REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MD PANABO AGRI-VENTURES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10658

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
MAR 2 5 2025

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* prays that the Court:

1. Reverse and set aside the *VAT Refund Notice* dated August 5, 2021 issued by the respondent, through Assistant Commissioner (ACIR) Maria Luisa I. Belen, denying in full petitioner's value-added tax (VAT) refund application for being contrary to law and for its utter lack of merit; and,

2. Grant petitioner's claim for VAT refund in the amount of ₱5,260,894.41.[1]

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[1] Statement of the Case, Pre-Trial Order dated November 17, 2022, Docket – Vol. 6, p. 3263.

THE PARTIES

Petitioner MD Panabo Agri-Ventures, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws.[2] It is registered with Bureau of Internal Revenue (BIR) - Revenue District No. 112, under Taxpayer's Identification Number (TIN) 005-211-258-000, with address at Brgy. Kasilak, Panabo, Davao del Norte.[3]

Respondent Commissioner of Internal Revenue is the public officer duly authorized to decide cases involving claims for tax refund pursuant to Section 112(C) of the National Internal Revenue Code (NIRC).[4]

THE FACTS OF THE CASE

Petitioner filed its *Amended Quarterly VAT Returns* (BIR Form No. 2550-Q) for the 1st to 4th quarters of taxable year 2019 on the following dates through the BIR's Electronic Filing and Payment System (eFPS):

Period (Taxable Year 2019)	Date of Filing	Reference No.
1st Quarter (January 1 to March 31)[5]	August 11, 2020	102000037318089
2nd Quarter (April 1 to June 30)[6]	August 12, 2020	102000037341440
3rd Quarter (July 1 to September 30)[7]	August 11, 2020	102000037326300
4th Quarter (October 1 to December 31)[8]	August 13, 2020	102000037356367

On May 11, 2021, petitioner filed with the BIR VAT Credit Audit Division (BIR-VCAD) an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[9] for VAT refund, amounting to ₱7,561,458.39, for the period January 1, 2019 to December 31, 2019, with attached *Revised Checklist of Mandatory Requirements on Claims for VAT Credit/Refund*,[10] and *Taxpayer's Attestations*.[11]

Consequently, the *Tax Verification Notice* No. TVN201800143120 dated May 11, 2021 was issued to petitioner,[12] authorizing Revenue Officers Marjorie C. Dioso and Michelle J. Alonzo-Bucayu, to verify the supporting documents and/or pertinent records relative to petitioner's claim for VAT refund for the period covering the subject claim.

[2] Exhibits "P-2", Docket – Vol. I, pp. 43 to 54; Exhibits "P-12", "P-13", "P-14" and "P-15", BIR Records (Exhibit "R-6"), pp. 1 to 31.
[3] Exhibit "P-6", Docket – Vol. 7, p. 3504.
[4] Par. A, Admitted Fact, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 6, p. 3264.
[5] Exhibit "P-17", BIR Records (Exhibit "R-6"), pp. 40 to 41.
[6] Exhibit "P-17-1", BIR Records (Exhibit "R-6"), pp. 38 to 39.
[7] Exhibit "P-17-2", BIR Records (Exhibit "R-6"), pp. 36 to 37.
[8] Exhibit "P-17-3", BIR Records (Exhibit "R-6"), pp. 34 to 35.
[9] Exhibit "P-16", BIR Records (Exhibit "R-6"), p. 117.
[10] Exhibit "R-2", BIR Records (Exhibit "R-6"), p. 116.
[11] Exhibit "P-24", BIR Records (Exhibit "R-6"), pp. 112 to 115.
[12] Exhibit "R-1", BIR Records (Exhibit "R-6"), p. 119.

On October 4, 2021, petitioner received the letter (*VAT Refund Notice*) dated August 5, 2021,[13] signed by Assistant Commissioner Maria Luisa I. Belen, denying its application for refund.

The present *Petition for Review* was filed on October 29, 2021.[14]

After an extension was granted,[15] respondent posted his *Answer* on February 2, 2022,[16] interposing certain special and affirmative defenses, to wit: (1) petitioner's claim for refund in the amount of ₱5,260,894.41, representing alleged unutilized input VAT for taxable year 2019 were not fully substantiated by proper documents; (2) the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; (3) the claim for tax refund must be denied due to petitioner's failure to comply with the requirements in Section 238 of the Tax Code, as amended; and (4) partaking the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

On February 23, 2022, petitioner filed its *Reply*.[17]

Respondent transmitted the *BIR Records* of the case, consisting of 404 pages in one (1) folder, on March 11, 2022.[18]

In view of the parties' failure to reach an agreement before the Philippine Mediation Center-Court of Tax Appeals, the Pre-Trial Conference was set on July 7, 2022.[19] However, the same was reset to,[20] and held on, September 29, 2022.[21] Prior thereto, the *Pre-Trial Brief for Petitioner* was filed on September 23, 2022,[22] while *Respondent's Pre-Trial Brief* was submitted on September 27, 2022.[23]

On November 2, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[24] which was admitted and approved in the Resolution dated November 10, 2022,[25] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated November 17, 2022 was then issued.[26]

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[13] Exhibits "P-1" and "R-5", Docket – Vol. I, pp. 38 to 42.
[14] Docket – Vol. I, pp. 5 to 33.
[15] *Motion for Extension of Time to File Answer*, Docket – Vol. 6, pp. 2813 to 2816; Resolution dated February 9, 2022, Docket – Vol. 6, p. 2819.
[16] Docket – Vol. 6, pp. 2837 to 2846.
[17] Docket – Vol. 6, pp. 2828 to 2835.
[18] *Compliance* dated March 10, 2022, Docket – Vol. 6, pp. 2862 to 2864.
[19] Resolution dated March 18, 2022, Docket – Vol. 6, pp. 2868 to 2870.
[20] Notice of Resetting dated June 29, 2022, Docket – Vol. 6, p. 2896.
[21] Minutes of the hearing held on, and Order dated, September 29, 2022, Docket – Vol. 6, pp. 3210 to 3212.
[22] Docket – Vol. 6, pp. 2897 to 2922.
[23] Docket – Vol. 6, pp. 3203 to 3206.
[24] Docket – Vol. 6, pp. 3219 to 3226.
[25] Docket – Vol. 6, pp. 3241 to 3242.
[26] Docket – Vol. 6, pp. 3263 to 3270.

Trial then ensued, with the parties presenting their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Sharon D. Sido,[27] petitioner's Accounting Manager; (2) Mr. Marlon D. Dumail,[28] petitioner's Information and Communication Technology (ICT) Department Manager; (3) Mr. Joseph P. Basquina,[29] petitioner's Senior Accounting Staff; and (4) Mr. Peter Raymond T. Santos,[30] the Court-commissioned independent certified public accountant (ICPA).[31]

The *Report* of the said ICPA was submitted on January 4, 2023.[32]

On March 22, 2023, petitioner filed its *Formal Offer of Evidence* (FOE),[33] to which respondent filed his *Comment (to Petitioner's Formal Offer of Evidence)* on March 27, 2023.[34] Petitioner then filed a *Reply (Re: Respondent's Comment to Petitioner's Formal Offer of Evidence)* on April 4, 2023.[35] In the Resolution dated July 13, 2023,[36] the Court deferred the resolution of petitioner's FOE until after the submission of certain duly marked exhibits or the lapse of the period granted for such purpose.

Petitioner's *Compliance/Manifestation [To the Resolution dated 13 July 2023]* was then filed on July 27, 2023.[37] In the Resolution dated September 8, 2023,[38] the Court admitted petitioner's exhibits, *except* Exhibits "P-47", "P-48", "P-49", "P-50" and "P-51", as the marked copies of the same could not be found in either the docket of the case or the BIR Records.

For his part, respondent offered the testimony of Revenue Officer Jayson B. Gordovez.[39]

On November 24, 2023, respondent filed his *Formal Offer of Evidence.*[40] Petitioner failed to file its *Comment (to Respondent's Formal Offer of Evidence)* on

[27] *Judicial Affidavit of Sharon D. Sido*, Docket – Vol. 6, pp. 2924 to 2937; Minutes of the hearing held on, and Order dated, February 7, 2023, Docket – Vol. 6, pp. 3368 to 3370.

[28] *Judicial Affidavit of Marlon D. Dumail*, Docket – Vol. 6, pp. 2982 to 2990; Minutes of the hearing held on, and Order dated, February 7, 2023, Docket – Vol. 6, pp. 3368 to 3370.

[29] *Judicial Affidavit of Joseph P. Basquina*, Docket – Vol. 6, pp. 3006 to 3016; Minutes of the hearing held on, and Order dated, March 7, 2023, Docket – Vol. 7, pp. 3373 to 3375.

[30] *Judicial Affidavit of Peter Raymond T. Santos*, Docket – Vol. 7, pp. 3376 to 3391; Minutes of the hearing held on, and Order dated, March 7, 2023, Docket – Vol. 7, pp. 3373 to 3375.

[31] *Oath of Commission* dated November 17, 2022, Docket – Vol. 6, p. 3273; Minutes of the hearing held on, and Order dated, November 17, 2022, Docket – Vol. 6, pp. 3271 and 3276 to 3277, respectively.

[32] Letter dated January 3, 2023, and Exhibit "P-52", Docket – Vol. 6, pp. 3280 to 3355.

[33] Docket – Vol. 7, pp. 3472 to 3496.

[34] Docket – Vol. 7, pp. 3468 to 3470.

[35] Docket – Vol. 7, pp. 3462 to 3466.

[36] Docket – Vol. 7, pp. 3566 to 3567.

[37] Docket – Vol. 7, pp. 3572 to 3574.

[38] Docket – Vol. 7, pp. 3577 to 3578.

[39] Exhibit "R-7", Docket – Vol. 6, pp. 2889 to 2894; Minutes of the hearing held on, and Order dated, November 9, 2023, Docket – Vol. 7, pp. 3579 to 3581.

[40] Docket – Vol. 7, pp. 3582 to 3585.

December 12, 2023.[41] In the Resolution dated February 16, 2024,[42] the Court admitted all of respondent's offered exhibits.

In view of respondent's *Manifestation* that he will adopt the arguments in his *Answer* as his Memorandum,[43] and petitioner's *Memorandum*,[44] separately filed on April 1, 2024, the present case was considered submitted for decision on April 11, 2024.[45]

THE STIPULATED ISSUE

The issue for this Court's resolution is "Whether the Petitioner is entitled to refund of alleged excess and unutilized input VAT for taxable year 2019 in the amount of Five Million Two Hundred Sixty Thousand Eight Hundred Ninety-Four and 41/100 Pesos (PhP5,260,894.41)." [46]

Petitioner's arguments:

Petitioner argues that it is entitled to a VAT refund for taxable year 2019 in the amount of ₱5,260,894.41; that it complied with all the requisites of a valid refund; that it submitted all the required documents to support its application for refund; that it issued valid invoices for its zero-rated transactions pursuant to a valid Permit to Use Computerized Accounting System (PTU CAS) and are compliant with Sections 237 and 238 of the Tax Code; and that the modification of the header of system generated sales invoice (SI) from *"Charge Sales Invoice"* to *"Commercial Invoice"* does not constitute a system enhancement that resulted in the change in the system's release and/or version number that warrants automatic revocation of petitioner's PTU CAS.

Respondent's counter-arguments:

In his *Answer*, respondent contends that petitioner's claim for refund in the amount of ₱5,260,894.41, representing alleged unutilized input VAT for taxable year 2019 were not fully substantiated by proper documents; that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; that the claim for tax refund must be denied due to petitioner's failure to comply with the requirements in Section 238 of the Tax Code, as amended; and that partaking the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

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[41] Docket – Vol. 7, pp. 3588 to 3592.
[42] Docket – Vol. 7, pp. 3595 to 3596.
[43] Docket – Vol. 7, pp. 3597 to 3599.
[44] Docket - Vol. 7, pp. 3601 to 3635.
[45] Minute Resolution dated April 11, 2024, Docket – Vol. 7, p. 3640.
[46] Issue to be Resolved, JSFI, Docket – Vol. 6, p. 3220.

THE COURT'S RULING

The present *Petition for Review* must be denied.

Requisites for the grant of the refund or issuance of tax credit certificate under the law.

Section 112 of the NIRC of 1997, as last amended by Republic Act (RA) No. 10963,[47] provides, in part, 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant

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[47] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Based on the foregoing provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[48]

2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 90-day period;[49]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[50]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[51]

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

[49] Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water And Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue*, *supra*.

[51] *Id.*

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[52] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and regulations;[53]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[54]

7. the input taxes are due or paid;[55]

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[56] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[57]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.[58] Thus, petitioner's compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales.[59] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[60] Moreover, it must be pointed out that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[61]

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the

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[52]Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

[53] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue, supra.*

[54] *Id.*

[55] *Id.*

[56] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

[57] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

[58] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

[59] *J.R.A. Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.

[60] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

[61] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[62]

Furthermore, it must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove every minute aspect of their case.[63] Thus, it behooves petitioner to show compliance with each of the foregoing requisites and invoicing requirements. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.

Petitioner's administrative and judicial claims were timely filed.

The *first* requisite provided in Section 112(A) of the NIRC of 1997, as amended, commands the taxpayer to file an administrative claim for input VAT refund within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 1st to 4th quarters of taxable year 2019. Counting two (2) years from the close of the subject taxable quarters, petitioner had until the following respective dates to file its administrative claim, *viz*:

Period Covered (2019)	Close of Taxable Quarter	Last Day to File Administrative Claim
1st Quarter	March 31, 2019	March 31, 2021
2nd Quarter	June 30, 2019	June 30, 2021
3rd Quarter	September 30, 2019	September 30, 2021
4th Quarter	December 31, 2019	December 31, 2021

However, in view of the COVID-19 pandemic and pursuant to Section 4(tt) of RA No. 11494[64] signed into law on September 11, 2020, the statutory deadlines and timeliness for the filling and submission of any document were extended, to wit:

> "(tt) Moving of statutory deadlines and timelines for the filing and submission of any document, the payment of taxes, fees, and

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[62] *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, supra.

[63] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[64] AN ACT PROVIDING FOR COVID-19 RESPONSE AND RECOVERY INTERVENTIONS AND PROVIDING MECHANISMS TO ACCELERATE THE RECOVERY AND BOLSTER THE RESILIENCY OF THE PHILIPPINE ECONOMY, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, otherwise known as *"Bayanihan to Recover As One Act"*.

other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under CQ[65];"

To implement the same, Revenue Regulations (RR) No. 27-2020[66] dated October 6, 2020 was issued, where Section 5 thereof provides, in part, that "[i]f the deadline for the filing of the VAT refund claim falls within the ECQ or MECQ period, filing of the claim shall be extended for thirty (30) days after the lifting of the ECQ or MECQ. This applies to the affected areas of the processing offices or to the registered business address of the taxpayer-claimant where the restrictions are strictly enforced."

In relation thereto, Revenue Memorandum Circular (RMC) No. 39-2021[67] dated March 18, 2021 provides that "xxx following the temporary closure of VCAD until March 28, 2021, in compliance with the existing health protocols for the mitigation of the COVID-19 pandemic, the filing of VAT Refund, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021."

Thereafter, RMC No. 45-2021[68] was issued on April 5, 2021, which provides that the extended deadline for filing of VAT refund applications with the VCAD which falls due on April 12, 2021 per RMC No. 39-2021 is thirty (30) days from the lifting of the ECQ (Enhanced Community Quarantine).

The National Capital Region (NCR), among others, was then placed under Modified Enhanced Community Quarantine (MECQ) from April 12, 2021 to April 30, 2021, and from May 1, 2021 to May 14, 2021, pursuant to the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) Resolution Nos. 109-A dated April 10, 2021, and 113-A dated April 29, 2021, respectively.

Thereafter, the NCR, among others, was then placed under General Community Quarantine (GCQ), starting May 15, 2021 until May 31, 2021, pursuant to IATF Resolution No. 115-A dated May 13, 2021.

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[65] Community Quarantine.

[66] SUBJECT: Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the Tax Code of 1997, as Amended, in Relation to Section 4 (tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".

[67] SUBJECT: Extension of the Deadline for the Filing of Applications and Suspension of the Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Pursuant to Section 112 of the Tax Code of 1997, as Amended by the R.A. No. 10963 (TRAIN Law) with the VAT Credit Audit Division (VCAD).

[68] SUBJECT: Extension of the Deadline for the Filing of Position Papers, Replies, Protests, Documents and Other Similar Letters and Correspondences in Relation to Ongoing BIR Audit Investigations, and Filing of VAT Refund with VAT Credit Audit Division (VCAD).

Hence, petitioner's administrative claim for refund for the subject period was timely filed on May 11, 2021.[69] Notably, the administrative claim for refund relative to the 1st quarter of taxable year 2019 was filed within the extended deadline.

The *second* requisite stated in Section 112(C) of the NIRC of 1997, as amended, grants the BIR a period of ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund, in turn, the taxpayer may appeal to the Court within thirty (30) days from receipt of the decision denying its claim or after the lapse of the said ninety (90)-day period.

As already noted, the administrative claim was filed by petitioner on May 11, 2021. Accordingly, respondent had ninety (90) days therefrom, or until August 9, 2021, within which to decide on petitioner's claim for refund.

However, applying Revenue Regulations No. 27-2020 and pursuant to IATF Resolution No. 130-A, since the risk classification of the National Capital Region (NCR) was elevated to ECQ beginning August 6, 2021, and considering that the 90-day period was originally set to expire on August 9, 2021, the 90-day period was effectively suspended and only resumed 30 days from September 16, 2021, when the MECQ status was lifted on October 16, 2021. Thus, petitioner had thirty (30) days from receipt thereof, or until November 15, 2021, to file an appeal before this Court. The present *Petition for Review* was filed on October 29, 2021.[70] Correspondingly, petitioner's judicial claim for refund was likewise timely instituted.

Given the foregoing, petitioner complied with the above-stated *first* and *second* requisites.

Petitioner is a VAT-registered entity.

Petitioner fulfilled the *third* requisite considering that it is a VAT-registered taxpayer with TIN 005-211-258-000, as shown in its *BIR Certificate of Registration* No. OCN 2RC0001113617.[71]

Petitioner failed to establish that it was engaged in zero-rated sales during the taxable year 2019.

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[69] Exhibits "P-16", "R-2" and "P-24", BIR records (Exhibit "R-6"), pp. 113 to 117.

[70] Docket – Vol. I, pp. 5 to 33.

[71] Exhibit "P-6", Docket – Vol. 7, p. 3504.

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

Petitioner was established with the primary purpose: "*to develop, manage, own, lease and operate agricultural lands, pasture lands, ranches, fishponds; to engage in the planting and cultivation of bananas and other farm products; to engage in the raising, breeding, cross-breeding, fattening and pasturing of cattle, hog, poultry and similar stocks; and in general undertake or carry on all kinds of studies, experiments, cultivation, storage, and trading in all kinds of agricultural, livestock and fishery products and its by-products in the Philippines or elsewhere*".[72]

Petitioner claims that during its years of operations, it focused on growing Cavendish bananas which were heavily exported to the Japanese market.[73] Thus, petitioner believes that it is engaged in zero-rated export sales covered by Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended,[74] which reads as follows:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — xxx
>
> (1) xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

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

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

[72] Exhibit "P-2", Docket – Vol. I, pp. 43 to 54; Exhibit "P-13", BIR Records (Exhibit "R-6"), pp. 23 to 30.
[73] Par. 11, Statement of Facts and Antecedent Proceedings, *Memorandum*, Docket – Vol. 7, p. 3603
[74] Par. 54.3, Discussion, *Memorandum*, Docket – Vol. 7, p. 3614.

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

As for the *first* essential element, it has been settled that petitioner is a VAT-registered entity, as already discussed in the *third* requisite.

Parenthetically, it is noted that petitioner is also registered with the Bureau of Customs (BOC) having been issued with *BOC Certificate of Registration* dated April 30, 2018.[75] It is likewise a Board of Investment (BOI)-registered entity as evidenced by *Certificate of Registration* No. 2019-266 dated December 2, 2019;[76] and a Department of Trade and Industry (DTI)-registered entity per *Certificate of Accreditation* issued on January 4, 2019.[77]

Relative to the *second* essential element is Section 113(A) and (B) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005,[78] as amended, which provide that any VAT-registered person claiming VAT zero-rated or considered export sales must present, at the minimum, the following supporting documents:

1. **VAT sales invoice** as proof of sale of goods; and
2. Bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Section 113(A) and (B) of the NIRC of 1997, as amended, and Section 4.113-1(A) and (B) of RR No. 16-2005, are quoted hereunder for easy reference, to wit:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

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[75] Exhibit "P-3", Docket – Vol. 7, p. 3498.
[76] Exhibit "P-5", Docket – Vol. 7, p. 3500.
[77] Exhibit "P-4", Docket – Vol. 7, p. 3499.
[78] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

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

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

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

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

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

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

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

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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

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

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

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

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

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section."

In addition to the above requirements, the sales invoices and official receipts supporting the export sales must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended, *viz*.:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* —

(A) *Issuance.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at One hundred pesos (P100.00) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

xxx xxx xxx

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

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

In its *Amended Quarterly VAT Returns* (BIR Form No. 2550-Q) for the taxable year 2019,[79] petitioner declared total sales in the amount of ₱369,647,378.97, which includes zero-rated sales in the amount of ₱363,969,751.30, as shown below:

Taxable year 2019	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**TOTAL**
Vatable sales	₱ 798,002.33	₱ 1,823,553.50	₱ 2,459,720.67	₱ 596,351.17	₱ 5,677,627.67
Zero-rated sales	69,899,236.51	110,876,340.84	87,600,444.89	95,593,729.06	363,969,751.30
Exempt sales	0.00	0.00	0.00	0.00	0.00
Total Sales	**₱ 70,697,238.84**	**₱112,699,894.34**	**₱90,060,165.56**	**₱96,190,080.23**	**₱369,647,378.97**

[79] Exhibits "P-17" to "P-17-3", BIR Records (Exhibit "R-6"), pp. 34 to 41.

As already noted, in the letter dated August 5, 2021,[80] respondent denied in full petitioner's claim for input VAT refund amounting to ₱7,561,458.39, for taxable year 2019. The BIR explained therein the reasons for the denial of the refund claim, *viz.*:

> "Evaluation and verification of the subject claim was conducted based on the documents submitted upon filing of the application for VAT refund, as mandated under Section 11 of Revenue Memorandum Order (RMO) No. 47-2020, the following vital observations were noted, to wit:
>
> **1.** Deductions from claim:
>
> | | |
> |---|---|
> | Disallowed input tax due to non-compliance with the invoicing requirements | Php 36,069.34 |
> | Discrepancy of claimed input tax per application and per documents submitted | 133,918.33 |
> | Over-claimed input tax | 2,012,032.19 |
> | Allocate input tax on unremitted export sales | 118,544.12 |
> | **Total Deductions from Claim** | **Php2,300,563.98** |
>
> **2.** Facts of your case disclosed that there was an issued Permit to Use (PTU) Computerized Accounting System (CAS) No. **1810_0112_PTU_CAS_000350** approved on **October 10, 2018**. The said permit covers your complete CAS, computerized books of accounts and the use/printing of system-generated accounting records, which include among others the issuance of **CHARGE INVOICES with serial range from 0000001 to 9999999**. Issuance of the abovementioned CAS Permit was likewise verified and affirmed by the Assistant Commissioner, Client Support Service. However, scrutiny and analysis of pertinent documents revealed that you **issued Commercial Invoices for your sale of goods for taxable year 2019**, instead of Charge Invoices notwithstanding that the said CAS Permit approved the issuance of the latter and not otherwise.
>
> Section V(P) of RMO No. 29-2002 in relation to RMO No. 21-2000 stipulates that **a taxpayer shall apply for a new permit to use CAS in case of any system enhancement that shall result in change in systems release** and/or version number. **In case a taxpayer is found using an enhanced system without the approval of the BIR, the permit originally issued shall be deemed automatically revoked from the time the enhanced system is adopted**. Conversely, **you were not able to show documents to prove whether an enhancement and/or modification on the said CAS Permit was requested from and approved by the concerned RDO relative to the foregoing concern.**
>
> xxx.
>
> Clearly in your case, the Commercial Invoices not covered by the BIR approved CAS Permit have no probative, and are likewise deemed secondary corroborating documents only pursuant to the afore-cited RMC. Hence, you were not able to comply with one of the requisites in establishing VAT zero-rated sales, which is the issuance of a valid Sales Invoices for your alleged zero-rated sale of goods. In this regard, you were not able to prove its zero-rated sales amounting to **Php363,969,751.30.**

N

[80] Exhibits "P-1" and "R-5", Docket – Vol. 1, pp. 38 to 42.

xxx."

Considering that petitioner is already amenable to respondent's disallowance of its input VAT in the total amount of Php2,300,563.98, petitioner therefore only assails in the present *Petition* the denial of its input VAT amounting to ₱5,260,894.41, which pertain to the above disallowed zero-rated sales of ₱363,969,751.30 due to the alleged issuance of invalid sales invoices.

In construing the term "system enhancement", petitioner invokes Section II.AA of Revenue Memorandum Order (RMO) No. 29-2002[81] and advances that renaming of the header of the invoice – from "Charge Invoice" to "Commercial Invoice" – is not considered a change or modification in the system software or architecture components of the CAS so as to constitute system enhancement.[82]

To support its position, petitioner offered the testimony of Mr. Marlon D. Dumail, the Manager of the ICT Department of petitioner, through his Judicial Affidavit, as follows:[83]

"Q11: You mentioned that you prepared a document entitled 'Computerized Accounting System (CAS) No Enhancement Narrative Report'. If shown a copy of this Report, will you be able to identify the same?

A11: Yes.

Q12: I am showing you a copy of the Computerized Accounting System (CAS) No Enhancement Narrative Report. What is the relationship of this document to the one you are referring to?

A12: That is the same Report that I am referring to.

xxx.

Q14: You mentioned in the Report that changing the header of Petitioner's system-generated sales invoices does not constitute a system enhancement on Petitioner's CAS, what do you mean by this?

A14: System enhancement is defined in Section II.AA of RMO No. 29-2002 as 'any change or modification in the system software or architecture components of a computerized application system that will add value or further improve the system.'

In the case of Petitioner's CAS, changing the header name of the system-generated sales invoices does not add value nor improve the Petitioner's CAS.

To elaborate, all data entry changes in the financial system are covered by the audit trail log. This audit trail log is illustrated at the Annex C of the Report. On the other hand, the change in the header of the sales invoices from 'Charge Sales Invoice' to 'Commercial Invoice' is 'coded' in the programming 'stored procedure programmability' and used at program runtime. This 'stored

[81] Par. 68, Discussion, *Memorandum*, Docket – Vol. 7, p. 3622.
[82] Par. 71, Discussion, *Memorandum*, Docket – Vol. 7, p. 3622.
[83] *Judicial Affidavit of Marlon D. Dumail*, Docket – Vol. 6, pp. 2986 to 2988.

procedure programmability' can be seen at Annex D of the Report. The 'stored procedure programmability' only defines the display or presentation of the 'table' of contents on the user's interface, which includes the form headers and print layout. Hence, changes in the header of the system-generated sales invoices will not affect the contents of the underlying modules and sub modules within the accounting system. Further, this will not also affect the integral recognition and computation of all financial transactions.

Put simply, changing the header of the system-generated sales invoice from 'Charge Sales Invoice' to 'Commercial Invoice' is simply a nominal or formal change which adds no value nor improvement in the system.

Q15: Aside from not being a system enhancement as defined under Section II.AA of RMO No. 29-2002, what other issues, if any, were covered and clarified by your Report?

A15: The amendment of the header is a modification that does not result in change in the systems release and/or version number of Petitioner's CAS. As illustrated in Annex B of our Report, despite said modification, Petitioner's CAS remains to be SAP Business One, version 9.2 (9.20.170) PL:07 (32-bit), released on 06 October 2017.

Q16: What else can you say about said modification, if any?

A16: The modification in the heading of the system-generated sales invoice does not affect the financial aspect of the CAS.

In fact, side-by-side comparison of the Charge Sales Invoice submitted by Petitioner during its CAS application and the Commercial Invoice later issued to its clients would show that both are the same on all material respects. No improvements or substantial modifications on the contents of the invoice were made.

xxx."

We agree with petitioner.

Section II.AA of RMO No. 29-2002,[84] defines "system enhancement" as any change or modification in the system software or architecture components of a computerized application system that will add value or further improve the system.

Relative thereto, Section V(P) of the same Rule states that the taxpayer shall apply for a new permit to use CAS in case of any system enhancement that shall result in change in systems release and/or version number. In case a taxpayer is found using an enhanced system without the approval of the BIR, the permit originally issued shall be deemed automatically revoked from the time the enhanced system is adopted.

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[84] SUBJECT: Revised Procedures in the Processing and Approval of Application for Permit to Adopt Computerized Accounting System (CAS) or Components Thereof Amending RMO No. 21-2000.

In this case, the PTU CAS No. 1810_0112_PTU_CAS_000350 issued on October 10, 2018 to petitioner indicates the following approved software/system description:[85]

> "Main Software/Core System
>
> Software Name SAP Business One
> Version Number Version 9.2 PL 07
> Release No. and/or Date 2017"

Clearly, the above version and release number remain to be used by petitioner despite the change in the header name of its invoice as presented in its *Computerized Accounting System (CAS) No Enhancement Narrative Report.*[86]

Considering the explanation of petitioner's witness, coupled with the documentary evidence presented, petitioner was able to show that the change in the header name of its invoice from "Charge Invoice" to "Commercial Invoice" do not constitute system enhancement that will require a new PTU CAS Permit from the BIR.

However, to this Court's mind, whether petitioner had a "system enhancement" is of no moment.

The Court still finds the commercial invoices presented by petitioner insufficient to support its VAT zero-rating sales transactions since these are only supplementary documents vis-à-vis charge sales invoice which is a principal document, as respectively defined in RR No. 18-2012,[87] which implements the aforequoted Section 237 of the NIRC of 1997, as amended, to wit:

> "2. **PRINCIPAL RECEIPTS/INVOICES** – for purposes of this regulations, it is written account evidencing the sale of goods and/or services issued to customers in an ordinary course of business which necessary includes the following:
>
> **2.1** **<u>VAT SALES INVOICE</u>** – for purposes of Value Added Tax (VAT) pursuant to Section 106 of the NIRC, as amended, **it is a written account evidencing the sale of goods and/or properties issued to customers in an ordinary course of business, whether cash sales or on account (credit) <u>which shall be the basis of the output tax liability of the seller</u>** and the input tax claim of the

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[85] Exhibit 'P-10", Docket – Vol. 7, pp. 3514 to 3519.
[86] Exhibit "P-45", Docket – Vol. 7, pp. 3549 to 3559.
[87] SUBJECT: Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof.

buyer. **Cash Sales Invoices and Charge Sales Invoices fall under this definition.**

xxx

3. **SUPPLEMENTARY RECEIPTS/INVOICES** — for purposes of these Regulations, these are also known as **COMMERCIAL INVOICES**. It is a written account evidencing that a transaction has been made between the seller and the buyer of goods and/or services, forming part of the books of accounts of a business taxpayer for recording, monitoring and control purposes.

   It is a document evidencing delivery, agreement to sell or transfer of goods and services which includes but are not limited to delivery receipts, order slips, debit and/or credit memo, purchase order, job order, provisional/temporary receipt, acknowledgement receipt, collection receipt, cash receipt, bill of lading, billing statement, statement of account, and any other documents, by whatever name it is known or called, whether prepared manually (handwritten information) or pre-printed/pre-numbered loose-leaf (information typed using excel program or typewriter) or computerized as long as it is used in the ordinary course of business being issued to customers or otherwise.

   Supplementary receipts/invoices, for purposes of Value-Added Tax, are not valid proof to support the claim of Input Taxes by buyers of goods and/or services." *(Emphases and underscoring added)*

Relative thereto, RMC No. 2-2014[88] provides as follows:

"Revenue Regulations No. 18-2012, Revenue Memorandum Order (RMO) No. 12-2013 in relation to Sections 106, 108, 113 and other pertinent provisions of the National Internal Revenue Code (NIRC), as amended, mandate that:

1. **Sales Invoice (Cash or Charge)** shall be issued as *Principal* evidence in the *sale of goods and/or properties*;
2. **Official Receipt** shall be issued as *Principal* evidence in the *sale of services and/or lease of properties*; and
3. **Commercial Receipts/Invoices** such as delivery receipts, order slips, purchase orders, provisional receipts, acknowledgment receipts, collection receipts, credit/debit memo, job orders and other similar documents that form

[88] SUBJECT: Clarification on the Issuance of Official Receipt as Required by Government Auditors as Evidence of Receipt of Payment for Disbursements Where the Payee/Recipient is a Dealer, Supplier or Any Business Establishment Required by the Bureau of Internal Revenue to Issue Such.

> part of the accounting records of the taxpayer and/or issued to their customers evidencing delivery, agreement to sell or transfer of goods and services, shall be *Supplementary* evidence only.
>
> xxx.
>
> In view thereof, this Circular is hereby issued to reiterate that the provisions set forth in **RR No. 18-2012** and RMO No. 12-2013, in the issuance of Principal and/or Supplementary Receipts/Invoices in the ordinary course of business and the consequent examination of evidence of receipt of payment, shall be **strictly observed**." *(Emphases and underscoring added)*

Prescinding from above, a **commercial invoice** has the following characteristics:

(1) It is a document evidencing delivery, agreement to sell or transfer of goods and services;

(2) It is for recording, monitoring and control purposes of the taxpayer; and

(3) It is not valid proof to support the claim of input tax.

In contrast, a **charge sales** invoice falls under the category of a "VAT SALES INVOICE", since it is a written account evidencing the sale of goods and/or properties issued to customers in an ordinary course of business, which shall be the basis of the output tax liability of the seller and the input tax claim of the buyer.

Correspondingly, it is clear that only sales invoices (whether cash or charge) shall be issued and considered as principal evidence for sale of goods and/or properties which shall be the basis of the output tax liability of the seller (whether 12% or 0%). Thus, for the purpose of VAT zero rating, the commercial invoices issued by petitioner do not suffice since these are mere supplementary documents. In other words, the said commercial invoices, being merely considered as supplementary receipts/invoices, cannot be treated as equivalent to "VAT SALES INVOICE" or as proof of zero-rated sales.

Verily, petitioner failed to show compliance with the aforementioned *second* essential element and *fourth* requisite. In other words, it has fallen short in establishing that its sales of goods qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Considering petitioner's failure to establish its zero-rated or effectively zero-rated sales for the 1st to 4th quarters of taxable year 2019, the present *Petition for Review* must necessarily fail. Hence, it becomes unnecessary to look into petitioner's compliance with the other remaining requisites.

As final note, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[89] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[90] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[91] Strict adherence to the conditions prescribed by law is required of the taxpayer.[92]

WHEREFORE, in light of the foregoing disquisition, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[89] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[90] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.
[91] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015, *citing J.R.A. Philippines, Inc. vs. CIR*, G.R. No. 171307, August 28, 2013.
[92] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019.

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.

MA. BELEN M. RINGPIS-LIBAN
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