REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

CBK POWER COMPANY LIMITED, *Petitioner,*	**CTA CASE NOS. 8246 & 8302** (CTA *EB* No. 1225) (G.R. Nos. 203054-55)
- versus -	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 0 2 2018 10:00 a.m.

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AMENDED DECISION

BAUTISTA, J.:

The Case

Submitted anew for decision is the Petition for Review docketed as CTA Case No. 8246[1] which prays that judgment be rendered ordering respondent to issue a tax credit certificate ("TCC") in the amount of Php17,784,968.91, representing unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, including unutilized amortized input taxes on capital goods exceeding Php1,000,000.00 for the period January 1, 2009 to March 31, 2009, all attributable to zero-rated sales for the same period.[2]

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[1] *Records, CTA Case No. 8246, Vol. 1, Petition for Review ("PFR"),* pp. 1-49, with annexes. N.B. CTA Case No. 8302 was considered closed and terminated by virtue of the Court's Resolution dated February 25, 2017.

[2] *Records, CTA Case No. 8246, PFR, Vol. 1, Prayer,* p. 14.

The Parties[3]

On one hand, petitioner is a partnership duly organized and existing under and by virtue of laws of the Philippines, with principal office at the National Power Corporation Compound, Kalayaan, Laguna.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to act as such, including, *inter alia,* the power to decide, approve, and grant refunds or tax credits of erroneously or illegally collected internal revenue taxes, as provided by law, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

The Facts

The Court in Division reiterates the relevant facts[4] of the case as held in the Decision dated June 10, 2014 ("Original Decision"), as follows:

> On November 26, 2010, petitioner filed with the BIR Revenue District Office No. 55 of Laguna, its administrative claim in the amount of [Php]17,784,968.91, for unutilized input taxes on local purchases and importations of goods other than capital goods, local purchases of services, payments for services rendered by non-residents, including unutilized amortized input taxes on capital goods covering the period from January 1, 2009 to March 31, 2009.
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> Also, on February 24, 2011, petitioner filed with the BIR Large Taxpayers Service, Revenue District Office No. 121, BIR National Office Building, Agham Road, Diliman, Quezon City, its administrative claim in the amount of [Php]31,680,290.87, for unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, including unutilized amortized input taxes on capital goods covering the period from April 1, 2009 to June 30, 2009.

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[3] *Records, CTA Case No. 8246, Vol. 3, Decision, Facts of the Case,* p. 1817.
[4] *Id.* at 1817-1823.

> Due to respondent's inaction, on March 30, 2011, petitioner filed a Petition for Review, docketed as *CTA Case No. 8246*, regarding its claim in the amount of [Php]17,784,968.91, covering the period from January 1, 2009 to March 31, 2009.
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> On June 27, 2011, respondent filed her Answer, interposing the following Special and Affirmative Defenses:
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> xxx xxx xxx
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> On the other hand, on June 28, 2011, petitioner filed another Petition for Review, docketed as *CTA Case No. 8302*, regarding its claim in the amount of [Php]31,680,290.87, covering the period from April 1, 2009 to June 30, 2009.
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> On September 2, 2011, respondent filed her Answer, interposing the following:
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> xxx xxx xxx
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> On October 14, 2011, the Court ordered the consolidation of *CTA Case No. 8302*, with *CTA Case No. 8246*, pursuant to Section 1 of Rule 31 of the 1997 Rules of Civil Procedure:
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> On December 1, 2011, for failure of respondent to appear during Pre-Trial, and upon motion of petitioner, the Court declared the former as in default and allowed the latter to present its evidence *ex-parte*. The same was confirmed in a Resolution dated December 23, 2011.

On January 6, 2012, respondent filed a Motion to Lift Order of Default[5]; which was denied[6] by the Court on April 19, 2012. Thereafter, respondent filed a Motion for Reconsideration[7], which was also denied by the Court in a Resolution[8] dated June 13, 2012.

On August 17, 2012, respondent filed by registered mail, a Petition for *Certiorari*[9] before the Supreme Court, docketed as G.R. Nos. 203054-55, entitled *"Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company, Limited,"* praying that the Court's Resolutions dated December 23, 2011, April 19, 2012, and June 13, 2012, be nullified and set aside.

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[5] *Records, CTA Case No. 8246, Vol. 1, Motion to Lift Order of Default,* pp. 133-137.
[6] *Id., Vol. 2, Resolution,* pp. 576-577.
[7] *Id., Motion for Reconsideration,* pp. 578-582.
[8] *Id., Resolution,* p. 587-588.
[9] *Id., Petition for Certiorari,* pp. 671-718, with annexes.

Meanwhile, in view of the Court's denial of respondent's Motion for Reconsideration, petitioner was allowed to present its evidence *ex-parte*. Thus, petitioner presented the following witnesses: *(1)* petitioner's Chief Financial Officer Mr. Fernando J. Dela Paz[10] on July 31, 2012[11] ("Mr. Dela Paz"); *(2)* petitioner's Accounting Manager Mr. Joey L. Polintan[12] ("Mr. Polintan") on August 30, 2012[13]; and *(3)* the Court-commissioned Independent Certified Public Accountant ("ICPA") Ms. Myra Celeste O. Dabalos[14] ("ICPA Dabalos") on January 31, 2013[15] .

On October 11, 2012, the Supreme Court issued a Resolution[16] requiring the CTA and petitioner (respondents in *G.R. Nos. 203054-55*) to file their comments on the Petition for *Certiorari* filed by respondent. Petitioner filed its Comment on/Opposition to the Commissioner of Internal Revenue's Petition for *Certiorari* Under Rule 65 of the 1997 Revised Rules of Court Dated August 15, 2012[17] on December 7, 2012.

On April 8, 2013, petitioner filed a Motion for Leave of Court to File Attached Amended Petition for Review for *CTA Case No. 8302*, entitled, *"CBK Power Company Limited vs. Commissioner of Internal Revenue"*[18]; which was granted[19] by the Court on May 2, 2013.

Records show that the Court in Division promulgated a Decision[20] on June 10, 2014, with the dispositive portion[21] reading as follows:

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[10] *Records, CTA Case No. 8246, Vol. 1, Exhibit "N," Affidavit of Mr. Fernando J. Dela Paz*, pp. 157-170.
[11] *Id., Vol. 2, Commissioner's Report Ex-Parte hearing on July 31, 2012*, p. 592.
[12] *Id., Exhibit "P," Sworn Statement of Mr. Joey L. Polintan to Questions Propounded by Atty. Carmencita P. Victorino*, pp. 621-630.
[13] *Id., Commissioner's Report Ex-Parte hearing on August 30, 2012*, p. 658.
[14] *Id., Exhibit "PP," Sworn Statement of Myra Celeste O. Dabalos to Questions Propounded by Attorney Carmencita Perez Victorino*, pp. 912-946.
[15] *Id., Commissioner's Report Ex-Parte hearing on January 31, 2013*, p. 1006.
[16] *Records, CTA Case No. 8246, Vol. 2, Notice issued by the Supreme Court Third Division*, p. 851
[17] *Id., Comment on/Opposition to the Commissioner of Internal Revenue's Petition for Certiorari Under Rule 65 of the 1997 Revised Rules of Court Dated August 15, 2012*, pp. 853-898.
[18] *Id., Vol. 3, Motion for Leave of Court to File Attached Amended Petition for Review for CTA Case No. 8302, entitled, "CBK Power Company Limited vs. Commissioner of Internal Revenue,"* pp. 1506-1753, with annexes.
[19] *Id., Resolution*, pp. 1763-1765.
[20] *Id., Decision*, pp. 1816-1840; penned by Associate Justice Lovell R. Bautista, with Associate Justice Amelia R. Cotangco-Manalastas concurring.
[21] *Id., Dispositive Portion*, p. 1839.

> **WHEREFORE,** the consolidated Petition for Review and Amended Petition for Review are hereby **PARTLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE a TAX CREDIT CERTIFICATE,** in favor of petitioner, in the reduced amount of [Php]22,126,419.93, representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first (1st) and second (2nd) quarters of 2009.
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> **SO ORDERED.**[22]

Respondent filed a Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014)[23] by registered mail on July 17, 2014; and in response, Petitioner's Comment on Respondent's Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014)[24] was submitted with the Court on August 29, 2014.

On September 8, 2014, the Court resolved to deny[25] petitioner's Motion for Reconsideration, with the following dispositive portion[26], for reference:

> **WHEREFORE,** respondent's "Motion for Partial Reconsideration (Re: Decision promulgated on 10 June 2014)" is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[27]

Not satisfied, respondent filed with the Court *En Banc* a Motion for Extension of Time to File Petition for Review[28] on September 25, 2014; which was granted by the Court *En Banc* in a Minute Resolution[29] dated September 29, 2014.

On October 13, 2014, respondent filed a Petition for Review *Ad Cautelam*[30] before the Court *En Banc* docketed as CTA *EB* No. 1225;

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[22] Emphases retained.
[23] *Records, CTA Case No. 8246, Vol. 3, Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014),* pp. 1857-1869.
[24] *Id., Petitioner's Comment on Respondent's Motion for Partial Reconsideration (Re: Decision promulgated 10 June 2014),* pp. 1873-1880.
[25] *Id., Resolution,* pp. 1882-1883.
[26] *Id.* at 1883.
[27] Emphases retained.
[28] *Rollo, CTA EB No. 1225, Motion for Extension of Time to File Petition for Review,* pp. 1-4.
[29] *Id., Minute Resolution,* p. 5.
[30] *Id., PFR,* pp. 6-49, with annexes.

thereafter, the Court *En Banc* issued an order[31] on October 28, 2014 for petitioner to file its comment, to which it failed to comply *per* Records Verification Report[32] issued by the Judicial Records Division on December 3, 2014.

On January 7, 2015, the Court *En Banc* resolved[33] to give due course to the Petition for Review and required the parties to file their respective memoranda.

With the filing of petitioner's Memorandum[34] on February 20, 2015; and the issuance of a Records Verification Report[35] dated March 24, 2015 that respondent failed to file his Memorandum, the case was deemed submitted for decision[36] on April 16, 2015. This was later recalled[37] by the Court *En Banc* on September 16, 2015, in view of the transmittal of the entire records of the case to the Supreme Court. Such transmittal was noted in Supreme Court Resolution[38] dated November 10, 2014.

On July 29, 2015, the Supreme Court promulgated a Decision[39] granting respondent's Petition for *Certiorari*, setting aside the Court's Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012. The dispositive portion[40] of the Supreme Court Decision reads as follows:

> **WHEREFORE**, the petition for *certiorari* is **GRANTED**. The Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012 issued by the Court of Tax Appeals in CTA Case Nos. 8246 and 8302 are hereby **SET ASIDE**. The consolidated cases are hereby **REMANDED** to the CTA Third Division to give [respondent] the chance to present evidence, rebuttal and sur rebuttal evidence, if needed.
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> **SO ORDERED.**[41]

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[31] *Rollo, Resolution,* pp. 51-52.
[32] *Id., Records Verification Report,* pp. 55.
[33] *Id., Resolution,* pp. 57-58.
[34] *Id., Memorandum for Respondent,* pp. 59-66.
[35] *Id., Records Verification Report,* p. 67.
[36] *Id., Resolution,* pp. 69-70.
[37] *Rollo, CTA EB No. 1225, Resolution,* pp. 98-102.
[38] *Records, CTA Case No. 8246, Vol. 4, Supreme Court Notice,* pp. 1781.
[39] *Id., Supreme Court Decision,* pp. 1805-1816.
[40] *Id., Dispositive Portion,* p. 1815.
[41] Emphases retained, italics ours.

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Thereafter, the Supreme Court's Third Division issued a Notice of Judgment[42] on August 13, 2015; and an Entry of Judgment[43] was later issued on December 15, 2015.

On September 17, 2015, petitioner filed a Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302)[44] ("Motion to Withdraw"), due to the issuance by the Bureau of Customs ("BOC") of a TCC with Serial No. 001059, in favor of petitioner, for the amount Php40,808,627.00, representing refund of petitioner's claimed unutilized input taxes on importations of goods other than capital goods for the period April 1, 2009 to December 31, 2009[45].

Meanwhile, on February 16, 2016, the Court *En Banc* issued a Resolution[46] in CTA *EB* No. 1225, dismissing the Petition for Review *Ad Cautelam* and remanding the case to the Third Division for its proper disposition. This later became final and executory and was entered in the Book of Entries of Judgments[47] on March 18, 2016. The dispositive portion[48] of the Resolution reads as follows:

> **WHEREFORE**, the Petition for Review *Ad Cautelam* is hereby **DISMISSED** without prejudice. The case is hereby **REMANDED** to the Third Division for its proper disposition.
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> **SO ORDERED.**[49]

The Court, in a Resolution[50] dated February 15, 2017, granted petitioner's Motion to Withdraw, declaring *CTA Case No. 8302* withdrawn and considered closed and terminated; while, setting the initial presentation of evidence for respondent in *CTA Case No. 8246, viz.:*

> **WHEREFORE**, petitioner's Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302) is hereby **GRANTED**. Accordingly, the Amended Petition for

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[42] *Records, CTA Case No. 8246, Vol. 4, Notice of Judgment,* pp. 1817-1818.
[43] *Id., Entry of Judgment,* pp. 1843-1844.
[44] *Id., Motion to Withdraw Amended Petition for Review (docketed as CTA Case No. 8302),* pp. 1786-1799, with annexes
[45] *Id., par. 13,* p. 1790.
[46] *Rollo, Resolution,* unnumbered.
[47] *Id., Entry of Judgement,* unnumbered.
[48] *Id., Resolution, Dispositive Portion,* unnumbered.
[49] Emphasis retained.
[50] *Records, CTA Case No. 8246, Vol. 4, Resolution,* pp. 1848-1851

Review for CTA Case No. 8302 is hereby considered **WITHDRAWN** and CTA Case No. 8302 is hereby considered **CLOSED** and **TERMINATED**. As for CTA Case No. 8246, let the initial presentation of evidence for respondent be set on **<u>May 2, 2017 at 9:00 a.m.</u>**

SO ORDERED.[51]

During the hearing[52] on May 2, 2017, counsel for respondent manifested that the case was just recently assigned to him; the Court then reset the initial presentation of evidence for respondent to July 3, 2017. However, during the hearing[53] on July 3, 2017, counsel for respondent manifested that he has no evidence to present, there being no report of investigation submitted to him by the assigned Revenue Officer. The Court then granted the parties thirty (30) days to submit their respective memoranda.

With the filing of the Memorandum for the Petitioner[54] on July 20, 2017, and respondent's Memorandum[55], after being granted[56] an extension, on August 17, 2017; the Court resolved[57] to submit the case for decision on August 23, 2017; hence this Amended Decision.

Issue[58]

WHETHER PETITIONER IS ENTITLED TO A TCC FOR THE 1ST QUARTER OF CY 2009 IN THE AMOUNT OF PHP17,784,968.91[59] REPRESENTING UNUTILIZED CREDITABLE INPUT TAXES.

Petitioner's Arguments[60]

Petitioner bases its claim for the issuance of a TCC over the unutilized input taxes for the period January 1, 2009 to March 31, 2009,

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[51] Emphases retained.
[52] *Records, CTA Case No. 8246, Vol. 4, Minutes of Hearing on May 2, 2017,* p. 1852.
[53] *Id., Minutes of Hearing on July 3, 2017,* p. 1853.
[54] *Id., Memorandum for the Petitioner,* pp. 1855-1888.
[55] *Id., Memorandum,* pp. 1895-1903.
[56] *Records, CTA Case No. 8246, Vol. 4, Motion for Extension of Time to File Memorandum,* pp. 1889-1892; *Records, CTA Case No. 8246, Vol. 4, Resolution,* p. 1894.
[57] *Records, CTA Case No. 8246, Vol. 4, Resolution,* p. 1905.
[58] *Id., Vol. 3, Decision, Issue,* p. 1823.
[59] *Id., Vol. 1, PFR, Prayer,* p. 14.
[60] *Id., Vol. 4, Memorandum for Petitioner, Discussions,* pp. 1875-1885.

on *Section 112(A)* in relation to *Section 108(B)(7) of the 1997 National Internal Revenue Code, as amended by RA No. 9337 ("1997 NIRC").* Petitioner claims that under existing laws and jurisprudence, in order to be entitled to a claim for refund or TCC for unutilized input taxes attributable to zero-rated sales under *Section 112(A) of the 1997 NIRC,* it must prove that: *(1)* it is a VAT-registered entity; *(2)* its sales are zero-rated; *(3)* the input taxes claimed were attributable to zero-rated sales and were not applied against any output tax liability; and *(4)* its administrative and judicial claims for refund were seasonably filed. Petitioner asserts that it was able to sufficiently prove and substantiate its compliance with all the afore-mentioned requirements; and that respondent failed to present any evidence to dispute petitioner's claims.

Respondent's Counter-Arguments[61]

Respondent counter-argues that petitioner is not entitled to a refund or issuance of a TCC; that petitioner is a special purpose entity, the sole purpose of which is to engage in all aspects of design, financing, construction, testing, commissioning, operation, maintenance, management, and ownership of Kalayaan II pumped-storage hydroelectric power plant; that being engaged in the generation of power, petitioner is considered to be a Renewable Energy ("RE") Developer and is covered by the provisions of the *Republic Act ("RA") No. 9513*[62].

Respondent avers that pursuant to *Section 15(g) of RA No. 9513,* petitioner, as an RE Developer, is entitled to zero-rated VAT on its purchases of local supply of goods, properties, and services needed for the development, construction, and installation of its plant facilities, and on the whole process of exploring and developing renewable energy sources up to its conversion into power; that considering there was no input VAT to be paid by RE Developers, it necessarily follows that petitioner is not entitled to the refund or the issuance of a TCC from its purchases. Respondent ratiocinated that petitioner is not the proper party to claim for any input VAT refund on the subject purchases.

Lastly, respondent maintains that it is incumbent upon petitioner to prove its entitlement to the refund sought, and failure to

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[61] *Records, CTA Case No. 8246, Vol. 4, Memorandum, Arguments/Discussions,* pp. 1896-1900.
[62] Renewable Energy Act of 2008.

prove the same is fatal to its claim for tax refund. He avers that claims for refund are construed strictly against the claimant, for the same partake of a nature of tax exemption, and such is looked upon with disfavor.

The Ruling of the Court

Petitioner's claim for TCC is anchored on *Section 112(A) and (C) of the 1997 NIRC,* which reads as follows:

> *SEC. 112. Refunds or Tax Credits of Input Tax. –*
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> (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(8)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

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

Pursuant to the afore-quoted provisions and jurisprudence[63], a taxpayer may claim a refund or a TCC, for input taxes paid on purchases of goods and services attributable to zero-rated sales, upon compliance with the following requisites:

1. the taxpayer-claimant must be VAT-registered;

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

3. input taxes were incurred or paid;

4. such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. said input taxes were not applied against any output VAT liability; and

6. the claim was filed within the prescriptive period.

Respondent, despite being given an opportunity by the Supreme Court to present evidence, opted not to do so. Therefore, after a review of the original Decision, the Court finds no reason to reverse its findings and to reiterate petitioner's compliance with the first (1^{st}), second (2^{nd}), fifth (5^{th}), and sixth (6^{th}) requisites. However, since petitioner withdrew its judicial claim for the second quarter of CY

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[63] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015, 765 SCRA 511; *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013, 709 SCRA 462; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011, 659 SCRA 658; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011, 639 SCRA 521; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010, 626 SCRA 567; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009, 605 SCRA 536; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007, 522 SCRA 657.

2009, there is a need to determine compliance with the third (3rd) and fourth (4th) requirements, and for a re-computation of the amount of the TCC to which petitioner is entitled (if any), with respect to the first quarter.

Input VAT paid or incurred are attributable to zero-rated or effectively zero-rated sales.

Petitioner reflected in its Quarterly VAT Return for the first (1st) quarter of 2009[64] its claimed input taxes in the amount of Php17,784,968.91, broken down as follows:

DETAILS	AMOUNTS	
Input tax on cap. goods exceeding 1M from previous quarter	Php 4,626,744.08[65]	
Input tax on cap. Goods exceeding 1M for the quarter	1,469,860.78[66]	
Total	Php 6,096,604.86	
Less: Input tax on cap. goods exceeding 1M deferred to succeeding quarter	Php 5,560,957.04[67]	
Amortization of input tax on cap. Goods exceeding 1Million		Php 535,647.82
Input tax on goods other cap. goods		6,024,501.87[68]
Input tax on importation of goods		335,565.00[69]
Input tax on services		10,414,723.92[70]
Input tax on services rendered by non-residents		474,530.30[71]
TOTAL		**PHP 17,784,968.91**

To prove that it has incurred or paid the aforesaid input VAT, petitioner submitted various suppliers' invoices, official receipts, Bureau of Customs' ("BOC") Import Entries and Internal Revenue Declarations ("IEIRD"), and various BOC and bank official receipts,[72] which were examined by the Court-commissioned ICPA Ms. Dabalos.

Upon scrutiny of the ICPA Report on the results of input tax verification[73] and the related supporting documents, the Court agrees

[64] *Box 2 of 2, Exhibit "BB-1."*
[65] *Id., Exhibit "BB-1-002b," line 20B.*
[66] *Id., Exhibit "BB-1-002c," line 21D.*
[67] *Id., Exhibit "BB-1-002d," line 23A.*
[68] *Id., Exhibit "BB-1," line 21F.*
[69] *Id., line 21H.*
[70] *Box 2 of 2, Exhibit "BB-1," line 21J.*
[71] *Id., line 21L.*
[72] *Box 2 of 2, Exhibits "CC-010001" to "CC-010268;" Box 2 of 2; Exhibits "CC-020001" to "CC-020417;" Box 2 of 2, Exhibits "CC-030001" to "CC-031250."*
[73] *Box 1 of 2, Exhibit "DD-1," to "DD-52."*

with the findings of the ICPA that the input taxes in the amount of Php644,218.61 should be disallowed for non-compliance with the substantiation requirements under *Section 113(A), (B) and (C)*[74] *of the 1997 NIRC.*

Below is the detailed breakdown of the disallowed input VAT of Php644,218.61, to wit:

EXCEPTIONS (1ST QUARTER OF CY 2009)	EXHIBIT	INPUT VAT
	BOX 1 OF 2	
Input taxes on domestic purchase of goods supported by documents other than a VAT Invoice - Supported by other non-VAT document	DD-5	Php 4,423.23
Input taxes on domestic purchase of goods supported by a VAT Invoice but not an original copy	DD-7	61,710.78
Input taxes on domestic purchases of goods supported by a VAT invoice not issued in the name of the Petitioner (*e.g.* Power Co. Ltd) but with TIN and address of the Petitioner	DD-8	5,235.00

[74] *SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.* -
(A) *Invoicing Requirements.* - A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the 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 (P1,000) 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.
(C) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

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Input taxes on domestic purchases of goods supported by a VAT invoice not issued in the name of the Petitioner (*e.g.* CBK only)	DD-9	58.93
Input taxes on domestic purchase of goods supported by TIN sales invoice	DD-10	18,344.99
Input taxes on domestic purchase of goods supported by a VAT Invoice but not dated within the VAT-taxable year	DD-13	14,119.23
Input taxes on domestic purchase of goods supported by VAT Invoice that is not BIR Registered	DD-14	72,450.00
Input taxes on domestic purchases of goods with correction in the year of the invoice date without counter signature	DD-17	174.79
Input taxes on domestic purchase of services supported by documents other than a VAT OR (*i.e.* VAT invoice, *etc.*)	DD-23	29,693.58
Input taxes on domestic purchase of services supported by documents other than a VAT OR (*i.e.* Statement of account, non-VAT invoice, *etc.*)	DD-24	18,301.21
Input taxes on domestic purchases of services supported by VAT OR not issued in the name of Petitioner (*e.g.* EME Phils Services Corp and CBR Power Co. Ltd) but with TIN and address of the Petitioner and the amount of tax was not separately shown	DD-26	493.75
Input taxes on domestic purchases of services supported by VAT OR not issued in the name of Petitioner (*e.g.* CBK only, CBK New-Spillway, CBK Training Center) but without TIN and/or address of petitioner	DD-27	4,505.03
Input taxes on domestic purchase of services supported by TIN OR only	DD-28	22,422.85
Input taxes on domestic purchase of services supported by a VAT OR not dated within the VAT-taxable year	DD-31	187,801.33
Input taxes on domestic purchases of services supported by a VAT OR that is not BIR-registered	DD-32	1,189.68
Input taxes on domestic purchases of services with correction in the OR date without counter signature	DD-34	39,594.02
Double claiming of input tax on domestic purchase of services	DD-40	180.48
Input taxes on domestic purchase of services supported by VAT OR. However, the sentence "This is not a source of input tax." is printed in the VAT OR.	DD-41	2,972.51
Input taxes on domestic purchase of goods and services without supporting documents	DD-42	32,698.72
Overclaimed input tax on domestic purchases of goods/services due to erroneous computation (*i.e.*, arithmetical error)	DD-44	4,768.41
Overclaimed portion of input tax arising from forex rate used on foreign currency denominated purchases purchases of goods and services	DD-46	25,580.99
Input taxes on domestic purchase of services supported by a VAT OR which is not an original copy	DD-49	97,499.10
TOTAL		**PHP 644,218.61**

In addition, the Court already disallowed input VAT in the amount of Php737,559.61, as detailed in the June 10, 2014 Decision, which were all incurred in the first quarter of CY 2009 for non-compliance with the substantiation requirements summarized as follows:

	DETAILS	AMOUNTS
1.)	Input VAT without supporting documents	Php 541,463.72
2.)	Input VAT on domestic purchases of services supported by VAT ORs but the amount of VAT was not separately shown	128,431.69

3.)	Input VAT on domestic purchases of goods supported by VAT ORs but the amount of VAT was not separately shown	40,193.34
4.)	Input VAT on domestic purchases of goods supported by VAT invoice with correction in the date but without counter signature	22,071.43
5.)	Input VAT on domestic purchase of goods supported by VAT invoice that is not BIR-registered	5,399.43
TOTAL		**PHP 737,559.61**

Consequently, from the total input VAT claim in the amount of Php17,784,968.91, only the amount of Php16,403,190.69, as computed below, has been duly substantiated:

DETAILS	AMOUNTS	
Input VAT Claim		Php 17,784,968.91
Less: Disallowances Per ICPA Report Per Court's further verification	 Php 644,218.61 737,559.61	 1,381,778.22
VALID INPUT VAT		**PHP 16,403,190.69**

WHEREFORE, premises considered, the Decision and the Resolution dated June 10, 2014 and September 8, 2014, respectively, are hereby **AFFIRMED with MODIFICATION**. Respondent is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIXTEEN MILLION FOUR HUNDRED THREE THOUSAND ONE HUNDRED NINETY AND 69/100 PESOS (PHP16,403,190.69)** representing unutilized input VAT incurred in relation to its zero-rated sales of electricity to the NPC for the first quarter of CY 2009.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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