REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MINDANAO II GEOTHERMAL PARTNERSHIP,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8082 & 8106

Members:
CASTAÑEDA, JR., *Chairperson;*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
AUG 09 2017
4:25 p.m.

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DECISION

CASANOVA, *J.*:

These Petitions for Review filed by petitioner Mindanao II Geothermal Partnership against respondent Commissioner of Internal Revenue seek the refund or issuance of tax credit certificate (TCC) of its excess and unutilized creditable input taxes for the 1st and 2nd to 4th quarters of taxable year (TY) 2008 in the amount of ₱1,624,603.33 and ₱4,524,652.92, respectively, or in the aggregate amount of ₱6,149,256.25 for TY 2008.

Petitioner was a partnership previously registered with Securities and Exchange Commission (SEC), with principal address at Barangay, Ilomavis, Kidapawan City.[1] It was a registered taxpayer in the Regional District Office (RDO) No. 108, BIR, Kidapawan City with Tax Identification No. (TIN) 004-766-953-000 and engaged in the line of business of generation, collection, and distribution of electricity.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who is empowered to perform the duties of

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 8082 Docket, (Vol. I), p. 89.
[2] Par. 3, *Ibid*; Exhibit "B".

his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner had an Operations and Maintenance Agreement with Marubeni Energy Services Corporation (MESC).[4]

On March 11, 1997, petitioner entered into a Build-Operate-Transfer (BOT) contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of 48.25 megawatt geothermal power plant provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.[5]

Petitioner filed with the BIR its 1st, 2nd, 3rd, and 4th Quarterly VAT Returns for TY 2008 on April 24, 2008, July 25, 2008, October 24, 2008, and January 26, 2009, respectively.[6]

On December 28, 2009, petitioner filed its administrative claim for refund or tax credit of its unapplied and unutilized input taxes for TY 2008 in the total amount of ₱6,149,256.25[7] with the RDO No. 108, BIR, Kidapawan City.

Consequently, respondent issued a Letter of Authority for the examination of petitioner's books of accounts and other accounting records for VAT covering the period of January 1, 2008 to December 31, 2008.[8]

On March 29, 2010, petitioner's partnership was dissolved.[9]

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[3] Par. 2, *Id.*
[4] Par. 4, *Id.*
[5] Par. 5, Admitted Facts, JSFI, CTA Case No. 8082 Docket (Vol. I), pp. 89 to 90.
[6] Pars. 6, 7, 8, and 9, Admitted Facts, JSFI, CTA Case No. 8082 Docket (Vol. I), p. 90; Exhibits "F", "G", "H", "I", respectively.
[7] Par. 10, Ibid; Exhibits "C" and "C-1".
[8] Exhibit "N".
[9] Exhibits "A", "A-1", "A-2", and "A-3", respectively.

On April 15, 2010, petitioner filed this Petition for Review[10] before the lapse of the 120-day period within which respondent should act on the former's administrative claim for refund, representing excess and unutilized creditable input tax covering the 1st quarter of TY 2008. Petitioner filed, through registered mail on May 27, 2010, another Petition for Review with Motion to Consolidate with CTA Case No. 8082[11] for refund or issuance of TCC representing excess and unutilized creditable input tax covering the 2nd to 4th quarters of TY 2008.

Respondent interposed the following special and affirmative defenses in the Answer[12] filed on June 8, 2010 for CTA Case No. 8082:

> "4. Petitioner is not entitled to refund or tax credit in the amount of ₱1,624,603.33 representing alleged unutilized input tax for the 1st Quarter of 2008 because it failed to submit all necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales to National Power Corporation (NPC).
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> 5. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112 (D) of the Tax Code of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition sine qua non prior to the filing of judicial claim.
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> 6. To support its claim, it is imperative for petitioner to prove and present the following, viz:
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> > a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of

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[10] CTA Case No. 8082 Docket (Vol. I), p. 1-9.
[11] CTA Case No. 8106 Docket, p. 1-11.
[12] CTA Case No. 8082 Docket (Vol. I), pp.44-48.

Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

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

d. That the input taxes of ₱1,624,603.33 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the period from 1st quarter of 2008 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

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

f. The judicial claim was filed within the period prescribed in Section 112 (D) of the NIRC of 1997;

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

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

7. The case of Ang Tibay vs. Court of Industrial Relations GR No. L-46496, states the primary rights which must be respected even in an administrative proceeding:

1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Hughes, in Morgan v. U.S., 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the

evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra*.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O.G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia and Maryland Coach Co. v. national *(sic)* labor *(sic)* Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.). . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn *(sic)* judicial

proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them**. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal. *(sic)* a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation,

> and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)
> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations *(sic)* personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.
> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

8. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for

refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670**)."

As to CTA Case No. 8106, respondent interposed the following special and affirmative defenses in his Answer[13] filed on July 5, 2010:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of ₱4,524,652.92 being claimed by petitioner as alleged excess and unutilized creditable input taxes for the 2nd and 4th quarters of the year 2008 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. To support its claim, it is imperative for petitioner to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in

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[13] CTA Case No. 8106 Docket, pp. 50 to 58.

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

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

d. That the input taxes of ₱4,524,652.92 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the third and fourth quarters of taxable year 2007 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods prescribed in Section 112 of the NIRC of 1997;

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

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

8. The petition for review was filed out of time, Section 112 (D) of the NIRC of 1997 categorically provides, thus:

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

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

In case of full or partial denial of the claim for tax refund or tax credit, or <u>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</u>

> <u>hundred twenty day-period appeal the decision or the unacted claim with the Court of Tax Appeals.'</u>

There was likewise no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, hence, there was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 112 of the NIRC of 1997. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the BIR before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law.

Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 28 December 2009, the date when it filed its administrative claim for refund. The said period expired on 27 April 2010. Hence, the 30-day period within which to file the petition for review expired on 27 May 2010. This being so, the Honorable Court has no jurisdiction to act on the instant petition for review.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*).

10. Respondent has no objection to petitioner's motion to consolidate the instant case with CTA Case No. 8082 entitled Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue as stated in the allegations in paragraphs 15-22 of the petition."

On July 1, 2010, respondent filed his Pre-Trial Brief[14] for CTA Case No. 8082.

On August 9, 2010, CTA Case No. 8082 was consolidated with CTA Case No. 8106.[15] Then, petitioner filed its Consolidated Pre-Trial Brief[16] on September 2, 2010.

The parties submitted their Joint Stipulation of Facts and Issues[17] on September 27, 2010 which the Court approved on September 28, 2010.[18] On even date, the Pre-Trial was deemed terminated.[19]

Upon motion[20] of petitioner, the Court approved the commission of Mr. Michael L. Aguirre as Independent Certified Public Accountant on October 4, 2010.[21]

To prove its claim, petitioner initially presented Ms. Ma. Daisy C. Abenes as its witness.

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[14] CTA Case No. 8082 Docket (Vol. I), pp. 50 to 58.
[15] Resolutions, CTA Case No. 8082 Docket (Vol. I), p. 62 and pp. 63 to 64, respectively.
[16] CTA Case No. 8082 Docket (Vol. I), pp. 69 to 75.
[17] CTA Case No. 8082 Docket (Vol. I), pp. 89 to 91.
[18] Resolution, CTA Case No. 8082 Docket (Vol. I), p. 97.
[19] *Ibid.*
[20] Motion to Approve the Commission of Mr. Michael L. Aguirre as Independent Certified Public Accountant, CTA Case No. 8082 Docket (Vol. I), pp. 98 to 100.
[21] Minutes of Hearing dated October 4, 2010, CTA Case No. 8082 Docket (Vol. I), p. 111; and Oath of Commission, CTA Case No. 8082 Docket (Vol. I), p. 110.

In the midst of petitioner's presentation of evidence, respondent filed a Motion to Dismiss[22] on December 7, 2010 claiming that petitioner prematurely filed its Petition for Review in CTA Case No. 8082. Respondent propounds that only 107 days had lapsed from the filing of petitioner's administrative claim on December 28, 2009 and the filing of the Petition for Review on April 15, 2010 which is in clear violation of Sec. 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In the Resolution[23] dated January 20, 2011, the Court granted respondent's Motion to Dismiss, thereby dismissing petitioner's claim for refund for the 1st quarter of TY 2008 for being filed prematurely. On February 7, 2011, petitioner filed a Motion for Reconsideration[24], which was then denied by the court in the Resolution[25] dated March 15, 2011 for lack of merit.

On April 14, 2011, petitioner elevated the matter in the CTA *En Banc* via a Petition for Review[26] which was docketed as CTA EB No. 750, praying that the Resolutions dated January 20, 2011 and March 15, 2011, respectively, issued by the CTA Second Division be reversed and set aside. Accordingly, the CTA *En Banc* gave due course to the Petition.[27]

On July 5, 2012, a Decision[28] was rendered by the Court *En Banc* dismissing the Petition for Review. Thereafter, petitioner filed a Motion for Reconsideration[29] on July 26, 2012, but was subsequently denied by the Court *En Banc* in the Resolution[30] dated November 29, 2012.

Undaunted, petitioner filed a Petition for Review[31] on January 24, 2013 with the Supreme Court which was docketed as G.R. No. 204745. Petitioner prays that the Decision dated July 5, 2012 and Resolution dated November 29, 2012 both rendered by the CTA *En Banc* be reversed and set aside and judgment be rendered reinstating its Petition for Review in CTA Case No. 8082.

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22 CTA Case No. 8082 Docket (Vol. I), pp. 164 to 168.
23 Resolution, CTA Case No. 8082 Docket (Vol. I), pp. 181 to 185.
24 CTA Case No. 8082 Docket (Vol. I), pp. 187 to 195.
25 Resolution, CTA Case No. 8082 Docket (Vol. I), pp. 206 to 207.
26 CTA Case No. 8082 Docket (Vol. I), pp. 219 to 245.
27 Resolution dated June 30, 2011, CTA Case No. 8082 Docket (Vol. I), pp. 343 to 344.
28 Decision, CTA Case No. 8082 Docket (Vol. II), pp. 390 to 402.
29 Motion for Reconsideration, CTA Case No. 8082 Docket (Vol. II), pp. 406 to 431.
30 Resolution, CTA Case No. 8082 Docket (Vol. II).
31 CTA Case No. 8082 Docket (Vol. II), pp. 476 to 519.

On December 8, 2014, the Supreme Court promulgated a Decision[32] granting petitioner's Petition for Review. The decision reversed and set aside the CTA *En Banc*'s Decision dated July 5, 2012 and Resolution dated November 29, 2012, and, further, remanded CTA Case No. 8082 to the CTA Second Division for its resolution on the merits.

Consequently, the proceedings of the instant case continued, and petitioner presented its witnesses, namely: Ms. Ivy P. Acosta, and Mr. Michael L. Aguirre. Thereafter, petitioner formally offered its documentary exhibits which the Court admitted in its Resolution[33] dated May 23, 2016.

On the other hand, on June 6, 2016, respondent's counsel manifested in open Court that she has no witness to present in this case.[34]

Considering petitioner's Memorandum[35], filed through registered mail on July 8, 2016, and respondent's Manifestation[36], filed on August 5, 2016, stating that he is adopting the arguments raised in his Answer, filed on June 8, 2010, as his Memorandum, these Petitions for Review were deemed submitted for decision on August 11, 2016.[37]

The following stipulated issues[38] are set forth by the parties for the Court's determination:

1. Whether or not petitioner's administrative and judicial claims were timely filed;

2. Whether or not petitioner has exhausted all administrative remedies before filing the present petition;

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[32] Decision, CTA Case No. 8082 Docket (Vol. II), pp. 710 to 713.
[33] CTA Case No. 8082 Docket (Vol. IV), pp. 1633 to 1634.
[34] Minutes of the Hearing, CTA Case No. 8082 Docket (Vol. IV), p. 1635.
[35] CTA Case No. 8082 Docket (Vol. IV), pp. 1647 to 1681.
[36] CTA Case No. 8082 Docket (Vol. IV), pp. 1683 to 1685.
[37] Resolution, CTA Case No. 8082 Docket (Vol. IV), p. 1686.
[38] Issues, JSFI, CTA Case No. 8082 Docket (Vol. I), pp. 90 to 91.

3. Whether or not the Court has jurisdiction over the present case;

4. Whether or not the amount of ₱6,149,256.25 represents the accumulated excess and unutilized creditable input taxes paid by petitioner within the 1st to 4th Quarters of TY 2008 directly attributable to its primary source of revenue which is VAT zero-rated;

5. Whether or not petitioner's excess and unutilized creditable input taxes for TY 2008 is duly supported by pertinent documents, such as VAT compliant invoices and official receipts; and

6. Whether or not petitioner's excess and unutilized creditable input taxes paid by petitioner for the 1st to 4th Quarters of TY 2008 in the total amount of ₱6,149,256.25 remains unutilized and will not be utilized because of petitioner's corporate dissolution.

The aforementioned issues may be summarized into a main issue of whether or not petitioner is entitled to the claim for refund or tax credit in the accumulated amount of ₱6,149,256.25 representing its excess and unutilized creditable input taxes for the 1st to 4th Quarters of TY 2008 directly attributable to its primary source of revenue which is VAT zero-rated.[39]

Petitioner claims the refund or issuance of tax credit certificates (TCC) in the total amount of ₱6,149,256.25, representing its excess and unutilized creditable input taxes attributable to its zero-rated sales for the four quarters of calendar year (CY) 2008. The amount of ₱6,149,256.25 is broken down as follows:

Case No.	Period covered	Amount
8082	1st quarter of 2008	₱ 1,624,603.33
8106	2nd to 4th quarter of 2008	4,524,652.92
Total		**₱6,149,256.25**

[39] Par. 7, Issues, JSFI, C.T.A. Case No. 8082 Docket (Vol. I), p. 91.

Pertinent provision of Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "SEC. 112. **Refunds or Tax Credits of Input Tax.-**
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.
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> xxx xxx xxx
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to foregoing, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

(1) the taxpayer is VAT registered;
(2) the taxpayer is engaged in zero-rated or effectively zero-rated sales;
(3) the input taxes were incurred or paid;
(4) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
(5) the input taxes have not been applied against any output VAT liability; and
(6) the claim was filed within the prescribed periods both in the administrative and judicial levels.

The Court shall determine first the last requisite which is the timeliness of filing of the administrative and judicial claims.

Petitioner's administrative and judicial claims were timely filed

Applying Section 112(A) of the NIRC of 1997, as amended, petitioner has two years to file a claim for refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when such sales were made; thus, petitioner's last day for filing of its administrative claim for the four taxable quarters of CY 2008 fell on the following dates:

Period covered	**Last day of the Two-year period**
January to March 2008 (1st qtr 2008)	March 31, 2010
April to June 2008 (2nd qtr 2008)	June 30, 2010
July to September 2008 (3rd qtr 2008)	September 30, 2010
October to December 2008 (4th qtr 2008)	December 31, 2010

Since petitioner filed its administrative claim[40] on December 28, 2009, it is clear that it was timely filed.

On the other hand, Section 112 (D) of the 1997 Tax Code (now Section 112 (C) of the NIRC of 1997, as amended) states the time requirement for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to a

[40] Exhibits "C" to "C-1".

act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA.[41]

Thus, from the filing of petitioner's administrative claim, together with the supporting documents, on December 28, 2009, respondent had one hundred twenty (120) days or until April 27, 2010 to act on the said claim. After the lapse of the 120-day period, petitioner had thirty (30) days or until May 27, 2010 within which to file a judicial claim before this Court. Due to respondent's inaction on said claim, petitioner filed a Petition for Review before this Court on March 30, 2010 covering its claim for the first quarter of 2008 (docketed as CTA Case No. 8082) and another Petition for Review on May 27, 2010 (docketed as CTA Case No. 8106) covering its claim for the second to fourth quarters of 2008.

Although the judicial claim for the first quarter of 2008 was filed before the expiration of the 120-day period, the same was deemed timely filed as ruled by the Supreme Court in the case of *Mindanao II Geothermal Partnership vs Commissioner of Internal Revenue*[42], thus:

> "Recently, in *Taganito Mining Corporation v. CIR*, the Court reconciled the pronouncements in the *Aichi* and *San Roque* cases in the following manner:
>
> Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that **during the period December 10, 2003** (when BIR Ruling No. DA-489-03 was issued) **to October 6, 2010** (when the *Aichi* case was promulgated), **taxpayers-claimants need not observe the 120-day period** before it could file a judicial claim for refund of excess input VAT before the CTA. **Before and after the aforementioned period (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.** (Emphases and underscoring supplied)
>
> In this case, records disclose that petitioner filed its administrative and judicial claims for refund/credit of its input VAT in CTA Case No. 8082 on December 28, 2009 and March 30, 2010, respectively, or during the period when BIR Ruling No. DA-489-03 was in place, *i.e.*, from December 10, 2003 to October 6, 2010. As

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[41] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015

[42] G.R. No. 204745, December 8, 2014

> such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, and hence, is deemed timely filed."

As to the judicial claim for the second to fourth quarters of 2008, the same was filed within the "120+30-day" periods prescribed by law. Respondent had 120 days from December 28, 2009 or until April 27, 2010 within which to act on petitioner's administrative claim. Due to inaction of respondent, petitioner had thirty days from April 27, 2010 or until May 27, 2010 to appeal such inaction. Considering that the Petition for Review docketed as CTA Case No. 8106 was filed on May 27, 2010, the same was timely filed.

Clearly, both the administrative and judicial claims were seasonably filed.

The Court shall now proceed to make a determination of petitioner's compliance with the other requisites.

Petitioner is VAT-registered

Petitioner is registered with the Regional District Office (RDO) No. 108, Kidapawan City of the BIR with TIN 004-766-953-000 as a VAT entity engaged in the business of generation, collection, and distribution of electricity.[43]

Petitioner had zero-rated sales

On March 11, 1997, petitioner entered into a Build-Operate-Transfer (BOT) contract with the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) for the finance, engineering, supply, installation, testing, commissioning, operation and maintenance of 48.25 megawatt geothermal power plant provided that PNOC-EDC shall supply and deliver steam to petitioner at no cost. In turn, petitioner shall convert the steam into electric capacity and energy for PNOC-EDC and shall deliver the same to the National Power Corporation (NPC) for and in behalf of PNOC-EDC.[44]

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[43] See footnote no. 2.
[44] See footnote no. 5.

Petitioner's 48.25 megawatt geothermal power plant was accredited[45] by the Department of Energy (DOE) as a Block Power Production Facility pursuant to Executive Order (EO) No. 215, as amended and was certified by the Energy Regulatory Commission (ERC) as complaint with the requirements set forth by the latter for its generation facility, as evidenced by the Certificate of Compliance (COC) No. 03-10-GXT25-0025[46] dated October 15, 2003, which was renewed by COC No. 08-12-GXT25-0025[47] on December 8, 2008.

As a power generation company utilizing geothermal energy, petitioner's sales of generated power and delivery of electric capacity and energy to the NPC for and in behalf of PNOC-EDC (pursuant to the BOT Contract), qualify for VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended by R.A. No. 9337, as implemented by Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005, to wit:

> "SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.** -
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (7) **Sale of power or fuel generated through renewable sources of energy such as,** but not limited to, biomass, solar, wind, hydropower, **geothermal,** ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels." (*Emphasis supplied*)
>
> **"SEC. 4.108-5. *Zero-rated Sale of Services.—***
>
> xxx xxx xxx
>
> (b) ***Transactions Subject to Zero Percent (0%) VAT Rate.*** — The following services performed in the Philippines by a

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[45] Exhibits "D-1" & "D-2".
[46] Exhibit "AA".
[47] Exhibit "BB".

VAT-registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, **geothermal and steam**, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; *Provided, however*, That zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power." *(Emphasis supplied)*

Corollary thereto is the provision of Section 4.108-3(f) of RR No. 16-2005, as amended by RR No. 4-2007, which states:

"SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.* –

xxx xxx xxx

(f) **Sale of electricity by generation, transmission, and distribution companies** shall be subject to twelve percent (12%) on their gross receipts starting Feb. 1, 2006; Provided, that **sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, **geothermal**, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT**.

'G*eneration companies'* refer to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of RA No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities." *(Emphasis supplied)*

In its Quarterly VAT Returns for the four quarters of TY 2008, petitioner reported zero-rated sales/receipts of ₱316,642,501.23, as shown below:

Period Covered	Amount	Exhibit
1st Quarter 2008	₱ 88,760,859.62	"F-2"[48]
2nd Quarter 2008	94,266,762.38	"G-2"[49]
3rd Quarter 2008	72,116,424.84	"H-2"[50]
4th Quarter 2008	61,498,454.39	"I-2"[51]
Total	**₱ 316,642,501.23**	

As verified from the supporting Schedule of Zero-Rated Sales[52] and the corresponding VAT zero-rated official receipts[53] (ORs), petitioner's zero-rated sales/receipts of ₱316,642,501.23 were duly substantiated, hence, the amount of input VAT attributable to the entire zero-rated sales shall be considered for refund.

Input taxes were incurred or paid and are attributable to zero-rated sales

Having resolved that petitioner's sale of generated power and delivery of electric capacity and energy to NPC for and in behalf of PNOC-EDC for the four quarters of 2008, in the amount of ₱316,642,501.23, qualifies for VAT zero-rating, the Court shall now determine the amount of input VAT attributable thereto.

Per its Quarterly VAT Returns for the four quarters of 2008, petitioner reflected its input VAT in the total amount of ₱6,149,256.25, broken down as follows:

Particulars	1st Quarter *(Exhibit F)*	2nd Quarter *(Exhibit G)*	3rd Quarter *(Exhibit H)*	4th Quarter *(Exhibit I)*	Total
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	₱ 1,754.88	₱ 11,412.43	₱ 41,083.83	₱ 50,684.92	₱ 104,936.06
Domestic Purchases of Services *(Line 21J)*	1,622,848.45	1,732,171.87	1,042,044.18	1,647,255.69	6,044,320.19
Total Input Taxes for the period	**₱1,624,603.33**	**₱1,743,584.30**	**₱1,083,128.01**	**₱1,697,940.61**	**₱6,149,256.25**

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48 CTA Case No. 8082 Docket (Vol. III), p.855.
49 CTA Case No. 8082 Docket (Vol. III), p.859.
50 CTA Case No. 8082 Docket (Vol. III), p.863.
51 CTA Case No. 8082 Docket (Vol. III), p.866.
52 Annex B of Exhibit "CC".
53 Exhibits "T.1A" to "T.1C", "T.2A", "T.2B", "T.3A", "T.4A", "T.5A" to "T.5B", "U.1A" to "U.1B", "U.2A" to "U.2B", "U.3A" to "U.3B", "V.1A" to "V.1C", "V.2A" to "V.2B", "V.3A" to "V.3B", "W.1B" to "W.1C", "W.2A" to "W.2B" and "W.3A".

To prove that it incurred/paid the aforementioned input VAT, petitioner submitted various suppliers' invoices and official receipts (ORs)[54] which upon examination thereof, the Court-commissioned Independent CPA (ICPA), Mr. Michael L. Aguirre, noted a few exceptions, to wit:[55]

Findings	Input VAT Amount	ICPA Report Reference *(Exhibit "CC")*
Purchase of service supported by OR dated outside the 2008 covered period	₱ 14,035.71	Annex D *(Docket, Vol. IV, p.1617)*
Purchase of goods without original/valid sales invoices but with original/valid ORs	765.28	Annex E.1 *(Docket, Vol. IV, p.1618)*
Total	**₱ 14,800.99**	

Further review of the ICPA's report and petitioner's supporting documents reveals that, in addition to the disallowance of ₱14,800.99 input VAT, the amount of ₱5,913,754.37 should also be disallowed for the supporting invoices and ORs failed to meet the substantiation requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05, as amended.

			Exhibit Reference	
Supplier	**Inv/OR No.**	**Amount**	**Per Summary**	**Per Inv/OR**
1. Purchases of goods/services supported by invoices/ORs but input VAT amount was not separately shown				
Jetour Philippines Inc	14775	₱ 8,104.93	"F-9"	P.1
Marubeni Energy Services Corp	0276	360,191.83	"F-9"	P.6
Plumas Transport Corporation	0577	300.00	"F-9"	P.7
Triple Eight Int'l Travel & Tours Inc	28053	2,716.00	"F-9"	P.8
Triple Eight Int'l Travel & Tours Inc	28244	1,358.00	"F-9"	P.9
House of Travel Inc	20773	643.00	"F-9"	P.10
Julieto Marco	2231	60.00	"F-9"	P.11
Marubeni Energy Services Corp	0278	274,702.36	"F-9"	P.12
Plumas Transport Corporation	0584	9,107.14	"F-9"	P.13
Amica Corporation	028	181,209.60	"F-9"	P.16
General Electric Philippines Inc	66455	23,357.14	"F-9"	P.21
Julieto Marco	2244	60.00	"G-9"	Q.4
Marubeni Energy Services Corp	0289	737,713.61	"G-9"	Q.18
Marubeni Energy Services Corp	0292	258,541.27	"G-9"	Q.19
Triple Eight Int'l Travel & Tours Inc	29528	1,358.00	"G-9"	Q.23
General Electric Philippines Inc	66604	23,357.14	"G-9"	Q.29
Mabuhay Vinyl Corporation	002356	11,615.73	"G-9"	Q.35
Marubeni Energy Services Corp	0298	378,432.51	"G-9"	Q.36

[54] Exhibits "P-1" to "S-63".
[55] Exhibit "CC".

Marubeni Energy Services Corp	0289	128,055.79	"G-9"	Q.37
Aviatica Travel & Management Corporation	54423	1,519.00	"H-9"	R.1
General Electric Philippines Inc	66631	11,678.57	"H-9"	R.6
Marubeni Energy Services Corp	0300	275,642.09	"H-9"	R.16
Davao Sweet Temptations Inc	04412	15.32	"H-9"	R.23
General Electric Philippines Inc	66853	23,357.14	"H-9"	R.24
Georgetown Electrical System	0099	1,098.21	"H-9"	R.25
Aviatica Travel & Management Corporation	54553	625.00	"H-9"	R.35
Aviatica Travel & Management Corporation	54586	1,519.00	"I-9"	S.1
Breadcart Bakeshop and Coffeeshop	3231	96.43	"I-9"	S.2
General Electric Philippines Inc	66866	11,678.57	"I-9"	S.6
General Electric Philippines Inc	66867	11,678.57	"I-9"	S.7
Plumas Transport Corporation	0645	3,600.00	"I-9"	S.14
Plumas Transport Corporation	1003	18,214.29	"I-9"	S.15
American Packing Industries (Phils)	05-888	22,002.95	"I-9"	S.21
Marubeni Energy Services Corp	0314	394,458.49	"I-9"	S.31
Marubeni Energy Services Corp	0312	319,172.82	"I-9"	S.32
Prime Travel Tours Inc	16029	36.00	"I-9"	S.37
Basilican Ventures	619	26.79	"I-9"	S.42
Julieto Marco	2326	5,400.00	"I-9"	S.49
Marubeni Energy Services Corp	0318	516,056.93	"I-9"	S.54
Tri-amp Corporation	1455	36,624.00	"I-9"	S.60
Tri-Ohms	1303	40,714.29	"I-9"	S.61
subtotal		**₱ 4,096,098.51**		
2. Purchases of goods/services supported by invoices/ORs without TIN and/or address of petitioner				
Columbia Computer Center (Davao) Inc	30891	₱ 267.86	"F-9"	P.17
Davao Diamond Industrial Supply	255843	250.71	"H-9"	R.2
Davao Diamond Industrial Supply	255845	1,007.14	"H-9"	R.3
GH Office Depot	295788	211.61	"H-9"	R.7
The Amalgamated Trading Center	8058	1,580.36	"H-9"	R.20
Tomas Electrical Supply Corporation	179686	192.86	"H-9"	R.34
Cebu Power Exponents Services Inc	1633	9,604.80	"I-9"	S.3
Kupler Industries Inc	028743	1,003.56	"I-9"	S.10
Simplex Industrial Corporation	92178	660.00	"I-9"	S.16
Villanueva Caña & Associates	0671	317.28	"I-9"	R.43
Villanueva Caña & Associates	0687	54,600.00	"I-9"	S.19
Villanueva Caña & Associates	0710	12,000.00	"I-9"	S.20
Simplex Industrial Corporation	92409	534.64	"I-9"	S.39
W & L Trading Corporation	7956	3,114.86	"I-9"	S.40
Davao Diamond Industrial Supply	263207	556.07	"I-9"	S.44
Minerva Y. Chua	1016	24,192.00	"I-9"	S.55
SGV & CO	057582	18,000.00	"I-9"	S.58
Tomas Electrical Supply Corporation	185026	377.14	"I-9"	S.59
W & L Trading Corporation	8192	964.29	"I-9"	S.62
subtotal		**₱ 129,435.18**		
3. Purchases of goods/services supported by invoices/ORs without TIN and/or address of petitioner and input VAT amount was not separately shown				
Mabuhay Vinyl Corporation	2141	₱ 22,235.79	"F-9"	P.2
Mabuhay Vinyl Corporation	2140	11,227.01	"F-9"	P.3
Mabuhay Vinyl Corporation	2138	44,546.59	"F-9"	P.4

Mabuhay Vinyl Corporation	2139	10,558.68	"F-9"	P.5
Dawn's Café	11112	610.71	"F-9"	P.19
Doney Chicken House Inc	099384	21.43	"F-9"	P.20
Jewealt Marketing	4476	192.86	"F-9"	P.22
Julieto Marco	2237	60.00	"F-9"	P.23
Marubeni Energy Services Corp	0281	254,758.51	"F-9"	P.26
Davao Diamond Industrial Supply	249855	1,607.14	"G-9"	Q.1
Mabuhay Vinyl Corporation	2263	35,454.13	"G-9"	Q.5
Plumas Transport Corporation	0661	3,600.00	"G-9"	Q.6
Plumas Transport Corporation	0603	3,600.00	"G-9"	Q.7
Alavar Seafoods Restaurant	126288	163.39	"G-9"	Q.10
Cifra Industrial Services Corp	1463	10,809.37	"G-9"	Q.11
Garden Orchid Hotel & Resort Corp	114621	741.96	"G-9"	Q.12
House of Travel Inc	21596	691.00	"G-9"	Q.13
Mabuhay Vinyl Corporation	2283	21,758.42	"G-9"	Q.15
Mabuhay Vinyl Corporation	2355	22,842.73	"G-9"	Q.16
Plumas Transport Corporation	0678	3,600.00	"G-9"	Q.20
RBA Janitorial & Manpower Services	3370	1,713.76	"G-9"	Q.21
SMA Lumber & Gen Merchandise	4280	2,330.89	"G-9"	Q.22
Julieto Marco	2305	60.00	"G-9"	Q.31
Kidapawan Hardware & Auto Supply	988	210.00	"G-9"	Q.32A
Kidapawan Supplies Center	9655	428.57	"G-9"	Q.33
Kidapawan Supplies Center	9640	664.29	"G-9"	Q.34
Plumas Transport Corporation	0686	3,600.00	"G-9"	Q.38
Jewealt Marketing	4739	964.29	"H-9"	R.8
Julieto Marco	2311	60.00	"H-9"	R.11
Mabuhay Vinyl Corporation	2441	11,636.19	"H-9"	R.13
Mabuhay Vinyl Corporation	2443	22,624.51	"H-9"	R.14
Mabuhay Vinyl Corporation	2472	23,531.52	"H-9"	R.15
Plumas Transport Corporation	0700	3,600.00	"H-9"	R.19
House of Travel Inc	22131	5,043.00	"H-9"	R.26
House of Travel Inc	22432	1,519.00	"H-9"	R.27A
Mabuhay Vinyl Corporation	2524	11,718.02	"H-9"	R.30
Mabuhay Vinyl Corporation	2525	22,651.79	"H-9"	R.31
Plumas Transport Corporation	0620	3,600.00	"H-9"	R.33
House of Travel Inc	22432	472.00	"H-9"	R.36
Mabuhay Vinyl Corporation	2585	22,486.75	"H-9"	R.37
Marubeni Energy Services Corp	0306	286,341.19	"H-9"	R.40
Plumas Transport Corporation	0631	3,600.00	"H-9"	R.41
Plumas Transport Corporation	0644	384.00	"H-9"	R.42
Davao Central Warehouse Club Inc	8219	188.57	"I-9"	S.4
Dawn's Café	13968	382.50	"I-9"	S.5
Cifra Industrial Services Corp	1535	10,087.50	"I-9"	S.22
House of Travel Inc	22923	1,519.00	"I-9"	S.24
Mabuhay Vinyl Corporation	2736	23,382.58	"I-9"	S.28
Mabuhay Vinyl Corporation	2706	23,203.63	"I-9"	S.29
Mindanao Electrical Services	9343	2,367.86	"I-9"	S.33
NCH Philippines Inc	2082	1,108.80	"I-9"	S.35
Plumas Transport Corporation	1019	11,797.14	"I-9"	S.36
American Packing Industries (Phils)	5913	11,002.30	"I-9"	S.41

House of Travel Inc	22987	621.00	"I-9"	S.46
Mabuhay Vinyl Corporation	2755	35,577.97	"I-9"	S.51
Plumas Transport Corporation	1032	9,107.14	"I-9"	S.56
subtotal		**₱ 1,008,665.48**		
4. Purchase of goods/services supported by documents other than VAT invoices/ORs				
Kidapawan Megacenter Corp	78199	₱ 216.84	"F-9"	P.24
Tokio Marine Malayan Insurance	14096	360,406.35	"F-9"	P.29
Mang Inasal	106	16.50	"G-9"	Q.17
Ayala Property Mgmt Corp	316477	2.68	"G-9"	Q.26
Somoutori	41559	28.93	"G-9"	Q.39
MOF Company (Subic) Inc	4029	960.00	"I-9"	S.34
Hyman's Bahay Kainan	372684	26.79	"I-9"	S.47
Proheart Food Corp	3048946	26.79	"I-9"	S.57
World Chicken	222847	18.75	"I-9"	S.63
subtotal		**₱ 361,703.63**		
5. Purchase of goods/services supported by documents with notation "Not valid source of /not allowed for claiming input tax"				
Matsuko Rubber Industries Inc	7766	₱ 5,785.71	"H-9"	R.17
Marco Polo Davao	125324	1,027.49	"H-9"	R.39
Marco Polo Davao	127061	1,060.29	"I-9"	S.13
Marco Polo Davao	127161 GC	851.24	"I-9"	S.30
Marco Polo Davao	127244	494.91	"I-9"	S.52
Marco Polo Davao	127243	1,179.16	"I-9"	S.53
subtotal		**₱ 10,398.80**		
6. Purchase of service supported by OR not issued in petitioner's name and without petitioner's TIN and address				
PGA Sumpo Japan Insurance Inc.	28641	₱ 144.00	"H-9"	R.18
subtotal		**₱ 144.00**		
7. Purchases of services supported by ORs dated outside the period of claim and input VAT amount was not separately shown				
Marubeni Energy Services	0305	₱ 307,308.77	"H-9"	R.32
subtotal		**₱ 307,308.77**		
Total		**₱ 5,913,754.37**		

Therefore, out of petitioner's reported input VAT for TY 2008 in the amount of ₱6,149,256.25, only the amount of ₱220,700.89 represents petitioner's valid input VAT, computed as follows:

Total Input VAT per Returns		₱ 6,149,256.25
Less: Disallowances		
Per ICPA's report	₱ 14,800.99	
Per this Court's findings	5,913,754.37	5,928,555.36
Valid Input VAT		**₱ 220,700.89**

Considering that petitioner had no other sales reported per Quarterly VAT Returns for CY 2008, the valid input VAT of ₱220,700.89 is entirely attributable to its zero-rated sales.

Input taxes were not applied against any output VAT liability

A perusal of petitioner's Quarterly VAT Returns[56] for the four quarters of 2008 shows that it had no output tax liability against which the valid input VAT of ₱220,700.89 may be applied or credited. Further, the input VAT of ₱220,700.89 was not carried over to the succeeding quarters of 2009[57].

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a TCC, representing unutilized input VAT paid on its domestic purchases of goods and services for the four quarters of 2008 which is attributable to its zero-rated sales for the same period, in the reduced amount of **₱220,700.89**.

WHEREFORE, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱220,700.89** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales for TY 2008.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[56] Exhibits "F-3", "G-3", "H-3", and "I-3", respectively.
[57] Exhibits "J-2", "K-2", "L-2" and "M-2".

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice