same in the amount ₱12,274,510.00 for the period of October to December 2014.[50]

In its Amended 3rd Quarterly VAT Returns for the fiscal year ended March 31, 2015 (FY 2015) or for the period October to December 2014,[51] petitioner reported total sales in the amount of ₱2,209,765,901.11 which include zero-rated sales in the amount of ₱2,208,671,802.71, as shown below: ℛ

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[48] Docket, Vol. I, pp. 10 .
[49] Exhibits "P-1" to "P-4", Docket, Vol. I, pp. 252 to 255.
[50] Par. 2, Memorandum [For the Petitioner], Docket, Vol. II, pp. 763 to 764.
[51] Exhibit "P-11".

VATable Sales/Receipts	₱ 1,094,098.40
Zero-Rated Sales/Receipts	2,208,671,802.71
Total Sales/Receipts	**₱ 2,209,765,901.11**

In his *Report*, the Court-commissioned ICPA, Mr. Garry S. Pagaspas, classified petitioner's zero-rated sales as follows:[52]

Particulars	USD	Php
Actual export sale of service	244,401.82	10,857,462.04
Actual export sale of goods	48,941,159.99	2,196,580,128.30
Sale to PEZA-registered entities	27,499.00	1,234,212.37
Total Zero-rated Sales	**49,213,060.81**	**2,208,671,802.71**

Based on the above breakdown, petitioner has three (3) sources of zero-rated sales, as follows: (i) sale of service under Section 108(B)(2) of the NIRC of 1997, as amended; (ii) actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended; and (iii) sale to PEZA-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

a) Sale of service under Section 108(B)(2) of the NIRC of 1997, as amended (₱10,857,462.04)

Section 108(B)(2) of the NIRC of 1997, as amended, states:

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

xxx xxx xxx

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

(1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign

[52] Table 7, ICPA Report, Exhibit "P-82.15", Docket, Vol. II, p. 562.

currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**;" *(Emphasis supplied)*

Based on the foregoing provision, the following requisites must be present for the sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the NIRC of 1997, as amended:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[53]

2. The services fall under any of the categories under Section 108(8)(2),[54] or simply, the services rendered should be other than *"processing, manufacturing or repacking of goods"*;[55]

3. The service must be performed in the Philippines[56] by a VAT-registered person; and

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[53] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11,2012.

[54] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[55] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.

[56] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[57]

With regard to the *first* requisite, petitioner presented a SEC Certification of Non-Registration dated May 26, 2017[58] indicating that the records of the SEC "do not show the registration of **Sumitomo Wiring System, Ltd** as a corporation or as a partnership." Such document, however, failed to prove that said petitioner's client is a non-resident foreign corporation doing business outside the Philippines.

As consistently ruled by the Court in a number of cases,[59] the Court needs to ascertain from both the SEC Certification of Non-Registration and the proof of incorporation or registration, whether an entity is a non-resident foreign corporation doing business outside the Philippines. Considering that petitioner only presented Sumitomo Wiring Systems, Ltd.'s Certification of Non-Registration, the Court cannot ascertain from said document alone whether it is a non-resident foreign corporation doing business outside the Philippines. Hence, petitioner failed to comply with the *first* requisite.

Moreover, petitioner failed to comply with the *second* and *third* requisites because it was not able to establish that the services it provided to Sumitomo Wiring Systems, Ltd. are not in the same category as *"processing, manufacturing or repacking of goods"*, and that they were performed in the Philippines.

Petitioner also failed to provide proof that the purported services rendered to Sumitomo Wiring Systems, Ltd. were paid in acceptable foreign currency and accounted for in accordance with the

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[57] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.
[58] Exhibit "P-60".
[59] *NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9255, April 4, 2019; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9079, January 9, 2018; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 8065, September 20, 2017; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case Nos. 8623, 8656, 8661 & 8685, August 4, 2017; *Emerson Electric (Asia) Limited-ROHQ v. Commissioner of Internal Revenue*, CTA Case No. 8657, December 21, 2016; *Procter & Gamble Asia, Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 7820, June 22, 2016; *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 7808, December 16, 2014 affirmed in toto by the CTA En Banc on August 16, 2016 in CTA EB No. 1290.

rules and regulations of the BSP. Thus, the *fourth* essential element was likewise not complied with.

Verily, petitioner fell short in establishing that its sales of services amounting to ₱10,857,462.04 qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

b) Actual export sale of goods under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended (₱2,196,580,128.30)

Section 106(A)(2)(a)(1) 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
>
> (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);"

Based on the foregoing, in order for an export sale to qualify as zero-rated, the following essential elements must be present:

1. the sale was made by a VAT registered person;
2. there was sale and actual shipment of goods from the Philippines to a foreign country; and,

3. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

As for the *first* requisite, it has been settled that petitioner is a VAT-registered person.

As for the *second* requisite, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, respectively provide:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A <u>VAT invoice</u> for every sale, barter or exchange of goods or properties; and
>
> 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:
>
> (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:
>
> 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;" *(Underscoring 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

xxx xxx xxx

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

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

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

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

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

(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;" *(Underscoring supplied)*

Based on the foregoing, any VAT registered person claiming for VAT zero-rating in relation to export sales must present the following documents:

1. the sales invoice as proof of sale of goods; and

2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

> "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, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial</u> <u>invoices</u>, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx"

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

Thus, only export sales supported by above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

The bulk of petitioner's sales are from export of goods to Sumitomo Wiring Systems, Ltd. (SWS) and Sumitomo Electric Wiring Systems, Inc. (SEWSI) located at Japan and United States of America, respectively. Petitioner's gross sales amounted to US$48,950,473.82 or ₱2,196,998,199.83, which are duly supported with VAT zero-rated sales invoices and export documents (*i.e.*, airway bills, bills of lading, Certificates of Inspection and Loading),[60] as confirmed from the ICPA's examination of said documents.

The gross sales of US$48,950,473.82 or ₱2,196,998,199.83 was accordingly adjusted with various credit and debit memos from SWS[61] aggregating US$1,136.07 or ₱50,982.84, and US$10,449.90 or ₱469,054.37, respectively, or a net debit of US$9,313.83 or ₱418,071.53. Accordingly, the net sales declared in the VAT returns amounted to US$48,941.159.99 or ₱2,196,580,128.30.

Thus, petitioner satisfactorily complied with the *second* essential element.

As for the *third* requisite, *i.e.,* the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, petitioner presented the Certification issued by The Bank of Tokyo-Mitsubishi UFJ, Ltd. – Manila Branch in relation to the above transactions.[62]

On the other hand, it is also required that the foreign currency inward remittance must pertain to the payments for the zero-rated sales during the period of claim or for the 3rd quarter of FY 2015. To prove the same, petitioner prepared a Reconciliation of Export Sales and Dollar Remittances (Reconciliation)[63] to show the invoices comprising a particular amount of remittance for a certain date as indicated in the bank certification.

Records reveal, however, that SI No. CSI-0000001492 with sales amount of US$174,016.54[64] or ₱7,811,602.48 cannot be traced to the Reconciliation and the Certificates of Inward Remittances. Hence, this amount must be disallowed due to the absence of corresponding foreign currency inward remittance.

Accordingly, only the gross sales amounting to US$48,776,457.28[65] or ₱2,189,186,597.35[66] will be considered for

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[60] Exhibits "P-61" and "P-61.1 to P-61.554".
[61] Exhibits "P-61" and "P-61.555 to P-61.558".
[62] Exhibits "P-62 to P-62.1".
[63] Exhibit "P-63".
[64] Exhibit "P-61.554".
[65] US$48,950,473.82 less US$174,016.54.
[66] ₱2,196,998,199.83 less ₱7,811,602.48.

purposes of reconciling the zero-rated sales with the corresponding foreign currency inward remittance.

The following table shows the summary of the inward remittances as certified by The Bank of Tokyo-Mitsubishi UFJ, Ltd. – Manila Branch, net of receivables credits and import and other charges, purportedly relating to the foreign currency payments for the sales during the 3rd quarter of FY 2015, as lifted from the Reconciliation:

Customer	Corresponding Gross Sales During the 3rd Quarter of FY 2015	Add: Other Receivables Credited	Less: Import & Other Charges	Net Proceeds	Date of Remittance
SWS	$ 5,758,237.61	$ 20,098.61	$ 5,103,805.30	$ 674,530.92	11/25/2014
SWS	8,913,391.36	9,345.09	6,975,109.59	1,947,626.86	12/29/2014
SWS	10,344,542.24	8,014.77	3,109,189.38	7,243,367.63	1/23/2015
SEWSI	10,720,395.35	127,904.58	106,605.00	10,741,694.93	12/15 & 18/2014
SEWSI	7,408,255.19	256,513.94	127,696.00	7,537,073.13	1/20/2015
SEWSI	7,087,689.16	272,643.20	89,990.00	7,270,342.36	2/16/2015
Total	**$50,232,510.91**	**$694,520.19**	**$15,512,395.27**	**$35,414,635.83**	

Based on the above table, it can be deduced that the total gross sales with purported inward remittance amounted to US$50,232,510.91. On the other hand, the reported gross sales of petitioner for the 3rd quarter of FY 2015 amounted to US$48,950,473.82. The difference of US$1,282,037.89 is attributable to the following: (a) sales per returns amounting to US$174,016.54 not traced to the Certificates of Inward Remittance; and (b) inward remittances in December 2014 for sales in September 2014 amounting to US$883,494.75 and US$572,558.88, thus:

Gross sales for the 3rd quarter of FY 2015	$ 48,950,473.82
Less: Sales without remittance	174,016.54
Gross sales for the 3rd quarter of FY 2015 with corresponding remittances	**$48,776,457.28**
Foreign currency inward remittances	$ 50,232,510.91
Less:	
Remittance for sales on 09/20/2014	883,494.75
Remittance for sales on 09/27/2014	572,558.88
	1,456,053.63
Foreign currency inward remittances for sales during the 3rd quarter of FY 2015	**$48,776,457.28**

ge

Difference	**$ -**

However, it can be gleaned from the Reconciliation that the foreign currency inward remittances from petitioner's customers were adjusted with additional *"other receivables credits"* and deducted with *"import and other charges"*. Petitioner failed to explain the nature and basis of these additional other receivables credits and deductions for import and other charges. Petitioner also failed to provide any document to support the same.

Considering that petitioner failed to present evidence vis-à-vis the above-adjustments made, credit must be given only to the extent of the inward remittances as certified by The Bank of Tokyo-Mitsubishi UFJ, Ltd. – Manila Branch amounting to US$33,958,582.20 or ₱1,524,156,505.38, computed as follows:

Customer	**Net Proceeds**	**Date of Remittance**	**Exchange Rates Used on the Corresponding Invoices**	**Peso Conversion**
SWS	$ 674,530.92	11/25/2014	₱ 44.8750	₱ 30,269,575.04
SWS	1,947,626.86	12/29/2014	44.8800	87,409,493.48
SWS	7,243,367.63	1/23/2015	44.8900	325,154,772.91
SEWSI - net of the remittances for sales on September 2014[67]	9,285,641.30	12/15/2014 & 12/18/2014	44.8750	416,693,153.34
SEWSI	7,537,073.13	1/20/2015	44.8800	338,263,842.07
SEWSI	7,270,342.36	2/16/2015	44.8900	326,365,668.54
Total	**$33,958,582.20**			**₱1,524,156,505.38**

Verily, considering that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency ...and accounted for in accordance with the rules and regulations of the BSP"*,[68] petitioner is considered to have complied with the above-stated *third* requisite for an export sale to qualify as VAT zero-rated to the extent of ₱1,524,156,505.38, representing the customers' payments for petitioner's export sales for the 3rd quarter of FY 2015. gr

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[67] The remittances for September sales in the amounts of US$883,494.75 and US$572,558.88 were deducted from the total remittances of US$10,741,694.93 to accordingly adjust the sales for the period.

[68] *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

c) Sale to PEZA-registered entities – US$27,499.00 or ₱1,234,212.37

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

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

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

> "SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* – x x x
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export sales.* – *'Export Sales'* shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws. ✓

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

xxx xxx xxx."

The special law applicable to this case is RA No. 7916, as amended, otherwise known as *"The Special Economic Zone Act of 1995"*. Sections 8 and 24 thereof read:

"SECTION 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – **The ECOZONE shall be managed and operated by the PEZA as separate customs territory.**

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance." *(Emphasis supplied)*

"SECTION 24. *Exemption form National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted** as follows:

(a) Three percent (3%) of the National Government;

(b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." *(Emphasis supplied)*

Considering that the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT. This was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.,*[69] to wit:

"This Court agrees, however, **that PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory**. *gc*

[69] G.R. No. 150154, August 9, 2005.

xxx xxx xxx

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.[70]" (*Emphases supplied*)

Based on the foregoing, in order for an export sale to be qualified for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following requisites must be present:

1. the sale must be made by a VAT registered person; and

2. the sale of goods must be to an entity entitled to the incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

As discussed earlier, petitioner is a VAT-registered person.

[70] Now at 12% VAT rate.

As to the *second* requisite, records show that petitioner sold goods to International Wiring Systems (Phils.) Corp. (IWSPC) and Sumi Philippines Wiring Systems Corp. (SPWSC) amounting to US$27,499.00 during the period of October 1, 2014 to December 31, 2014.[71] Said transactions are duly supported by sales invoices[72] in accordance with law and regulations.

Further, based on its PEZA Certificate of Registration No. 93-04 and PEZA VAT Zero-Rating Certification (PEZA-ERD Form No. 97-01) No. 2014-0009, IWSPC is registered as an Export Enterprise at the Special Export Processing Zone in Luisita Industrial Park and is qualified for VAT zero-rating for the year 2014.[73] SPWSC, on the other hand, is registered as an Ecozone Export Enterprise at the Hermosa Ecozone Industrial Park with PEZA Certificate of Registration No. 11-38[74] and is likewise qualified for VAT zero-rating for the year 2014 based on its PEZA VAT Zero-Rating Certification (PEZA-ERD Form No. 97-01) No. 2014-0081.[75] Moreover, petitioner presented the letter dated August 25, 2016 signed by Mr. Justo Porfirio Li. Yusingco, PEZA Deputy Director General for Finance and Administration and OIC, confirming the issuance of VAT zero-rating certifications to IWSPC and SPWSC.[76]

Based on the foregoing, petitioner complied with the *second* requisite. Specifically, petitioner satisfactorily proved that its sale of goods to PEZA-registered entities amounting to US$27,499.00, equivalent to ₱1,234,212.37, qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

To recapitulate, out of the total reported zero-rated sales for the 3rd quarter of FY 2015 amounting to ₱2,208,671,802.71, only the amount of ₱1,525,390,717.75 represents petitioner's valid zero-rated sales for the same period, broken down as follows:

Particulars	Zero-rated Sales
Actual export sale of goods	₱ 1,524,156,505.38
Sale to PEZA-registered entities	1,234,212.37
Total Valid Zero-rated Sales	**₱ 1,525,390,717.75**

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[71] Exhibit "P-65".
[72] Exhibits "P-65.1 to P-65.5".
[73] Exhibit "P-66" and "P-66.1".
[74] Exhibit "P-66.2".
[75] Exhibit "P-66.3".
[76] Exhibit "P-66.4".

After finding that petitioner had VAT zero-rated sales in the total amount of ₱1,525,390,717.75 for the subject period of claim, the Court shall now proceed to determine whether petitioner complied with the remaining requisites pertaining to the input VAT being claimed for refund.

The input VAT being claimed does not appear to be transitional input taxes

In its Amended 3rd Quarterly VAT Returns for FY 2015,[77] petitioner declared total input VAT of ₱12,405,801.81 from its current domestic purchases and importation of goods and services, of which the amount of ₱12,274,510.00 is the subject of the present claim, as shown below:

Input Tax Due on:	**Input VAT Amount**
Purchase of capital goods not exceeding ₱1M	₱ 114,205.50
Purchase of capital Goods exceeding ₱1M	929,026.57
Domestic purchases of goods other than capital goods	1,634,448.11
Sub-total	*₱ 2,677,680.18*
Input Tax Paid on:	
Importation of goods other than capital goods	₱ 650,010.00
Domestic purchase of services	9,078,111.63
Sub-total	*₱ 9,728,121.63*
Total	**₱ 12,405,801.81**
Less: Output VAT	131,291.81
Excess Input VAT	**₱ 12,274,510.00**

The above input taxes do not appear to be transitional input taxes, as provided under Section 111(A) of the NIRC of 1997, as amended, to wit:

> "SEC. 111. *Transitional/Presumptive Input Tax Credits.* –
>
> (A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input

[77] Exhibit "P-11".

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."

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the 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.[78]

As there is no showing that the above-stated input VAT is transitional input VAT, petitioner has complied with the *sixth* requisite for the grant of an input VAT refund.

Not all of petitioner's input VAT being claimed for refund are due or paid

The *seventh* requisite provides that the input VAT being refunded should be due or paid. The fulfillment of this requisite is fully dependent on the compliance to the invoicing and substantiation requirements under the law.

The following table shows the summary of the ICPA's findings,[79] to wit:

Description	Capital Goods[80]	Non-Capital Goods	Services	Total
Input VAT verified by ICPA				
1. Fully compliant				
Domestic purchase	₱ 143,504.57	₱ 1,264,887.84[81]	₱6,062,279.05[82]	₱ 7,584,876.96
Domestic purchase included by ICPA in capital goods exceeding P1M but did not actually exceed P1M	-	114,205.50[83]	-	114,205.50

[78] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, April 2, 2008.
[79] Exhibits "P-82.23" to "P-82.26".
[80] Exhibit "P-75".
[81] Exhibit "P-73".
[82] Exhibit "P-73".
[83] Exhibit "P-75".

Importation	785,522.00	650,010.00[84]	-	1,435,532.00
Subtotal	*₱ 929,026.57*	*₱ 2,029,103.34*	*₱ 6,062,279.05*	*₱ 9,020,408.96*
2. Not fully compliant – on Domestic purchases[85]				
Not prescribed supporting documents (not SI for purchase of goods; not OR for purchase of service)	₱ -	₱ 19,353.34	₱ 15,189.00	₱ 34,542.34
Documents printed in thermal paper	-	-	35,904.32	35,904.32
With handwritten details	-	359,787.05	2,867,830.75	3,227,617.80
Out of period	-	19,865.12	21,286.97	41,152.09
Incorrect details of name, TIN, address of petitioner	-	6,670.47	635.36	7,305.83
Subtotal	*₱ -*	*₱ 405,675.98*	*₱ 2,940,846.40*	*₱ 3,346,522.38*
Total input VAT verified by ICPA	**₱ 929,026.57**	**₱ 2,434,779.32**	**₱9,003,125.45**	**₱12,366,931.34**
Current input VAT for the 3rd quarter of FY2015 per VAT Return				₱12,405,801.81
Discrepancy				**₱ 38,870.47**

Petitioner failed to account for the above noted discrepancy amounting to ₱38,870.47. Hence, the same shall be disallowed outright from the total input VAT claim. Thus, for purposes of computing the valid input VAT, the Court shall only consider the input VAT amounting to ₱12,366,931.34.

A.) Input VAT from Capital Goods

It must be noted that part of the total input VAT claim of ₱12,274,510.00, is the amount of ₱929,026.57, representing input VAT on purchases of capital goods exceeding ₱1,000,000.00. Pursuant to Section 110 (A) of the NIRC of 1997, as amended, as implemented by Section 4.110-3 of RR No. 16-2005, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1,000,000.00, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed ₱1,000,000.00, the total input taxes shall be allowed as credit/refund in the month of acquisition. Jr

[84] Exhibit "P-74".
[85] Exhibits "P-69 to P-72".

While petitioner was able to substantiate the claimed input VAT of ₱929,026.57 on capital goods purchases exceeding ₱1,000,000.00, only the amortization for the 3rd quarter of FY 2015 in the amount of ₱46,824.10 may be claimed by petitioner as valid input tax credits for the same taxable quarter, as determined below:

Supplier	Description	Total Input VAT	Useful Life (in months)[86]	Monthly Amortization	No. of Months in Q3 of FY 2015	Allowable Input VAT - Q3 FY 2015	Input VAT Deferred to Future Periods
Accent Micro Technologies Inc.	Office Machines & Equip-local	₱ 11,183.14	36	₱ 310.64	3	₱ 931.93	₱ 10,251.21
Honda Cars Batangas	Transportation Equipment	132,321.43	60	2,205.36	3	6,616.07	125,705.36
Sumitomo Wiring Systems, Ltd.	Plant Mach. & Equip.-imported	785,522.00	60	13,092.03	3	39,276.10	746,245.90
		₱929,026.57		₱15,608.03		₱46,824.10	₱882,202.47

Consequently, the unamortized input VAT of ₱882,202.47 shall be deducted from petitioner's input VAT claim.

B.) Input VAT from Importation of Goods Other than Capital Goods

As for the input VAT from importation of goods other than capital goods amounting to ₱650,010.00, petitioner satisfactorily supported the same with importation documents *i.e.*, Import Entry and Internal Revenue Declaration, Bureau of Customs (BOC) Withdrawal Permit, supplier sales invoices, bills of lading or waybills, and BOC official receipts (ORs)].[87]

C.) Input VAT from Domestic Purchases of Non-capital Goods and Services

In support of the input VAT on petitioner's domestic purchases of non-capital goods and services, petitioner submitted suppliers' sales invoices (SIs) for purchases of goods and ORs for purchases of services[88] which were likewise examined by the ICPA.

Pursuant to the examination by the ICPA and as shown earlier, the exceptions detailed below in the aggregate amount of

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[86] Based on the ICPA's verification, Table 28, ICPA Report, Exhibit "P-82.27", Docket, Vol. II, p. 574.
[87] Exhibits "P-74" and "P-74.1 to P-74.3.8".
[88] Exhibits "P-73", "P-73.1 to P-73.980", "P-75", and "P-75.3 to P-75.5".

₱3,346,522.38 were noted. Hence, the same shall be disallowed for refund purposes.

	Description	Exhibit No.	Non-Capital Goods	Services	Total
1	Not prescribed supporting documents (not SI for purchase of goods; not OR for purchase of service)	P-67	₱ 19,353.34	₱ 15,189.00	₱ 34,542.34
2	Documents printed in thermal paper	P-68	-	35,904.32	35,904.32
3	With handwritten details	P-69	359,787.05	2,867,830.75	3,227,617.80
4	Out of period	P-71	19,865.12	21,286.97	41,152.09
5	Incorrect details of name, TIN, address of petitioner	P-72	6,670.47	635.36	7,305.83
	Total		**₱405,675.98**	**₱2,940,846.40**	**₱3,346,522.38**

Upon further verification, the input VAT amounting to ₱21,663.20, as determined below, must also be disallowed for petitioner's failure to meet the invoicing and substantiation requirements prescribed by law and regulations, to wit:

Supplier	SI/OR No.	SI/OR Date	Input VAT Amount	Exhibit No.
DISALLOWED INPUT VAT ON DOMESTIC PURCHASES OF SERVICES				
Not supported by VAT OR				
Greenland Commercial & Forklift, Inc.	40152	10/28/2014	₱ 1,237.06	P-73.140
Atlas Copco (Phils) Inc.	745617	12/12/2014	16,586.43	P-73.670
		Subtotal	***₱17,823.49***	
Overclaimed input VAT				
Asian Terminals Inc.	242515	10/28/2014		P-73.260
	Amount per schedule	₱4,548.11		
	Amount per OR	4,313.40	₱ 234.71	
Asian Terminals Inc.	2425214	10/28/2014		P-73.261
	Amount per schedule	₱ 909.61		
	Amount per OR	862.68	46.93	
Asian Terminals Inc.	2425998	10/31/2014		P-73.262
	Amount per schedule	₱7,276.85		
	Amount per OR	6,901.44	375.41	
Asian Terminals Inc.	2429619	10/31/2014		P-73.313
	Amount per schedule	₱3,394.82		
	Amount per OR	3,114.36	280.46	
Asian Terminals Inc.	2430185	11/3/2014		P-73.572
	Amount per schedule	₱2,728.82		
	Amount per OR	2,588.04	140.78	
		Subtotal	***₱ 1,078.29***	
Total disallowed input VAT from domestic purchases of services			**₱18,901.78**	
DISALLOWED INPUT VAT ON DOMESTIC PURCHASES OF GOODS				
Supported by VAT invoice but the amount of VAT is not separately indicated				
Luz Pharmacy	183248-183250	10/1/2014	***₱ 2,761.42***	P-73.167

Total disallowed input VAT from domestic purchases of goods	**₱ 2,761.42**
TOTAL DISALLOWED INPUT VAT FROM DOMESTIC PURCHASES	**₱21,663.20**

In sum, out of the total input VAT with supporting documents verified by the ICPA amounting to ₱12,366,931.34 for the 3rd quarter of FY 2015, only the amount of ₱8,116,543.29 pertains to petitioner's valid input VAT, as computed below:

Description	Capital Goods	Non-Capital Goods	Services	Total
Total input VAT verified by ICPA	**₱929,026.57**	**₱2,434,779.32**	**₱9,003,125.45**	**₱12,366,931.34**
Less: Disallowances				
(A) Per ICPA Report	-	405,675.98	2,940,846.40	3,346,522.38
(B) Per this Court's further verification:				
1. Input VAT from purchases of capital goods exceeding ₱1 million deferred for future periods	882,202.47	-	-	882,202.47
2. Domestic purchases	-	2,761.42	18,901.78	21,663.20
Total disallowances	*882,202.47*	*408,437.40*	*2,959,748.18*	*4,250,388.05*
Valid input VAT	**₱ 46,824.10**	**₱2,026,341.92**	**₱6,043,377.27**	**₱8,116,543.29**

Considering that there are both zero-rated or effectively zero-rated sales and taxable sales, the said amount of ₱8,116,543.29 shall be proportionately allocated on the basis of sales volume

The *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

Here, petitioner had mixed zero-rated or effectively zero-rated sales and taxable sales in the amount of ₱2,209,765,901.11 for the 3rd quarter of FY 2015.[89] gr

[89] Line 19A of Exhibit "P-11", Docket, Vol. I, p. 280.

Considering that petitioner's input VAT cannot be directly or entirely attributed to any of the said transactions, the valid input VAT of ₱8,116,543.29 shall be allocated proportionately on the basis of the volume of petitioner's total sales, as shown below:

Taxable Sales	₱ 1,094,098.40
Divided by the Reported Total Sales per Amended Quarterly VAT Return	₱ 2,209,765,901.11
Multiplied by Total Valid Input VAT	₱ 8,116,543.29
Valid input VAT allocated to sales subject to the 12% VAT	**₱ 4,018.66**

Total Valid Zero-Rated Sales	₱ 1,525,390,717.75
Divided by the Reported Total Sales per Amended Quarterly VAT Return	₱ 2,209,765,901.11
Multiplied by Total Valid Input VAT	₱ 8,116,543.29
Valid Input VAT allocated to valid zero-rated sales	**₱ 5,602,810.59**

Thus, only the amount of ₱4,018.66 represents input VAT attributable to sales subject to the 12% VAT, while the amount of ₱5,602,810.59 is the input VAT attributable to zero-rated sales.

The subject valid input taxes have not been applied against output taxes during and in the succeeding quarters

For the 3rd quarter of FY 2015, petitioner incurred output VAT liability in the amount of ₱131,291.81.[90] Since petitioner's input VAT in the amount of ₱4,018.66 allocated to sales subject to the 12% VAT is not enough to cover the said output VAT liability, the output VAT still due against petitioner is computed as follows:

Output VAT	₱ 131,291.81
Less: Valid Input VAT allocated to Sales subject to the 12% VAT	4,018.66
Output VAT Still Due	**₱ 127,273.15**

The valid input VAT attributable to valid zero-rated sales in the amount of ₱5,602,810.59 shall then be utilized against the said remaining output VAT liability of petitioner in the amount of ₱127,273.15. Correspondingly, only the remaining input VAT of ₱5,475,537.44 represents petitioner's unapplied/excess input VAT attributable to its valid zero-rated sales, as shown below: ge

[90] Line 15B of Exhibit "P-11", Docket, Vol. I, p. 280.

Substantiated Input VAT Allocated to Zero-Rated Sales	₱ 5,602,810.59
Less: Output VAT still due	127,273.15
Excess input VAT attributable to valid zero-rated sales	**₱ 5,475,537.44**

The said amount of ₱5,475,537.44 is included in the amount of the subject refund claim, *i.e.*, the amount of ₱12,274,510.00.

It is noteworthy that petitioner deducted the claimed input VAT amount of ₱12,274,510.00 as *"VAT Refund/TCC"* in its Amended 3rd Quarterly VAT Return of FY 2015.[91] By virtue thereof, the subject claim, which includes the above-stated amount of ₱5,475,537.44, did not form part of the excess input VAT of ₱13,998,107.17[92] as of the end of the 3rd quarter of FY 2015 to be carried over/ applied to the succeeding quarters.

To end, petitioner was able to partially show the Court its entitlement to the present refund claim. Hence, the partial grant of the same is in order.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **DIRECTED TO REFUND** petitioner the amount of **₱5,475,537.44**, representing the unutilized input VAT attributable to zero-rated sales for the period covering the 3rd quarter of FY 2015, or from October 1, 2014 to December 31, 2014.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[91] Line 23D of Exhibit "P-11", Docket – Vol. I, p. 281.
[92] Line 29 of Exhibit "P-11", Docket – Vol. I, p. 281.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice