REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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CE CASECNAN WATER AND ENERGY COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7891

Members:

UY, *Chairperson,* and
FABON-VICTORINO, JJ.

Promulgated:

AUG 10 2016 ; 3:00 p.m.

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DECISION

UY, J.:

In this Petition for Review filed on March 30, 2009, petitioner CE Casecnan Water and Energy Company, Inc. prays for the refund or issuance of a tax credit certificate (TCC) in the total amount of ₱14,453,440.28, allegedly representing its unutilized input value-added tax (VAT) for the period from the first quarter to the fourth quarter of calendar year (CY) 2007.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija.[1] It's primary business purpose is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration [NIA] (the 'Project'); provided that, in no

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, Docket, p. 184.

event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens."[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer with Taxpayer Identification No. 004-500-931-000 and power generation as its business.[3]

Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law.[4]

On the following dates, petitioner filed through the BIR's electronic filing and payment system (eFPS) its original Quarterly VAT Returns for the 1st quarter to the 4th quarter of CY 2007, respectively:[5]

Taxable Quarter	Date of Filing of Original Quarterly VAT Return
1st	April 23, 2007
2nd	July 25, 2007
3rd	October 25, 2007
4th	January 24, 2007

Petitioner filed its Final Amended Quarterly VAT Returns for the said periods on February 19, 2009 through the BIR's eFPS.[6] Thereafter, petitioner filed an administrative claim for refund with the Large Taxpayers Audit and Investigation Division I of the BIR[7] on February 20, 2009.

Upon the belief that the running of the two-year prescriptive period under the Tax Code and Revenue Regulations No. 16-2005,

2 Par. 3, JSFI, Admitted Facts, Docket, p. 185.
3 Par. 4, JSFI, Admitted Facts, Docket, p. 185.
4 Par. 2, JSFI, Admitted Facts, Docket, p. 185.
5 Par. 6, JSFI, Admitted Facts, Docket, p. 186.
6 Par. 7, JSFI, Admitted Facts, Docket, p. 187.
7 Par. 8, JSFI, Admitted Facts, Docket, p. 187.

as amended, would be suspended, and that its right to judicially claim for refund or the issuance of a TCC for its unutilized input VAT, pursuant to Section 112(C), in relation to Section 229, of the Tax Code, would be preserved, petitioner filed the instant Petition for Review on March 30, 2009.[8]

In her *Answer* filed on May 8, 2009,[9] respondent raises the following defenses, to wit:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 7. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.
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> 8. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997, as amended.
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> 9. Petitioner must prove compliance with the following in order to be entitled to a claim for refund:
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> a) Registration requirements of a value-added taxpayer under the pertinent provision of the Tax Code of 1997, as amended and its implementing regulations;
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> b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of 1997, as amended;
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> Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);
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> c) Submission of complete documents in support of the administrative claim for refund pursuant to Section 112(c) of the Tax Code of 1997, as amended, otherwise, there would be no sufficient compliance with regard to the filing of

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[8] Par. 25, Petition for Review, Docket, p. 15.

[9] Docket, pp. 115 to 122.

administrative claim for tax credit/refund which is a condition sine qua non prior to the filing of judicial claim.

d) That the input taxes in the amount of Fourteen Million Four Hundred Fifty Three Four Hundred Forty Pesos and 28/100 (P14,453,440.28) allegedly representing input VAT from its domestic purchases of non-capital goods and services, services rendered by non-residents, importation of non-capital goods and domestic purchases of capital goods for the 1^{st}, 2^{nd} , 3^{rd} and 4^{th} quarter of taxable year 2007 were :

1. attributable to its zero-rated or effectively zero-rated sales;
2. incurred or paid by petitioner; and
3. not applied against any output VAT liability.

e) That the claim for refund in the amount of Fourteen Million Four Hundred Fifty Three Four Hundred Forty Pesos and 28/100 (P14,453.440.28) representing unutilized input tax was filed within two (2) years after the close of the taxable quarter when sales are made in accordance with Section 112(a) of the Tax Code of 1997, as amended;

f) Petitioner must likewise prove that it has complied with the governing rules and regulations with regard to recovery of taxes as provided in Section 112(a) of the Tax Code, as amended.

10. Corollary thereto, Section 112 of the National Internal Revenue Code provides:

'Section 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 sale 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. xxx
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> (b) Capital Goods.
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> A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchase, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchases was made.'
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> xxx
>
> (d) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> **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).'

As provided by law, petitioner has to file its judicial claim with the Honorable Court within (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty (120) day period from the date of filing of the administrative claim. This requirement is jurisdictional, failure to do so would deprive this Honorable Court of jurisdiction to decide on the case.

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In the case at hand, the administrative protest was filed by petitioner on February 20, 2009. Respondent, should be given an opportunity to act on the administrative claim filed by petitioner within a period of 120 days from February 20, 2009 or until June 20, 2009. Afterwards, the petitioner may file the Petition for Review within 30 days from June 20, 2009 or until July 30, 2009.

However, as it can be gleaned, petitioner filed the Petition for Review on March 30, 2009 or after only a lapse of 30 days from the filing of the administrative claim. Therefore, on the basis of the aforequoted provision of law, the Petition for Review was prematurely filed on March 30, 2009. Hence, this Honorable Court is bereft of jurisdiction to try and hear the case at hand.

11. For the judicial claim for refund to prosper, petitioner must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts *(Commissioner of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 571)*.

12. Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

13. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

14. Taxes collected are presumed to be in accordance with laws and regulations.

15. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation.

16. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v.*

> *Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005).* The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-Land Service. Vs. Court of Appeals, 357 SCRA 444)."

On June 5, 2009, petitioner filed its Reply,[10] wherein it disagrees with respondent that the instant Petition for Review was prematurely filed, and argues that Section 112(D) of the Tax Code is a mandate addressed to respondent, not on the taxpayer.

This case was set for pre-trial on July 2, 2009. As directed by the Court,[11] the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on July 20, 2009.[12] The same was approved in the Resolution dated July 27, 2009 together with the termination of Pre-Trial in this case.[13]

During trial, petitioner presented two (2) witnesses: Leilah Yasmin Alpad and the Court commissioned Independent Certified Public Accountant, Annalyn B. Artuz. Thereafter, petitioner offered its documentary and testimonial evidence. Except for Exhibit "R-6-C-4Q-00090", the Court admitted said documentary and testimonial evidence in the Resolutions dated October 12, 2010 and January 12, 2011.[14] Thus, petitioner rested its case.

During the hearing held on January 13, 2011 for the initial presentation of respondent's evidence, respondent's counsel manifested that she will no longer present evidence, and the Court granted the parties a period of thirty (30) days from said date to file their respective memorandum, after which, the case will be submitted for decision.[15]

However, instead of filing a memorandum, respondent filed a *Motion to Dismiss* on January 20, 2011,[16] arguing as follows:

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[10] Docket, pp. 128 to 144.
[11] Minutes of the hearing held on July 2 2009, Docket, p. 176.
[12] Docket, pp. 184 to 189.
[13] Docket, p. 191.
[14] Docket, pp. 364 to 365, and 386 to 387.
[15] Minutes at the hearing held on January 13, 2011, Docket, p. 389.
[16] Docket, pp. 390 to 403.

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1. this Court is bereft of jurisdiction to try the instant case on the ground that the Petition for Review was prematurely filed by petitioner, citing as basis Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, in relation to Section 112(D) of the National Internal Revenue Code (NIRC) of 1997; and

2. the defense of lack of jurisdiction over the subject matter can be raised any time even for the first time on appeal.

According to respondent, as provided by law, the case will only be ripe for judicial determination within thirty (30) days after receipt of respondent's decision denying the claim or after the expiration of the one hundred twenty (120) day period from the date of the submission of complete documents in support of the administrative claim for refund; and that this requirement is jurisdictional and failure to do so would deprive this Court of jurisdiction to decide on the case. Respondent then pointed out that petitioner filed the instant Petition for Review on March 30, 2009 or after only a lapse of thirty (30) days from the filing of the administrative claim.

As directed by the Court, petitioner filed its *Comment/Opposition (Re: Respondent's Motion to Dismiss dated January 18, 2011)*[17] on March 3, 2011, praying for the denial of the Motion to Dismiss and argued as follows:

1. The *Motion to Dismiss* is based on the doctrine set by the case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.* (hereinafter referred to as the "*Aichi* case",[18] which is contrary to an earlier doctrine also laid down by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Atlas* case")[19];
2. Since the *Aichi* case forms part of our system of laws, it should not be applied retroactively; and
3. The *Aichi* case is based on an erroneous application of the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation* (hereinafter referred to as the "*Mirant* case")[20].

However, the Court granted respondent's *Motion to Dismiss* in the Resolution dated May 19, 2011,[21] the dispositive portion of which

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[17] Docket, pp. 416 to 432.
[18] G.R. No. 184823, October 6, 2010.
[19] G.R. Nos. 141104 and 148763, June 8, 2007.
[20] G.R. No. 172129, September 12, 2008.
[21] Docket, pp. 434 to 443.

reads:

> "WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby **GRANTED** and the Petition for Review is **DISMISSED** based on the ground of lack of cause of action, the judicial claim having been prematurely filed with this Court.
>
> **SO ORDERED.**"

On June 7, 2011, petitioner filed a *Motion for Reconsideration* of said Resolution.[22] Upon manifestation and motion of respondent's counsel, respondent was granted a period of fifteen (15) days within which to file a Comment to the said Motion for Reconsideration.[23] Respondent, however, failed to file the said Comment.[24]

Thereafter, petitioner's *Motion for Reconsideration* was denied in the Resolution dated September 12, 2011,[25] the dispositive portion of which reads:

> "**WHEREFORE**, finding no sound reason to reverse, amend or modify the Resolution of the Court dated 19 May 2011, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Hence, petitioner filed on October 14, 2011, a Petition for Review before the Court of Tax Appeals (CTA) *En Banc*, praying for the reversal of this Court's Resolutions dated May 19, 2011 and September 12, 2011, and the declaration that petitioner is entitled to a refund of ₱14,453,440.28, allegedly representing its unutilized input VAT attributable to zero-rated sales for the four quarters of CY 2007.[26] The case was docketed as CTA EB No. 836.

On November 25, 2011, respondent filed her *Comment* to the said *Petition for Review*,[27] after being directed by the CTA *En Banc* in the Resolution dated October 25, 2011.[28]

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[22] Docket, pp. 450 to 468.
[23] Minutes of the hearing held on June 17, 2011, Docket, p. 470.
[24] Records Verification dated July 25, 2011, Docket, p. 471.
[25] Docket, pp. 472 to 479.
[26] Docket, pp. 486 to 543.
[27] Docket, pp. 577 to 608.
[28] Docket, pp. 571 to 572.

In the Resolution dated December 9, 2011, the CTA *En Banc* gave due course to the Petition for Review, and required the parties to file their respective memorandum, within a period of thirty (30) days from receipt thereof.[29]

On January 19, 2012, petitioner filed its *Memorandum*;[30] while on February 3, 2012, respondent filed a *Manifestation*, alleging that she is adopting the arguments she raised in her *Comment* to the Petition for Review, due to the fact that she has already fully discussed her arguments therein.[31]

Thereafter, the CTA *En Banc* promulgated its Decision dated January 28, 2013,[32] the dispositive portion of which are articulated as follows:

> "**WHEREFORE,** premises considered, the Petition for Review *en banc* is **DENIED**. Accordingly, the Resolutions of the CTA First Division dated May 19, 2011 and September 12, 2011 are **AFFIRMED** on the ground of premature filing.
>
> **SO ORDERED.**"

On February 22, 2013, petitioner filed its *Motion for Reconsideration (Re: Decision dated January 28, 2013)*, praying for the reconsideration of the CTA *En Banc*'s Decision dated January 28, 2013, and the rendition of an Amended Decision granting the full refund of petitioner's claim input VAT refund covering the first to fourth quarters of 2007 in the amount of ₱14,453,440.28.[33]

As directed by the Court *En Banc*,[34] respondent filed a *Comment (Re: Petitioner's Motion for Reconsideration)* on April 11, 2013, praying for denial thereof and the affirmance of the questioned Decision.[35]

Upon the strength of the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[36] promulgated by the

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[29] Docket, pp. 611 to 612.
[30] Docket, pp. 617 to 670.
[31] Docket, pp. 690 to 692.
[32] Docket, pp. 673 to 683.
[33] Docket, pp. 699 to 726.
[34] Resolution dated March 18, 2013, Docket, pp. 728 to 729.
[35] Docket, pp. 736 to 745.
[36] G.R Nos. 187485, 196113 and 197156, February 12, 2013.

Supreme Court, the CTA *En Banc* issued its Amended Decision dated May 28, 2013, which held as follows:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **GRANTED**. The Court *en banc*'s Decision promulgated on January 28, 2013 is hereby **REVERSED** and **SET ASIDE**. However, as regards the granting of refund on its full amount, CTA Case No. 7891 is **REMANDED** to the Court of origin for a complete determination of the specific amount of refund or tax credit to which petitioner is entitled to, if any. Thereafter, the said Court shall render judgment, declaring such specific amount of refund or tax credit, if any.
>
> **SO ORDERED**."

Consequently, respondent filed her *Motion for Reconsideration (Re: Decision Promulgated May 28, 2013)* on June 20, 2013, praying for the setting aside of the Amended Decision dated May 28, 2013, and the reinstatement of the Decision dated January 28, 2013.[37] On the other hand, petitioner filed its *Comment (To Respondent's Motion for Reconsideration dated June 20, 2013)* on July 30, 2013,[38] pursuant to the Resolution dated July 3, 2013 of the CTA *En Banc*.[39]

The CTA *En Banc* promulgated the Resolution dated September 25, 2013,[40] denying respondent's Motion for Reconsideration, as follows:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Undaunted, respondent filed a *Petition for Review on* Certiorari before the Supreme Court on November 18, 2013, assailing the CTA *En Banc*'s Amended Decision dated May 28, 2013 and Resolution dated September 25, 2013,[41] in the case entitled *"Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company,*

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[37] Docket, pp. 762 to 777.
[38] Docket, pp. 787 to 803.
[39] Docket, pp. 780 to 781.
[40] Docket, pp. 805 to 811.
[41] Docket, pp. 820 to 837.

Inc." docketed as G.R. No. 209307.

On January 27, 2014, the Third Division of the Supreme Court denied the said *Petition for Review on* Certiorari of respondent. The Deputy Division Clerk of Court of the said Third Division notified respondent as follows:

> "**N O T I C E**
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> Sirs/Mesdames:
>
> *Please take notice that the Court, Third Division, issued a Resolution dated* **January 27, 2014**, *which reads as follows:*
>
> '**G.R. No. 209307** ***(Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.).*** — Acting on the petition for review certiorari assailing the Amended Decision dated May 28, 2013 and Resolution dated September 25, 2013 of the Court of Tax Appeals, Quezon City, in CTA EB 836, the Court resolves to **DENY** the petition for failure to show any reversible error in the challenged amended decision and resolution as to warrant the exercise of the Court's discretionary appellate jurisdiction.'
>
> Very truly yours,
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> **LUCITA ABJELINA SORIANO**
> Division Clerk of Court
>
> By:
>
> *(signed)*
> **WILFREDO V. LAPITAN**
> Deputy Division Clerk of Court".[42]

Respondent then filed a *Motion for Reconsideration* with the High Court, praying that its Resolution dated January 27, 2014 be reconsidered and set aside, and in lieu thereof, judgment be rendered granting respondent's *Petition for Review on* Certiorari.[43]

The Supreme Court, however, denied respondent's *Motion for Reconsideration* with finality. The Deputy Division Clerk of Court

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[42] Docket, p. 1017.
[43] Docket, pp. 1019 to 1028.

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again notified respondent as follows:

"**N O T I C E**

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **April 29, 2014**, *which reads as follows:*

'**G.R. No. 209307** ***(Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.)***. — Acting on the motion of the Office of the Solicitor General for reconsideration of the Resolution dated January 27, 2014 which denied the petition for review on certiorari, the Court resolves to **DENY** the motion with **FINALITY**, as no substantial arguments were raised to warrant its reconsideration.'

Very truly yours,

LUCITA ABJELINA SORIANO
Division Clerk of Court

By:

(signed)
WILFREDO V. LAPITAN
Deputy Division Clerk of Court"

On June 19, 2014, the Supreme Court's Resolution dated January 27, 2014 became final and executory and was recorded in its Book of Entries of Judgments.[44]

In effect, the Amended Decision dated May 28, 2013 of the CTA *En Banc* was not overturned by the Supreme Court, and therefore, the assailed ruling of the CTA *En Banc* directing that the instant case be remanded to the Court *a quo* (this Division) *"for a complete determination of the specific amount of refund of tax credit to which petitioner is entitled to, if any"*, stands.

Pursuant thereto, this Court gave the parties an opportunity to file anew their respective memorandum, if they so desire, in the Resolution dated May 20, 2015.[45]

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[44] Docket, pp. 1038 to 1039.
[45] Docket, pp. 1044 to 1047.

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Petitioner filed its Memorandum on August 25, 2015;[46] while respondent filed her Memorandum on September 1, 2015.[47] This case was submitted for decision on September 15, 2015.[48]

Hence, this Decision.

THE ISSUES

In the Joint Stipulation of Facts and Issues filed on July 20, 2009, the parties stipulated the following issues for the resolution of this Court, to wit:

> "10. Whether or not Petitioner's excess unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱14,453,440.28 is substantiated by documentary evidence in the form of invoices and official receipts.
>
> 11. Whether or not Petitioner's excess unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 amounting to ₱14,453,440.28 was applied or credit against any output VAT of the Petitioner in the subsequent quarter or quarters.
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> 12. Whether or not Petitioner is entitled to a refund of and/or issuance of a tax credit certificate ("TCC") for its excess unutilized input VAT amounting to ₱14,453,440.28, which input VAT: (i) arose from Petitioner's domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods; and (ii) are all attributable to Petitioner's zero-rated sales of generated power to NIA.
>
> 13. Whether or not Petitioner's claim for refund of and/or issuance of a TCC for its excess unutilized input VAT for the period from the 1st quarter to the 4th quarter of CY 2007 was filed within the period prescribed by the Tax Code."[49]

We summarize the foregoing issues as follows:

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[46] Docket, pp. 1074 to 1101.
[47] Docket, pp. 1106 to 1116.
[48] Resolution dated September 15, 2015, Docket, p. 1120.
[49] JSFI, Stipulated Issues for Trial, Docket, pp. 184 to 189, at pp. 187 to 188.

"Whether or not petitioner is entitled to a refund of, or issuance of a TCC for, its excess and unutilized input VAT for the CY 2007 in the aggregate amount of ₱14,453,440.28, arising from its domestic purchases of non-capital goods and services, domestic purchases of capital goods, purchase of services rendered by non-residents, and importation of non-capital goods."

Petitioner's arguments:

Petitioner argues that it has complied with all of the requisites for the refund of input VAT attributable to zero-rated or effectively zero-rated sales. According to petitioner, it is a VAT-registered taxpayer; it generated zero-rates sales; it timely filed its administrative and judicial claims for refund; its excess and unutilized input VAT is: (i) attributable and allocable to its zero-rated sales of generated power, and (ii) duly substantiated and supported by VAT invoices and official receipts; and its unutilized input VAT has not been applied against any output VAT liability.

Respondent's counter-arguments:

Respondent contends that since tax refunds are regarded as tax exemptions, these are to be construed *strictissimi juris* against the person or entity claiming the exemption. According to respondent, petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

Moreover, respondent avers that petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected; and that petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code, as amended.

Furthermore, respondent stresses that in order to be entitled to a claim for refund, petitioner must prove compliance with the following: (1) registration requirements of value-added taxpayer; (2) invoice and accounting requirements for VAT-registered persons as well as the filing and payment of VAT; (3) submission of complete documents in support of the administrative claim for refund; (4) the amount of input taxes were attributable to its zero-rated or effectively zero-rated sales, incurred or paid by petitioner, and not applied against any output VAT liability; (5) the claim for refund was filed within two (2) years after the close of the taxable quarter when the sales are made; and (6) the governing rules and regulations with regard to recovery of taxes under Section 112(a) of the Tax Code, as amended.

Lastly, petitioner points out that the Petition for Review was prematurely filed on March 30, 2009, and hence, this Court is bereft of jurisdiction to try and hear the case at hand.

THE COURT'S RULING

It is noteworthy that in respondent's Memorandum filed on September 10, 2015, the issue of jurisdiction is once again, being raised by respondent in arguing that the instant Petition for Review was prematurely filed[50].

Needless to state, such issue has already been laid to rest, initially by the CTA *En Banc* in **CTA EB No. 836** in its Amended Decision dated May 28, 2013, and later on, by the Supreme Court in **G.R. No. 209307** denying respondent's petition filed therein for failure to show any reversible error in the challenged Amended Decision and Resolution of the CTA *En Banc* to warrant the exercise of the Supreme Court's discretionary appellate jurisdiction.'

Nevertheless, for clarity, in *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[51] the Supreme Court said:

> "In *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*,[52] the Court held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, its non-observance would lead to the dismissal of the judicial claim on the ground of lack of jurisdiction. *Aichi* also clarified the two (2)-year prescriptive period applies only to administrative claims and not to judicial claims. Succinctly put, once the administrative claim is filed within the two (2)-year prescriptive period, the claimant must wait for the 120-day period to end; thereafter, he is given a 30-day period to file his judicial claim before the CTA, even if said 120-day and 30-day periods would exceed the aforementioned two

[50] Docket, pp. 1106 to 1115, at p. 1113
[51] G.R. No. 198928, December 3, 2014.
[52] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

(2)-year prescriptive period.

However, in *CIR v. San Roque Power Corporation (San Roque)*,[53] the Court categorically recognized an exception to the mandatory and jurisdictional nature of the 120-day period. It ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 provided a valid claim for equitable *estoppel* under Section 246 of the NIRC. In essence, the aforesaid BIR Ruling stated that *'taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.'*

Recently, in *Taganito Mining Corporation v. CIR*,[54] the Court reconciled the pronouncements in the *Aichi* and *San Roque* cases in the following manner:

> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **<u>during the period December 10, 2003</u>** (when BIR Ruling No. DA-489-03 was issued) **<u>to October 6, 2010</u>** (when the *Aichi* case was promulgated), **<u>taxpayers-claimants need not observe the 120-day period</u>** before it could file a judicial claim for refund of excess input VAT before the CTA. **<u>Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim</u>**."

Furthermore, *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*,[55] the High Court held:

> "*San Roque* likewise ruled out the application of the BIR ruling to cases of late filing. **The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day periods, is limited to premature filing** and does not extend to the late filing of a judicial claim.
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> In sum, **premature filing is allowed for cases**

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[53] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.
[54] G.R. No. 197591, June 18, 2014.
[55] G.R. No. 168950, January 14, 2015

falling during the time when BIR Ruling No. DA-489-03 was in force; nevertheless, late filing is absolutely prohibited even for cases falling within that period." *(Emphases supplied)*

In this case, considering that petitioner filed its administrative claim for refund with the BIR on February 20, 2009,[56] and its judicial claim on March 30, 2009, it clear that petitioner resorted to premature filing. However, as such premature filing was made when BIR Ruling No. DA-489-03 was still in force, the same is considered as an exception to the mandatory and jurisdictional nature of the 120+30 day periods. Thus, this Court is undoubtedly has jurisdiction to entertain the present case.

The issue on jurisdiction having been settled, We shall now make a determination whether or not petitioner is entitled to the refund being claimed.

The Court finds that for the four quarters of CY 2007, petitioner duly filed with the BIR its amended Quarterly VAT Returns declaring the following:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
	(Exhibit "D-5")	*(Exhibit "E-2")*	*(Exhibit "F-3")*	*(Exhibit "G-2")*	
Sale to Government	₱ 716,026,606.13	₱ 690,359,485.72	₱ 674,068,415.69	₱ 633,994,324.09	₱2,714,448,831.63
Zero-Rated Sales/Receipts	597,073,817.14	424,445,028.00	462,311,968.29	1,281,380,118.16	2,765,210,931.59
Total Sales/Receipts	1,313,100,423.27	1,114,804,513.72	1,136,380,383.98	1,915,374,442.25	5,479,659,763.22
Output tax due	₱ 85,923,192.74	₱ 82,843,138.29	₱ 80,888,209.88	₱ 76,079,318.89	₱ 325,733,859.80
Less: Allowable Input Tax					
Input Tax Carried Over From Previous Quarter	26,066,286.96	29,920,708.54	32,474,837.85	9,214,736.41	26,066,286.96
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	319,999.98	302,857.11	285,714.24	650,439.27	319,999.98
Current transactions					
Purchase of Capital Goods exceeding ₱1M			395,035.72		395,035.72
Domestic Purchase of Goods other than Capital Goods	607,623.45	716,233.78	526,036.33	542,486.48	2,392,380.04
Importation of Goods other than Capital Goods		281,313.00	47,411.00	145,377.00	474,101.00
Domestic Purchase of Services	7,209,727.35	5,269,299.07	6,258,905.63	6,854,139.50	25,592,071.55
Services Rendered by Non-residents	642,252.98	424,435.39	35,049.20	251,785.06	1,353,522.63

[56] Par. 8, JSFI, Admitted Facts, Docket, p. 187.

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Total Allowable Input Tax	₱ 34,845,890.72	₱ 36,914,846.89	₱ 40,022,989.97	₱ 17,658,963.72	₱ 56,593,397.88
Less: Deductions from input tax					
Input tax deferred for the succeeding period	302,857.11	285,714.24	650,439.27	613,544.64	613,544.64
Input Tax on Sale to Gov't closed to expense	(45,499,538.02)	(44,170,871.33)	(43,093,262.67)	(41,787,624.72)	(174,551,296.74)
VAT Refund/TCC claimed			26,066,286.96		26,066,286.96
Total Allowable Input Tax	80,042,571.63	80,800,003.98	56,399,526.41	58,833,043.80	204,464,863.02
Net VAT Payable	₱ 5,880,621.11	2,043,134.31	24,488,683.47	17,246,275.09	121,268,996.78
Less: Tax Credits/Payments					
VAT Withheld on Sales to Government	35,801,329.65	34,517,972.16	33,703,419.88	31,699,715.37	135,722,437.06
Total Overpayment	**₱29,920,708.54**	**₱32,474,837.85**	**₱9,214,736.41**	**₱14,453,440.28**	**₱14,453,440.28**

As indicated in the returns, petitioner's total allowable input VAT arising from its amortization of input VAT on purchases of capital goods exceeding ₱1 Million, domestic purchases of goods other than capital goods, importation of goods other than capital goods, domestic purchases of services and services rendered by non-residents for the four quarters of CY 2007 amounted to ₱29,913,566.28, broken down as follows:

Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	₱ 319,999.98	₱ 302,857.11	₱ 285,714.24	₱ 650,439.27	₱ 319,999.98
Add: Purchase of Capital Goods exceeding ₱1M			395,035.72		395,035.72
Total Unamortized Input Tax on Capital Goods Exceeding ₱1Million	319,999.98	302,857.11	680,749.96	650,439.27	715,035.70
Less: Input tax on purchases of capital goods exceeding ₱1 Million deferred for the succeeding period	302,857.11	285,714.24	650,439.27	613,544.64	613,544.64
Amortization of Input tax on capital goods exceeding ₱1 Million	17,142.87	17,142.87	30,310.69	36,894.63	101,491.06
Add: Input tax on:					
Domestic Purchase of Goods other than Capital Goods	607,623.45	716,233.78	526,036.33	542,486.48	2,392,380.04
Importation of Goods other than Capital Goods		281,313.00	47,411.00	145,377.00	474,101.00
Domestic Purchase of Services	7,209,727.35	5,269,299.07	6,258,905.63	6,854,139.50	25,592,071.55
Services Rendered by Non-residents	642,252.98	424,435.39	35,049.20	251,785.06	1,353,522.63
Total Allowable Input Tax	**₱ 8,476,746.65**	**₱ 6,708,424.11**	**₱ 6,897,712.85**	**₱ 7,830,682.67**	**₱ 29,913,566.28**

Out of the reported input VAT of ₱29,913,566.28 petitioner is claiming a refund of ₱14,453,440.28 allegedly attributable to its zero-rated sales for the same period, computed as follows:

Period Covered	Sales				Input Taxes	
	Sales to Government (a)	Zero-rated Sales (b)	Total (c=a+b)	Ratio (d=b/c)	For the Year 2007	Allocated to Zero-rated Sales
1st Qtr	₱ 716,026,606.13	₱ 597,073,817.14	₱1,313,100,423.27	45.470537%	₱ 8,476,746.65	₱ 3,854,422.24
2nd Qtr	690,359,485.72	424,445,028.00	1,114,804,513.72	38.073494%	6,708,424.11	2,554,131.44
3rd Qtr	674,068,415.69	462,311,968.29	1,136,380,383.98	40.682854%	6,897,712.85	2,806,186.42
4th Qtr	633,994,324.09	1,281,380,118.16	1,915,374,442.25	66.899719%	7,830,682.67	5,238,704.70
Total	₱2,714,448,831.63	₱2,765,210,931.59	₱5,479,659,763.22		**₱ 29,913,566.28**	**₱14,453,444.80**
Difference due to rounding off						(4.52)
Amount of Claim per Petition for Review						**₱14,453,440.28**

Petitioner anchors its entitlement to a refund of its unutilized input VAT pursuant to Section 112(A) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337[57], which provides as follows:

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

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[57] 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.

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Clearly from the foregoing provisions, in order to be entitled to a tax credit certificate/refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

At this juncture, and as pointed out earlier, petitioner has complied with the last requisite. Hence, the Court shall proceed to determine whether or not petitioner satisfied the above-remaining requisites.

First Requisite: the claimant must be a VAT-registered person

It is undisputed that petitioner is registered with the Bureau of Internal Revenue as a VAT taxpayer with Taxpayer Identification No. 004-500-931-000 and power generation as its business.[58]

Second Requisite: there must be zero-rated or effectively zero-rated sales

Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, provides that sale of power generated through renewable sources of energy is among the transactions subject to zero-percent (0%) VAT, to wit:

> "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

[58] Par. 4, JSFI, Docket, p. 185; Exhibit "C".

> (0%) rate:
>
> xxx xxx xxx
>
> (7) Sale of power of fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

In relation thereto, Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005,[59] which implements the afore-quoted provision, qualifies the applicability of such zero-rating as follows:

> "SEC. 4.108-5. *Zero-Rated Sale of Services.-*
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* – The following services performed in the Philippines by a VAT–registered person shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) Sale of power of fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels: *Provided,* however, That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power."

Corollary thereto, Section 4.108-3(f) of the same RR No. 16-2005, provides as follows:

> "SEC. 4.108-3. *Definition and Specific Rates on Selected Services.-*
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[60] VAT on their gross receipts: *Provided,* That sale of power or

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[59] SUBJECT: Consolidated Value-Added Tax Regulations of 2005

[60] Now 12%. Refer to Revenue Memorandum Order No. 7-2006 dated January 31, 2006.

> fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels shall be subject to 0% VAT.
>
> *'Generation companies'* refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Clearly, from the foregoing, to qualify for VAT zero-rating, petitioner must prove that it is engaged in the sale of power or fuel generated through renewable sources of energy.

As stipulated by the parties, petitioner's primary business purpose is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration [NIA] (the 'Project'); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or law to corporations wholly or partially owned by Filipino citizens."[61]

Petitioner was able to prove that its 140- megawatt hydro-electric power plant project has been accredited by the DOE as a Private Sector Generation Facility under the Implementing Rules and Regulations of Executive Order No. 215, as amended,[62] and the Energy Regulation Commission issued Certificate of Compliance No. 05-07- GN8-10701 dated July 27, 2005 for its generation facility.[63] Moreover, petitioner generates power through its hydro-electric power plant and subsequently sells it to NIA in accordance with the

[61] Par. 3, JSFI, Admitted Facts, Docket, p. 185.
[62] Exhibit "B".
[63] Exhibit "W".

Amended and Restated Casecnan Project Agreement by and between petitioner and NIA dated June 26, 1995[64]. Thus, petitioner, being a generation company, is entitled for VAT zero-rating on its sale of generated energy from renewable sources.

For the period covering January 1, 2007 to December 31, 2007, petitioner derived receipts from sales of power generated services to NIA in the amount of ₱2,765,210,931.59, which it declared in its Amended Quarterly VAT Returns for the same period, broken down as follows:

Exhibit	**CY 2007**	**Zero-Rated Sales/Receipts**
"D-5"	1st Quarter	₱ 597,073,817.14
"E-2"	2nd Quarter	424,445,028.00
"F-3"	3rd Quarter	462,311,968.29
"G-2"	4th Quarter	1,281,380,118.16
Total		**₱ 2,765,210,931.59**

The said declared zero-rated sales are supported by zero-rated sales invoices and official receipts, as presented below:

Exhibit	**Official Receipt No.**	**O.R. Date**	**Payment for Invoice No.[65]**	**O.R. Amount in US$**	**Foreign Exchange Rate**	**Amount in Peso**
First Quarter of 2007						
R-4-1.1	0527	26-Jan-07	ZR-0516	3,032,400.00	48.8850	₱ 148,238,877.29
R-4-1.2	0528	26-Jan-07	ZR-0517	-	-	44,763,680.00
R-4-1.3	0529	26-Feb-07	ZR-0518	3,032,400.00	48.2120	146,198,072.07
R-4-1.4	0530	26-Feb-07	ZR-0518	2,324,825.76	48.2120	112,084,502.05
R-4-1.5	0531	28-Mar-07	ZR-0519	3,032,400.00	48.0770	145,788,698.08
					Subtotal	597,073,829.49
Second Quarter of 2007						
R-4-1.6	0532	25-Apr-07	ZR-0520	3,032,400.00	47.6340	144,445,344.83
R-4-1.7	0533	25-May-07	ZR-0522	3,032,400.00	46.1140	139,836,096.68
R-4-1.8	0534	27-Jun-07	ZR-0523	3,032,400.00	46.2220	140,163,595.96
					Subtotal	424,445,037.47
Third Quarter of 2007						
R-4-1.9	0535	26-Jul-07	ZR-0524	3,032,400.00	45.0480	136,603,558.26
R-4-1.10	0536	24-Aug-07	ZR-0525	3,032,400.00	46.4180	140,757,946.30
R-4-1.11	0537	27-Sep-07	ZR-0526	3,032,400.00	45.2010	137,067,515.48
R-4-1.12	0538	27-Sep-07	ZR-0526	898,524.62	45.2010	40,614,212.26
R-4-1.13	0539	27-Sep-07	ZR-0527	160,809.41	45.2010	7,268,746.30
					Subtotal	462,311,978.60
Fourth Quarter of 2007						

[64] Exhibit R-9.1 to R-9.84.
[65] Exhibits R-2-1.1 to R-2-1.18.

R-4-1.14	0540	26-Oct-07	ZR-0528	3,032,400.00	44.0610	133,610,579.41
R-4-1.15	0541	26-Oct-07	ZR-0528	4,328,246.51	44.0610	190,706,873.77
R-4-1.16	0542	26-Oct-07	ZR-0529	100,265.28	44.0610	4,417,788.60
R-4-1.17	0543	29-Nov-07	ZR-0530	3,032,400.00	42.7980	129,780,658.11
R-4-1.18	0544	29-Nov-07	ZR-0530	7,330,774.86	42.7980	313,742,509.49
R-4-1.19	0545	29-Nov-07	ZR-0531	278,428.86	42.7980	11,916,198.62
R-4-1.20	0546	27-Dec-07	ZR-0532	3,032,400.00	41.6830	126,399,532.01
R-4-1.21	0547	27-Dec-07	ZR-0532	8,797,921.06	41.6830	366,723,751.70
R-4-1.22	0548	27-Dec-07	ZR-0533	97,935.73	41.6830	4,082,255.12
					Subtotal	1,281,380,146.84
			Total			**₱2,765,210,992.40**[66]

The receipts/collections tabulated above from petitioner's sales of electricity generated through renewable sources of energy, particularly, hydropower, qualify for VAT zero-rating as discussed above.

***Third and Fourth Requisites:* that input taxes were incurred or paid; and that such input taxes are attributable to zero-rated or effectively zero-rated sales**

In view of the Court's finding that petitioner had VAT zero-rated receipts for the four quarters of 2007 in the amount of ₱2,765,210,931.59, We now determine whether or not input taxes were incurred or paid, and if so, whether the amount thereof are attributable thereto, respectively.

As stated earlier, petitioner reflected a total amount of ₱29,913,566.28 allowable input VAT in its amended Quarterly VAT Returns for CY 2007, to wit:

Particulars	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	₱ 17,142.87	₱ 17,142.87	₱ 30,310.69	₱ 36,894.63	₱ 101,491.06
Domestic Purchase of Goods (other than Capital Goods)	607,623.45	716,233.78	526,036.33	542,486.48	2,392,380.04
Importation of Goods other than Capital Goods	-	281,313.00	47,411.00	145,377.00	474,101.00
Domestic Purchase of Services	7,209,727.35	5,269,299.07	6,258,905.63	6,854,139.50	25,592,071.55
Service Rendered by Non-Residents	642,252.98	424,435.39	35,049.20	251,785.06	1,353,522.63

[66] Difference of ₱60.81 due to rounding-off.

Total Available Input Tax	**₱8,476,746.65**	**₱6,708,424.11**	**₱6,897,712.85**	**₱7,830,682.67**	**₱29,913,566.28**

In support of its reported input VAT of ₱29,913,566.28, petitioner presented various invoices, official receipts, IEIRD, BIR Form No. 1600 and other documents[67] which were all examined by the Court-commissioned Independent Certified Public Accountant (ICPA) firm, Constantino Guadalquiver & Co., through its Partner, Annalyn B. Artuz. The ICPA summarized in her Report dated September 26, 2009[68] petitioner's reported input VAT for the four quarters of CY 2007 as follows:

Findings	**Reference** *(see Annexes of the ICPA Report)*	**1st Qtr**	**2nd Qtr**	**3rd Qtr**	**4th Qtr**	**TOTAL INPUT VAT**
Properly Substantiated						
1. Domestic purchases of goods and services properly supported by VAT invoices and VAT ORs	Annex 3-1Q-1, Annex 3-2Q-1, Annex 3-3Q-1, Annex 3-4Q-1	₱7,015,491.92	₱5,033,037.25	₱6,083,058.56	₱6,921,573.55	₱25,053,161.28
2. Importation of goods and services properly supported by IEIRDs/BOC ORs/BIR Form 1600	Annex 3-1Q-2, Annex 3-2Q-2, Annex 3-3Q-2	643,070.77	447,955.39	68,954.20		1,159,980.36
3. Domestic purchases of goods properly supported by VAT invoices not dated within the VAT-taxable quarter but within the VAT-taxable year.	Annex 3-2Q-3, Annex 3-3Q-3, Annex 3-4Q-2		182.48	1,351.33	1,354.34	2,888.15
4. Domestic purchases of services properly supported by VAT ORs not dated within the VAT-taxable quarter but by within the VAT-taxable year.	Annex 3-2Q-4, Annex 3-3Q-4		175.47	54,168.36		54,343.83
5. Domestic purchases of goods/services properly supported by VAT invoices/ORs with countersigned changes in the Company's TIN and/or address duly supported by authorization letters from suppliers, signed by their officers, allowing their representatives to make the necessary corrections in the documents and countersign the changes made.	Annex 3-1Q-3, Annex 3-2Q-5, Annex 3-3Q-5, Annex 3-4Q-3	455,487.99	408,959.48	247,943.06	412,065.02	1,524,455.55

[67] Exhibit "R-6-C-1Q-00001 to R-6-C-1Q-00720"; "R-6-C-2Q-00001 to R-6-C-2Q-00692"; "R-6-C-3Q-00001 to R-6-C-3Q-00826"; "R-6-C-3Q-00001 to R-6-C-3Q-00593"; "R-6-C-4Q-00001 to R-6-C-4Q-00391"; "V-1" to "V-9"

[68] Exhibit R.

6. Domestic purchases of capital goods exceeding 1 million properly supported by VAT invoices	Annex 3-1Q-4, Annex 3-2Q-6, Annex 3-3Q-6, Annex 3-4Q-4	17,142.87	17,142.87	21,489.28	23,662.50	79,437.52
	Subtotal	**8,131,193.55**	**5,907,452.94**	**6,476,964.79**	**7,358,655.41**	**27,874,266.69**
Other Findings						
1. Domestic purchases of goods/services supported by VAT invoices/ORs with countersigned changes. (The ICPA have ascertained from the additional supporting documents, i.e. VAT ORs for goods/VAT invoices for services, that input VAT was passed on to the petitioner)	Annex 3-1Q-5, Annex 3-2Q-7, Annex 3-3Q-7, Annex 3-4Q-5	77,459.60	129,750.33	66,207.65	48,646.64	322,064.22
2. Domestic purchases of goods/services supported by VAT invoices/ORs with countersigned changes in the Company's name and/or TIN.	Annex 3-1Q-6, Annex 3-2Q-8, Annex 3-3Q-8, Annex 3-4Q-6	59,656.96	142,741.81	59,881.98	7,626.80	269,907.55
3. Domestic purchases of goods/services supported by VAT invoices/ORs wherein VAT was not shown separately. (The ICPA have ascertained from the additional supporting documents, i.e. VAT ORs/Invoices that input VAT was passed on to the petitioner).	Annex 3-1Q-7, Annex 3-3Q-9	2,436.00		4,686.24		7,122.24
4. Domestic purchase of capital goods exceeding ₱1 million supported by TIN # Vehicle Sales Invoice which shows that VAT was passed on to the petitioner.	Annex 3-3Q-10, Annex 3-4Q-7			8,821.43	13,232.13	22,053.56
	Subtotal	**139,552.56**	**272,492.14**	**139,597.30**	**69,505.57**	**621,147.57**
Other Findings						
1. Domestic purchases of goods supported by documents other than VAT invoices	Annex 3-1Q-8, Annex 3-2Q-9, Annex 3-3Q-11, Annex 3-4Q-8	20,662.59	888.46	6,367.65	4,235.38	32,154.08
2. Domestic purchases of services supported by documents other than VAT ORs	Annex 3-1Q-9, Annex 3-2Q-10, Annex 3-3Q-12, Annex 3-4Q-9	3,680.60	47,413.59	79,875.50	243.36	131,213.05
3. Domestic purchases of goods supported by photocopied VAT invoices	Annex 3-1Q-10	8,028.16				8,028.16
4. Domestic purchases of services supported by photocopied VAT ORs	Annex 3-1Q-11	1,562.80				1,562.80

5. Domestic purchases of goods supported by VAT invoices not issued in the name of the Company	Annex 3-1Q-12, Annex 3-2Q-11, Annex 3-3Q-13, Annex 3-4Q-10	2,392.41	1,716.82	378.15	85.60	4,572.98
6. Domestic purchases of services supported by VAT ORs not issued in the name of the Company	Annex 3-1Q-13, Annex 3-2Q-12, Annex 3-3Q-14, Annex 3-4Q-11	26,771.52	67,584.77	37,864.04	680.84	132,901.17
7. Domestic purchases of goods supported by TIN-V invoices	Annex 3-1Q-14, Annex 3-2Q-13, Annex 3-3Q-15, Annex 3-4Q-12	349.18	15,230.94	32.70	4,678.30	20,291.12
8. Domestic purchases of services supported by TIN-V ORs	Annex 3-1Q-15, Annex 3-2Q-14, Annex 3-3Q-16, Annex 3-4Q-13	24,471.42	25,052.56	59,386.64	32,142.84	141,053.46
9. Domestic purchases of goods supported by VAT invoices not dated within the VAT-taxable year	Annex 3-1Q-16, Annex 3-2Q-15	18,854.40	8,220.96			27,075.36
10. Domestic purchases of services supported by VAT-ORs not dated within the VAT-taxable year	Annex 3-1Q-17, Annex 3-2Q-16, Annex 3-3Q-17, Annex 3-4Q-14	1,438.47	41.89	1,140.00	4,095.48	6,715.84
11. Domestic purchases of goods supported by TIN # or TIN-V tape receipts only	Annex 3-1Q-18, Annex 3-2Q-17	401.78	131.48			533.26
12. Domestic purchases of services supported by TIN # or TIN-V tape receipts only	Annex 3-2Q-18, Annex 3-3Q-18, Annex 3-4Q-15		268.09	70.29	74.69	413.07
13. Domestic purchases of goods supported by TIN # only; TAN-V; TAN-VAT; TIN-NV/Non-VAT invoices; stamped/handwritten TIN-V/VAT invoices	Annex 3-4Q-16				2,268.00	2,268.00
14. Domestic purchases of services supported by TIN # only; TAN-V; TAN-VAT; TIN-NV/Non-VAT ORs; stamped/handwritten TIN-V/VAT ORs	Annex 3-1Q-19, Annex 3-2Q-19, Annex 3-3Q-19, Annex 3-4Q-17	49,754.01	1,213.83	1,762.26	2,872.67	55,602.77
15. Domestic purchases of goods supported by VAT invoices issued in the Company's name but without or with wrong Company's TIN and/or address	Annex 3-1Q-20, Annex 3-2Q-20, Annex 3-3Q-20, Annex 3-4Q-18	6,972.08	600.27	1,508.46	5,184.91	14,265.72

16. Domestic purchases of services supported by VAT ORs issued in the Company's name but without or with wrong Company's TIN and/or address	Annex 3-1Q-21, Annex 3-2Q-21, Annex 3-3Q-21, Annex 3-4Q-19	2,347.43	718.32	4,017.66	12.86	7,096.27
17. Domestic purchases of goods supported by VAT invoices issued in the Company's name with TIN and/or address changed/added on the VAT invoices but without countersign.	Annex 3-1Q-22, Annex 3-2Q-22, Annex 3-3Q-22, Annex 3-4Q-20	786.54	2,679.92	900.28	507.86	4,874.60
18. Domestic purchases of services supported by VAT ORs issued in the Company's name with TIN and/or address changed/added on the VAT ORs but without countersign.	Annex 3-1Q-23, Annex 3-2Q-23, Annex 3-3Q-23, Annex 3-4Q-21	4,083.42	2,035.89	1,986.64	216.00	8,321.95
19. Domestic purchases of goods supported by tape receipts without or not in the name of the Company's name and/or TIN	Annex 3-1Q-24, Annex 3-2Q-24, Annex 3-4Q-22	2,576.42	3,911.80		430.27	6,918.49
20. Domestic purchases of services supported by tape receipts without the Company's name and/or TIN	Annex 3-1Q-25, Annex 3-2Q-25, Annex 3-3Q-24, Annex 3-4Q-23	393.05	939.00	4,791.08	90.22	6,213.35
21. Domestic purchases of goods supported by VAT invoices but without invoice date.	Annex 3-1Q-26, Annex 3-2Q-26	1,608.75	884.58			2,493.33
22. Domestic purchases of goods supported by tape receipts with handwritten Company's name, TIN and/or address.	Annex 3-1Q-27, Annex 3-2Q-27, Annex 3-3Q-25, Annex 3-4Q-24	474.71	88.03	29.37	232.15	824.26
23. Domestic purchases of services supported by tape receipts with handwritten Company's name, TIN and/or address.	Annex 3-1Q-28, Annex 3-2Q-28, Annex 3-3Q-26, Annex 3-4Q-25	681.97	7.39	519.98	164.35	1,373.69
24. Domestic purchases of services supported by VAT ORs but without OR date.	Annex 3-1Q-29, Annex 3-2Q-29, Annex 3-3Q-27	809.06	1,714.29	750.10		3,273.45
25. Domestic purchases of goods supported by VAT invoices but are not BIR-registered.	Annex 3-1Q-30, Annex 3-4Q-26	2,386.14			16,496.57	18,882.71
26. Domestic purchases of services supported by VAT ORs but are not BIR-registered.	Annex 3-3Q-28, Annex 3-4Q-27			12,871.05	1,808.26	14,679.31

27. Domestic purchases of goods/services supported by VAT invoices/ORs wherein VAT was not shown separately.	Annex 3-1Q-31, Annex 3-2Q-30, Annex 3-3Q-29, Annex 3-4Q-28	4,580.03	5,919.60	892.40	24,893.35	36,285.38
28. Purchases of services supported by TIN VAT invoices with stamp "Not allowed for claiming input VAT".	Annex 3-3Q-30			105.60		105.60
29. Importation of goods supported by documents not in the name of the Company.	Annex 3-2Q-31		347.85			347.85
30. Importation of goods supported by an original IEIRD and/or original BOC OR and /or LBP OR that are not dated.	Annex 3-4Q-29				119,386.00	119,386.00
31. Over-claimed input VAT on domestic purchases/importation of goods/services due to erroneous computation (i.e., arithmetical error).	Annex 3-1Q-32, Annex 3-2Q-32, Annex 3-3Q-31, Annex 3-4Q-30	4,516.07	709.49	22,575.57	22.36	27,823.49
32. Effects of forex on foreign currency denominated purchases of goods and services - overstatement.	Annex 3-1Q-33, Annex 3-2Q-33, Annex 3-3Q-32, Annex 3-4Q-31	111.21	372.50	2,446.92	11,886.17	14,816.80
33. Supporting documents not available for verification.	Annex 3-1Q-34, Annex 3-2Q-34, Annex 3-3Q-33, Annex 3-4Q-33	15,306.32	339,786.71	40,878.42	169,813.20	565,784.65
	Subtotal	**206,000.54**	**528,479.03**	**281,150.76**	**402,521.69**	**1,418,152.02**
TOTAL		**₱8,476,746.65**	**₱6,708,424.11**	**₱6,897,712.85**	**₱7,830,682.67**	**₱29,913,566.28**

Upon verification of the ICPA report together with the supporting documents, the Court finds that the input VAT in the total amount of ₱2,039,299.59 (₱621,147.57+₱1,418,152.02) should be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended by RA No. 9337, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05.

Therefore, out of petitioner's claimed input VAT for the CY 2007 in the amount of ₱29,913,566.28, only the amount of ₱27,874,266.69 represents petitioner's valid input VAT which shall be proportionately allocated to petitioner's sales to government and zero-rated sales, computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Valid Input VAT	**₱ 8,131,193.55**	**₱ 5,907,452.94**	**₱ 6,476,964.79**	**₱ 7,358,655.41**	**₱ 27,874,266.69**
Allocated to					
Sale to Government	₱ 716,026,606.13	₱ 690,359,485.72	₱ 674,068,415.69	₱ 633,994,324.09	₱2,714,448,831.63
Zero-rated Sales/Receipts	597,073,817.14	424,445,028.00	462,311,968.29	1,281,380,118.16	2,765,210,931.59
Total	₱1,313,100,423.27	₱1,114,804,513.72	₱1,136,380,383.98	₱1,915,374,442.25	₱5,479,659,763.22
Allocation Factor					
Sale to Government	54.529463%	61.926506%	59.317146%	33.100281%	
Zero-rated Sales/Receipts	45.470537%	38.073494%	40.682854%	66.899719%	
Input VAT Attributable to Sale to Government	₱ 4,433,896.16	₱ 3,658,279.21	₱ 3,841,950.68	₱ 2,435,735.62	₱ 14,369,861.67
Input VAT Attributable to Zero-rated Sales	**₱ 3,697,297.39**	**₱ 2,249,173.73**	**₱ 2,635,014.11**	**₱ 4,922,919.79**	**₱13,504,405.02**

Fifth Requisite: that the input taxes were not applied against any output VAT liability

Although the claimed input VAT of ₱14,453,440.28 was carried-over by petitioner in its succeeding Quarterly VAT Returns,[69] the same remained unutilized until it was deducted as "Any VAT Refund/TCC Claimed"[70] in its Quarterly VAT Return for the first quarter of CY 2009. Thus, the excess input VAT of ₱25,042,599.53[71] as of the end of the first quarter of CY 2009 which was to be carried-over to the succeeding second quarter of CY 2009[72] is no longer included the subject claim.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of TCC in the reduced amount of ₱13,504,405.02, representing its unutilized excess input VAT for the four quarters of CY 2007 which are attributable to its zero-rated sales for the same period.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is

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[69] First to Fourth Quarters of 2008 (Exhibits "H", "I", "J" & "K") and First Quarter of 2007 (Exhibit "L")
[70] Exhibit "L", Line 23D.
[71] Exhibit "L", Line 29, Total Amount Payable (Overpayment).
[72] Exhibit R-8.1.

ORDERED to refund petitioner or issue a TCC in its favor in the amount of ₱13,504,405.02, representing its unutilized excess input VAT for the four quarters of CY 2007.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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.

ERLINDA P. UY
Chairperson
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice