REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

TOTAL (PHILIPPINES) CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 7898, 7980, and 8008

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

Promulgated:
JUL 24 2013 ; 10:00a.m.

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DECISION

UY, *J.*:

Before the Court are three (3) consolidated Petitions for Review filed by petitioner, Total (Philippines) Corporation, against respondent, Commissioner of Internal Revenue, docketed as CTA Case Nos. 7898, 7980 and 8008, seeking the tax refund or issuance of tax credit certificate in the total amount of P120,570,966.03, allegedly representing its excess and unutilized input value-added tax (VAT) for the four (4) quarters of taxable year 2007, allegedly attributable to its zero-rated sales.

THE FACTS

Petitioner Total (Philippines) Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC), with principal office address at Penthouse, Total Corporate Center, 1012 Triangle Drive, North

Bonifacio, Bonifacio Global City, 1634 Taguig City.[1] It is licensed by the SEC to acquire, assemble, install, construct, equip, repair, remodel, maintain, develop, operate, hold, own, lease and otherwise deal with oil terminals and service station networks; to develop and operate a wholesale distribution network and carry out the purchase, acquisition, including importation, if appropriate, storage, marketing, distribution, transport, use, wholesale, exportation, refinement, treatment, distillation and manufacture of, and generally deal in, Fuel Oils, Gas Oils, Gasolines, Lubricants and, subject to market conditions, Bitumens, Solvents and Kerosenes and, subject to the written agreement of the stockholders any and all kinds of oil and oil products, such as Jet Fuel and liquefied petroleum gas.[2]

Moreover, petitioner is a VAT-registered entity and was assigned with Taxpayer's Identification Number (TIN) 005-145-964-000 VAT. Such registration was made on September 5, 1997.[3]

On the other hand, respondent Commissioner of Internal Revenue is sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, to act and approve claims for refund or tax credit as provided by law. She holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[4]

On the belief that it has unutilized input tax for the first, second, third, and fourth quarters of 2007, petitioner filed its administrative claims for refund with the Large Taxpayer Audit and Investigation Division II of the BIR, summarized as follows:

Exhibit	Period Covered	Amount Claimed	Date of Filing
"D"	1st & 2nd Quarters, 2007	P 49,384,322.00	March 31, 2009
"E"	3rd Quarter, 2007	P 33,010,816.00	June 2, 2009
"F"	4th Quarter, 2007	P 38,175,828.03	October 27, 2009
	Total	P120,570,966.03	

[1] Par. 1.1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 7980 Docket, pp. 90 to 91; and Par. 2.1 (vis-à-vis Exhibits "A" and "B"), Conditionally Admitted Facts, JSFI, CTA Case No. 7898 Docket, p. 128.

[2] Par. 1.4, Admitted Facts, JSFI, CTA Case No. 7980 Docket, pp. 91 to 92; and Par. 2.2 (vis-à-vis Exhibits "A" and "B"), Conditionally Admitted Facts, JSFI, CTA Case No. 7898 Docket, pp. 128 to 129.

[3] Par. 1.3, Admitted Facts, JSFI, CTA Case No. 7980 Docket, p. 91; and Exhibit "C".

[4] Par. 1.2, Admitted Facts, JSFI, CTA Case No. 7898 Docket, pp. 125 to 126; Par. 1.2, Admitted Facts, JSFI, CTA Case No. 7980 Docket, p. 91; and Par. 1, Admitted Facts, JSFI, CTA Case No. 8008 Docket, p. 82.

Subsequently, petitioner filed its judicial claims for refund on the following dates:

Case No.	Period Covered	Date of Filing
CTA Case No. 7898	1st & 2nd Quarters, 2007	March 31, 2009
CTA Case No. 7980	3rd Quarter, 2007	September 30, 2009
CTA Case No. 8008	4th Quarter, 2007	December 21, 2009

Respondent filed her separate Answers to the Petitions for Review on the following dates: (1) in CTA Case No. 7898, on May 5, 2009;[5] (2) in CTA Case No. 7980, on November 11, 2009;[6] and in CTA Case No. 8008, on January 25, 2010.[7] Basically, respondent raises the following similar arguments and defenses in her separate Answers, to wit:

> 1) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
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> 2) The amounts of P49,384,322 for the period from January 1, 2007 to June 30, 2007; P33,010,816.00 for the period July 1, 2007 to September 30, 2007; and P38,175,828.03 for the period from 1 October 2007 to 31 December 2007, subject of petitioner's refund claims in CTA Case Nos. 7898 and 8008, respectively, as alleged unutilized VAT input taxes were not properly documented.
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> 3) In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 4) To support its claim, it is imperative for petitioner to prove the following, viz:
>
> a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);
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> b. The invoicing and accounting requirements for Vat-registered persons, as well as the filing and

[5] CTA Case No. 7898 Docket (Volume I) pp. 94 to 100.
[6] CTA Case No. 7980 Docket, pp, 49 to 56.
[7] CTA Case No. 8008 Docket, pp. 48 to 54.

payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the first to fourth quarters of taxable year 2005 (should be 2007) were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit); and

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

5) All the Petitions for Review in the instant consolidated cases were prematurely filed in contravention of Section 112 (D) of the NIRC of 1997, which provides:

'SEC. 112. Refunds or Tax Credits of Input Tax.

xxx xxx xxx

(D) Period Within Which Refund or Tax Credit of Input Taxes Shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

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

It is clear from the foregoing provision of law that petitioner should give respondent 120 days to process its claim for refund. It can appeal to this Honorable Court only after the expiration of the 120-day period granted by law or within thirty days from the decision of respondent denying its claim for refund. All of the Petitions for Review filed in these consolidated cases were prematurely filed, to wit:

a. In CTA Case No. 7898, petitioner filed its administrative claim for refund on the same day that it filed the instant petition for review on March 31, 2009;

b. In CTA Case No. 7980, petitioner filed its judicial claim September 30, 2009 or within

120 days after it filed its administrative claim on June 2, 2009; and

c. In CTA Case No. 8008, petitioner filed its judicial claim on December 21, 2009 or within 120 days after it filed its administrative claim for refund on October 27, 2009.

6) Petitioner did not submit complete documents in support of its administrative claim for refund in CTA Case Nos. 7898 and 8008 and therefore the 120-day period commenced to run on the date of filing of the administrative claims in said cases; while petitioner only submitted 4 documents during the administrative proceedings in CTA Case No. 7980. It seems that petitioner only plans to present the necessary documents/evidences allegedly supporting its claim for refund before this Honorable Court. It is well-settled that matters not raised in the administrative level cannot be raised for the first time on appeal. (*Aguinaldo Industries Corp. Fishing Nets Division vs. Commissioner of Internal Revenue, et al.*, L-29790, February 25, 1982).

7) Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No, 145526 promulgated on March 26, 2007 held:

> "Petitioner's contention that non-compliance with revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. <u>Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that is satisfied all the documentary evidence and evidentiary</u>

requirements for administrative claim for refund or tax credit.xxx" (Underscoring provided)

On April 20, 2010, petitioner moved for the consolidation of CTA Case Nos. 7898, 7980 and 8008.[8] In the Resolution dated April 27, 2010, [9] this Court granted petitioner's motion, and the three (3) cases were accordingly consolidated.

During trial, petitioner presented testimonial and documentary evidence in support of its claims. On the other hand, respondent's counsel manifested during the hearing held on May 8, 2012 that there was no report of investigation from the Revenue Examiner regarding petitioner's administrative claim for refund, and thus he waived respondent's right to present evidence.[10]

Per this Court's Resolution dated May 23, 2012, the parties were directed to file their respective Memorandum within thirty (30) days from said date.

These cases were submitted for decision after respondent filed her Memorandum[11] on June 6, 2012, and petitioner filed its Memorandum[12] on August 6, 2012.[13]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, the issues for this Court's resolution are the following:

For CTA Case No. 7898:

"A.

WHETHER OR NOT PETITIONER'S EXPORT SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE ZERO-RATED SALES.

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[8] CTA Case No. 7898 Docket (Volume I), pp. 226 to 228.
[9] CTA Case No. 7898, Docket (Volume I) pp. 231 to 232.
[10] Resolution dated May 23, 2012, CTA Case No. 7898 Docket (Volume II), pp. 752 to 753.
[11] CTA Case No. 7898 Docket (Volume II), pp. 754 to 769.
[12] CTA Case No. 7898 Docket (Volume II), pp. 783 to 804.
[13] Resolution dated August 13, 2012, CTA Case No. 7898 Docket (Volume II), p. 806.

B.

WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE 1^{ST} AND 2^{ND} QUARTERS OF TAXABLE YEAR 2007, IN THE AMOUNTS OF P608,791,851.00 AND P694,051,132.00, RESPECTIVELY ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS, AND THE AMOUNTS OF P20,721,551.00 AND P28,662,771.00 ARE ALLEGEDLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES FOR THESE PERIODS.

C.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE 1^{ST} (P20,721,551.00) AND 2^{ND} (P28,662,771.00) QUARTERS OF TAXABLE YEAR 2007 THAT ARE ALLEGEDLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

D.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE 1^{ST} AND 2^{ND} QUARTERS OF TAXABLE YEAR 2007 THAT ARE ALLEGEDLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

E.

WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

F.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE 1^{ST} AND 2^{ND} QUARTERS OF TAXABLE YEAR 2007 THAT ARE ALLEGEDLY ALLOCATED TO ITS ZERO RATED SALES AND SALES

TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES."[14]

For CTA Case No. 7980:

"A.

WHETHER OR NOT PETITIONER'S EXPORT SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE ZERO-RATED SALES.

B.

WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE THIRD QUARTER OF TAXABLE YEAR 2007 ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS, AND P33,010,815.98 IS PROPERLY ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES.

C.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE THIRD QUARTER OF CY 2007 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

D.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE THIRD QUARTER OF CY 2007 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

E.

WHETHER OR NOT THE PETITIONER SEASONABLY FILED AND EXHAUSTED ADMINISTRATIVE REMEDIES

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[14] CTA Case No. 7898 Docket (Volume I), pp.129 to 130.

AND WHETHER OR NOT IT TIMELY FILED ITS JUDICIAL CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

F.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE THIRD QUARTER OF CY 2007 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES."[15]

For CTA Case No. 8008:

"A.

WHETHER OR NOT PETITIONER'S EXPORT SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES ARE ZERO-RATED SALES.

B.

WHETHER OR NOT PETITIONER HAS UNUTILIZED INPUT VAT FOR THE FOURTH QUARTER OF TAXABLE YEAR 2007 ARISING FROM ITS DOMESTIC PURCHASES OF TAXABLE GOODS AND SERVICES AND IMPORTATION OF GOODS IN THE AMOUNT OF Php 38,175,828.03.

C.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2007 WHICH IS THE SUBJECT OF THE PRESENT CLAIM ARE PROPERLY SUBSTANTIATED BY INVOICES AND OFFICIAL RECEIPTS.

D.

WHETHER OR NOT THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2007 WHICH IS THE SUBJECT OF THE PRESENT CLAIM WERE NOT UTILIZED IN THE SUCCEEDING TAXABLE QUARTER(S) OR APPLIED AGAINST ANY OUTPUT VAT LIABILITY OF THE PETITIONER.

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[15] CTA Case No. 7980 Docket, pp. 94 to 95.

E.

WHETHER OR NOT THE PETITIONER SEASONABLY FILED ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

F.

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR THE UNUTILIZED CREDITABLE INPUT TAXES FOR THE FOURTH QUARTER OF CY 2007 THAT ARE ALLOCATED TO ITS ZERO RATED SALES AND SALES TO COMPANIES LOCATED IN SPECIAL ECONOMIC ZONE/FREEPORT ZONES."[16]

All the foregoing issues, may be summed up into one general issue, to wit: whether or not petitioner is entitled to a tax refund or issuance of tax credit certificate in the total amount of P120,570,966.03, representing excess and unutilized input VAT for the four (4) quarters of taxable year 2007.

Petitioner's arguments:

Petitioner argues that it made sales to locators within the special economic and Freeport zones for the taxable year 2007, which sales are subject to zero percent (0%) VAT.

According to petitioner, it has generated substantial amount of input taxes for the entire period 2007 arising from the domestic purchases and importations of goods and services, including the amount of ₱120,570,966.03 which is allocated to its zero-rated sales. These input VAT plus the input taxes carried over from the previous quarter resulted to higher input taxes than output taxes, thereby generating unutilized input taxes.

Furthermore, petitioner contends that its unutilized creditable input taxes for taxable year 2007 are attributable to its zero-rated sales, and are properly substantiated by invoices and official receipts. Also, petitioner avers that the input taxes being claimed for refund were not applied against output taxes and neither were these carried over in the succeeding quarters.

[16] CTA Case No. 8008 Docket, pp. 85 to 86.

Lastly, petitioner asserts that the administrative and judicial claims for refund were filed within the period provided by law.

Respondent's counter-arguments:

Respondent claims that while it is true that Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sales, nonetheless, compliance with certain invoicing requirements must be met before such claim for refund or credit can be granted.

Moreover, respondent contends that it is the responsibility of a taxpayer seeking for a refund to comply with Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88, and Revenue Memorandum Order No. 53-98.

Finally, respondent points out that since petitioner did not submit complete documents in support of its administrative claims for refund as indicated under Section 112(D) of the NIRC of 1997, the 120-day period started to run on March 31, 2009, June 2, 2009, and October 27, 2009, the dates when it filed its administrative claims for refund. The said periods were yet to expire on August 28, 2009, October 30, 2009, and March 25, 2010. Hence, the petition for review filed on March 31, 2009, September 30, 2009, and December 21, 2009 were all prematurely filed. This being so, the Honorable Court has no jurisdiction to act on the instant petition for review.

THE RULING OF THE COURT

Section 112(A) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[17] provides the basis for refunds or tax credits of input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* –

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[17] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of 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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(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 aforequoted provisions of Section 112(A), in order that a taxpayer-claimant will be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following basic requisites must be complied with:

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

The fifth requisite pertains to the filing of the administrative claim for tax credit certificate/refund of input VAT. As explicitly stated under Section 112(A), the application for tax credit certificate/refund of unutilized excess input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four taxable quarters of 2007 which closed on March 31, 2007; June 30, 2007; September 30, 2007 and December 31, 2007. Counting two (2) years from the said dates, petitioner had until March 31, 2009; June 30, 2009; September 30, 2009 and December 31, 2009, respectively, within which to file its administrative claim for tax credit certificate/refund for the respective quarter of 2007. Thus, petitioner's administrative claims for refund were seasonably filed on March 31, 2009, June 2, 2009 and October 27, 2009, as shown below:

CTA Case No.	Year 2007	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim	Exhibits
7898	1st Quarter	March 31, 2007	March 31, 2009	March 31, 2009	"D", "D-1"
	2nd Quarter	June 30, 2007	June 30, 2009		
7980	3rd Quarter	September 30, 2007	September 30, 2009	June 2, 2009	"E", "E-1"
8008	4th Quarter	December 31, 2007	December 31, 2009	Oct. 27, 2009	"F", "F-1"

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended by RA No. 9337, provides that the Commissioner of Internal Revenue (CIR) has 120 days from the date of the submission of the complete documents in support of the application for tax refund/credit within which, in proper cases, to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days.

Applying Section 112(C) of the NIRC of 1997, as amended by RA 9337, the following are the pertinent dates involving petitioner's claims for refund:

CTA Case No.	Quarters of Taxable Year 2007	Date of Filing of Administrative Claim	End of 120 days for respondent CIR to act on Administrative Claim	End of 30 days from lapse of 120 days to file Judicial Claim	Date of Filing of Judicial Claim
7898	1st Quarter 2nd Quarter	March 31, 2009	July 29, 2009	August 28, 2009	March 31, 2009
7980	3rd Quarter	June 2, 2009	September 30, 2009	October 30, 2009	September 30, 2009
8008	4th Quarter	October 27, 2009	February 24, 2010	March 26, 2010	December 21, 2009

Clearly from the foregoing table, petitioner's judicial claims for the four quarters of 2007 were prematurely filed on March 31, 2009, September 30, 2009 and December 21, 2009, as these were filed by petitioner without awaiting for the 120-day period to lapse. This is in accordance with the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[18] (hereinafter referred to as the "*Aichi* case"), to wit:

> Section 112(D)[19] of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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[18] G.R. No. 184823, October 6, 2010.
[19] Now Section 112(C), as amended by Republic Act No. 9337.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' The phrase 'within two (2) years x x x apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D)[20] of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D)[21] of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D)[22] of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA."

However, in *Commissioner of Internal Revenue vs. San Roque*

[20] Id.
[21] Id.
[22] Id.

Power Corporation, etseq.[23] (hereinafter referred to as the "*San Roque* case"), the Supreme Court said:

> "When Section 112(C) states that 'the taxpayer affected **may**, within thirty (30) days from 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,' the law does not make the 120+30 day periods optional just because the law uses the word '**may**.' The word 'may' simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word 'may' be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after the filing the administrative claim with the Commissioner.
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> The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the 30-day period always available to the taxpayer, the taxpayer cannot longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.
>
> To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the

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[23] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

effectivity of the *Atlas* doctrine,[24] except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

xxx xxx xxx

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

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BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where

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[24] Referring to *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (G.R. Nos. 141104 and 148763, June 8, 2007), wherein it was held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229 of the NIRC of 1997.

the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Underscoring supplied)*

Applying the aforesaid ruling in the instant consolidated cases, and considering that petitioner respectively filed its judicial claims for refund or issuance of tax credit certificate on March 31, 2009, September 30, 2009, and December 21, 2009, all prior to the promulgation of the *Aichi* case, petitioner can rely on BIR Ruling No. DA-489-03 and need not wait for the lapse of the 120-day period before it can file said claims before this Court. Correspondingly, said judicial claims may be respectively considered as timely filed, pursuant to the *San Roque* case.

The Court shall now consider petitioner's compliance with the other remaining legal requirements pertaining to its refund claim.

Petitioner submits that its sales of goods to companies located in foreign countries and in special economic zones and freeport zones qualify for VAT zero-rating pursuant to Section 106(A)(2) of the NIRC of 1997, as amended by RA No. 9337, which states:

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* -

(A) *Rate and Base of Tax.* – xxx xxx xxx

(1) 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);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);

(5) <u>Those considered export sales under Executive Order NO. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws</u>; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations." *(Underscoring supplied)*

The Court agrees with petitioner.

Sales by a VAT taxpayer from the customs territory to entities located in export processing zones are considered export sales under Executive Order No. (EO) 226, otherwise known as the *"Omnibus Investments Code of 1987"*, the relevant portions of which read as follows:

"**ARTICLE 23.** 'Export Sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported directly by a registered export producer or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: *Provided,* That sales of export products to another

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producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents: *Provided, further,* **That without actual exportation the following shall be considered constructively exported for purposes of this provision**: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) **sales to export processing zones**;..." (*Emphasis supplied*)

"**ARTICLE 77.** ***Tax Treatment of Merchandise in the Zone.*** – (1) Except as otherwise provided in this Code, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise whether directly or indirectly related in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding.

"(2) **Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction.**..." (*Emphasis supplied*)

Considering that petitioner's sales of goods to entities located in export processing zones fall within the definition of "export sales" under EO 226, such sales are export sales contemplated by the aforequoted 106(A)(2) as subject to zero percent (0%) VAT.

Likewise, Section 4.106-5 of Revenue Regulations (RR) No. 16-05, as amended by Section 5 of RR No. 04-07, classify as *"export sales"* the sales to export processing zones pursuant to Republic Act (RA) Nos. 7916,[25] as amended, 7903,[26] 7922[27] and other similar

[25] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATON, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

export processing zones; sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA No. 7227[28] and sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported, to wit:

> "**SEC. 4.106-5.** ***Zero-Rated Sales of Goods or Properties***. — xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) **Export Sales**. — "*Export Sales*" shall mean:
>
> **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.
>
> ***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided,* That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided,* further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be

[26] AN ACT CREATING A SPECIAL ECONOMIC ZONE AND FREE PORT IN THE CITY OF ZAMBOANGA CREATING FOR THIS PURPOSE THE ZAMBOANGA CITY SPECIAL ECONOMIC ZONE AUTHORITY, APPROPRIATING FUNDS HEREFOR, AND FOR OTHER PURPOSES.

[27] AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT IN THE MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[28] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.

> considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided,* finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.

Similarly, direct export sales of goods to foreign countries qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended by RA No. 9337, subject to the following conditions:

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;
2.) the sale was made by a VAT registered person;
3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4.) the payment was accounted for in accordance with the rules and regulations of the BSP.

In its 2007 Quarterly VAT Returns, petitioner's declared zero-rated sales amounted to P1,091,958,783.59, broken down as follows:

Exhibit	Year 2007	Zero-Rated Sales
"CCC"[29]	1st Quarter	P 195,990,440.91
"GGG"[30]	2nd Quarter	257,770,632.65
"MMM"[31]	3rd Quarter	304,475,671.70
"SSS"[32]	4th Quarter	333,722,038.33
	Total	**P 1,091,958,783.59**

Based on his review and validation of petitioner's zero-rated sales for the year 2007, the court-commissioned independent CPA (ICPA), Enrico T. Pizarro,[33] noted that petitioner's reported zero-rated sales for the year 2007 pertain to sales to PEZA (Philippine Economic Zone Authority)-registered enterprises and export sales of fuel to RD Fishing Industry which were paid for in acceptable foreign currency.[34]

To establish that its clients are special economic or freeport zone enterprises, petitioner submitted various Certifications / Certificates[35] of Registration from the PEZA, Clark Development Corporation (CDC), Board of Investments (BOI) and Export Processing Authority (EPZA), detailed as follows:

Exhibit	Business Name	Issuing Authority	Effectivity Period of Certification
QQ-1	Analog Devices Gen. Trias, Inc. (ADGT)	PEZA	2007
QQ-2	Dunlop Slazenger (Phils.) Inc. (DSPI)	PEZA	2001
QQ-3	Ichinomiya Electronics Philippines Corp.	PEZA	2006
QQ-4	Moog Controls Corporation (Phil. Branch) (Moog)	PEZA	(Cannot be determined because of the incompleteness of the document.)
QQ-5	Nidec Precision Philippines Corporation (NPPC)	PEZA	2006
QQ-6	Pan Century Surfactants Inc. (PCSI)	PEZA	2006
QQ-7	Phoenix Gold Energy, Inc., Sub-lessee of Philexcel Business Park, Inc. (Phoenix)	CDC	March 13, 2006 to January 31, 2007
QQ-8	R.D. Policarpio & Co. Inc. (Policarpio)	CDC	May 25, 2004 to May 12, 2007
QQ-9	Sakamoto Orient Chemicals Corporation (SOCC)	PEZA	2006
QQ-10	AGC Flat Glass Philippines, Inc.	PEZA	2010

[29] CTA Case No. 7898 Docket (Volume II), pp. 531 to 532.
[30] CTA Case No. 7898 Docket (Volume II), pp. 539 to 540.
[31] CTA Case No. 7898 Docket (Volume II), pp. 551 to 552.
[32] CTA Case No. 7898 Docket (Volume II), pp. 563 to 564.
[33] Partner of PMC Consultants & Partners Co.
[34] Exhibit "KKKKK", Results of Procedures Performed, p. 5, no. 1.b; and p. 18, no. 1.f.
[35] Exhibits "QQ-1" to "QQ-16".

QQ-11	Davao Agricultural Ventures Corp.	BOI	2010
QQ-12	Metalcrest Technologies Inc. (MTI)	PEZA	2006
QQ-13	Ogino Philippines Corporation (OPC)	PEZA	2010
QQ-14	Philippine Bobbin Corporation	EPZA	-
QQ-15	Tann Philippines, Inc. (TPI)	PEZA	2010
QQ-16	Wind Tunnel International, Inc. (WTII)	CDC	Oct. 6, 2006 to Feb. 18, 2014

However, it must be remembered that the period covered by the instant claim is taxable year 2007, and therefore, only the Certifications which are indicative of the fact that the named entities therein are duly registered with the PEZA or BOI or CDC, as the case may be, and only during the effectivity thereof, which must be within the year 2007, shall be considered valid for purposes of determining petitioner's zero-rated sales for the year 2007. As a corollary, any sale to the above-named entities at the time their respective registration has expired, either fully for the entire year of 2007, or partially after a certain month in 2007, or was not yet effective in the year 2007, shall not be included in the computation of such zero-rated sales for the said year.

Circumspection is called for in this instance, since the respective registration with the above-stated government agencies may already have been revoked or suspended, or is not yet effective or is no longer renewed, in the year 2007. It must be emphasized that to be subject to zero percent (0%) VAT, it is crucial that a transaction be classified as an export sale, which in turn is dependent on the requirement that the sale was indeed made to an enterprise, whose registration with any of the said government agencies is already effective or is still in effect.

In light of the foregoing considerations and looking now at the foregoing summary, petitioner's sales to the following entities shall be denied for the reasons stated as follows:

(1) Effectivity period of respective Certification has expired: Dunlop Slazenger (Phils), Inc. (2001), Ichinomiya Electronics Philippines Corp. (2006), NIDEC Precision Philippines Corporation (2006), Pan Century Surfactants Inc. (2006), Sakamoto Orient Chemicals Corporation (2006), Metalcrest Technologies Inc. (2006);

(2) Effectivity period of respective Certification was after 2007, or all for the year 2010: AGC Flat Glass Philippines, Inc., Davao Agricultural Ventures Corp., Ogino Philippines Corporation, and Tann Philippines, Inc.

(3) Effectivity period cannot be determined because of incompleteness of documents : Moog Controls Corporation (Phil. Branch), and Philippine Bobbin Corporation,

(4) Effectivity period has partially expired within the year 2007: Sales to R.D. Policarpio & Co. Inc. starting May 13, 2007, and to Phoenix Gold Energy, Inc. starting February 1, 2007 (shall be denied);

On the other hand, petitioner's sales to Asahicast Philippines, Inc., Tarlac Power Corp., Total Lubricants Hongkong, Ltd., American Hospitality Academy, Metro Active, Inc., shall be denied VAT zero-rating for petitioner's failure to submit certifications stating that such entities are special economic zone or freeport zone enterprises for the year 2007 and/or other documents to prove that such sales are VAT zero-rated.

As regards petitioner's alleged zero-rated direct export sales to RD Fishing Industry, petitioner submitted the corresponding sales invoices[36] and bank statements[37] as summarized in its List of Export Sales[38]. However, petitioner failed to prove the actual shipment of its fuel to a foreign country because it failed to submit export documents such as bills of lading, export declarations or permits, etc. Hence, considering petitioner's failure to show that the sales to RD Fishing Industry were actually direct export sales as contemplated under Section 106(A)(2)(a)(1), the same shall be denied VAT zero-rating.

In fine, only the sales made by petitioner to Analog Devices Gen. Trias, Inc. and Wind Tunnel International Inc. for the year 2007 and sales to Phoenix Gold Energy, Inc. for the month of January 2007 and R.D. Policarpio & Co. Inc. for the period January 1, 2007 to May 12, 2007 which are duly supported by PEZA/CDC certifications and VAT zero-rated sales invoices in the total amount of P74,460,845.27, broken down below, qualifies for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

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[36] Exhibits "WW-2-1" to "WW-2-3", "WW-1-b-39", "WW-1-b-81", "WW-1-b-83", "WW-1-b-111", "WW-1-b- 113", and "WW-1-b-115".
[37] Exhibit "ZZ-1".
[38] Exhibit "Z".

Customer	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Analog Devices Gen. Trias, Inc.[39]	P 536,462.00	P 572,462.00	P -	P -	P 1,108,924.00
Wind Tunnel International,Inc.[40]	-	184,831.26	235,791.17	242,461.45	663,083.88
Phoenix Gold Energy, Inc.[41]	37,835,052.40		-	-	37,835,052.40
R.D. Policarpio & Co. Inc.[42]	23,861,817.02	10,991,967.97	-	-	34,853,784.99
TOTAL	**P62,233,331.42**	**P11,749,261.23**	**P235,791.17**	**P242,461.45**	**P74,460,845.27**

Consequently, only the portion of the input VAT claim attributable to the substantiated zero-rated sales of P74,460,845.27 will be considered for refund. The rate to be applied is based on the substantiated zero-rated sales over the total amount of reported zero-rated sales, computed as follows:

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[39] Exhibits "MM-2-6" and "LL-1-a-143".

[40] Exhibits "LL-1-a-436", "LL-2-50", "LL-2-51", "VV-1-a-156", "VV-1-a-348", "VV-1-a-349", "VV-1-a-350", "VV-1-a-351", "WW-1-a-155", "WW-1-a-156", "WW-1-a-275", "WW-1-a-389", "WW-1-a-547", and "WW-1-a-548".

[41] Exhibits "MM-1-3" to "MM-1-5", "MM-1-7" to "MM-1-12", "MM-1-16", "MM-1-19" to "MM-1-21", "MM-1-23", "MM-1-25", "MM-1-28", "MM-1-31" to "MM-1-32", "MM-1-35" to "MM-1-37", "MM-1-39", "MM-1-41" to "MM-1-43", "MM-1-45" to "MM-1-46", "MM-1-48" to "MM-1-50", "MM-1-58" to "MM-1-59", "MM-1-61", "MM-1-66" to "MM-1-67", "MM-1-69" to "MM-1-71", "MM-1-73" to "MM-1-75", "MM-1-79" to "MM-1-81", "MM-1-83" to "MM-1-85", "MM-1-87" to "MM-1-88", "MM-1-93", "MM-1-96" to "MM-1-99", "MM-1-101", "MM-1-109", "MM-1-111" to "MM-1-113", "MM-1-115" to "MM-1-117", "MM-1-119", "MM-1-121" to "MM-1-125", "MM-1-127", "MM-1-130", "MM-1-132" to "MM-1-134", "MM-1-136" to "MM-1-137", "MM-1-141" to "MM-1-147", "MM-1-149" to "MM-1-151", and "MM-1-153" to "MM-1-154".

[42] Exhibits "MM-1-6", "MM-1-18", "MM-1-22", "MM-1-33", "MM-1-38", "MM-1-44", "MM-1-64", "MM-1-65", "MM-1-76" to "MM-1-78", "MM-1-86", "MM-1-95", "MM-1-108", "MM-1-114", "MM-1-126", "MM-1-131", "MM-1-140", "MM-1-152", "MM-1-163", "MM-1-164", "MM-1-203", "MM-1-209", "MM-1-210", "MM-1-218", "MM-1-225", "MM-1-231", "MM-1-243", "MM-1-244", "MM-1-269", "MM-1-275", "MM-1-277" to "MM-1-279", "MM-1-282", "MM-1-287", "MM-1-297", "MM-1-303", "MM-1-330", "MM-1-331", "MM-1-344", "MM-1-356", "MM-1-357", "MM-1-370", "MM-1-371", "MM-1-401", "MM-1-407", "MM-1-415", "MM-1-424", "MM-1-426", "MM-1-442", "MM-1-459", "MM-1-475", "MM-1-481", "MM-1-490", "MM-1-493", "MM-1-502", "LL-1-a-5", "LL-1-a-18", "LL-1-a-31", "LL-1-a-44", "LL-1-a-48", "LL-1-a-64", "LL-1-a-74", "LL-1-a-88", "LL-1-a-96", "LL-1-a-102", "LL-1-a-115", "LL-1-a-123", "LL-1-a-134", "LL-1-a-137", "LL-1-a-144", "LL-1-a-153", "LL-1-a-159", "LL-1-a-169", "LL-1-a-175", "LL-1-a-184" to "LL-1-a-186", and "LL-1-a-192".

Taxable Quarter of Year 2007	Total Sales	Substantiated Zero-Rated Sales	Ratio of Substantiated Zero-Rated Sales to Total Sales
1st Quarter	P 5,758,130,011.57	P 62,233,331.42	1.0807907%
2nd Quarter	6,241,755,130.93	11,749,261.23	0.1882365%
3rd Quarter	6,608,872,808.89	235,791.17	0.0035678%
4th Quarter	6,772,420,063.16	242,461.45	0.0035801%
	P 25,381,178,014.55	**P 74,460,845.27**	

After having resolved that petitioner had VAT zero-rated sales for the year 2007 in the total amount of P74,460,845.27, We shall now determine whether petitioner incurred excess input taxes in connection thereto.

Based on petitioner's amended Quarterly VAT Returns filed with the BIR on February 4, 2010,[43] petitioner's total input VAT for the four (4) quarters of 2007 amounted to P2,794,093,313.26, broken down as follows:

Year 2007	**1st Quarter**	**2nd Quarter**
Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter	P4,586,947.93	P6,036,830.74
Add: Input Tax on Capital Goods exceeding P1Million Purchased this quarter	1,762,961.87	695,805.99
Total Unamortized Input Tax on Capital Goods exceeding P1Million	P6,349,909.80	P6,732,636.73
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	6,036,831.36	6,360,773.98
Amortization of Input Tax on Capital Goods exceeding P1Million	313,078.44	371,862.75
Add: Input Tax on:		
Purchase of Capital Goods not exceeding ₱1Million	-	88,342.94
Domestic Purchases of Goods Other than Capital Goods	133,137,814.15	93,929,770.00
Importation of Goods other than Capital Goods	445,234,383.52	578,156,946.95
Domestic Purchase of Services	30,106,574.28	21,504,208.27
Total Input Tax	**P608,791,850.39**	**P694,051,130.91**

[43] Exhibits "CCC", "GGG", "MMM", and "SSS".

Year 2007	3rd Quarter	4th Quarter	Total for 2007
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter	P6,360,773.98	P6,888,272.17	P4,586,947.93
Add: Input Tax on Capital Goods exceeding P1Million Purchased this quarter	947,017.81	471,233.35	3,877,019.02
Total Unamortized Input Tax on Capital Goods exceeding P1Million	P7,307,791.79	P7,359,505.52	P8,463,966.95
Less: Input Tax on Purchases of Capital Goods exceeding P1Million deferred for the succeeding period	6,888,272.17	6,909,559.61	6,909,559.61[44]
Amortization of Input Tax on Capital Goods exceeding P1Million	419,519.62	449,945.91	1,554,406.72
Add: Input Tax on:			
Purchase of Capital Goods not exceeding P1Million	125,412.80	36,464.96	250,220.70
Domestic Purchases of Goods Other than Capital Goods	113,913,287.73	105,151,901.15	446,132,773.03
Importation of Goods other than Capital Goods	586,784,534.04	648,635,527.35	2,258,811,391.86
Domestic Purchase of Services	15,282,765.04	20,450,973.36	87,344,520.95
Total Allowable Input Tax	**P716,525,519.23**	**P774,724,812.73**	**P2,794,093,313.26**

Petitioner submitted its suppliers' invoices, official receipts, Bureau of Customs (BOC) Import Entries and Internal Revenue Declarations (IEIRDs), BOC and bank official receipts in support of the P2,794,093,313.26.

Upon verification of the aforesaid documents, the Court-commissioned independent ICPA reported his findings as follows: [45]

[44]Understated by P.62 because of the erroneous indication made by petitioner in its Quarterly VAT Return for the second quarter of 2007 of the amount of P6,036,830.74 instead of the amount of P6,036,831.36 as Input Tax Deferred on Capital Goods Exceeding P1Million from Previous Quarter .

[45] Exhibit "K[5]", pages 26 to 29.

	Exhibits	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Total amount of input VAT examined		**P608,478,771.95**	**P693,679,268.16**	**P716,105,999.61**	**P774,274,866.82**	**P2,792,538,906.54**
Exceptions noted:						
a. Supporting documents were not provided						
Goods	NN-2-a OO-2-a XX-2-a YY-2-a	P 1,127,363.71	P 9,571,031.10	P11,930,390.11	P 1,548,692.67	P 24,177,477.59
Services	NN-2-b OO-2-b XX-2-b YY-2-b	1,992,942.83	1,365,635.33	2,072,221.43	3,043,358.18	8,474,157.77
Importations	NN-2-c OO-2-c XX-2-c YY-2-c	26,966,847.00	8,116,137.00	5,778,672.00	8,015,101.00	48,876,757.00
Capital Goods	OO-2-d	-	88,342.94	-	-	88,342.94
b. Supporting documents were not dated within the year of claim						
Goods	NN-3-a OO-3-a	P 2,949,152.53	P 143,371.20	-	P -	P 3,092,523.73
Services	NN-3-b OO-3-b YY-7-a	5,887,992.43	940,616.45	-	41,338.02	6,869,946.90
c. Supporting documents did not show the amount of input VAT as separate item						
Goods	NN-4-a OO-4-a XX-3-a YY-3-a	P 2,130.81	P 355,534.50	P 1,054.29	P 1,028.57	P 359,748.17
Services	NN-4-b OO-4-b XX-3-b YY-3-b	3,418,806.89	11,966,870.73	977,508.63	817,461.21	17,180,647.46
d. Supporting documents with transactions amounting P1,000 or more, did not show TIN of the Company						
Goods	NN-5-a OO-5-a XX-4-a YY-4-a	P 177,674.97	P 1,759,262.24	P 500,310.06	P 304,257.14	P 2,741,504.41
Services	NN-5-b OO-5-b XX-4-b YY-4-b	2,761,314.49	3,724,646.12	168,305.58	95,695.34	6,749,961.53
e. Supporting documents are Non-VAT invoice and/or Non-VAT official receipts						
Goods	NN-6-a OO-6-a	P 1,135.71	P 3,715.32	P -	P -	P 4,851.03
Services	NN-6-b XX-5-a YY-5-a	80,290.43	-	1,233.07	64,732.86	146,256.36
f. Supporting documents did not indicate the name of the Company						
Goods	NN-7-a	P 2,144.02	-	P -	-	P 2,144.02
Services	XX-7-a	-	-	41,897.83	-	41,897.83
g. Supporting documents with manual alterations						
Goods	XX-6-a YY-6-a	P -	-	P 20,606.91	P 970,291.92	P 990,898.83

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	Services	NN-8-b OO-7-a XX-6-b YY-6-b	22,680.00	297,148.70	86,357.52	102,443.83	508,630.05
h. Supporting documents did not indicate the date of the transaction							
	Services	NN-9-b OO-8-b	P 69,344.58	P 88,120.72	-	-	P 157,465.30
Total Exceptions noted			**P 45,459,820.40**	**P 38,420,432.35**	**P 21,578,557.43**	**P 15,004,400.74**	**P 120,463,210.92**
Total amount of input VAT without exceptions			**P563,018,951.55**	**P655,258,835.81**	**P694,527,442.18**	**P759,270,466.08**	**P2,672,075,695.62**

The total amount of P120,463,210.92 input VAT excepted by the ICPA should be disallowed for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of the RR No.16-2005, as amended.

It should be noted that there is a discrepancy between the total input taxes declared in petitioner's Quarterly VAT returns and the input taxes examined by the Court-commissioned ICPA as shown below:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Total claimed input tax	P608,791,850.39	P694,051,130.91	P716,525,519.23	P774,724,812.73	P2,794,093,313.26
Total input tax examined	608,478,771.95	693,679,268.16	716,105,999.61	774,274,866.82	2,792,538,906.54
Difference	**P 313,078.44**	**P 371,862.75**	**P 419,519.62**	**P 449,945.91**	**P 1,554,406.72**

The Court found that the above difference pertains to petitioner's claimed amortized input taxes on purchases of capital goods exceeding P1million for the subject taxable quarters, thus:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Deferred input tax on capital goods exceeding P1M from previous quarter	P4,586,947.93	P6,036,830.74	P6,360,773.98	P6,888,272.17	P23,872,824.82
Add: Input tax on capital goods exceeding P1M this quarter	1,762,961.87	695,805.99	947,017.81	471,233.35	3,877,019.02
Less: Input tax on capital goods exceeding P1M deferred for the succeeding quarter	(6,036,831.36)	(6,360,773.98)	(6,888,272.17)	(6,909,559.61)	(26,195,437.12)
Claimed amortized input tax on capital goods exceeding P1M	**P 313,078.44**	**P 371,862.75**	**P 419,519.62**	**P 449,945.91**	**P 1,554,406.72**

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For being unsubstantiated, the aforesaid input taxes of P1,554,406.72 shall also be disallowed.

Moreover, petitioner's input VAT claim should be further decreased by P100,274,122.08, broken down as follows:

Findings	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
1. Input tax on importation of goods supported by IEIRDs without machine validation or BOC/bank ORs[46]	P73,286,969.06	P -	P 5,352,657.00	P -	P 78,639,626.06
2. Input tax on domestic purchase of goods supported by VAT ORs that are not legible[47]	566,778.86	281,919.36	-	-	848,698.22
3. Input tax on domestic purchase of services supported by VAT OR not issued in the name of petitioner[48]	-	-	31,039.38	-	31,039.38
4. Input tax on domestic purchases of services supported by TIN # ONLY or TIN-V ORs[49]	2,084,118.39	111,226.85	363,014.92	1,512,788.59	4,071,148.75
5. Input tax on domestic purchase of services supported by undated official receipt[50]	-	-	-	19,236.00	19,236.00
6. Input tax on purchases of services wherein the VAT amount	41,681.21	238,577.80	-	-	280,259.01

[46] Exhibits "NN-1-c-31", "NN-1-c-33" to "NN-1-c-36" and "XX-1-c-6".
[47] Exhibits "NN-1-a-86" to "NN-1-a-95", "NN-1-a-105", "NN-1-a-151" to "NN-1-a-154", "OO-1-a-86", "OO-1-a-96", "OO-1-a-98", and "OO-1-a-100" to "OO-1-a-105".
[48] Exhibit "XX-1-b-280".
[49] Exhibits "NN-1-b-29", "NN-1-b-30", "NN-1-b-58", "NN-1-b-288" to "NN-1-b-294", "NN-1-b-375" to "NN-1-b-380", "NN-1-b-469" to "NN-1-b-472", "OO-1-b-3", "OO-1-b-24", "XX-1-b-13" to "XX-1-b-15", "XX-1-b-189", "XX-1-b-234" to "XX-1-b-237", "YY-1-b-20", "YY-1-b-21", "YY-1-b-168", "YY-1-b-169", "YY-1-b-172" to "YY-1-b-177", and "YY-1-b-216".
[50] Exhibit "NN-1-b-411".

was not separately shown in the OR[51]					
7.Input tax on domestic purchase of service supported by a VAT official receipt but with alteration on payor's name[52]	-	11,342.88	-	-	11,342.88
8.Overclaimed input tax[53]	1,691.01	1,843,179.22	13,653,191.22	874,710.33	16,372,771.78
TOTAL	**P75,981,238.53**	**P2,486,246.11**	**P19,399,902.52**	**P2,406,734.92**	**P100,274,122.08**

Proceeding from the aforesaid disallowances, out of petitioner's claimed total input tax of P2,794,093,313.26, only the amount of P2,571,801,573.54, as computed below, represents petitioner's valid input tax:

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Total claimed input tax	P608,791,850.39	P694,051,130.91	P716,525,519.23	P774,724,812.73	P2,794,093,313.26
Less: Disallowances					
Not examined by ICPA	P 313,078.44	P 371,862.75	P 419,519.62	P 449,945.91	P 1,554,406.72
Per ICPA's report	45,459,820.40	38,420,432.35	21,578,557.43	15,004,400.74	120,463,210.92
Per this Court's further verification	75,981,238.53	2,486,246.11	19,399,902.52	2,406,734.92	100,274,122.08
Total disallowances	P121,754,137.37	P 41,278,541.21	P 41,397,979.57	P 17,861,081.57	P 222,291,739.72
Properly substantiated input tax	**P487,037,713.02**	**P652,772,589.70**	**P675,127,539.66**	**P756,863,731.16**	**P2,571,801,573.54**

At this point we take into consideration the output taxes reported by petitioner in its Quarterly VAT Returns for the year 2007 and compare the same with the foregoing substantiated input taxes, to wit:

[51] Exhibits "NN-1-b-1", "NN-1-b-2", "NN-1-b-4" to "NN-1-b-7", "NN-1-b-10", "NN-1-b-192", "OO-1-b-1", and "OO-1-b-4".

[52] Exhibit "OO-1-b-11".

[53] Exhibits "NN-1-b-222", "NN-1-b-247", "OO-1-a-119", "OO-1-b-33", "OO-1-b-36", "XX-1-a-30", "XX-1-a-32", "XX-1-a-180", "XX-1-b-1", "XX-1-b-11", "XX-1-b-23", "XX-1-b-24", "XX-1-b-61", "XX-1-b-75", "XX-1-b-112", "XX-1-b-340", "XX-1-c-8", "XX-1-c-20", "XX-1-c-22", "YY-1-a-18" to "YY-1-a-20", "YY-1-a-211", "YY-1-b-25", "YY-1-b-84", "YY-1-b-110", "YY-1-b-115", "YY-1-b-157", "YY-1-b-262", "YY-1-b-263", "YY-1-b-275", "YY-1-b-301", and "YY-1-c-4".

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Total
Output tax	P667,352,002.44	P717,985,873.95	P756,527,656.46	P772,643,762.97	P2,914,509,295.82
Properly substantiated input tax	487,037,713.02	652,772,589.70	675,127,539.66	756,863,731.16	2,571,801,573.54
Output tax still due	**P180,314,289.42**	**P 65,213,284.25**	**P 81,400,116.80**	**P 15,780,031.81**	**P 342,707,722.28**

As shown above, petitioner's properly substantiated input taxes for the year 2007 are not enough to cover its output taxes for the same year. While petitioner reflected in its Quarterly VAT Return for the first quarter of 2007[54] the amount of P413,673,290.11 as *"Input Tax Carried Over from Previous Quarter"*, petitioner failed to present VAT invoices or receipts to prove the existence of such amount. Hence, the input VAT carry-over in the said amount of P413,673,290.11 cannot be validly applied against petitioner's output VAT, pursuant to Section 110(A) in relation to Section 110(B) of the NIRC of 1997, as amended by RA Nos. 9337 and 9361, to wit:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax **evidenced by a VAT invoice or official receipt** issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> xxx xxx xxx
>
> (B) *Excess Output or Input Tax.*— If at the end any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: *Provided, however*, That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112." *(Emphases supplied)*

Considering that there is no excess input VAT which may be the subject of a claim for refund/tax credit certificate under Section 112(A) of the NIRC of 1997, as amended, the instant claim must perforce be denied.

[54] Exhibit "CCC".

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds **in relation to the VAT** are in the nature of such exemptions.[55]

WHEREFORE, in view of the foregoing considerations, the present Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Chairperson
Associate Justice

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[55] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice