REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

PILIPINAS KYOHRITSU INC. *Petitioner,*	**CTA CASE NO. 9646**
	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 07 2023 9:00 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before this Court is a **Petition for Review,**[1] filed on 9 August 2017 by **Pilipinas Kyohritsu Inc.** ("**PKI**" or "**petitioner**") against respondent **Commissioner of Internal Revenue** ("**CIR**" or "**respondent**"), praying that judgment be rendered ordering respondent to refund a total amount of Nine Million Five Hundred Forty-Four Thousand Two Hundred Forty-Six and 41/100 Pesos (**Php9,544,246.41**), representing petitioner's alleged excess and unutilized input value added tax ("VAT") for the period January to March 2015, the fourth (4th) quarter of petitioner's fiscal year ending 31 March 2015 ("FY2015").

The Parties

Petitioner Pilipinas Kyohritsu Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Km. 75 Laurel Highway Inosloban, Lipa City, Batangas.

[1] Docket Vol. 1, pp. 10-146, with annexes.
[2] See Petition for Review, *id.*, p. 11; see also Exhibit "P-1", Docket Vol. 2, p. 602-603.

Petitioner is engaged in the business of manufacturing and exporting parts and accessories, specifically wiring harnesses, weld caps, and tie-bands, and engineering design activities. Petitioner is registered with the Bureau of Internal Revenue ("BIR") as a VAT-registered large taxpayer with identification number 000-269-082-000,[3] and with the Board of Investments ("BOI") as a new export producer of automotive wiring harnesses (BOI Registration No. ["RN"] 2007-060),[4] a new export producer of weld caps for automotive application (BOI RN 2005-177),[5] a new export producer of tie band products for automotive wiring harnesses (BOI RN 2015-080),[6] and a new IT-enabled service exporter in the field of engineering design of automotive wiring harnesses (BOI RN 2003-046).[7]

On the other hand, respondent is the Commissioner of the BIR, vested with the authority to decide, approve, and grant tax refunds pursuant to ***Section 112 (C) of the National Internal Revenue Code of 1997, as amended*** ("**Tax Code**"). He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

The Facts

On 14 March 2017, petitioner filed its Application for Tax Credit/Refund (BIR Form No. 1914) with BIR Regular Large Taxpayers Audit Division I ("RLTAD I") requesting for the refund of its unutilized and/or unused input VAT amounting to Php9,544,246.41 covering the period January to March 2015 (4th quarter of FY2015).[9]

Due to the respondent's inaction on the application, petitioner filed the instant Petition for Review[10] with the Court on 9 August 2017, to which respondent filed his Answer on 20 October 2017[11] after various Motions for Extension of Time to File Answer.[12]

On 1 March 2018, petitioner submitted the Judicial Affidavits of Ms. Edna Luisa Lopez,[13] Manager of PKI's Finance and Management Accounting Department; Mr. Salvador Laylo, Jr.,[14] Manager of PKI's Business Planning Department, Import/Export Section; and Ms. Evelyn Ocampo,[15] Assistant Manager of PKI's Management Accounting Session.

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3 Exhibit "P-1", Docket Vol. 2, p. 602-603.
4 Exhibit "P-2", *id.*, p. 604.
5 Exhibit "P-3", *id.*, p. 610.
6 Exhibit "P-4", *id.*, p. 616.
7 Exhibit "P-5", *id.*, p. 625.
8 See Petition for Review, Docket Vol. 1, p. 11.
9 Exhibit "P-7", Docket Vol. 2, p. 633.
10 See Petition for Review, Docket Vol. 1, pp. 10-147, with annexes.
11 *Id.*, pp. 163-171.
12 *Id.*, pp. 150-152; *id.*, pp. 156-158.
13 See Judicial Affidavit of Edna Luisa Lopez, Exhibit "P-24", *id.*, pp. 177-191.
14 See Judicial Affidavit of Salvador Laylo, Jr., Exhibit "P-25", *id.*, pp. 192-199.
15 See Judicial Affidavit of Evelyn Ocampo, *id.*, pp. 200-208.

On even date, both parties submitted their respective Pre-Trial Briefs.[16]

Respondent then transmitted to the Court the BIR records of the instant case on 2 March 2018.[17]

The Pre-Trial Conference was held on 6 March 2018.[18] Thereafter, on 20 March 2018, the parties submitted their Joint Stipulation of Facts and Issues.[19] The Pre-Trial Order was then issued by the Court on 16 April 2018.[20]

Commissioner's Hearings for petitioner were conducted on 3 May 2018,[21] and 10 May 2018,[22] and 24 May 2018.[23] Meanwhile, in the Commissioner's Hearing conducted on 31 May 2018, respondent manifested that he had no documents for marking.[24]

On 24 May 2018, petitioner filed a Motion for the Appointment of an Independent Certified Public Accountant ("ICPA"), Mr. Garry S. Pagaspas.[25] However, the motion was denied by the Court during the hearing on 4 June 2018 after respondent interposed his objection on the ground that Mr. Pagaspas had been commissioned thrice for the same petitioner, thereby putting his firm's impartiality in question.[26]

Another Motion for the Appointment of an ICPA[27] was filed by petitioner on 31 July 2018, this time asking for the commissioning of Mr. Lorenz Samuel D. Gomez. The Court approved the motion on 6 August 2018, and Mr. Gomez took his oath on the same date.[28] ICPA Gomez submitted softcopies of the pre-marked documents used as exhibits in the ICPA Report on 5 September 2018.[29]

For its testimonial evidence, petitioner presented Ms. Lopez during the hearing conducted on 2 July 2018.[30] However, Ms. Ocampo failed to appear on the two hearings set for her testimony, despite due notice.[31]

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16 See Petitioner's Pre-Trial Brief, *id.*, pp. 210-368, with attachments; Respondent's Pre-Trial Brief, *id.*, pp. 370-372.

17 See Compliance dated 28 February 2018, *id.*, pp. 375-377.

18 See Minutes of Hearing dated 6 March 2018, *id.*, p. 379.

19 See Joint Stipulations of Facts and Issues, *id.*, pp. 387-393.

20 See Pre-Trial Order, *id.*, pp. 396-403.

21 See Commissioner's Report dated 3 May 2018, *id.*, p, 404.

22 See Commissioner's Report dated 10 May 2018, *id.*, p, 420.

23 See Commissioner's Report dated 24 May 2018, *id.*, p. 428.

24 See Commissioner's Report dated 31 May 2018, *id.*, p. 457.

25 See Motion for the Appointment of an Independent Certified Public Accountant, *id.*, pp. 432-455, with attachments.

26 See Minutes of Hearing dated 4 June 2018, *id.*, p. 458.

27 See Motion for the Appointment of an Independent Certified Public Accountant, *id.*, pp. 462-480, with annexes.

28 See Minutes of Hearing dated 6 August 2018, *id.*, p. 481.

29 See Transmittal Letter dated 5 September 2018, *id.*, pp. 487-488.

30 See Minutes of Hearing dated 2 July 2018, *id.*, p. 460.

31 See Minutes of Hearing, dated 24 January 2019, *id.*, p. 490; *see also* Minutes of the Hearing, dated 6 August 2019, *id.*, p. 565.

On 28 February 2019, petitioner submitted the judicial affidavit of ICPA Gomez,[32] together with the ICPA Report.[33] ICPA Gomez was called to the witness stand on 24 September 2019.[34]

Petitioner then requested to recall Ms. Lopez to testify before the Court. A Supplemental Judicial Affidavit[35] was accordingly submitted on 7 October 2019, and Ms. Lopez was again called as witness during the hearing on 19 November 2019.[36]

Subsequently, on 4 December 2019, petitioner filed its Formal Offer of Evidence,[37] to which the respondent interposed no objections but only as to the manner that the evidence was identified in open court.[38]

The Court, however, denied the admission of Exhibits "P-8", "P-8-A" and "P-19" for failure to identify; ICPA Exhibits "P-34", "P-45.697, "P-45.2361" to "P-45.1360", "P-48.702" to "P-48.1638", and "P-49.2" to "P-49.3", for failure to submit the scanned copy of the ICPA-marked exhibits.[39] In this regard, petitioner filed a Motion for Reconsideration asking the Court to allow the continuance of the presentation of Ms. Lopez as witness, to identify the relevant exhibits; and to order ICPA Gomez to produce and submit the scanned copies of the lacking ICPA Exhibits.[40]

In the Court's Resolution dated 24 February 2021,[41] the Motion to Direct ICPA to Submit Exhibits of its ICPA Report was granted. Also, petitioner was allowed to recall Ms. Lopez, as its witness who was then presented to the Court on 1 July 2021.[42]

On 8 July 2021, ICPA Gomez transmitted to the Court the softcopies of the ICPA Exhibits previously not submitted.[43]

Accordingly, the Court granted the admission of the previously denied exhibits in the Resolution dated 14 December 2021, except for Exhibit "P-34" upon noting the ICPA's manifestation that there is no document duly marked as such.[44]

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32 See Judicial Affidavit of Lorenz Samuel Gomez, *id.*, pp. 504-514.
33 See Report of Independent CPA, *id.*, pp. 515-545.
34 See Minutes of Hearing dated 24 September 2019, *id.*, p. 569.
35 See Supplemental Judicial Affidavit of Edna Luisa Lopez, Exhibit "P-35", *id.*, pp. 575-584, with annexes.
36 See Minutes of Hearing dated 19 November 2019, *id.*, p. 586.
37 See Formal Offer of Evidence, *id.*, pp. 589-719, with annexes,
38 See Comment (Re: Formal Offer of Evidence dated 4 December 2019), *id.*, pp. 721-723.
39 See Resolution dated 14 February 2020, Docket Vol. 2, pp. 728 to 731.
40 See Motion for Reconsideration with Motion to Direct ICPA to Submit Exhibits of its ICPA Report, *id.*, pp. 739-742.
41 See Resolution dated 24 February 2021, *id.*, pp. 755-757.
42 See Minutes of Hearing dated 1 July 2021, *id.*, p. 777.
43 See Transmittal Letter dated 8 July 2021, *id.*, pp. 780-781.
44 See Resolution dated 14 December 2021, *id.*, pp. 786-788.

Meanwhile, respondent once again manifested during the hearing on 1 July 2021 that he would not submit any evidence for the instant case.[45]

Thereafter, upon noting the parties' failure to submit their Memoranda despite order from the Court, the instant case was submitted for decision on 8 July 2022.[46]

The Issue

The sole issue for this Court's resolution is:

> WHETHER PETITIONER IS ENTITLED TO A REFUND OF ITS ALLEGED EXCESS OR UNUTILIZED INPUT VAT PAYMENTS FOR THE PERIOD JANUARY TO MARCH 2015 IN THE TOTAL AMOUNT OF PHP9,544,246.41.[47]

Arguments of the Parties

Petitioner's Arguments[48]

Petitioner argues that it is entitled to a VAT refund or a tax credit certificate for its alleged unutilized input VAT for the 4th quarter of FY2015. It contends that it has timely filed both its administrative and judicial claims for refund; that it is duly registered with the BIR as a VAT taxpayer; that it is likewise registered with the BOI as an exporter of several automotive parts and accessories and that its export sales are thus subject to 0% VAT; that it has actually shipped its goods from the Philippines to a foreign country; that such export sales were paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"); that it has duly supported its local purchases of goods and services, as well as importations, for which input VAT have been paid; that the said input VAT were not credited, applied, or utilized in subsequent periods; that it has not filed nor will it file any similar claim with the BIR, BOI, Bureau of Customs ("BOC") or the Department of Finance for the period covered by the instant petition; and that it was able to prove that it has complied with the procedural requirements set forth in ***Section 112(A) and (D) of the Tax Code*** and has submitted all relevant documentary requirements set forth in ***Revenue Memorandum Circular No. 54-2014.***[49]

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45 See Minutes of Hearing dated 1 July 2021, *id.*, p. 777; Resolution dated 14 March 2022, *id.*, p. 790.
46 See Resolution dated 8 July 2022, *id.*, p. 793.
47 See Pre-Trial Order, Docket Vol. 1, p. 397.
48 See Petition for Review, *id.*, pp. 12-23.
49 Subject: Clarifying Issues Relative to the Application for Value Added Tax ("VAT") Refund/Credit under Section 112 of the Tax Code, as amended, 11 June 2014.

Respondent's Counter-Arguments[50]

On the other hand, respondent maintains that in claims for tax refund or tax credit, it is incumbent upon the claimant to prove not only its entitlement to the claim but also its compliance with all the documentary and evidentiary requirements therefor. Specifically, respondent alleges that petitioner failed to comply with the required time frames for instituting claims for refund. Further, respondent claims that petitioner failed to observe the invoicing and accounting requirements laid down in ***Sections 113, 114 and 236 of the Tax Code,*** and its implementing regulations under ***Revenue Regulations ("RR") No. 16-2005,***[51] which should be fatal to its claim.

Respondent also avers that petitioner failed to submit documents supporting its claim for refund at the administrative level, thus it should be deemed pro-forma. According to respondent, such pro-forma administrative claim should not be taken as proper compliance with the requirements of the law as to filing an application with the BIR prior to the institution of a judicial claim for refund. Thus, respondent posits that the instant case must be dismissed due to the Court's lack of jurisdiction over the instant petition brought about by petitioner's failure to comply with a condition precedent.

Lastly, respondent states that this case, being a tax refund, partakes the nature of a tax exemption, thus should be construed *strictissimi juris* against the claimant and liberally in favor of the government.

The Ruling of the Court

We partially grant the instant Petition for Review.

The provisions governing the claim for refund or issuance of a tax credit certificate of excess or unutilized creditable input VAT attributable to zero-rated sales are ***Sections 112(A) and (C) of the Tax Code***, which provide:

> "**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

50 See Answer; Docket Vol. 1, pp. 163-171.

51 Subject: Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

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

x x x

(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) *[now 90]*[52] 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**."
(Emphasis and underscoring supplied.)

The foregoing provisions have been interpreted by various case laws that have laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit or refund of input VAT. The said requisites are classified into certain categories, to wit:

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

1. the administrative claim with the BIR should be filed within two ("2") years after the close of the taxable quarter when the pertinent zero-rated sales were made;[53]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty ("120") days, the judicial claim should be filed with this Court, within thirty ("30") days from receipt of the decision or after the expiration of the said 120-day period;[54]

[52] As amended under Section 36 of Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law, effective 1 January 2018.
[53] Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, 23 July 2018.
[54] *Ibid.*

As to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[55]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[56]
5. for zero-rated sales under ***Sections 106(A)(2)(a)(1), (2), and (b) and 108(B)(1) and (2)***, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[57]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[58]
7. the input taxes are due or paid;[59]
8. the input taxes have not been applied against output taxes during and in the succeeding quarters; and[60]
9. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.[61]

A review of the records would show that petitioner has partially complied with these requisites as to qualify it to be entitled to the refund of input VAT.

The Court has jurisdiction over the instant case, and is not limited by the evidence presented in the administrative claim; the taxpayer is allowed to present additional evidence with the CTA to support its claim for tax refund.

At the outset, the Court addresses the main contention of the respondent that the instant Petition must be dismissed for lack of jurisdiction due to the petitioner's failure to submit the complete documents at the administrative

[55] Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, April 27, 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, 19 October 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

[56] *Ibid.*

[57] *Ibid.*

[58] *Ibid.*

[59] *Ibid.*

[60] *Ibid.*

[61] *Ibid.*

level.

The Court finds no merit in such argument and adheres to the pronouncement of the Supreme Court in the case of ***Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.***[62] citing ***Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)***,[63] where it was recognized that when the BIR fails to render a decision on the administrative claim, it is such inaction which properly prompts the taxpayer-claimant to elevate the case before the Court. Accordingly, as the CTA litigates cases *de novo*, the Court may give credence to all evidence submitted by the parties, including those that may not have been presented during the administrative claim for refund, to wit:

> "At this point, it is necessary to determine the grounds relied upon by a taxpayer in filing its judicial claim with the CTA. The case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue* is instructive, thus:
>
>> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR has no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In this case, it was the inaction of petitioner CIR which prompted respondent to seek judicial recourse with the CTA. Petitioner CIR did not send any written notice to respondent informing it that the documents it submitted were incomplete or at least require respondent to submit additional documents. As a matter of fact, petitioner CIR did not even render a Decision denying respondent's administrative claim on the ground that it had failed to submit all the required documents.

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[62] G.R. No. 212727, 1 February 2023.
[63] G.R. No. 231581, 10 April 2019.

> **<u>Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal per se. However, this does not preclude the CTA from considering evidence that was not presented in the administrative claim with the BIR</u>**.
>
> x x x
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, **<u>the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.</u>**
>
> **<u>Cases filed in the CTA are litigated de novo</u>** as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." **<u>Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance</u>**." (Emphasis and underscoring supplied.)

Here, the petitioner similarly did not receive any decision from the respondent regarding its application for refund. Moreover, petitioner was neither informed by respondent of any deficiency in its documentary submissions nor required to present additional documents to support its claim. Respondent's inaction thus prompted the petitioner to elevate the case to the Court, pursuant to the above-quoted ***Section 112(C) of the Tax Code***.

Following the clear pronouncement in ***CE Casecnan***, above, the petitioner may be allowed to offer evidence to the Court, including those that may not have been presented before the BIR, as it becomes the taxpayer's right to submit additional or even new evidence before the CTA to support its refund claim.

<u>Petitioner's administrative and judicial claims for refund were timely filed.</u>

As regards the *first* and *second* requisites in refund claims relating to the timeliness of the administrative and judicial claims, the Court finds guidance from the ruling of the Supreme Court in case of ***Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue***,[64] which states:

[64] G.R. No. 191495, 23 July 2018.

> "x x x **a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application. The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made**.
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> From the submission of complete documents to support the administrative claim, **the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction. The period to appeal is thirty (30) days counted from the receipt of the decision or inaction by the CIR.**"
>
> (Emphasis and underscoring supplied.)

To summarize, there are three relevant periods governing claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales:

1. the administrative claim for refund or issuance of tax credit certificate must be filed by the VAT-registered taxpayer within two (2) years from the close of the taxable quarter when the sales were made;
2. the CIR has 120 days (now 90 days)[65] to grant or deny the claim for refund from the date of submission of complete documents in support of the administrative application; and
3. the judicial appeal must be filed by the claimant within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period, whichever comes first.[66]

In relation to the 120-day period above, the running of the same shall be triggered by the simultaneous submission by the taxpayer-applicant of the tax refund claim together with the complete supporting documents, in accordance with the pronouncement of the Supreme Court in ***Pilipinas Total Gas, Inc., v. CIR***,[67] to wit:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.

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[65] As amended by Section 36 of the TRAIN Law.

[66] Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc., G.R. No. 212727, 1 February 2023.

[67] G.R. No. 207112, 8 December 2015.

> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
>
> It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench. **As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:**
>
>> **The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.**
>>
>> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
>
> **Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim.** Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim." (Emphasis supplied.)

In the case at hand, petitioner's claim covers the period January to March 2015, which is the 4th quarter of the taxpayer's FY2015. Counting two (2) years form 31 March 2015, petitioner had until 31 March 2017 within which to file its claim for VAT refund or tax credit with the BIR.

A perusal of the duly stamped received BIR Form No. 1914[68] shows that the administrative claim was filed on 14 March 2017. Hence, the administrative claim was seasonably filed. *lv*

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[68] *Supra* note 9.

Counting 120 days from such date of filing, the BIR had until 12 July 2017 within which to decide on the VAT refund/credit claim. However, the records do not show any resolution therein issued by the BIR. Accordingly, petitioner had until 11 August 2017, or 30 days after the lapse of the 120-day period, within which to elevate the case to the Court. Thus, the instant Petition was timely instituted on 9 August 2017.[69]

A summary of the relevant dates is shown in the table below:

Period Covered by the Refund Claim	**Date of Filing of Administrative Claim**	**End of 120 days for BIR to decide on the claim**	**End of 30 days from the expiration of the 120 days**	**Date of Filing of the Petition for Review**
January to March 2015 (4^{th} quarter FY2015)	14 March 2017	12 July 2017	11 August 2017	9 August 2017

<u>Petitioner is a VAT-registered entity.</u>

Petitioner submitted its BIR Certificate of Registration ("COR")[70] OCN No. 2006-059-0014 with Tax Identification No. ("TIN") 000-269-082-000, duly stating that it is registered as an entity subject to VAT. The Court hereby finds the COR as sufficient proof of petitioner's compliance with the *third* requisite.

<u>Petitioner had valid zero-rated sales during the 4^{th} quarter of FY2015, but only in the amount of Php1,109,112,652.94.</u>

The *fourth* requisite mandates that the taxpayer-applicant must be engaged in zero-rated or effectively zero-rated sales. The importance of such requisite is highlighted in the case of ***Coca-Cola Bottlers Philippines, Inc. v. CIR***,[71] to wit:

> "A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **<u>It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that</u>**

[69] See Petition for Review, *supra* note 10.
[70] *Supra* note 2.
[71] G.R. No. 222428, 19 February 2018.

he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales. Such is the clear import of the Court's ruling in San Roque, to wit:

> **Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law,** like companies generating power through renewable sources of energy. xxx."

(Emphasis and underscoring supplied.)

Moreover, as for the *fifth* requirement, the ***Tax Code*** requires that those zero-rated sales falling under ***Sections 106 (A)(2)(a)(1) and (2), and 108 (B)(1) and (2)*** thereof must be paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Based on PKI's amended 4th quarter VAT return for FY2015,[72] petitioner reported sales amounting to **Php1,926,640,223.02** broken down as follows:

Sales	Amount of Sales	Output VAT
VATable Sales	Php 1,839,583.80	Php 220,750.06
Zero-rated Sales	1,924,800,639.20	0
Total Sales	**Php 1,926,640,223.02**	Php 220,750.06

Meanwhile, as per his report,[73] ICPA Gomez testified that petitioner's zero-rated sales can be further accounted as follows:

Sales	USD	PHP
i Actual Export Sale of Services	220,668.68	9,813,313.64
ii Actual Export Sale of Goods	43,168,777.28	1,914,031,067.07
iii Sale to PEZA-registered Entities	21,675.00	956,258.51
Total Sales	**43,411,120.96**	**1,924,800,639.22**

In this regard, PKI's reported zero-rated sales can be broken down into three (3) different categories, namely:

i. Actual export sale of services under ***Section 108(B)(2) of the Tax Code***, as amended;

ii. Actual export sale of goods under ***Section 106(A)(2)(a)(1) of the Tax Code***, as amended; and

[72] Exhibit "P-8-C", Docket Vol. 2, pp. 640-641.
[73] See ICPA Report, *id.*, p. 527.

iii. Sale to Philippine Economic Zone Authority (PEZA)-registered entities under ***Section 106(A)(2)(a)(5) of the Tax Code***, as amended.

The Court shall now determine the propriety of the petitioner's treatment of these alleged zero-rated sales, based on the allegations and supporting documents submitted.

(i) Actual export sale of services under Section 108(B)(2) of the Tax Code, as amended

The rules on VAT zero-rating on actual export of services is governed by ***Section 108(B)(2) of the Tax Code***, which states:

> "**SEC. 108.** *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —
>
> x x x
>
> (B) Transactions Subject to Zero Percent (0%) Rate. — **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:**
>
> (1) Processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid, for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**
> (Emphasis supplied.)

Based on the foregoing, the following elements must be present for the sale or supply of services to be considered subject to VAT zero-rating:

1) The services fall under any of the categories under ***Section 108(B)(2)***,[74] or, simply, be other than "processing, manufacturing, or repacking goods";[75]

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[74] Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

[75] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007.

2) The services must be performed in the Philippines[76] by a VAT-registered person;
3) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[77] and
4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[78]

During the 4th quarter of petitioner's FY2015, zero-rated services were rendered to Sumitomo Wiring Systems, Ltd. ("SWS-Japan"), as stated in its Summary of Actual Export Sales of Services.[79] According to the Engineering Service Agreement[80] between petitioner and SWS-Japan, the services of PKI are for the input and maintenance of designing data of automotive wiring harnesses, to wit:

> "ARTICLE I. STATEMENT OF SERVICES
>
> (a) Services requested by SWS
>
> During the term of this Agreement, **PKI shall furnish SWS with its services for the input and maintenance of designing data of automotive wiring harnesses in the capacity of an independent contractor**. All arrangements for the services shall be made in writing duly executed on behalf of SWS by its authorized representative and duly accepted on behalf of PKI by its authorized representative.
>
> SWS shall specify the time period for performance and, if PKI shall have an issue with the time period specified, the parties shall consult.
>
> (b) Services provided by PKI
>
> All services shall be performed by PKI in accordance with the terms and conditions of this Agreement.
>
> Regarding other additional jobs, SWS shall give instructions to PKI in a separate letter. The compensation and other terms and conditions for such additional jobs as may be requested shall be agreed to by the parties in advance of work and paid to PKI by SWS separate from the contract fees in this Agreement.
>
> x x x

[76] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. 153205, 22 January 2007; Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

[77] Sitel Philippines Corporation (Formerly Clientlogic Phils. Inc.) v. Commissioner of Internal Revenue, G.R. No. 201326, 8 February 2017; Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Accenture, Inc. v. Commissioner of Internal Revenue, G.R. No. 190102, 11 July 2012.

[78] Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, 22 January 2007; Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch), G.R. No. 152609, 29 June 2005.

[79] ICPA Exhibit "P-35".

[80] ICPA Exhibit "P-35.7".

ARTICLE 10. INDEMNIFICATION

x x x

(b) PKI agrees that in the performance of the services hereunder it will comply with all applicable national, state, or local safety protection requirements, rules, regulations and laws (public or private) of the Philippines, **while performing services anywhere in the Philippines.**" (Emphasis supplied.)

Accordingly, anent the *first* element, the Court finds that the same was duly satisfied in the instant case since the agreement covers services other than processing, manufacturing, or repacking goods.

However, petitioner failed to prove that these services were performed in the Philippines. While the Court recognizes that the Indemnification clause, above, provides that Philippine laws, rules, and regulations must be complied with while performing services anywhere in the country, there is no provision in the contract which states that all services shall be rendered in the Philippines. The existing terms merely denote a permissive situs as to where the services may be performed. Fatal to petitioner's cause is that there is nothing in the documentary and testimonial evidence offered by it showing the place or jurisdiction where these services were actually rendered. Thus, the Court finds that compliance with the *second* element was not met.

Meanwhile, for the purpose of establishing the residence of SWS-Japan, petitioner submitted a Certification of Non-registration of Company[81] issued by the Securities and Exchange Commission ("SEC") stating that the SEC's records do not show registration of SWS-Japan as a corporation or partnership in the Philippines. However, such document does not prove that SWS-Japan is a non-resident foreign corporation ("NRFC") doing business outside the Philippines.

Jurisprudence[82] has established that in order to be considered a NRFC doing business outside the country, taxpayer-claimants must present **both** the SEC Certification of Non-Registration of Company and proof or incorporation and registration in a foreign country. Moreover, there must be no other indication that would deem the foreign corporation as "doing business" in the Philippines, which would disqualify such entity from being classified as a NRFC. Hence, due to the lacking supporting documents, petitioner failed to prove compliance with the *third* element.

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[81] ICPA Exhibit "P-36".

[82] Chevron Holdings, Inc. (Formerly Caltex Asia Limited) vs. Commissioner of Internal Revenue, G.R. No. 215159, 5 July 2022; Commissioner of Internal Revenue vs. Macquarie Offshore Services Pty., Ltd. – Philippine Branch, G.R. No. 225169, 6 October 2021; Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.

Finally, records show that petitioner likewise failed to adduce evidence to prove that payments for the services rendered were made in acceptable foreign currency accounted for in accordance with BSP rules, as required in the *fourth* element above.

While a Certificate of Inward Remittance[83] was submitted by petitioner, a closer look at this would reveal that it only covered the second category of its zero-rated sales, its actual export sale of goods. Indeed, the Summary of Dollar Remittance[84] prepared by petitioner to support the Certificate would readily show that said remittances were only covered by Invoices for the export sale of goods. There was no matching Official Receipts which would have covered the export sale of services.

Based on the foregoing, the Court finds that the sale of services to SWS-Japan amounting to Php9,813,313.64 do not qualify for VAT zero-rating under ***Section 108(B)(2) of the Tax Code***, as amended.

(ii) Actual export sale of goods under Section 106(A)(2)(a)(1) of the Tax Code, as amended

As regards VAT zero-rating on export sale of goods, ***Section 106(A)(2)(a)(1),*** as amended, provides that:

> "**SEC. 106**. *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) Rate and Base of Tax. — . . .
>
> x x x
>
> (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)."** (Elements supplied.)

Thus, in order for the exportation of goods to be considered subject to 0% VAT, the following elements must be complied with:

[83] ICPA Exhibit "P-38".
[84] ICPA Exhibit "P-39".

1. The sale was made by a VAT-registered person;
2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and
3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

Anent the *first* element, it has already been established that petitioner is a VAT-registered person based on its Certificate of Registration.[85]

As for the *second* element, ***Section 113(A)(1),(B)(1), and (2)(c) of the Tax Code***, as amended, and ***Section 4.113.1(A)(1), (B)(1), and (2)(c) of RR No. 16-2005***[86] respectively provide as follows:

Section 113(A)(1),(B)(1) and (2)(c) of the Tax Code:

"SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -

(A) Invoicing Requirements. - A VAT-registered person shall issue:

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

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

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

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

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

x x x

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

(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the

85 *Supra* note 3.
86 *Supra* note 51.

invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client."
(Emphasis supplied.)

Section 4.113.1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005

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

(A) A Vat-registered person shall issue: -

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

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

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

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

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

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

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

x x x

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

Based on the foregoing, any VAT registered person claiming VAT zero-rating on its direct export sale of goods must present the following documents:

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

Furthermore, the sales invoice supporting the export sales must be duly registered with the BIR as prescribed under ***Sections 237 and 238 of the Tax Code***, to wit:

> "**SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensations, fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser. xxx
>
> **SEC. 238.** *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an **authority to print receipts or sales or commercial invoices before a printer can print the same.**
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, **the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.** x x x"
> (Emphasis supplied.)

As per ICPA Gomez' report, PKI's zero-rated export sale of goods amounting to USD43,168,777.28. (equivalent to Php1,914,031,067.07) for the 4th quarter of FY2015 arose from sales to SWS-Japan and Sumitomo Electric Wiring Systems, Inc. ("SEWS-USA").[87] The ICPA report further states that these were properly supported by VAT zero-rated sales invoices, bills of lading, or airway bills.[88]

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[87] See ICPA Report, Docket Vol. 2, pp. 527-528

[88] ICPA Exhibit "P-37.1-728".

However, as per independent verification on the documents attached to the ICPA Report, the Court finds that certain sales reported for VAT zero-rating were evidenced by invoices issued by SWS-Japan, instead of petitioner's BIR-approved commercial invoice. It also appears from the records that the sales covered by these invoices involve goods delivered directly by PKI to Sumidenso Do Brasil Industries Electricas Ltda. for the account of SWS-Japan. Nevertheless, despite actual export of the goods from the Philippines to Brazil, the same cannot be considered properly subject to VAT zero-rating due to non-compliance with the above-discussed invoicing requirement. The disqualified zero-rated sales, due to non-compliance with the *second* element, amounting to Php4,706,449.62 are summarized below:

Month	Invoice No.	Invoice Date	Customer	Sales Value (in USD)	Sales Value (in PHP)	ICPA Exhibit No.
MAR	SPCL-15-PW001	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.678"
MAR	SPCL-15-PW002	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.679"
MAR	SPCL-15-PW003	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.680"
MAR	SPCL-15-PW004	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.681"
MAR	SPCL-15-PW005	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.682"
MAR	SPCL-15-PW006	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.683"
MAR	SPCL-15-PW007	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.684"
MAR	SPCL-15-PW008	3/7/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.685"
MAR	SPCL-15-PW009	3/11/15	SWS-JAPAN	3,533.86	155,807.89	"P-37.686"
MAR	SPCL-15-PW010	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.687"
MAR	SPCL-15-PW011	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.688"
MAR	SPCL-15-PW012	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.689"
MAR	SPCL-15-PW013	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.690"
MAR	SPCL-15-PW014	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.691"
MAR	SPCL-15-PW015	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.692"
MAR	SPCL-15-PW016	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.693"
MAR	SPCL-15-PW017	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.694"
MAR	SPCL-15-PW018	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.695"
MAR	SPCL-15-PW019	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.696"
MAR	SPCL-15-PW020	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.697"
MAR	SPCL-15-PW021	3/11/15	SWS-JAPAN	1,950.81	86,011.21	"P-37.698"
MAR	SPCL-15-PW022	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.699"
MAR	SPCL-15-PW023	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.700"
MAR	SPCL-15-PW024	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.701"

MAR	SPCL-15-PW025	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.702"
MAR	SPCL-15-PW026	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.703"
MAR	SPCL-15-PW027	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.704"
MAR	SPCL-15-PW028	3/11/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.705"
MAR	SPCL-15-PW029	3/11/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.706"
MAR	SPCL-15-PW030	3/7/15	SWS-JAPAN	2,118.76	93,416.13	"P-37.707"
MAR	SPCL-15-PW031	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.708"
MAR	SPCL-15-PW032	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.709"
MAR	SPCL-15-PW033	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.710"
MAR	SPCL-15-PW034	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.711"
MAR	SPCL-15-PW035	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.712"
MAR	SPCL-15-PW036	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.713"
MAR	SPCL-15-PW037	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.714"
MAR	SPCL-15-PW038	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.715"
MAR	SPCL-15-PW039	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.716"
MAR	SPCL-15-PW040	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.717"
MAR	SPCL-15-PW041	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.718"
MAR	SPCL-15-PW042	3/11/15	SWS-JAPAN	2,705.26	119,274.91	"P-37.719"
	TOTAL			**106,746.42**	**4,706,449.62**	

Finally, the *third* element requires that the sale should be paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP. For this purpose, petitioner submitted Certificate of Inward Remittance issued by The Bank of Toko-Mitsubishi UFJ, Ltd. – Manila Branch.[89] This document summarizes all the remittance proceeds which were credited to petitioner's foreign currency deposit unit ("FCDU") savings account with the bank in the year 2015. It lists the remitting customer's name, the dates the payments were credited, the reference numbers, and the corresponding amounts in USD.

To reconcile the sales and the payments of its customers, petitioner submitted a Summary of Dollar Remittances[90] where the invoice numbers are listed and grouped according to the dates the corresponding payments were remitted.

[89] *Supra* note 83.
[90] *Supra* note 84.

In the same reconciliation document, and as stated in the ICPA Report,[91] certain adjustments to the sales were made reflecting the offsetting arrangement between PKI and its customers. The offset amounts refer to (i) adjustments based on bill of lading or airway bill date; (ii) other receivables credited; (iii) petitioner's importation of materials; and (iv) other charges debited. These are further supported by net-off documents signed by representative of PKI and SWS-Japan.[92] Listed below are the amounts lifted from the petitioner's Summary of Dollar Remittance:

Amounts in USD	**Invoice amount**	**Adjustment based on BL/AWB Date**	**Other Receivables Credits**	**Importations**	**Other Charges Debited**	**Net Proceeds**
	(a)	**(b)**	**(c)**	**(d)**	**(e)**	**Sum (a) to (e)**
SWS-Japan						
Feb 2015 - (PKI Paid SWS)	9,368,892.49	(3,537,336.91)	8,375.08	(6,751,472.48)	(204,062.33)	(1,115,604.15)
25 Mar 2015 Remittance	8,146,690.82	1,585,986.22	18,312.07	(4,261,988.18)	(199,909.06)	5,289,091.87
24 Apr 2015 Remittance	6,050,978.97	1,123,954.24	13,161.44	(4,152,938.92)	(327,770.26)	2,707,385.47
SEWS-USA						
16 Mar 2015 Remittance	6,849,718.95	(2,493,004.03)				4,356,714.92
15 Apr 2015 Remittance	5,556,609.52	1,415,917.88	34,734.86		(173,078.00)	6,834,184.26
15 May 2015 Remittance	7,203,053.37	1,065,941.15	10,093.44		(269,471.00)	8,009,616.96
Total	**43,175,944.12**					**26,081,389.33**

The Court notes that due to these adjustments, the amount of foreign currency remittances are lower than those reported as zero-rated sales. Thus, the full amount per invoices cannot simply be declared as zero-rated sales absent the actual remittance to the petitioner's FCDU account in foreign currency since this will be deemed as non-compliance with the *fourth* element discussed above.

Moreover, pursuant to ***RMC No. 61-2016***,[93] offsetting arrangements are prohibited for taxation purposes, *viz.*:

> "BACKGROUND:
>
> It is a general principle of accounting that the offsetting of assets and liabilities in the balance sheet is improper. Hence, under no circumstance is offsetting to be considered appropriate in recording transactions that are subject to a wide range of "netting" arrangements or similar practices, including those with standard commercial provisions that allow parties to "net settle," such as trade receivables and payables.
>
> Questions have been raised about offsetting amounts recognized for transactions for which the net amount of those transactions, rather than the

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[91] See ICPA Report, Docket Vol. 2, pp. 529-230.
[92] ICPA Exhibit "P-40".
[93] Subject: Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving "Netting" or "Offsetting", 13 June 2016.

gross amount is reported for accounting/tax purposes. In the absence of definitive policies for reporting assets and liabilities arising from those transactions, various financial reporting practices have developed giving rise to accounting treatments that result in offsetting which adversely affect the complete measurement of an asset or a liability.

TAX CONSEQUENCE:

The practice of offsetting due to/due from and/or payable/receivable transactions of taxpayers and consequently the accounting and recording of the same and its related transactions in the books of the parties is strictly prohibited for taxation purposes. Thus, at all times, the accrued receivables or payables arising from sale or lease of goods or properties or the performance of service, shall be recognized at gross for income and value-added tax or percentage tax purposes."
(Emphasis supplied.)

In this regard, in order to determine valid zero-rated sales, the Court compared the amount of sales per invoices *vis à vis* the amounts actually remitted in foreign currency, on a per remittance basis, using the information presented in the Summary of Dollar Remittance.[94] If the actual payment is lower than the total invoice amount, then only the amount remitted should be considered zero-rated sales. On the other hand, if the actual remittance is higher, then the zero-rated sales should be merely based on the invoice amount. In other words, the invoice amount or the net proceeds, whichever is lower, shall be considered valid for VAT zero-rating, as computed below:

Amounts in USD	**Sales (per invoice)**	**Actual remittance (per Summary of Dollar Remittance**	**Amount of Sales or Actual Remittance whichever is lower**	**Unremitted Payments for Export Sales**
		SWS-Japan		
Feb-15	9,368,892.49	-	-	9,368,892.49
Mar-15	8,146,690.82	5,289,091.87	5,289,091.87	2,857,598.95
Apr-15	6,050,978.97	2,707,385.47		
Less: sales supported by SWS Invoice (included in petitioner's April 2015 remittance computation)	(106,746.42)	(106,746.42)		
April 15 (Adjusted)	5,944,232.55	2,600,639.05	2,600,639.05	3,343,593.50
		SEWS-USA		
Mar-15	6,849,718.95	4,356,714.92	4,356,714.92	2,493,004.03
Apr-15	5,556,609.52	6,834,184.26	5,556,609.52	-
May-15	7,203,053.37	8,009,616.96	7,203,053.37	-

[94] *Supra* note 84.

TOTAL				18,063,088.97

In view of the partial non-compliance with the *second* and *third* elements above, the petitioner's valid zero-rated sales under ***Section 106(A)(2)(a)(1) of the Tax Code***, should be adjusted as follows:

	USD	PHP
Total Sales	43,175,944.10	1,914,348,784.72
Debit Note	(8,284.54)	(366,997.92)
Credit Note	1,117.72	49,280.27
Total Net Sales per ICPA Report	**43,168,777.28**	**1,914,031,067.07**
Adjustments:		
Sales not supported by PKI invoice	(106,746.42)	
Unremitted payments for export sales	(18,063,088.97)	
Valid Zero-Rated Sales on Actual Exports	**24,998,941.89**	**1,108,411,088.67***
	** using the proportional rate of the amounts per "Total Net Sales per ICPA Report"*	

(iii) Sale to PEZA-registered entities under Section 106(A)(2)(a)(5) of the Tax Code, as amended

The VAT zero-rating on sale to PEZA-registered entities is governed by ***Section 106(A)(2)(a)(5) of the Tax Code***, as amended, which provides:

> "**SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) Rate and Base of Tax. — . . .
>
> x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) Export Sales. — The term 'export sales' means:
>
> x x x
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws. x x x"

In relation thereto, ***Section 4.106-5(a)(5) of RR No. 16-2005,***[95] ***as amended by RR No. 04-2007,***[96] states:

> "**SEC. 4.106-5**. *Zero-Rated Sales of Goods or Properties.* — . . .

95 *Supra* note 51.

96 Subject: Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005; 7 February 2007.

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

(a) Export Sales. —

x x x

(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 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."
(Underscoring supplied.)

In this case, the applicable special law is ***Republic Act No. 7916,***[97] ***as amended by RA No. 8748,***[98] otherwise known as "***The Special Economic Zone Act of 1995.***" ***Sections 8 and 24*** thereof read:

"**SECTION 8.** *ECOZONE to be Operated and Managed as Separate Customs Territory.* — **The ECOZONE shall be managed and operated by the PEZA as separate customs territory** .

The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.

x x x

[97] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes, 24 February 1995.

[98] An Act Amending Republic Act No. 7916, Otherwise Known as The "Special Economic Zone Act Of 1995", 1 June 1999.

> **SECTION 24.** *Exemption from National and Local Taxes.* — Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE.** x x x"
> (Emphasis supplied)

By viewing the ecozone as a foreign territory, sales of goods and services made by VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are then considered exportations subject to 0% VAT. This was explained by the Supreme Court in the case of ***Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue***[99] citing the earlier case of ***Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.***,[100] to wit:

> "It is now a settled rule that based on the **Cross Border Doctrine, PEZA-registered enterprises**, such as Toshiba, are VAT-exempt and no VAT can be passed on to them. The Court explained in the *Toshiba case* that —
>
> > **PEZA-registered enterprise, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**
> >
> > xxx xxx xxx
> >
> > The Philippine VAT system adheres to the Cross Border Doctrine, according to which, **no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.** Hence, **actual export of goods and services from the Philippines to a foreign country must be free of VAT;** while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."
>
> (Emphasis supplied.)

Accordingly, the following elements must be present in order for an export sale to be qualified for VAT zero-rating under ***Section 106(A)(2)(a)(5) of the Tax Code,*** as amended:

1. the sale was made by a VAT registered person; and
2. the sale of goods must be to an entity entitled to incentives under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987 ("OIC"), and other special laws.

[99] G.R. No. 157594, 9 March 2010.
[100] G.R. No. 150154, 9 August 2005.

As for the *first* element, it has been earlier established that petitioner is a VAT-registered person.

Anent the *second* element, petitioner presented documents from PEZA confirming that its customers International Wiring Systems (Phils.) Corp. ("**IWSPC**") and Sumi Philippines Wiring Systems Corporation ("**SPWSC**") are PEZA-registered export enterprises. These documents include PEZA Certificates of Registration[101] and PEZA VAT Zero-rating Certificates valid for the year 2015.[102]

Furthermore, it was determined that the corresponding sales to IWSPC and SPWSC were properly supported by VAT sales invoices[103] issued by the petitioner, in compliance with the previously cited ***Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238, all of the Tax Code***, as amended, in relation to ***Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005***.[104] However, an exception was noted in the invoice stated below in which the corresponding sales value was labeled as "VAT Exempt Sale" and not zero-rated sale:

Invoice number	**Invoice date**	**Customer**	**Sales Value (in USD)**	**Sales Value (in Php)**	**ICPA Exhibit no.**
2069	2/5/15	SPWSC	5,778.00	254,694.24	**"P-41.3"**

Accordingly, the adjusted sales valid for VAT zero-rating under ***Section 106(A)(2)(a)(5) of the Tax Code***, as amended, is computed as follows:

Sales	**USD**	**PHP**
Sale to PEZA-registered Entities per ICPA Report[105]	21,675.00	956,258.51
Adjustment: VAT Exempt Sale	5,778.00	254,694.24
Valid Zero-Rated Sales to PEZA	**15,897.00**	**701,564.27**

To summarize, out of the total zero-rated sales for the 4th quarter of FY2015[106] amounting to Php1,924,800,639.22 (USD43,411,120.96), only Php1,109,112,652.94 are considered valid for VAT zero-rating, calculated as follows:

Sales	**USD**	**PHP**

[101] ICPA Exhibits "P-42" and "P-42.3".
[102] ICPA Exhibits "P-42.1" and "P-42.4"
[103] ICPA Exhibits "P-41.1-9"
[104] *Supra* note 51.
[105] See ICPA Report, Docket Vol. 2, p. 533.
[106] See Q4 FY2015 VAT Return, *supra* note 72.

i. Actual Export of Services	-	-
ii. Actual Export of Goods	24,998,941.89	1,108,411,088.67
iii. Sales to PEZA Entities	15,897.00	701,564.27
Total Valid Zero-Rated Sales	**25,014,838.89**	**1,109,112,652.94**

Petitioner's input VAT are not transitional input taxes.

As for the *sixth* requisite, the jurisprudence[107] provides that the input taxes claimed for refund should not be transitional input taxes.

Transitional input tax is an input tax on a taxpayer's beginning inventory of goods, materials, and supplies equivalent to two percent (2%) of the value of such inventory or the actual VAT paid on such goods, materials, and supplies, whichever is higher, which shall be creditable against the output tax.[108] The transitional input tax operates as a benefit to newly VAT-registered persons on their transition from non-VAT to VAT status, to alleviate the impact of the VAT on the taxpayer.[109]

In this case, there is no showing that the input VAT claimed by the petitioner are transitional input taxes. Hence, the Court finds that the petitioner has complied with the *sixth* requisite.

Petitioner's input VAT were partially due or paid.

As for the *seventh* requisite, petitioner must prove that the input VAT it is claiming should either be due or paid, pursuant to ***Section 110(A) of the Tax Code***, as amended, and implemented by ***Section 4.110-1 to 4.110-3 of RR 16-2005***,[110] as amended by ***RR 4-2007***,[111] which respectively state:

Section 110(A) of the Tax Code, as amended

"**SEC. 110.** *Tax Credits.* —

[107] *Supra* note 55.
[108] Section 111 of the Tax Code.
"SEC. 111. Transitional/Presumptive Input Tax Credits. -
(A) Transitional Input Tax Credits. - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax."
[109] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. No. 158885 and 170680, 2 October 2009.
[110] *Supra* note 51.
[111] *Supra* note 96.

(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:

(a) Purchase or importation of goods:

(i) For sale; or
(ii)For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and
(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided*, however, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided*, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee. x x x"

Section 4.110-1 to 4.110-3 of RR 16-2005

"**SEC. 4.110-1.** *Credits For Input Tax*. — 'Input tax' means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity. Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods:

(1) For sale; or
(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or
(3) For use as supplies in the course of business; or
(4) For use as raw materials supplied in the sale of services; or
(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions "deemed sale" under Sec. 106 (B) of the Tax Code;

(e)Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

x x x

SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit*. — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods* . — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

(a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

(b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00. x x x."

Further, ***Section 4110.8 of RR No. 16-2005***[112] provides for the substantiation requirements of input tax credits as follows:

"**SEC. 4.110-8.** *Substantiation of Input Tax Credits*. —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

(b)Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.

(c) Input tax on "deemed sale" transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by

[112] *Supra* note 51.

the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.

(e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT."

Based on the foregoing provisions of the ***Tax Code*** and the corresponding implementing rules, input tax must be evidenced by VAT invoice or official receipts (OR) issued in accordance thereto in order to be creditable.

In the case at hand, PKI claims for the refund of the input tax amounting to Php9,544,246.41 which, using the amounts declared in the amended VAT return for the 4th quarter of FY2015,[113] appears to have been calculated by the petitioner as follows:

Particulars	**Amount (in Php)**
Current Input Tax on:	
Purchase of Capital goods not exceeding 1Million	56,860.49
Purchase of Capital goods exceeding 1Million	524,997.11
Importation of Goods Other Than Capital Goods	309,766.00
Domestic Purchase of Goods Other than Capital Goods	1,631,865.71
Domestic Purchase of Services	7,241,507.16
Total Current Input Tax	**9,764,996.47**
LESS: Output Tax Due	220,750.06
Excess Input Tax	**9,544,246.41**

For purposes of proving compliance with the substantiation requirements, petitioner submitted its VAT invoices and ORs on its current purchases enumerated above. In his report, ICPA Gomez summarized his findings[114] as follows:

Particulars	**Purchase Amount (in Php)**	**Input VAT (in Php)**
PKI VAT Refund	81,374,970.65	9,764,996.48
Less: Purchase/Input VAT verified by CPA		
1. Fully Compliant		
Domestic Purchase-services and noncapital goods	53,732,230.74	6,447,867.83

[113] *Supra* note 72.
[114] See Table 26, Summary of Input VAT, ICPA Report, Docket Vol. 2, p. 537.

Capital Goods - Domestic Purchase and Importation	4,848,813.40	581,857.60
Importations-Noncapital goods	2,581,383.33	309,766.00
Subtotal	**61,162,427.48**	**7,339,491.42**
2. Not fully compliant - Local Purchases		
Not prescribed supporting document (Not OR/SI)	206,396.95	24,767.63
Documents printed in thermal paper	150,507.53	18,060.90
With Handwritten details	18,907,572.16	2,268,909.07
Incorrect details of Name, TIN, Address or Missing details	597,559.12	71,707.10
Subtotal	**19,862,035.76**	**2,383,444.70**
Total Purchases/ Input VAT verified by ICPA	**81,024,463.24**	**9,722,936.12**
Discrepancy	**350,507.41**	**42,060.35**

Petitioner failed to account for the above noted discrepancy amounting to Php42,060.35. Thus, the same shall be disallowed outright from the total input VAT claim.

Meanwhile, the Court shall discuss below the details of the findings of ICPA Gomez, as well as the further exceptions noted based on further verification.

(i) Input VAT from capital goods

Part of petitioner's refund claim is the amount of Php581,857.60 representing input VAT on purchases of capital goods not exceeding Php1Million (Php56,860.49) and on purchases of capital goods exceeding Php1Million (Php524,997.11).

Pursuant to ***Section 110(A) of the Tax Code***, as implemented by ***Section 4.110-3 of RR No. 16-2005***,[115] an input VAT claim on capital goods may be claimed either in full during the month of acquisition or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds Php1Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if the aggregate acquisition cost does not exceed Php1Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

[115] *Supra* note 51.

The ICPA Report states that for the purposes his calculations, the full amount of Php581,857.60 was considered input VAT on purchases exceeding Php1Million reported in the month of March 2015, since no purchase of capital goods was reported in the months of January and February 2015.[116] However, the Court disagrees with such treatment since the amended quarterly VAT return[117] clearly states that there are indeed input VAT on "Purchase of Capital goods not exceeding 1Million." Moreover, the VAT invoices[118] submitted by the petitioner reflect that purchases made in January did not exceed the said threshold amount.[119] Thus, while input VAT related to purchase of capital goods in February and March 2015 should be amortized, those made in January 2015 should be claimed outright.

Based on the Court's independent verification, exceptions were noted on the following purchases both made in the month of January. The Court notes that invoices issued by Nexus Technologies Inc. have handwritten corrections in the business style field which were not countersigned. Thus, such modifications do not appear to have been made or authorized by the seller, making the documents invalid for input VAT claiming.

Supplier Name	**Invoice Date**	**VATable amount (in Php)**	**Input VAT (in Php)**	**ICPA Exhibit No.**
NEXUS TECHNOLOGIES, INC.	1/20/15	44,968.93	5,396.27	**"P-50.3"**
NEXUS TECHNOLOGIES, INC.	1/29/15	101,053.40	12,126.40	**"P-50.4"**

Meanwhile, it should be further emphasized that since input VAT on capital goods exceeding Php1Million will be amortized for purposes of VAT reporting, petitioner's claim for refund should likewise be limited to the amortization amount during the subject period. Thus, the allowable input VAT on purchase of capital goods, within the 4th quarter of FY2015 is Php53,823.53, computed as follows:

Supplier Name	**Sales Invoice Date**	**Total Input VAT (in Php)**	**Allowable Input VAT within Q4 FY 2015 (in Php)**	**Deferred to Succeeding Period**	**ICPA Exhibit No.**
MERIDIAN I.T. CORPORATION	1/6/15	9,741.75	9,741.75		"P-50.1"
LABELMEN ENTERPRISES	1/12/15	12,453.21	12,453.21		"P-50.2"

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116 See ICPA Report, Docket Vol. 2, p. 537.
117 *Supra* note 72.
118 ICPA Exhibit "P-50.1-12".
119 See Table 25, Capital Goods, ICPA Exhibit "P-50".

NEXUS TECHNOLOGIES, INC.	1/20/15	5,396.27	-		"P-50.3"
NEXUS TECHNOLOGIES, INC.	1/29/15	12,126.40	-		"P-50.4"
SMARTECH SOLUTIONS PHILIPPINES INCORPORATED	1/9/15	17,142.86	17,142.86		"P-50.5"
MERIDIAN I.T. CORPORATION	2/25/15	4,713.75	261.88	4,451.88	"P-50.6"
MERIDIAN I.T. CORPORATION	2/25/15	173,410.50	4,816.96	168,593.54	"P-50.7"
TWIN TECH ENGINEERING	2/16/15	6,428.57	107.14	6,321.43	"P-50.8"
MERIDIAN I.T. CORPORATION	3/18/15	158,580.00	4,405.00	154,175.00	"P-50.9"
MERIDIAN I.T. CORPORATION	3/31/15	158,580.00	4,405.00	154,175.00	"P-50.10"
MERIDIAN I.T. CORPORATION	3/31/15	9,150.00	254.17	8,895.83	"P-50.11"
TWIN TECH ENGINEERING	3/17/15	14,134.29	235.57	13,898.71	"P-50.12"
TOTAL		**581,857.60**	**53,823.53**	**510,511.39**	

(ii) Input VAT from importation of goods other than capital goods

In support of its input VAT from importation of non-capital goods, petitioner submitted the Bureau of Customs ("BOC") Statement of Settlement of Duties and Taxes ("SSDTs"), Import Entry and Internal Revenue Declarations ("IEIRDs"), supplier invoices, bill of lading or airway bills, and Application for Permit to Bring Goods from the Zone into the Customs Territory (PEZA Form No. 106),[120] which were all examined by ICPA Gomez.

The ICPA Report shows that petitioner's input VAT on importation of non-capital goods with a total of Php309,766.00, as declared per quarterly VAT return for the 4th quarter of FY2015, is classified as "compliant with invoicing requirement".[121]

Since no exceptions were also noted on the documents independently verified by the Court, ICPA Gomez' finding is hereby adopted, and the full amount of Php309,766.00 is considered valid input VAT.

[120] ICPA Exhibit "P-49.1-1.44"

[121] See Table 26, Summary of Input VAT, ICPA Report, Docket Vol. 2, p. 537.

(iii) Input VAT from domestic purchase of services and non-capital goods

In support of its input VAT from domestic purchases of services and non-capital goods, petitioner submitted supplier's sales invoices ("SI") for purchases of goods and ORs for purchases of services which were likewise examined by the ICPA.

As shown earlier, ICPA Gomez identified the documents covering total input VAT of Php6,446,867.83[122] as "fully compliant." On the other hand, he also noted exceptions in the aggregate amount of Php2,383,444.70,[123] broken down in the table below. Hence, the same shall be disallowed for refund purposes.

Findings	Purchase Amount (in Php)	Input VAT (in Php)	ICPA Exhibit No.
Not prescribed supporting document (Not OR/SI)	206,396.95	24,767.63	"P-43"
Documents printed in thermal paper	150,507.53	18,060.90	"P-44"
With Handwritten details in Loose Leaf (LL) and/or Computerized Accounting System (CAS) invoice/receipt, and unidentified LL or CAS Printed Receipts, and documents in different handwriting without certifications issued by the seller that such handwritten details were authorized	18,907,572.16	2,268,909.07	"P-45"
Incorrect details of name, TIN, address or missing details	597,559.12	71,707.10	"P-46"
Total Disallowed input VAT	**81,024,463.24**	**2,383,444.70**	

Upon the Court's further verification, the input VAT amounting to Php984,232.62 detailed below, must also be disallowed due to petitioner's failure to meet the invoicing and substantiation requirements prescribed by law and regulations:

[122] *Id.*
[123] *Id.*

Supplier Name	Total VATable Purchases (in Php)	Total Disallowed Input VAT (in Php)	Exceptions Noted	ICPA Exhibit No.
8 GIFTS, INC.	1,081,500.00	13,905.00	VAT per OR is only 115,875 but 129,780 per calculations	P-48.264
ABENSON VENTURES INC.	1,964.29	235.71	Countersigned corrections in Business Style, address and TIN fields but without certification that the counter-signatory is authorized by the seller	P-48.1225
ASIAN TERMINALS, INCORPORATED	409,210.67	49,105.28	Services supported by Billing Invoice; Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.190-193, 203, 206-208, 518, 723-725, 762-763, 773-774
CON-PAC WAREHOUSING, INC.	62,362.58	7,483.51	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.222
ESG PRECISION TOOLINGS	129,910.29	15,589.24	VATable sales not properly indicated/labeled	P-48.60, 64
EZER BIZLINK INTERNATIONAL CORP.	34,223.21	4,106.79	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.309

FILCAN ONE STOP CORP.	115,726.77	13,887.21	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.70-72, 312-316, 562-565, 783-784
FLEXIBLE AUTOMATION SYSTEM CORPORATION	8,303.57	996.43	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by	P-48.74
	32,656.25	3,918.75	Correction in business style not countersigned	P-48.566
FUNCTIONAL INC.	109,677.66	13,161.33	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.76-77, 317, 569, 571-572
	29,464.29	3,535.71	Correction in business style not countersigned	P-48.570
G3 ENGINEERING	23,437.50	2,812.50	Correction in name not countersigned	P-48.78
GLC SHELL MOTORIST'S POINT	841.95	101.03	No business style	P-48.1316
	738,964.33	88,676.19	Incomplete address	P-48.1024-1223, 1225-1276, 1325-1425, 1427-1482, 1484-1554, 1557-1578, 1580-1588, 1590-1615,

				1617-1618, 1620-1625, 1627-1637
GOLDEN KING SALES & TRADING	42,161.37	5,059.36	VATable sales not properly indicated/labeled	P48.107, 589, 619
GREENLAND COMMERCIAL & FORKLIFT, INC.	178,473.66	21,416.84	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.376
GREENPOLE	1.500.00	180.00	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.626
HERCO TRADING, INC.	48,405.00	5,808.60	Correction in business style not countersigned	P-48.627-628
HERMINIO HIPOLITO`S HARDWARE & CONSTRUCTION SUPPLY	58,214.28	6,985.71	Not found in records	P-48.1015-1016
HOPPS ENGINEERING PRODUCTS AND SERVICES	2,232.14	267.86	Countersigned corrections in Business Style and TIN fields but without certification that the counter-signatory is authorized by the seller	P-48.929
INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.	225,078.50	27,009.42	Countersigned corrections in Business Style and address fields but without certification that the counter-	P-48.507-512, 751

			signatory is authorized by the seller	
	2,716,248.62	325,949.79	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.199-202, 205, 209-213, 216--221, 223-231, 233-234, 236-244, 251, 254-261, 263, 492, 497-498, 500-506, 516-517, 521-528, 735-741, 744-746, 750 752-761, 764-766, 769-772, 775-782
KING'S DEVELOPMENT, INC.	72,000.00	8,640.00	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.387-388, 632-633
LIMA LOGISTICS CORPORATION	649,500.00	77,940.00	Countersigned corrections in Business Style and address fields but without certification that the counter-signatory is authorized by the seller	P-48.469, 471

	712,900.00	85,548.00	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.470
LUZ PHARMACY	7,820.55	938.47	VATable sales not properly indicated/labeled	P-48.988
M.S. DYNAMICS CORPORATION	19,325.90	2,319.10	Correction in business style not countersigned	P-48.398-399
MALAYAN INSURANCE COMPANY, INC.	119,926.85	14,391.22	Correction in business style not countersigned	P-48.137-138, 649-654
MANTRADE DEVELOPMENT CORPORATION	678,571.43	81,428.57	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.655
MILESTONE GUARANTY AND ASSURANCE CORP.	148,464.00	17,815.68	VATable sales and VAT not properly indicated/labeled	P-48.142, 409
NEXUS INDUSTRIAL PRIME SOLUTIONS CORP.	89,083.51	10,690.02	Countersigned corrections in Business Style and address fields but without certification that the counter-signatory is authorized by the seller	P-48.144, 416-417, 662-665
NEXUS TECHNOLOGIES, INC.	73,232.10	8,787.86	Correction in business style not countersigned	P-48.418, 420-422, 667-669
PAC-ATLANTIC LINES (PHILIPPINES), INC.	235,474.94	28,257.01	Countersigned corrections in Business Style field but without certification that the counter-signatory is	P-48.214-215, 235, 247-248, 252, 490, 494,

			authorized by the seller	496, 499, 514, 519, 742-743, 749, 767-768
POWERLOGIC CONTROLS CENTER, INC.	7,589.29	910.71	Correction in business style not countersigned	P-48.683
QUINTRIX INTERNATIONAL MARKETING CORPORATION	500.89	60.11	Correction in business style and address not countersigned	P-48.684
ROBINSON'S HANDYMAN, INC.	5,969.27	716.31	Undated sales invoice	P-48.689-690, 692-694
SANITARY CARE PRODUCTS ASIA, INC.	10,200.00	1,224.00	Countersigned corrections in Business Style and address fields but without certification that the counter-signatory is authorized by the seller	P-48.449
	14,400.00	1,728.00	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.695-696
TAIHON CHEMICALS & SERVICES INC.	26,116.08	3,133.93	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.170-171
TRANSCONTAINER (TCL) PHILIPPINES, INC.	18,370.79	2,204.50	Countersigned corrections in Business Style field but without certification that the counter-signatory is	P-48.245-246, 249, 253, 262, 495,

			authorized by the seller	515, 520, 748
WESTERN SYNERGY SALES TRADING	227,557.12	27,306.87	Countersigned corrections in Business Style field but without certification that the counter-signatory is authorized by the seller	P-48.182-186, 458-463, 710-715
TOTAL DISALLOWANCE	**9,167,559.65**	**984,232.62**		

Thus, the total valid input VAT on domestic purchase of services and non-capital goods is Php5,463,635.20, as computed below:

Particulars	Amount (in Php)
Domestic purchase of services and non-capital goods classified as "fully compliant" by ICPA	6,447,867.83
Less: Exceptions noted by the Court	984,232.62
Total valid input VAT on domestic purchase of service and non-capital goods	**5,463,635.20**

In sum, out of the total input VAT on current purchases amounting to Php9,764,996.48[124] for the 4th quarter of FY2015, only the amount of Php5,827,224.74 pertains to valid input VAT broken down as follows:

Particulars	Amount (in Php)
Input VAT from capital goods	53,823.53
Input VAT from importations	309,766.00
Input VAT from domestic purchase of services and non-capital goods	5,463,635.20
Total valid input VAT for the 4th quarter of FY2015	**5,827,224.74**

[124] See Table 17, Summary of Current Purchases, ICPA Report, Docket Vol. 2, p. 535.

Petitioner's input VAT was not applied against any output taxes during and in the succeeding quarters.

As to the *eighth* requisite, it was established by petitioner that the input VAT claim of Php9,544,246.41 was never utilized as the same was deducted in the VAT return for the 4th Quarter of FY2015[125] as "Any VAT Refund/TCC Claimed" in field 23D.

Upon further examination of the quarterly VAT returns for the succeeding quarters,[126] it was likewise determined that the same input VAT claimed was not carried over to the subsequent period.

Hence, the subject claim no longer forms part of the excess input VAT of Php24,657,998.28 as of the end of the 4th Quarter of FY2017[127] that was carried over/applied to the succeeding quarters.

Given the foregoing, the petitioner is precluded from the possibility of applying the present claim to its future output VAT liability. Petitioner is thus compliant with the *eight* requisite.

Petitioner's valid input VAT shall be proportionately allocated to both zero-rated and effectively zero-rated sales on the basis of sales volume

Finally, as for the *ninth requisite*, ***Section 112(A) of the Tax Code*** provides 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.

As per VAT return for the 4th quarter of FY2015,[128] petitioner reported total sales of Php1,926,640,223.02 composed of both VATable and zero-rated sales amounting to Php1,839,583.80 and Php1,924,800,639.22, respectively.

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[125] *Supra* note 72.
[126] Exhibit "P-10-C", Q1 FY2016 VAT Return, Docket Vol. 2, pp. 650-651; Exhibit "P-11-C", Q2 FY2016 VAT Return, *id.*, pp. 658-659; Exhibit "P-12-C", Q3 FY2016 VAT Return, *id.*, pp. 666-667; Exhibit "P-13-C", Q4 FY2016 VAT Return, *id.*, pp. 674-675; Exhibit "P-14-C", Q1 FY2017 VAT Return, *id.*, pp. 682-683; Exhibit "P-15-C", Q2 FY2017 VAT Return, *id.*, pp. 609-691; Exhibit "P-16-C", Q3 FY2017 VAT Return, *id.*, pp. 698-699; Exhibit "P-17-C", Q4 FY2017 VAT Return, *id.*, pp. 706-707;
[127] See Q4 FY2017 VAT Return, *id.*, pp. 706-707.
[128] *Supra* note 72.

Since petitioner's input VAT cannot be directly attributed to any of the transactions, the valid input VAT of Php5,827,224.74 shall be allocated proportionately on the basis of the volume of its sales, as follows:

Particulars	VATable Sales (in Php)	Zero-Rated Sales (in Php)
Sales amount per Quarterly VAT Return	1,839,583.80	1,924,800,639.22
Divided by: Total Sales per Quarterly VAT Return	1,926,640,223.02	1,926,640,223.02
Multiplied by: Valid Input VAT	5,827,224.74	5,827,224.74
Allocable Valid Input VAT	**5,563.92**	**5,821,660.82**

Thus, with regard to petitioner's compliance with the *ninth* requisite, only the amount of Php5,821,660.82 represents input VAT attributable to its zero-rated sales.

Determination of the refundable amount

We now come to the final determination of the refundable amount.

For the 4th quarter of FY2015, petitioner has an output VAT liability of Php220,750.06.[129] However, as shown in the table above, the allocable input tax on VATable sales is only Php5,563.92. Thus, output VAT still due is Php215,186.14.

Upon applying the valid input VAT allocated to the total zero-rated sales in the amount of Php5,821,660.82 against the remaining VAT liability of Php215,186.14, the unutilized input VAT allocated to the total zero-rated sales amounted to Php5,606,474.68. Out of said amount, only Php3,230,574.57 is considered attributable to valid zero-rated sales, as demonstrated below:

Particulars	Amount (in Php)
Valid input VAT allocable to zero-rated sales	5,821,660.82
Less: Output VAT still due	215,186.14
Unutilized input VAT allocable to zero-rated sales	5,606,474.68
Divided by: Total zero-rated sales	1,924,800,639.22

[129] See Q4 FY2015 VAT Return, *supra* note 72.

Multiplied by: Valid zero-rated sales	1,109,112,652.94
Unutilized input VAT attributable to valid zero-rated sales	3,230,574.57

To end, petitioner was able to partially prove to the Court its entitlement to the present refund claim. Hence, a partial grant of the same is in order.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** to petitioner the reduced amount of **₱3,230,574.57** representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the period January to March 2015 or the 4th quarter of petitioner's FY2015.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice