REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PILIPINAS TOTAL GAS, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7863

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
JUN 19 2018
2:50 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court is a Petition for Review[1] filed by petitioner on January 23, 2009, pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to

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[1] *Records, CTA Case No. 7863, Vol. 1, Petition for Review ("PFR")*, pp. 1-178, with annexes.
[2] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx
(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;
[3] An Act Creating the Court of Tax Appeals, as amended.
[4] 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.
[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

Section 3(a)(1)[6], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[7], seeking for the Court to render judgment ordering respondent to refund or to issue a tax credit certificate ("TCC") in favor of petitioner in the amount of Php7,898,433.98 representing unutilized input Value-Added Tax ("VAT") arising from its zero-rated transactions for the period covering the first and the second quarters of taxable year ("TY") 2007.[8]

The Parties

Petitioner Pilipinas Total Gas, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at MDD 121 East Science Avenue, Laguna Technopark, Biñan, Laguna.[9] It is engaged in the sale, transportation, and distribution of industrial gas, as well as the sale of gas equipment and other related business, as shown in its Securities and Exchange Commission Certificate of Registration Number AS095-011466.[10] Petitioner is registered with the BIR as a VAT taxpayer, as shown in its BIR Certificate of Registration bearing Taxpayer Identification Number 004-609-538-000.[11]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.[12]

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[6] Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following: xxx

xxx xxx xxx

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; xxx

[7] *A.M. No. 05-11-07-CTA*, November 22, 2005.
[8] *Records, Vol. 1, PFR, Prayer*, pp. 22-23.
[9] *Id., Vol. 2, Decision, The Parties*, p. 712.
[10] *Id., The Facts*, p. 712.
[11] *Id.*
[12] *Id., The Parties*, p. 712.

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The Facts

On April 20, 2007 and July 20, 2007, petitioner filed with the BIR its Original Quarterly VAT Returns for the first and the second quarters of TY 2007, respectively.[13]

However, on May 20, 2008, petitioner filed with the BIR its Amended Quarterly VAT Returns for the first and the second quarters of TY 2007, reflecting the following details:

	VATABLE SALES		ZERO-RATED SALES		EXEMPT SALES		DOMESTIC PURCHASES - GOODS OTHER THAN CAPITAL GOODS		DOMESTIC PURCHASES - SERVICES	
1ST	Php	1,169,920.98	Php	47,262,774.66	Php	-	Php	36,308,089.75	Php	1,462,946.16
2ND		713,132.06		31,906,108.49		18,026,481.31		24,661,608.92		5,270,691.44
TOTAL	PHP	1,883,053.04	PHP	79,168,883.15	PHP	18,026,481.31	PHP	60,969,698.67	PHP	6,733,637.60[14]

For the first and the second quarters of TY 2007, petitioner incurred unutilized input VAT credits from its domestic purchases of non-capital goods and services in the total amount of Php8,124,400.35, *viz.*:

2007 TAXABLE QUARTER	UNUTILIZED INPUT VAT CREDITS				TOTAL	
	DOMESTIC PURCHASES - GOODS OTHER THAN CAPITAL GOODS		DOMESTIC PURCHASES - SERVICES			
1ST	Php	4,356,970.77	Php	175,553.54	Php	4,532,524.31
2ND		2,959,393.07		632,482.97		3,591,876.04
TOTAL	**PHP**	**7,316,363.84**	**PHP**	**808,036.51**	**PHP**	**8,124,400.35**[15]

Of the total accumulated input VAT in the amount of Php8,124,400.35, the amount of Php7,898,433.98 is the excess or unutilized input VAT for the first and the second quarters of TY 2007.[16]

On May 15, 2008, petitioner filed an administrative claim for refund of unutilized input VAT for the two quarters of TY 2007, along with additional supporting documents.[17]

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[13] *Records, Vol. 2, Decision, The Facts,* p. 713.
[14] *Id.*
[15] *Id.* at 713-714.
[16] *Id.* at 714.
[17] *Id.*

In view of respondent's inaction, on January 23, 2009, petitioner filed its judicial claim for refund *via* the present Petition for Review with the Court.[18]

In the course of the proceedings before the First Division, petitioner presented *(1)* Ms. Rosalia T. Yu, the Finance Supervisor of petitioner,[19] and *(2)* Mr. Richard D. Go, the court-appointed Independent Certified Public Accountant,[20] as its witnesses.

On January 6, 2010, petitioner filed its Formal Offer of Evidence ("FOE") praying that *Exhibits* "A," "B," "B-1," "C," "D," "E," "E-1" to "E-7," "F," "G," "G-1" to "G-7," "H," "I," "J," "J-1" to "J-7," "K," "L,' "L-1" to "L-7," "M," "N," "O," "P," "P-1" to "P-7," "Q," "R," "S," "T," "U," "U-1" to "U-7," "V," "W," "X," "X-1" to "X-5," "Y," "Z," "Z-1" to "Z-5," "AA," "BB," "BB-1" to "BB-5," "CC," "DD," "EE," "FF," "GG," "GG-1" to "GG-5," "HH," "II," "II-1" to "II-5," "JJ," "KK," "LL," "MM," "NN," "NN-1," "OO," "OO-1," "PP," "QQ," "RR," "WW," "WW-1" to "WW-4," "WW-4-1" to "WW-4-6," "WW-5," "WW-5-1" to "WW-5-5" with submarkings, "WW-6," "WW-7," "WW-7-1" to "WW-7-6" with submarkings, "WW-8," "WW-8-1" to "WW-8-38," "WW-10," "WW-11," "WW-12," "XX," "XX-1," "YY," "YY-1," "ZZ," and "ZZ-1" be admitted as evidence for petitioner.[21]

Thereafter, the case was transferred to the Court pursuant to *CTA Administrative Circular No. 01-2010.*[22]

Petitioner's FOE was resolved by the Court in a Resolution dated March 9, 2010 by admitting all evidence offered.[23]

On May 27, 2010, counsel for respondent manifested that she is no longer presenting evidence.[24]

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[18] *Records, Vol. 2, Decision, The Facts,* p. 714.
[19] *Records, Vol. 1, Judicial Affidavits of Ms. Rosalia T. Yu,* pp. 246-264, 282-294, and 325-329; *Records, Vol. 1, April 30, 2009 Minutes of Hearing,* p. 265; *Records, Vol. 1, May 28, 2009 Minutes of Hearing,* pp. 295-296; *Records, Vol. 1, September 22, 2009 Minutes of Hearing,* p. 330; *Records, Vol. 1, October 20, 2009 Minutes of Hearing,* p. 338.
[20] *Records, Vol. 1, Judicial Affidavits of Mr. Richard D. Go,* pp. 301-311, and 332-339; *Records, Vol. 1, June 11, 2009 Minutes of Hearing,* p. 297; *Records, Vol. 1, July 16, 2009 Minutes of Hearing,* p. 312.
[21] *Records, Vol. 1, Petitioner's Formal Offer of Evidence ("FOE"),* pp. 342-379.
[22] *Id., Vol. 2, Order,* p. 603.
[23] *Id., Resolution on Petitioner's FOE,* pp. 606-608.
[24] *Records, Vol. 2, May 27, 2010 Minutes of Hearing,* p. 619; *Records, Vol. 2, June 11, 2010 Resolution,* p. 621.

On January 13, 2011, the Court promulgated a Decision[25] dismissing the Petition for Review for being prematurely filed due to petitioner's failure to prove that it submitted complete supporting documents (notwithstanding the fact that it submitted supporting documents along with its administrative claim for refund on May 15, 2008, and a Certification from the Department of Finance on August 28 2008)[26] - to warrant the grant of the refund and to reckon the commencement of the one hundred and twenty (120)-day period for the CIR to decide on its claim.[27] While petitioner contends that the 120-day period should start from August 28, 2008, the Court ruled that *per Revenue Memorandum Order ("RMO") No. 53-98*, the Summary List of Local Purchases and Certifications from the Board of Investments, Bureau of Customs and Office of the PEZA, are indispensable in the claim for refund.[28] The dispositive portion thereof reads as follows:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE**, and, accordingly **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED.**[29]

Aggrieved, petitioner filed its Motion for Reconsideration[30] on February 2, 2011 claiming that *(1)* the submission of the alleged incomplete supporting documents does not make the judicial appeal dismissible for lack of jurisdiction; *(2)* even assuming that the supporting documents are incomplete, the two (2) year prescriptive period for claiming a refund was already about to lapse when the Petition for Review was filed; and *(3)* the Court acquired jurisdiction over the Petition for Review.

On April 19, 2011, the Court issued a Resolution, finding no valid or compelling reason to reverse its Decision. The dispositive portion thereof reads in the following manner:

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[25] *Records, Vol. 2, Decision*, pp. 711-726; with Associate Justice Lovell R. Bautista's Dissenting Opinion, see pp. 727-731.
[26] *Records, Vol. 2, Decision*, p. 720.
[27] *Id.* at 723.
[28] *Id.*
[29] *Records, Vol. 2, Decision, Dispositive Portion*, p. 725; emphases retained; penned by now retired Associate Justice Olga Palanca-Enriquez, with Associate Justice Lovell R. Bautista dissenting and now retired Associate Justice Amelia R. Cotangco-Manalastas concurring. Associate Justice Lovell R. Bautista voted to give due course to the Petition for Review on the basis that the judicial claim was filed within the prescribed period.
[30] *Records, Vol. 2, Motion for Reconsideration*, pp. 732-744.

> **WHEREFORE,** premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[31]

On May 10, 2011, petitioner filed its Petition for Review[32] with the Court *En Banc* docketed as CTA *EB* No. 776, seeking the review and reversal of the January 13, 2011 Decision and the April 19, 2011 Resolution of the Court.[33] This Petition for Review was likewise dismissed for lack of merit on October 11, 2012. The dispositive portion of the Court *En Banc*'s Decision reads, to wit:

> **WHEREFORE,** the Petition for Review filed by petitioner Pilipinas Total Gas, Inc. on May 10, 2011, is hereby **DENIED[]** for lack of merit.
>
> **SO ORDERED.**[34]

The Court *En Banc* started counting the 120-days from the filing of the administrative claim on May 15, 2008, ending on September 12, 2008, hence, petitioner had thirty (30) days therefrom or until October 12, 2008 to file a Petition for Review with the Court.[35] The Court *En Banc* noted that petitioner's Petition for Review was filed in the court *a quo* belatedly on January 23, 2009, depriving it of competence to entertain the judicial action.[36]

On November 20, 2012, petitioner reiterated its arguments in its Motion for Reconsideration[37], which was denied by the Court *En Banc* on May 8, 2013 for lack of merit. The dispositive portion thereof reads, *viz.*:

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[31] *Records, Vol. 2, Resolution, Dispositive Portion,* p. 754; emphases retained; penned by now retired Associate Justice Olga Palanca-Enriquez, with now retired Associate Justice Amelia R. Cotangco-Manalastas concurring, and Associate Justice Lovell R. Bautista maintaining his dissent.
[32] *Records, Vol. 2, Court En Banc Petition for Review,* pp. 757-
[33] *Rollo, CTA EB No. 776, CTA En Banc Petition for Review,* pp. 1-50, with annexes.
[34] *Id., Court En Banc Decision,* pp. 139-160; emphases retained; penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justice Lovell R. Bautista maintaining his dissent, Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla concurring.
[35] *Rollo, Court En Banc Decision,* pp. 155-156.
[36] *Id.* at 156.
[37] *Id., Court En Banc Motion for Reconsideration,* pp. 161-173.

> **WHEREFORE,** the Motion for Reconsideration dated November 19, 2012, filed by petitioner is hereby **DENIED[]** for lack of merit.
>
> **SO ORDERED.**[38]

On June 27, 2013, petitioner filed its Petition for Review on *Certiorari* with the Supreme Court *En Banc* docketed as G.R. No. 207112. On December 8, 2015, the Supreme Court promulgated a Decision[39], the dispositive portion thereof reads:

> **WHEREFORE,** the petition is **PARTIALLY GRANTED.** The October 11, 2012 Decision and the May 8, 2013 Resolution of the Court of Tax Appeals *En Banc*, in CTA *EB* No. 776 are **REVERSED** and **SET ASIDE.**
>
> The case is **REMANDED** to the CTA Third Division for trial *de novo*.
>
> **SO ORDERED.**[40]

The Supreme Court found that the judicial claim was timely filed and that it was not premature; that the 120-day period should be reckoned from August 28, 2008 when the complete supporting documents were submitted; that *RMO No. 53-98* merely serves as a guide for revenue examiners, and not a benchmark to determine whether documents are complete to support a refund claim; that respondent neither gave notice to petitioner that its documents are inadequate nor ruled to deny its claim within the 120-day period; that counting from August 28, 2008, respondent had until December 26, 2008 to decide the claim, which he failed to do; that, therefrom, petitioner had 30 days or until January 25, 2009 to file its judicial claim; and that petitioner timely filed its Petition for Review with the Court on January 23, 2009.

The Supreme Court failed to rule on the issue of petitioner's entitlement to a refund or the issuance of a TCC in the amount of Php7,898,433.98, considering that the Petition for Review was denied due course and dismissed by the Court solely on the ground of

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[38] *Rollo, Court En Banc Resolution,* pp. 201-204; emphases retained; penned by Associate Justice Esperanza R. Fabon-Victorino, with Associate Justices Juanito C. Castañeda, Lovell R. Bautista, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring.
[39] *Rollo, CTA EB No. 776, Supreme Court Decision.*
[40] *Id.;* emphases retained.

premature and/or belated filing. Hence, the case was remanded to the Court for trial *de novo.*

On January 21, 2016, an Entry of Judgment was issued by the Deputy Clerk of Court and Chief Judicial Records Officer of the Supreme Court certifying that on December 8, 2015, the Decision rendered in the case docketed as G.R. No. 207112, has become final and executory and was recorded in the Book of Entries of Judgments.[41]

On July 12, 2016, the Court *En Banc* issued a Resolution, which reads as follows:

> With the Entry of Judgment issued by the Supreme Court, stating that its Decision dated December 8, 2015 has become final and executory on January 21, 2016, let the instant case be remanded to the CTA Special Third Division for further proceedings.
>
> SO ORDERED.

Accordingly, on August 9, 2016, the Court issued a Resolution[42] setting the case for hearing, on November 8, 2016, to determine whether the parties find it necessary to present additional evidence in relation to the issue of petitioner's compliance with the other requisites provided under *Section 112 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC").*

On February 7, 2017, in view of the cancelled hearing set last November 8, 2016 due to the retirement of Associate Justice Amelia R. Cotangco-Manalastas, the Court ordered the parties to file their respective manifestations stating whether they find it necessary to present additional evidence in relation to petitioner's compliance with the other requisites provided under *Section 112 of the 199 NIRC.*[43]

On February 20, 2017, petitioner filed its Motion for Extension of Time to File Manifestation[44], which was granted[45] by the Court. Thereafter, on March 2, 2017, petitioner filed its Manifestation and

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[41] *Rollo, CTA EB No. 776, Supreme Court Entry of Judgment.*
[42] *Records, Vol. 3, Resolution,* pp. 1400-1404.
[43] *Id., Resolution,* p. 1406.
[44] *Id., Motion for Extension of Time to File Manifestation,* pp. 1407-1409.
[45] *Id., Resolution,* p. 1411.

Motion[46]. The Motion was likewise granted by the Court on March 17, 2017.[47] Consequently, a commissioner's hearing was set on April 6, 2017 for the pre-marking of petitioner's exhibits; and the initial presentation of petitioner's evidence was scheduled on June 5, 2017. The commissioner's hearing was later rescheduled to May 16, 2017.[48]

On May 31, 2017, the Supplemental Judicial Affidavit of Ms. Rosalia T. Yu (In a form of Questions and Answers as Part of her Testimony on Direct Examination)[49] was filed.

During the hearing held last June 5, 2017, only the counsel of petitioner was present, along with witness Ms. Rosalia T. Yu.[50] The Court, thereafter, granted petitioner until June 15, 2017 to file its supplemental FOE.

Thereafter, a Supplemental FOE[51] was submitted by petitioner offering *Exhibits* "AAA," "BBB," "CCC," and "CCC-1" as evidence. The Court resolved to admit all of the aforestated exhibits on August 1, 2017.[52]

In view of petitioner's Supplemental Memorandum[53] filed on September 4, 2017, and respondent's failure[54] to file his memorandum despite due notice; the Court resolved to submit anew the case for decision through its Resolution[55] dated October 12, 2017; hence, this Decision.

The Issues[56]

WHETHER PETITIONER HAS COMPLIED WITH THE INVOICING AND ACCOUNTING REQUIREMENTS FOR VAT-REGISTERED PERSONS, AS

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[46] *Records, Vol. 3, Manifestation and Motion,* pp. 1412-1414.
[47] *Id., Resolution,* p. 1416.
[48] *Id., Resolution,* p. 1423.
[49] *Id., Exhibit "CCC," Supplemental Judicial Affidavit of Ms. Rosalia T. Yu (In a form of Questions and Answers as Part of her Testimony on Direct Examination),* pp. 1427-1431.
[50] *Id., June 5, 2017 Minutes of Hearing,* p. 1432.
[51] *Id., Supplementary FOE,* pp. 1434-1439, with annexes.
[52] *Records, Vol. 3, Resolution,* pp. 1442-1443.
[53] *Id., Supplemental Memorandum,* pp. 1444-1447.
[54] *Id., Records Verification Report,* p. 1448.
[55] *Id., Resolution,* p. 1449.
[56] *Records, Vol. 1, Resolution,* p. 245; *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"), Issues to be Resolved, Items 2 to 5,* pp. 237-238.

WELL AS THE FILING AND PAYMENT OF VAT, IN ACCORDANCE WITH THE PROVISIONS OF *SECTIONS 113 AND 114 OF THE 1997 NIRC;*

WHETHER PETITIONER'S INPUT TAXES OF PHP7,898,433.98, REPRESENTING EXCESS AND UNUTILIZED CREDITABLE INPUT VAT FOR THE FIRST AND THE SECOND QUARTERS OF TY 2007, ARE ATTRIBUTABLE TO ZERO-RATED SALES;

WHETHER PETITIONER'S ALLEGED UNUTILIZED INPUT VAT FOR THE FIRST AND THE SECOND QUARTERS OF TY 2007 WERE PAID AND APPLIED AGAINST ITS OUTPUT TAXES; AND

WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR TO THE ISSUANCE OF A TCC ON ITS UNUTILIZED INPUT TAX IN THE AMOUNT OF PHP7,898,433.98, INCURRED DURING THE FIRST AND THE SECOND QUARTERS OF TY 2007.

Ultimately, the only issue to be resolved is:

WHETHER PETITIONER IS ENTITLED TO A REFUND OR TO THE ISSUANCE OF A TCC IN THE AMOUNT OF PHP7,898,433.98 REPRESENTING UNUTILIZED INPUT VAT ARISING FROM ITS ZERO-RATED TRANSACTIONS FOR THE PERIOD COVERING THE FIRST AND THE SECOND QUARTERS OF TY 2007.

Petitioner's Arguments[57]

Petitioner alleges that it is entitled to the refund or to the tax credit sought since *(1)* it has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT, pursuant to the provisions of *Sections 113 and 114 of the 1997 NIRC; (2)* that input taxes in the amount of Php7,898,433.98 representing excess and unutilized creditable input VAT are attributable to zero-rated sales; and *(3)* that none of the

[57] *Records, Vol. 2, Memorandum, Discussion,* pp. 640-675.

unutilized input VAT was carried over nor applied against output taxes of succeeding taxable quarters.

Petitioner further argues that the authority to issue a certification that it has not applied for any tax credit and duty drawback for TY 2007 is lodged with the Department of Finance ("DOF") and not with any other agency or instrumentality of the government.

Respondent's Counter-Arguments[58]

Respondent counters that petitioner failed to prove that it is entitled to the claim for refund applied for.

The Ruling of the Court

Petitioner is entitled to the issuance of a TCC, albeit at a reduced amount.

In view of the Supreme Court's settlement of the issue regarding jurisdiction, the Court proceeds to determine whether petitioner is entitled to a refund or to an issuance of a TCC in the amount of Php7,898,433.98 representing unutilized input taxes for the first and the second quarters of TY 2007.

Section 106(A)(2)(c) of the 1997 NIRC provides as follows:

> SEC.106. *Value-Added Tax on Sale of Goods or Properties.* -
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> (A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
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> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

[58] *Records, Vol. 2, Memorandum (For Respondent), Arguments/Discussion,* pp. 695-704.

xxx xxx xxx

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

In relation to the above, *Section 3(3) of RMC No. 74-99* states:

SECTION 3. *Tax Treatment of Sales Made by a VAT Registered Supplier from the Customs Territory, to a PEZA Registered Enterprise. –*

xxx xxx xxx

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec.106(A)(2)(a)(S), NIRC, in relation to ART.77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Sec.108(B)(3), NIRC, in relation to the provisions of R.A.7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No.7-95 effective as of the date of the issuance of this Circular.

Petitioner claims that under the above sections, its sales to entities duly registered with PEZA are deemed zero-rated; and that as a result, it is entitled to the refund of its unutilized input taxes.

This Court agrees with petitioner that its sales to PEZA-registered entities are deemed zero-rated. Among the measures adopted by the government, to implement the policy of promoting preferential use of Filipino labor, domestic materials, and locally produced goods, and to help make them internationally competitive, is the establishment of special economic zones or freeports. In pursuit of these social and economic objectives, enterprises registered and authorized to conduct business operations in designated economic zones enjoy fiscal incentives, among which is relief or exemption from payment of national and local taxes, in lieu of which they pay a flat rate on gross income.[59]

Although an ecozone is undeniably a sovereign geographical territory of the Philippines, treating the zone as a special customs territory is necessary to give meaningful effect to the objectives expressed in the special law creating a particular economic zone. In effect, what is created is a fiction of a foreign territory. The entity that manages this fiction of foreign territory is the Philippine Economic Zone Authority ("PEZA").[60]

In the context of the fiction of foreign territory, the destination principle (as a basis for jurisdiction of the Philippines to impose VAT) as well as the situs of the transaction, as criteria for determining the place where the transaction occurred as the taxable event, will apply. As a result of the destination principle, *RMC No. 74-99* provides that any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the economic zone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to zero percent (0%) VAT.[61]

This was affirmed by the Supreme Court in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils), Inc.*[62] wherein the Supreme Court ruled that services rendered to a PEZA-registered enterprise effectively subjects the supply of such services to VAT at zero percent (0%).

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[59] *The Value Added Tax in the Philippines, Copyright 2000, First Ed. by Victor A. Deoferio, Jr. and Victorino C. Mamalateo*, pp. 198-202.
[60] *Id.*
[61] *Id.*
[62] G.R. No. 150154, August 9, 2005, 466 SCRA 211.

Likewise, in *BIR Ruling [DA-736-06]*, the BIR held that the sale of industrial gases and equipment by petitioner to its PEZA-registered customers pursuant to contracts entered into prior to the effectivity of *RA No. 9337* is subject to zero percent (0%) VAT and requires no prior approval for zero-rating based on *RMC No. 74-99*.

The case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[63], the Court *En Banc* explained that the sale to an enterprise within the economic zone is actually a sale outside the territory, hence no VAT shall be imposed. The relevant portion of the Decision states that:

> The Cross Border Doctrine provides that 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.
>
> Since, an ECOZONE is regarded as a foreign territory by RA 7916, the sales of goods and services therefore by VAT registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund, or issuance of tax credit certificate from their purchases of goods and services.

From the foregoing, it appears that petitioner must first prove that its clients are situated in an economic zone or is a PEZA-registered entity to qualify its sales as zero-rated. In support of its claim, petitioner submitted certificates[64] from PEZA and Clark Development Corporation certifying that its clients are PEZA-registered. Upon examination of said certificates, this Court finds petitioner to have aptly proven its right to claim for a VAT refund. With said certificates, its sales to the PEZA-registered entities are thus deemed zero-rated.

From the first and the second quarters of TY 2007, petitioner generated zero-rated sales in the amount of Php79,168,883.15. Consequently, petitioner is not liable to pay any output VAT thereon and the reported unutilized input VAT attributable thereto may be the

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[63] *CTA Case No. 7022, March 10, 2008.*
[64] *Records, Vol. 1, Exhibits "QQ" and "RR,"* pp. 577-579.

proper subject of a claim for refund or the issuance of a TCC under *Section 112(A) of the 1997 NIRC*, to wit:

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

Based on the afore-quoted provision, in order to be entitled to a refund or tax credit of unutilized input VAT, the following requisites must be complied with:

1. there must be zero-rated or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and

5. that the claim for the refund was filed within the two (2)-year prescriptive period.

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With respect to the first requisite, *Section 106(A)(2)(c) of the 1997 NIRC* and *RMC No. 74-99* qualifies petitioner's sales as zero-rated and is properly a subject for a refund or credit under *Section 112(A) of the 1997 NIRC*. However, *Section 112(A)* must be read together with *Section 113 of the same Code,* as implemented by *Section 4.108-1 of Revenue Regulations ("RR") No. 7-95,* which state that:

> *1997 NIRC*
>
> SEC.113. *Invoicing and Accounting Requirements for VAT-Registered Persons. -*
>
> (A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or 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.
>
> xxx xxx xxx
>
> *RR No. 7-95*
>
> SECTION 4.108-1. *Invoicing Requirements* - All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller;
>
> 2. date of transaction;
>
> 3. quantity, unit cost and description of merchandise or nature of service;
>
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.

xxx xxx xxx

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

If the taxable person is engage in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A 'VAT Invoice' shall be issued only for sales of goods, properties or services subject to VAT imposed in Section 100 and 102 of the Code....

Based on the foregoing law and regulation, petitioner must show that duly registered VAT invoices or official receipts ("OR") were issued and contain all the necessary information, *i.e.*, petitioner's TIN-VAT number and the imprinted words "zero-rated," in order for its sales to PEZA-registered entities be deemed fully entitled for VAT zero-rating.

In its Quarterly VAT Returns for the first[65] and the second[66] quarters of the TY 2007, petitioner declared the amount of Php99,078,417.50 as total sales, Php79,168,883.15 of which is zero-rated; broken down as follows:

	1ST QUARTER (EXHIBIT "J")	2ND QUARTER (EXHIBIT "U")	TOTAL
Vatable Sales	Php 1,169,920.98	Php 713,132.06	Php 1,883,053.04
Zero-Rated Sales	47,262,774.66	31,906,108.49	79,168,883.15
Exempt Sales	-	18,026,481.31	18,026,481.31
TOTAL SALES	**PHP 48,432,695.64**	**PHP 50,645,721.86**	**PHP 99,078,417.50**

In support thereof, petitioner submitted various documents, such as: *(1)* Summary of Sales and Receipts[67], *(2)* Schedule of Sales and

[65] *Records, Vol. 1, Exhibit "J,"* pp.422-424.
[66] *Id., Exhibit "U,"* pp.465-467.
[67] *Petitioner's FOE, Box 1, Exhibits WW-1 to WW-12 Folder, Exhibit "WW-7."*

Receipts (January 2007 to June 2007) [68], and *(3)* ORs[69] and Invoices[70].

Upon examination of the documents presented, only the amount of Php77,610,519.85 (Php79,168,883.15 less Php1,558,363.30) is considered to be valid zero-rated sales. The amount of Php1,558,363.30 should be denied for reasons stated hereunder:

CUSTOMER	AMOUNT	EXH. NO.	REASONS
Sumisetsu Phils.	Php 42,857.14	2115	Zero-rated Sales Not Indicated
Sumisetsu Phils.	214,285.71	2116	Zero-rated Sales Not Indicated
Sumisetsu Phils.	28,571.43	2117	Zero-rated Sales Not Indicated
Rohm Mechatech Center	5,500.00	2154	Invoice not Dated
Clarion Manufacturing Corp.	133,251.06	2196	Noted alteration on Customer's name Without countersignature
Le Firenze	328,005.30		Zero-rated Sales Not Indicated
Sumisetsu Phils.	128,571.43	2334	Zero-rated Sales Not Indicated
Sumisetsu Phils.	14,285.71	2335	Zero-rated Sales Not Indicated
Abbot Laboratories	58,880.00	2336	Zero-rated Sales Not Indicated
Le Firenze	157,242.40	2355	Zero-rated Sales Not Indicated
Ingasco, Inc.	28,221.76	2357	Zero-rated Sales Not Indicated
Abbot Laboratories	243,677.00	2442	Zero-rated Sales Not Indicated
Le Firenze	167,872.86	2536	Zero-rated Sales Not Indicated
Le Firenze	7,141.50	2537	Zero-rated Sales Not Indicated
TOTAL	PHP 1,558,363.30		

After resolving that petitioner had valid zero-rated sales for the first and the second quarters of TY 2007 in the aggregate amount of Php77,610,519.85, the Court shall now proceed with the determination of whether it incurred or paid input taxes in connection thereto.

In its Quarterly VAT Returns for the first and the second quarters of TY 2007, petitioner reported input VAT in the total amount of Php8,124,400.35, broken down as follows:

	1ST QUARTER	2ND QUARTER	TOTAL
Input Tax:			
Goods	Php 4,356,970.77[71]	Php 2,959,393.07[72]	Php 7,316,363.84
Services	175,553.54[73]	632,482.97[74]	808,036.51
TOTAL INPUT TAX	PHP 4,532,524.31	PHP 3,591,876.04	PHP 8,124,400.35

To determine the accuracy of petitioner's declaration, the ICPA

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[68] *Petitioner's FOE, Box 1, Exhibits WW-1 to WW-12 Folder, Exhibits "WW-7-1" to "WW-7-6."*
[69] *Id., Exhibits "2769" to "3291," Pilipinas Total Gas, Inc. Official Receipt Nos. 2769-3291.*
[70] *Id., Exhibits "2115" to "2768," Folder, Sales Invoice (PTGI) Nos. 2115-2768.*
[71] *Records, Vol. 1, Exhibit "J-4," line 21F,* p. 423.
[72] *Id., Exhibit "U-4," line 21F,* p. 466.
[73] *Id., Exhibit "J-5," line 21J,* p. 423.
[74] *Id., Exhibit "U-5," line 21J,* p. 466.

examined the documents[75] in support of its claim for refund. Based on his examination, the ICPA came up the following findings:

NATURE	EXHIBIT REFERENCE	AMOUNT
Input tax supported by documents dated beyond the period of claim.	WW-9-1	Php 27,788.91
Input VAT on purchases of goods and services supported by ORs not in the name of the co.	WW-9-2	17,483.27
Input VAT on purchases of goods and services where no withholding taxes were recognized.	WW-9-3	11,119.29
Input VAT on purchases of goods and services without original supporting documents.	WW-9-4	8,998.37
Other invalid input VAT claims on purchases of goods and services.	WW-9-5	17,494.97
Difference between allocated input VAT and actual input VAT utilized/applied on output VAT on vatable sales.	Exh. WW Table 3	77,426.51
TOTAL		PHP 160,311.32

Upon further study and evaluation of the above findings, this Court is in accord with the ICPA's conclusions. However, an additional input VAT of Php258,469.15 should be denied for reasons stated hereunder:

EXHIBIT	SUPPLIER	AMOUNT	REASONS
3	Republic Courier	Php 163.20	VAT not separately indicated
10	Wack Wack Golf	3,698.04	VAT not separately indicated
21	PCM Industrial	27,620.70	OR pre-printed with "Not a valid source of Input VAT"
22	Shell	3,994.82	VAT not separately indicated
31	PCM Industrial	21,452.06	OR pre-printed with "Not a valid source of Input VAT"
33	PCM Industrial	5,850.61	OR pre-printed with "Not a valid source of Input VAT"
45	Ingasco	5,428.04	VAT not separately indicated
53	Phil. Pub 1418	1,157.14	VAT not separately indicated
57	Titanic	639.12	VAT not separately indicated
433	Blackgold	707.14	VAT not separately indicated
445	PCM Industrial	3,441.47	OR pre-printed with "Not a valid source of Input VAT"
448-450	PCM Industrial	19,702.78	OR pre-printed with "Not a valid source of Input VAT"
451	PCM Industrial	612.00	OR pre-printed with "Not a valid source of Input VAT"
464	Ingasco	8,571.43	VAT not separately indicated
465	Ingasco	5,428.04	VAT not separately indicated
471	Shell	3,306.26	VAT not separately indicated
847	Airfrieght 2100	69.64	VAT not separately indicated
1276	Bureau of Customs	9,911.00	IEIRD without machine validation
1281	Honjin	85.72	VAT not separately indicated
1284	Republic Courier	109.80	VAT not separately indicated
1293	Hidden Valley Spring	15,645.32	VAT not separately indicated
1306	Phil. Pub 1418	1,607.14	VAT not separately indicated
1314	Ingasco	5,428.04	VAT not separately indicated
1315	Ingasco	8,571.43	VAT not separately indicated
1316	Dencom	333.95	VAT not separately indicated
1317	PLDT	160.00	VAT not separately indicated
1318	PLDT	515.38	VAT not separately indicated
1319	PLDT	185.91	VAT not separately indicated
1320	PLDT	1,119.60	VAT not separately indicated
1321	PLDT	363.62	VAT not separately indicated
1662	Philippine Today	1,944.00	VAT not separately indicated
1672	Isla Lipana	412.50	VAT not separately indicated
1673/74	PCM Industrial	100,134.68	OR pre-printed with "Not a valid source of Input VAT"
1690	Niko Niko Food Services	98.57	VAT not separately indicated

[75] *Petitioner's FOE, Box 1, Exhibits "W-5-1" to "W-5-5,"* with supporting documents labeled as supplier's invoices numbered 1 to 2114.

	TOTAL	PHP 258,469.15

From the foregoing, out of the total input VAT in the amount of Php8,124,400.35, only Php7,705,619.88 is supported with valid ORs, invoices, and schedules[76]; while the input VAT of Php418,780.47 is disallowed for not being properly substantiated by supporting documents, as prescribed under *Sections 110(A), 113(A) and (B) and 237 of the 1997 NIRC*, computed as follows:

Input Tax:		
Goods		Php 7,316,363.84
Services		808,036.51
Total Input Tax		Php 8,124,400.35
Less:		
Disallowance *per* ICPA	Php 160,311.32	
Disallowance *per* Court	258,469.15	Php 418,780.47
TOTAL VALID INPUT TAX		**PHP 7,705,619.88**

However, a portion of the Php7,705,619.88 shall be applied against the reported output VAT liability of Php225,966.37 (Php140,390.52[77] plus Php85,575.85[78]). Consequently, only the remaining input VAT of Php7,479,653.51 can be attributed to the total zero-rated sales amounting to Php79,168,883.15 and only the input VAT of Php7,332,423.73 is attributable to the valid zero-rated sales of Php77,610,519.85, computed as follows:

Valid Input VAT	Php 7,705,619.88
Less: Output Tax Due	225,966.37
Total	Php 7,479,653.51
Divide by Total Zero- Rated Sales	79,168,883.15
Multiply by Valid Zero-Rated Sales	77,610,519.85
EXCESS INPUT VAT ATTRIBUTABLE TO VALID ZERO-RATED SALES	**PHP 7,332,423.73**

The claimed input VAT was not carried over by petitioner in the succeeding periods and was never utilized because it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Returns for the first[79] and the second[80] quarters of TY 2007. Therefore, the excess input

[76]*Petitioner's FOE, Box 1, Exhibits "W-5-1" to "W-5-5,"* with supporting documents labeled as supplier's invoices numbered 1 to 2114.
[77] *Records, Vol. 1, Exhibit "J-6," BIR Form No. 2550-Q, line 19B*, p. 423.
[78] *Id., Exhibit "U-6," BIR Form No. 2550-Q, line 19B*, p. 466.
[79] *Id., Exhibit "J," BIR Form No. 2550-Q, line 23D*, amounting to Php4,392,133.79, p. 424.
[80] *Id., Exhibit "U," BIR Form No. 2550-Q, line 23D*, amounting to Php3,506,300.19, p. 467.

VAT of Php4,708,508.11[81] as of the end of the second quarter of 2007, which was carried over to the succeeding third quarter[82] of 2007, no longer includes the subject first and second quarters claimed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Pilipinas Total Gas, Inc. in the reduced amount of **SEVEN MILLION THREE HUNDRED THIRTY-TWO THOUSAND FOUR HUNDRED TWENTY-THREE AND 73/100 PESOS (Php7,332,423.73),** representing its unutilized and excess input VAT attributable to zero-rated sales for the first and the second quarters of TY 2007.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[81] *Records, Vol. 1, Exhibit "U-7," BIR Form No. 2550-Q, line 29,* p. 467.
[82] *Id., Exhibit "BB-3," BIR Form No. 2550-Q, line 20A,* p. 495.

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.

LOVELL R. BAUTISTA
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