REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

COLT COMMERCIAL, INC.,
Petitioner,

CTA Case No. 9270

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 0 3 2018

9:35 a.m.

x- x

DECISION

MANAHAN, *J.*:

This Petition for Review filed by Colt Commercial, Inc. on February 24, 2016 prays for the refund of the amount of ₱2,194,583.72, allegedly representing its unutilized input value-added tax (VAT) payments attributable to its zero-rated sales for the third[1] quarter of taxable year (TY) 2013.[2]

THE PARTIES

Petitioner Colt Commercial, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Suite 508 Padilla Delos Reyes Bldg., 232 Juan Luna St., Brgy. 289 Zone 027, Binondo, Manila.[3] It is a VAT-registered taxpayer with Taxpayer

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[1] Indicated as "Second Quarter" of taxable year 2013 in the Pre-Trial Order.
[2] Docket, CTA Case No. 9270, Vol. II, Par. I, Summary of the Case, Pre-Trial Order, p. 612.
[3] Docket, Vol. II, Par. 1(a), Joint Stipulation of Facts and Issues (JSFI), p. 593; Exhibit "P-1", docket, vol. I, p. 223.

Identification No. (TIN) 008-327-264-000, as evidenced by its Certificate of Registration No. OCN 1RC0000579258.[4]

As stated in its Articles of Incorporation, it is primarily incorporated to "engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative, wholesale or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials and electrical supplies, and or any and all kinds of goods, wares and merchandise."[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) as amended or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

Petitioner filed its Quarterly VAT Returns for the first, second, and third quarters of TY 2013 on April 24, 2013[6], on July 25, 2013[7], and on October 25, 2013[8], respectively, and amended all of the said returns on April 30, 2014[9]. Likewise, petitioner filed its Amended Quarterly VAT Returns for the fourth quarter of TY 2013 on January 25, 2014 and on April 30, 2014.[10]

On September 29, 2015, petitioner filed its administrative claim for refund covering the third quarter of TY 2013 in the amount of ₱2,194,583.72.[11]

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[4] Docket, Vol. II, Par. 1(c), JSFI, p. 594; Exhibit "P-5", docket, vol. I, p. 254.
[5] Docket, Vol. II, Par. 1(b), JSFI, pp. 593 to 594; Exhibit "P-2", docket, vol. I, p. 225.
[6] Docket, Vol. I, Exhibit "P-17", p. 456.
[7] Docket, Vol. I, Exhibit "P-17", p. 458.
[8] Docket, Vol. I, Exhibit "P-17", p. 460.
[9] Docket, Vol. I, Exhibit "P-17", pp. 455, 457, and 459.
[10] Docket, Vol. I, Exhibit "P-17", pp. 461 and 462.
[11] Docket, Vol. I, Par. 1(e), JSFI, p. 594; Exhibit "P-13", docket, vol. I, p. 449.

Respondent denied petitioner's claim for refund on January 25, 2016.[12] Hence, petitioner filed this Petition for Review[13] on February 24, 2016.

Respondent raised the following special and affirmative defenses in the Answer[14] filed on April 1, 2016:

> 16. The petition is premature considering that petitioner's claim for tax refund/credit of unutilized input tax payments attributable to zero-rated sales for the third quarter of taxable year 2013 in the amount of ₱2,194,583.72 is still pending investigation with Revenue Region No. 6, Manila.
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> 17. Petitioner has already applied the entire amount of input tax, subject of the claim for refund, against its output tax by carrying over the same to succeeding taxable quarters. Records showed that petitioner consistently carried forward its Input Tax credits from taxable quarter ending March 31, 2013 up to March 31, 2015.
>
> 18. Section 112 of the NIRC of 1997, as amended, provides that any VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated sales or effectively zero-rated sales, except transitional input tax, within two (2) years after the close of the taxable quarter when the sales were made, **to the extent that such input tax has not been applied against output tax**.
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> 18. The remedies of tax refund and input tax carry-over are alternative and the choice of one precludes the other.
>
> 19. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.

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[12] Docket, Vol. I, Exhibit "P-23", p. 510.
[13] Docket, Vol. I, pp. 10 to 22.
[14] Docket, Vol. I, pp. 167 to 171.

> 20. Tax refunds are in the nature of tax exemptions. Accordingly, the claimants of those refunds bear the burden of proving the factual basis of their claims, and of showing, by words too plain to be mistaken, that the legislature intended to exempt them.

The pre-trial conference was scheduled on May 12, 2016. Thus, the Respondent's Pre-Trial Brief[15] and petitioner's Pre-Trial Brief[16] were respectively filed on May 6, 2016 and on May 10, 2016.

On June 24, 2016, the parties submitted their Joint Stipulation of Facts and Issues[17]. Subsequently, the Court issued a Pre-Trial Order[18] on July 11, 2016, approving and adopting the parties' joint stipulations and terminating the pre-trial.

Upon motion of petitioner,[19] the Court commissioned Mr. Garry S. Pagaspas as the Independent Certified Public Accountant (ICPA) for the case on July 18, 2016.[20]

As trial ensued, petitioner presented Mr. Cyrus S. Chung, Ms. Cherilyn R. Chung, Ms. Jennifer S. Mañago, and Mr. Garry S. Pagaspas as its witnesses. Then, petitioner formally offered its testimonial and documentary evidence, consisting of Exhibits "P-1" to "P-29-A", inclusive of sub-markings; which the Court all admitted, except for Exhibits "P-7", "P-18-A", and "P-22".[21]

On the other hand, respondent, through counsel, manifested during the hearing on August 31, 2016 that he has no witness to present.[22]

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[15] Docket, Vol. I, pp. 174 to 177.
[16] Docket, Vol. I, pp. 210 to 222.
[17] Docket, Vol. II, pp. 593 to 595.
[18] Docket, Vol. II, pp. 612 to 616.
[19] Docket, Vol. II, Motion to Commission Independent Certified Public Accountant, pp. 596-600.
[20] Docket, Vol. II, Order dated July 18, 2016 and Oath of Commission, pp. 619 and 617, respectively.
[21] Docket, Vol. III, Resolutions dated November 11, 2016 and March 17, 2017, pp. 1038-1039 and 1055-1058, respectively.
[22] Docket, Vol. II, Order, p. 721.

The Court declared the instant case deemed submitted for decision on May 2, 2017,[23] after the filing of petitioner's Memorandum[24] on April 20, 2017 and of respondent's Memorandum[25] on April 24, 2017. Hence, this decision.

ISSUE

The parties submitted the following issue for the Court's determination:

> Whether petitioner is entitled to a tax refund in the amount of Two Million One Hundred Ninety-Four Thousand Five Hundred Eighty-Three Pesos and Seventy-Two Centavos (₱2,194,583.72) for the third quarter of TY 2013.[26]

Petitioner's Arguments[27]

Petitioner argued that the instant petition is not prematurely filed even if the decision of the BIR's Regional Director is not yet final since respondent did not act on its application for refund within 120-day period or until January 27, 2016. Thus, the absence of the final decision from the respondent upon expiration of the 120-day period may be considered as inaction on its part.

Petitioner also argued that it is entitled to a refund in the amount of Php2,194,583.72 for the 3rd quarter of taxable year 2013 as it complied with all the requisites pertaining to a valid claim for refund under Section 112(A) of the NIRC.

Respondent's Counter-Arguments[28]

Respondent, on the other hand, argued that petitioner is not entitled to a tax refund or issuance of Tax Credit Certificate (TCC) because the entire amount subject of claim for refund was applied "against its output tax by carrying over the same to succeeding taxable quarters"[29] and that it failed to prove that it has zero-rated sales to PEZA and SBMA registered entities.

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[23] Docket, Vol. III, Resolution, p. 1094.
[24] Docket, Vol. III, pp. 1059 to 1087.
[25] Docket, Vol. III, pp. 1089 to 1093.
[26] Docket, Vol. II, Par. 2, JSFI, p. 594.
[27] *Supra.*, Note 24.
[28] *Supra.*, Note 25.
[29] Docket, Vol. III, Respondent's Memorandum, p. 1091.

RULING OF THE COURT

Petitioner posits that it is entitled to a refund of its unutilized input taxes attributable to its zero-rated sales pursuant to Section 112(A) and (C) of the NIRC of 1997, as amended, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.–*
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated 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.
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue 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.

Based on the foregoing provision, in order to be entitled to refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1) That the claimant must be VAT-registered;
2) That there must be zero-rated or effectively zero-rated sales;
3) That the creditable input tax due or paid must be attributable to such zero-rated sales;
4) That the input taxes were not applied against any output VAT liability; and
5) That the administrative and judicial claims for refund were timely filed.

Petitioner's administrative and judicial claims were seasonably filed

Before proceeding with the determination of petitioner's compliance with the other requisites, the Court deems it appropriate to resolve first the question of timeliness of filing of the administrative and judicial claims for refund.

As explicitly stated in the afore-quoted provision, the application for tax credit or refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Likewise, respondent has 120 days from the date of submission of the complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of a full or partial denial or inaction within the 120-day period by respondent, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of respondent or from the expiration of the 120-day period.

The present claim covers the third quarter of TY 2013. Counting two years from the end of said quarter on September 30, 2013, petitioner had until September 30, 2015 within which to file its administrative claim for refund or issuance of tax credit certificate. Evidently, the filing of the administrative claim for refund of unutilized input taxes on September 29, 2015[30] was well within the two-year prescriptive period. Then, the 120-day period given to respondent to act on petitioner's administrative claim started from September 29, 2015, when all supporting documents have been attached, and ended on January 27, 2016.

Respondent denied the said claim through a Letter dated January 25, 2016,[31] which was allegedly received by petitioner on January 26, 2016.

There is no proof that the said letter was indeed received by petitioner on January 26, 2016. However, the Court will consider the date that respondent issued the letter of denial as the date of receipt of petitioner. Accordingly, petitioner had 30 days from January 25, 2016 within which to appeal its claim to this Court, or until February 24, 2016.

Since, this Petition for Review was filed on February 24, 2016[32], the same was timely filed.

The Court will now determine petitioner's compliance with the remaining requisites.

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[30] Docket, Vol. I, Exhibit "P-13", p. 449.
[31] Docket, Vol. I, Exhibit "P-23", p. 510.
[32] Docket, Vol. I, p. 10

Petitioner is a VAT-registered entity

Petitioner is a registered VAT taxpayer with TIN No. 008-327-264-000, as evidenced by its Certificate of Registration No. OCN 1RC0000579258 dated August 31, 2012.[33]

Petitioner had zero-rated sales

In its Articles of Incorporation[34], it is expressly stated that petitioner is primarily incorporated for the following purposes:

1.) To engage in the business of merchandising, distributing and marketing, whether as principal, agent, indenter or manufacturer's representative, wholesale or retail, such as but not limited to industrial, agricultural, manufacturing tools and equipment, engineering products, hardware items, construction materials, and electrical supplies, and or any and all kinds of goods, wares and merchandise.

2.) To engage in the business of import and export as principals, factors, representatives, agents or commissioned merchants with respect to buying, selling, trading or dealing in any and all kinds of goods, wares, products of all classes and description, distribution, import and export business.

For the third quarter of TY 2013, petitioner reflected total sales of ₱36,268,918.91 with the following sales in its Amended Quarterly VAT Return:[35]

SALES TYPE	AMOUNT
VATable	₱ 8,785,165.54
Zero-Rated	27,483,753.37
TOTAL	**₱ 36,268,918.91**

[33] Docket, Vol. I, Exhibit "P-5", p. 254.
[34] Docket, Vol. I, Exhibit "P-2", p. 225.
[35] Docket, Vol. I, Exhibit "P-17", p. 459.

A perusal of the records shows that petitioner's zero-rated sales are of three types: (1) direct export sales of goods to foreign clients; (2) sales to entities registered with the Board of Investment (BOI); and (3) sales to entities doing business within the economic zone and registered with the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA). These sales are entitled to the benefit of VAT zero-rating pursuant to Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended, quoted hereunder for ready reference:

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

This is implemented by Section 4.106-5(a)(1) and (a)(5) and (c) of Revenue Regulations (RR) No. 16-05, which provides that direct export sales of goods, transactions considered as export sales under Executive Order (EO) No. 226, and sales of goods or properties to enterprises duly registered with and accredited by the PEZA and SBMA are classified as zero-rated sales, the pertinent provisions state:

REVENUE REGULATIONS NO. 16-05

SUBJECT: *Consolidated Value-Added Tax Regulations of 2005*

xxx xxx xxx

SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.* – A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export sales.* – *"Export Sales"* shall mean:

(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, 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);

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx xxx

(c) *"Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement."* – Sales of goods or property to persons or entities who are tax-exempt under special laws, *e.g.* sales to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority (SBMA) pursuant to R.A. No. 7227, sales to enterprises duly registered and accredited with the Philippine Economic Zone Authority (PEZA) or international agreements to which the Philippines is signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."

Based on the foregoing, in order to qualify for VAT zero-rated direct export sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code; and Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-05, petitioner must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;
2. Export Declaration and Bill of Lading or Airway Bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. Bank Credit Advice, Certificate of Bank Remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

As regards the "considered export sales" under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code; and Section 4.113-1 (A)(1), (B)(1) and (2)(c) of RR No. 16-05, petitioner must present at least two (2) types of documents, namely:

1. Sales invoice as proof of sale of goods; and
2. Any proof of the buyer's entitlement to tax incentives under EO No. 226 or special laws (*i.e.*, Certificates of Registration with the BOI pursuant to EO No. 226 or Certificates of Registration with the PEZA or SBMA pursuant to Republic Act (RA) No. 7916 and RA No. 7227, respectively, for the corresponding taxable year).

In the Summary of Zero-Rated Sales[36], petitioner was able to account for the amount of ₱27,167,598.86 out of the ₱27,483,753.37 zero-rated sales reported in the Quarterly VAT Return for the third quarter of TY 2013. However, the balance

[36] Table 4 attached to the ICPA Report, Exhibit "P-28".

of ₱316,154.21 remained unaccounted for. The said Summary grouped petitioner's zero-rated sales as follows:

TYPE OF ZERO-RATED SALES	AMOUNT
Considered export sales	₱ 24,378,748.22
Actual export sales	1,788,850.64
TOTAL	**₱ 26,167,598.86**

As for its zero-rated sales to PEZA or SBMA-registered entities, petitioner only presented a Certification[37] dated February 16, 2016, which was issued by PEZA, confirming that the latter issued VAT zero-rating certifications to the PEZA-registered enterprises enumerated therein for TY 2013. The list includes the following entities with which petitioner had sales during the third quarter of TY 2013:

	CUSTOMER NAME	ZONE LOCATION	VAT CERT. NO.	VAT CERT. DATE
1.	Applied Machining Corporation	Laguna Technopark-SEZ	939	28-Jan-13
2.	Daitoh Precisions, Inc.	Mactan Economic Zone	1578	22-Apr-13
3.	Daiwa Seiko Philippines Corporation	Laguna International Industrial Park-SEZ	448	07-Jan-13
4.	Delta Design Philippines, LLC.	Carmelray Industrial Park II-SEZ; Baguio City Economic Zone	782	18-Jan-13
5.	Exas Philippines, Inc.	Mactan Economic Zone	1358	27-Feb-13
6.	Famous Secret Precision Machining, Inc.	Daiichi Industrial Park-SEZ	362	03-Jan-13
7.	Fatec Corp.	First Cavite Industrial Estate-SEZ	1073	01-Feb-13
8.	Ferusche Stainless, Inc.	Filinvest Technology Park Calamba-SEZ	1658	05-Jun-13
9.	Fujitsu Die-Tech Corporation of the Phils.	Laguna Technopark Inc.-SEZ	450	07-Jan-13
10.	Gunma Gohkin Philippines Corporation	Light Industry & Science Park I-SEZ	313	28-Dec-12
11.	Hitachi Industrial Machinery Phils. Corp.	First Cavite Industrial Estate-SEZ	229	21-Dec-12
12.	Imasen Philippine Manufacturing Corp.	Laguna Technopark Inc.-SEZ	121	13-Dec-12
13.	Ina Micro Opto Corporation	Mactan Economic Zone II-SEZ	1367	01-Mar-13
14.	Kodachi Seiki Philippines, Inc.	Cavite Economic Zone	1459	13-Mar-13
15.	Laguna Auto-Parts Manufacturing Corp.	Laguna Technopark Inc.-SEZ	79	10-Dec-12
16.	Laguna Metts Corporation	Laguna Technopark Inc.-SEZ	286	28-Dec-12
17.	Makoto Metal Technology Incorporated	Mactan Economic Zone II-SEZ	167	17-Dec-12
18.	Manufacturing Automation Solutions International Inc.	Calamba Premier International Park-SEZ	1694	27-Jun-13

[37] Docket, Vol. I, Exhibit "P-6", pp. 255 to 261.

19.	Meinan Philippines Inc.	Laguna Technopark Inc.-SEZ	734	17-Jan-13
20.	Menima Casting Products, Inc.	First Cavite Industrial Estate-SEZ	264	26-Dec-12
21.	Micro- Mechanics Technology International, Inc.	Carmelray Industrial Park II-SEZ	1413	08-Mar-13
22.	Micron Precision Phils., Inc.	Calamba Premier International Park-SEZ	839	21-Jan-13
23.	MKP, Inc.	Cavite Economic Zone	887	23-Jan-13
24.	Nidec Philippines Corporation	Laguna Technopark Inc.-SEZ	428	07-Jan-13
25.	Nidec Precision Philippines Corporation	Laguna Technopark Inc.-SEZ	443	07-Jan-13
26.	Parts Philippines Inc.	Cavite Economic Zone	1263	18-Feb-13
27.	Penta Technological Products, Inc.	Laguna Technopark Inc.-SEZ	747	07-Jan-13
28.	Philippine Nagano Seiko, Inc.	People's Technology Complex-SEZ	861	22-Jan-13
29.	Philippine Precision Technology Inc.	Carmelray Industrial Park I-SEZ	1720	08-Jul-13
30.	Philippine TRC, Inc.	Lima Technology Center-SEZ	879	22-Jan-13
31.	Precise Techno Inc.	Cavite Economic Zone	1313	20-Feb-13
32.	Prophile Sound Industries, Inc.	Cavite Economic Zone	165	17-Dec-13
33.	Suminac Philippines, Inc.	First Cavite Industrial Estate-SEZ	355	02-Jan-13
34.	T&S Laser Solutions, Inc.	First Philippine Industrial Park-SEZ	30	05-Dec-12
35.	Tamiya Philippines, Inc.	Mactan Economic Zone II-SEZ	1939	11-Nov-13
36.	TMX Philippines, Inc.	Mactan Economic Zone	1001	29-Jan-13
37.	Tsukuba Philippine Diecasting Corporation	Cavite Economic Zone	718	17-Jan-13
38.	Vitalo Packaging International, Inc.	Laguna Technopark-SEZ	395	04-Jan-13
39.	Wacker Neuson Manila Inc.	First Cavite Industrial Estate-SEZ	383	04-Jan-13
40.	Yutaka Manufacturing (Phils.) Inc.	Laguna Technopark Inc.-SEZ	769	18-Jan-13

Accordingly, only those sales made to the above-listed entities during the third quarter of TY 2013 shall be entitled to VAT zero-rating for purposes of the present claim. Consequently, all sales made to other alleged PEZA-registered entities during the third quarter of TY 2013 are not entitled to VAT zero-rating.

However, as for the direct export sales and sales made to BOI-registered entities, petitioner failed to provide proofs of actual exportation and BOI registration certificates. Thus, all those direct export sales and sales made to BOI-registered entities are not entitled to VAT zero-rating for purposes of the present claim.

To prove compliance with the VAT invoicing requirements under Section 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A) and (B) of RR No. 16-05, petitioner submitted sales invoices[38] of goods supporting the Summary of Zero-Rated Sales[39] for the third quarter of TY 2013. The said sales invoices were verified by the Court-commissioned ICPA, Mr. Garry S. Pagaspas.

Based on this summary and the findings above, the following zero-rated sales during the third quarter of TY 2013, totaling ₱2,329,095.94, shall be disallowed:

Invoice No.[40]	Invoice Date	Client/Customer	Amount
Sales to clients without proof of PEZA registration			
2568	7/3/2013	Polarmarine Incorporated	₱ 25,600.00
2569	7/3/2013	Polarmarine Incorporated	15,865.00
2575	7/3/2013	Polarmarine Incorporated	7,250.00
2603	7/2/2013	Turu Santechno Corp.	6,800.00
2681	7/5/2013	Turu Santechno Corp.	2,821.00
2794	7/12/2013	Polarmarine Incorporated	9,870.00
3102	7/27/2013	Polarmarine Incorporated	7,780.00
3123	7/27/2013	Polarmarine Incorporated	26,000.00
3124	7/27/2013	Polarmarine Incorporated	26,000.00
3198	7/31/2013	Polarmarine Incorporated	111,840.00
3246	8/2/2013	Polarmarine Incorporated	12,112.50
3247	8/2/2013	Polarmarine Incorporated	19,855.00
3309	8/7/2013	Polarmarine Incorporated	47,900.00
3464	8/14/2013	Polarmarine Incorporated	52,000.00
3469	8/14/2013	Polarmarine Incorporated	49,500.00
3470	8/14/2013	Polarmarine Incorporated	11,780.00
3471	8/14/2013	Polarmarine Incorporated	3,400.00
3705	9/2/2013	Polarmarine Incorporated	33,650.00
4029	9/18/2013	Turu Santechno Corp.	3,085.00
4060	9/18/2013	Turu Santechno Corp.	11,200.00
4061	9/19/2013	Polarmarine Incorporated	20,670.00
4062	9/19/2013	Polarmarine Incorporated	9,900.00
4065	9/19/2013	Polarmarine Incorporated	600.00
		Subtotal	**₱ 515,478.50**
Sales to clients without proof of BOI registration			
3952	9/12/2013	Ebara Benguet	**₱ 19,500.00**
Foreign sales without proof of actual export			
2897	7/17/2013	Waytech (M) Sdn Bhd	₱ 183,676.80
2931	7/18/2013	Premtool E.K.	315,153.00
2932	7/18/2013	Premtool E.K.	315,153.00
2933	7/18/2013	Premtool E.K.	106,545.54
2979	7/22/2013	Hillmec Engineering Sdn Bhd	48,366.82
2980	7/22/2013	Tkm Industries (M) Sdn Bhd	11,073.89
3303	8/6/2013	Hillmec Engineering Sdn Bhd	127,756.24

[38] Exhibit "P-9".
[39] Table 4 attached to the ICPA Report, Exhibit "P-28".
[40] Exhibit "P-9".

3215	8/1/2013	Premtool E.K.		310,711.38
3216	8/1/2013	Premtool E.K.		257,620.64
3217	8/1/2013	Premtool E.K.		90,819.98
4093	9/20/2013	Euroasia Technics Sdn Bhd		21,973.35
		Subtotal	**₱**	**1,788,850.64**
Documents not found in the records				
2522		Meinan Philippines, Inc.	**₱**	**5,266.80**
		Total	**₱**	**2,329,095.94**

Based on the foregoing, only the amount of ₱24,838,502.93 shall be considered as valid zero-rated sales, computed as follows:

Total Reported Zero-Rated Sales		₱ 27,483,753.38
Less:		
Unaccounted for by petitioner	₱ 316,154.51	
Disallowed by this Court	2,329,095.94	2,645,250.45
Total Valid Zero-Rated Sales		**₱ 24,838,502.93**

The creditable input taxes due or paid were attributable to zero-rated sales and were not applied against any output VAT liability

Petitioner's Amended Quarterly VAT Return for the third quarter of TY 2013 reflected excess input taxes amounting to ₱2,194,583.72, which is the subject of the present claim, computed as follows:

Input Taxes on Local Purchases of Goods Other Than Capital Goods	₱ 586,650.58
Input Taxes on Importations of Goods Other Than Capital Goods	2,662,153.00
Total Input Taxes	**₱ 3,248,803.58**
Less: Output Taxes on VATable Sales	1,054,219.86
Excess Input Taxes for the 3rd Quarter of TY 2013	**₱ 2,194,583.72**

To support its total input taxes of ₱3,248,803.58, petitioner submitted several documents, such as suppliers' invoices, official receipts, Airway Bills, Assessment Notices, Import Entries and Internal Revenue Declarations (IEIRD), and Bureau of Customs (BOC) Statements of Settlement of Duties and Taxes[41], which were examined by the ICPA. These documents disclosed an aggregate input VAT of only ₱2,782,931.38 based on the Summary of Domestic Purchases

[41] Exhibit "P-11".

and Importation.[42] Therefore, the unsupported input VAT in the amount of ₱465,872.20[43] shall be disallowed for refund.

Further examination of the supporting documents for the Summary of Domestic Purchases and Importation[44] leads to the disallowance of the amount of ₱1,082,667.59 for non-compliance with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-2, 4.110-3, 4.110-8, and 4.113-1 of RR No. 16-05, as amended. Below is the detailed breakdown of the disallowed input VAT of ₱1,082,667.59:

Purchase Invoice Nos.[45]	**Date**	**Registered Name**	**Input VAT**
No proof of VAT payment and dated outside the period of claim			
EY9B1300005	6/28/2013	Taegutec Ltd.	₱ 181,941.00
No proof of VAT payment			
EY9B1300006	7/16/2013	Taegutec Ltd.	247,785.00
5497325573	7/16/2013	Champ Dia Co. Ltd	5,095.00
3463749166	7/16/2013	Whizcut of Sweden AB	51,487.00
EY9B1300007	7/29/2013	Taegutec Ltd.	136,112.00
EY9B1300008	8/13/2013	Acrow Machinery Mfg. Co. Ltd	26,641.00
EY9B1300011	8/28/2013	Taegutec Ltd.	142,636.00
8956594500	8/27/2013	Whizcut of Sweden AB	123,258.00
Importation documents do not pertain to petitioner but to Colt Commercial			
1839729234	9/5/2013	Yg-1 Tools Asia Pte Ltd	119,361.36
1839932522	9/20/2013	Yg-1 Tools Asia Pte Ltd	11,770.23[46]
Proof of VAT remittance was not validated by bank			
82489	7/18/2013	Acrow Machinery Mfg. Co. Ltd	36,581.00
		Total	**₱ 1,082,667.59**

Based on the foregoing, petitioner's input VAT allowable as tax credits for the third quarter of TY 2013 only amounts to ₱1,700,263.79, as computed below:

Total Input VAT reported in 3Q of TY 2013		₱ 3,248,803.58
Less:		
Unsupported Input VAT	₱ 465,872.20	
Disallowances by the Court	1,082,667.59	1,548,539.79
Allowable Input VAT for the 3Q of TY 2013		**₱ 1,700,263.79**

[42] Table 5 attached to the ICPA Report, Exhibit "P-28".
[43] ₱3,248,803.58 – ₱2,782,931.38.
[44] Table 5 attached to the ICPA Report, Exhibit "P-28".
[45] Exhibits "P-11".
[46] Amount claimed by petitioner; however, it did not correspond with the amount indicated in the purchase invoice.

Nevertheless, a portion of the ₱1,700,263.79 shall be applied against the reported output VAT liability of ₱1,054,219.86. Consequently, only the remaining input VAT of ₱646,043.93 can be attributed to the entire zero-rated sales amounting to ₱27,483,753.38 and only the input VAT of ₱583,863.63 is attributable to the valid zero-rated sales of ₱24,838,502.93, computed as follows:

Allowable Input VAT		**₱ 1,700,263.79**
Less: Output VAT		1,054,219.86
Excess Input VAT Available for Refund		**₱ 646,043.93**
Multiply by Percentage of Valid Zero-Rated Sales over Total Zero-Rated Sales:		
Valid Zero-Rated Sales	₱ 24,838,502.93	
Divided by Total Reported Zero-Rated Sales	27,483,753.38	90.3752213%
Excess Input VAT Attributable to the Valid Zero-Rated Sales		**₱ 583,863.63**

Moreover, as noted by the ICPA, although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns,[47] the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the second quarter of TY 2015.[48] Therefore, the subject claim no longer formed part of the excess input VAT of ₱2,361,181.09[49] as of the end of the second quarter of TY 2015 that was to be carried over/applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability.

WHEREFORE, premises considered, this Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of ₱583,863.63 in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales covering the third quarter of taxable year 2013.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[47] Docket, Vol. I, Exhibits "P-17" and "P-18", pp. 461 and 481 to 485, respectively.
[48] Docket, Vol. I, Exhibit "P-17", line 23D, p. 467.
[49] Docket, Vol. I, Exhibit "P-17", line 29, p. 468.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice