REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SAN ROQUE POWER CORPORATION, *Petitioner,*	**CTA CASE NO. 10731**
	Present:
- versus -	**REYES-FAJARDO,** *Chairperson,* and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 09 2026 11:08 a.m.

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DECISION

ANGELES, J.:

Before the Court is a *Petition for Review*[1] filed by San Roque Power Corporation (petitioner) against the Commissioner of Internal Revenue (respondent) praying for the refund of the amount of Thirty-Four Million Eight Hundred Forty-Seven Thousand Six Hundred Twenty Pesos and 16/100 (₱34,847,620.16), allegedly representing petitioner's excess and unutilized input value-added tax (VAT) on its domestic purchases of goods and services and importations attributable to its zero-rated sales for the 1st to 4th quarters of fiscal year (FY) ended March 31, 2020.[2]

FACTS

Petitioner is a corporation duly organized and existing under Philippine laws.[3] It is registered with the Bureau of Internal Revenue (BIR) - Revenue District Office (RDO) No. 121-Excise LT Division I, under Taxpayer Identification Number (TIN) 005-017-501-00000, with address at San Roque, San Manuel, Pangasinan.[4]

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[1] The *Petition for Review* was filed through electronic mail on January 10, 2022, Vol. I, p. 47, while the hard copy was received on February 02, 2022.
[2] Summary of the Case, Pre-Trial Order dated September 29, 2022, Docket – Vol. III, p. 1225.
[3] Exhibits "P-1", "P-1-a" and "P-1-b", Docket – Vol. 4, pp. 1616 to 1641.
[4] Exhibit "P-2", Docket – Vol. 4, p. 1642.

Respondent is the duly appointed Commissioner of the BIR vested by law with the authority to carry out the functions, duties, and responsibilities of the said office, including the power to decide or grant applications for the refund of or issuance of tax credit certificates for excess and unutilized input VAT, pursuant to the provisions of the National Internal Revenue Code of 1997 (Tax Code) and other tax laws, rules, and regulations.[5]

Records show that petitioner is a domestic corporation primarily engaged in the design, construction, and operation of power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation (GOCC), or other entity engaged in the development, supply or distribution of energy.[6]

Its primary purpose is to engage in the business of a Generation Company pursuant to Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA Law, as amended, and to engage in the generation of electricity or power generation and provision of ancillary services, including the sale of electricity or power and related ancillary services.[7]

On October 11, 1997, petitioner and the National Power Corporation (NPC) entered into a *Power Purchase Agreement* (PPA) for the construction and operation of a multi-purpose hydroelectric power plant/generation facility, and for the supply of electricity, among others.[8]

Petitioner was then registered with the Board of Investments (BOI) on February 11, 1998 as a new operator of hydroelectric power generating plant (HEPP),[9] and was accredited by the Department of Energy (DOE) on January 30, 1999 for its 345 MW Hydroelectric Power Plant Project located in Pangasinan Province.

Thereafter, on November 29, 2017, petitioner and the National Grid Corporation of the Philippines (NGCP) entered into an *Ancillary Services Procurement Agreement* (ASPA) for the provision of ancillary services to ensure the reliability and security of the nationwide grid.[10]

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[5] Par. 3, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, pp. 1203 to 1204.
[6] Exhibit "P-1", Docket – Vol. 4, p. 1600.
[7] *Id.*
[8] Exhibit "P-15", Docket – Vol. 4, pp. 1810-1862.
[9] Exhibit "P-3", Docket – Vol. 4, p. 1644.
[10] Exhibit "P-16", Docket – Vol. 4, pp. 1952-1983.

On December 13, 2017, petitioner and NGCP filed with the Energy Regulatory Commission (ERC) an application for approval of the ASPA for a period of five (5) years. The said application was provisionally approved by the ERC, subject to certain conditions, per its *Order*[11] dated February 23, 2018.

In the instant *Petition for Review*,[12] petitioner alleges that: **(1)** it filed its Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th Quarters of FY 2020 (subject period) through the BIR Electronic Filing and Payment System (eFPS); **(2)** based on the said Returns, petitioner's aggregate sales subject to 12% VAT for the subject period amounted to ₱4,388,175.05, while its zero-rated sales for the same period amounted to ₱3,175,749,993.80; **(3)** it accumulated input VAT credits on its domestic purchases of goods and services and importations in the total amount of ₱35,374,201.14; and **(4)** out of the total input VAT of ₱35,374,201.14, the amount of ₱34,847,620.16, which is net of the output VAT from VATable sales, represents petitioner's excess and unutilized input VAT on its domestic purchases of goods and services and importations attributable to its zero-rated sales of goods for FY 2020, particularly its sale of power generated from renewable resources (*i.e.*, hydroelectric power) to NPC and NGCP.

Thus, on June 25, 2021, petitioner filed with the Large Taxpayers Service (Excise LT Audit Division I) of BIR RDO No. 121 an administrative claim for the refund of its excess and unutilized input taxes accumulated from its local purchases of goods/services and importations attributable to its zero-rated sales for FY ended March 31, 2020, in the total amount of ₱34,847,620.16.[13]

However, on November 24, 2021, respondent issued a letter denying petitioner's administrative claim for refund[14] on the ground that its "available excess input tax covering the period April 1, 2019 to March 31, 2020 is not enough to cover the output tax due arising from reclassification of ancillary fees from zero-rated sales to VATable sales pursuant to Section 108(A) of the NIRC, as amended."[15]

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[11] Exhibit "P-19", Docket – Vol. 4, pp. 1985-2002.
[12] *Supra*, note 1.
[13] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1204.
[14] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1204.
[15] Exhibit "P-22", Docket – Vol. 4, p. 2013.

PROCEEDINGS BEFORE THE COURT

The instant *Petition for Review* was filed *via* electronic mail on January 10, 2022,[16] while the hard copy thereof was filed on February 02, 2022.[17]

On April 20, 2022, respondent transmitted the *BIR Records* of the present case, consisting of 556 pages in one (1) folder.[18] Thereafter, on April 21, 2022, respondent filed his *Answer*.[19]

The Pre-Trial Conference was held on August 10, 2022.[20] Prior thereto, *Respondent's Pre-Trial Brief* was filed on May 25, 2022,[21] while the *Petitioner's Pre-Trial Brief* was submitted on August 03, 2022.[22]

On September 9, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[23] which was admitted and approved by the Court in the Resolution dated September 19, 2022.[24] The Pre-Trial Order dated September 29, 2022 was then issued.[25]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Lalaine A. Estayo,[26] petitioner's Assistant Manager; (2) Mr. Rubentheo P. Cuta,[27] petitioner's Operations Manager; (3) Atty. Maria Myla S. Maralit,[28] the Court-commissioned Independent Certified Public Accountant (ICPA);[29] and (4) Atty. Jose M. Layug,

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[16] Docket – Vol. I, p. 47.
[17] *Id. at* 6 to 44.
[18] *Compliance* dated April 20, 2022, Docket – Vol. III, pp. 1092 to 1094.
[19] Docket – Vol. III, pp. 1105 to 1112.
[20] Notice of Pre-Trial Conference dated April 27, 2022, Docket – Vol. III, pp. 1117 to 1118; Notice of Hearing dated July 14, 2022, Docket – Vol. III, p. 1126; Order dated, and Minutes of the hearing held on, August 10, 2022, Docket – Vol. III, pp. 1172 to 1174.
[21] Docket – Vol. III, pp. 1119 to 1122.
[22] *Id.* at 1127 to 1166.
[23] *Id.* at 1203 to 1215.
[24] *Id.* at 1218.
[25] *Id.* at 1225 to 1235.
[26] Exhibits "P-30" and "P-4683", Docket – Vol. I, pp. 412 to 436, Docket – Vol. III, pp. 1277 to 1288, respectively; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. III, pp. 1333 to 1335.
[27] Exhibit "P-4682", Docket – Vol. II, pp. 839 to 853; Minutes of the hearing held on, and Order dated, February 1, 2023, Docket – Vol. III, pp. 1333 to 1335.
[28] Exhibit "P-4684", Docket – Vol. III, pp. 1371 to 1391; Minutes of the hearing held on, and Order, dated March 8, 2023, Docket – Vol. III, pp. 1555 to 1557.
[29] *Oath of Commission* dated October 12, 2022, Docket – Vol. III, p. 1236; Minutes of the hearing held on, and Order dated, October 12, 2022, Docket – Vol. III, pp. 1237 to 1239.

Jr.,[30] an expert witness in the field of energy law and on the power industry in the Philippines.

The *Report* of the ICPA was submitted to the Court on November 28, 2022.[31]

On January 16, 2023, petitioner filed its *Motion for Leave of Court to File Amended ICPA Report*,[32] which was granted by the Court in the Resolution dated January 25, 2023.[33] Thus, the amended *Report* of the ICPA was submitted to the Court on February 03, 2023.[34]

Subsequently, on August 04, 2023, *Petitioner's Formal Offer of Evidence* was filed,[35] to which respondent filed his *Comment (Re: Formal Offer of Evidence with Manifestation)* on August 07, 2023.[36] On August 14, 2023, petitioner filed a *Motion for Leave to File and to Admit the Attached Reply (To Respondent's Comment dated 7 August 2023 on Petitioner's Formal Offer of Evidence dated 4 August 2023)*,[37] attaching thereto its *Reply (To Respondent's Comment dated 7 August 2023 on Petitioner's Formal Offer of Evidence dated 4 August 2023)*.[38]

In the Order dated August 23, 2023,[39] the Court granted petitioner's *Motion for Leave to File and to Admit the Attached Reply (To Respondent's Comment dated 7 August 2023 on Petitioner's Formal Offer of Evidence dated 4 August 2023)* and admitted the said *Reply*.

In the Resolution dated December 6, 2023,[40] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-4537 to P-4539", "P-4568 to P-4574" and "P-4578 to P-4586," for failure to present the originals for comparison.

Respondent, in turn, offered the testimony of Revenue Officer Ivory Gravamen.[41]

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[30] Exhibit "P-4692", Docket – Vol. III, pp. 1440 to 1459; Minutes of the hearing held on, and Order, July 5, 2023, Docket – Vol. 4, pp. 1563 to 1565.
[31] Docket – Vol. III, pp. 1241 to 1266.
[32] *Id.* at 1269 to 1273.
[33] *Id.* at 1276.
[34] Exhibit "P-4685", Docket – Vol. III, pp. 1338 to 1364.
[35] Docket – Vol. 4, pp. 1568 to 1598.
[36] Docket – Vol. 5, pp. 2162 to 2164.
[37] *Id.* at 2167 to 2170.
[38] *Id.* at 2172 to 2177.
[39] *Id.* at 2178.
[40] *Id.* at 2180 to 2181.
[41] Exhibit "R-7", Docket – Vol. III, pp. 1100 to 1104; Minutes of the hearing held on, and Order, dated September 10, 2024, Docket – Vol. 5, pp. 2199 to 2201.

On September 18, 2024, respondent filed his *Formal Offer of Evidence*,[42] to which petitioner filed its *Comment/Opposition (Re: Respondent's Formal Offer of Evidence dated 11 September 2024)* on September 30, 2024.[43] In the Resolution dated November 21, 2024,[44] the Court admitted respondent's offered exhibits.

Respondent's *Memorandum* was filed on December 18, 2024,[45] while *Memorandum (For Petitioner)* was submitted on January 02, 2025.[46]

The case was submitted for decision on February 17, 2025.[47]

ISSUE

The sole issue submitted for the Court's resolution is as follows:

> WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ALLEGED EXCESS AND UNUTILIZED INPUT VAT ON DOMESTIC PURCHASES OF GOODS AND SERVICES AND IMPORTATIONS ALLEGEDLY ATTRIBUTABLE TO ZERO-RATED SALES FOR THE 1ST TO 4TH QUARTERS OF FISCAL YEAR ENDED 31 MARCH 2020 IN THE AMOUNT OF PHP34,847,620.16.[48]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner's main argument is that its sale of ancillary service capacity/reserve power to NGCP is subject to zero percent (0%) VAT.

Petitioner alleges that it owns and operates a 100% hydropower generation facility, and the sale or purchase of power includes both electrical energy and/or capacity or ancillary services in the form of power reserves. Petitioner explains that based on Section 108(B)(7) of the Tax Code, Revenue Regulations (RR) No. 16-2005, as amended by

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[42] Docket – Vol. 5, pp. 2204 to 2207.
[43] *Id.* at 2212 to 2217.
[44] *Id.* at 2226 to 2227.
[45] *Id.* at 2229 to 2236.
[46] *Id.* at 2240 to 2278.
[47] Minute Resolution dated February 17, 2025, Docket – Vol. 5, p. 2281.
[48] Statement of Issues to be Tried and Resolved, JSFI, Docket – Vol. III, p. 1205.

RR No. 13-2018, and ERC Resolution No. 20 s. 2005, among others, there is no distinction between the proceeds of the sale of electricity and sale of ancillary service capacity. Accordingly, the sale of ancillary service capacity by generation companies which generate or source their power purely from renewable sources of energy, is subject to 0% VAT.

Petitioner also mentions that in respondent's letter denying petitioner's administrative claim for refund, he did not point out any specific basis for his categorical claim that ancillary fees have been reclassified as VATable, considering that petitioner's application for VAT refund/tax credit for FYs 2014 to 2019 was granted by respondent in 2019 and 2020, respectively, under comparable facts.

Petitioner further claims that it is entitled to its judicial VAT claim, in accordance with the requisites for filing a judicial claim for refund of creditable input tax.

Respondent's counter-arguments

Respondent contends that since he rendered a decision at the administrative level, the Court's jurisdiction becomes strictly appellate in nature; as such, the Court should confine itself to the issue of whether the findings of respondent are consistent with law.

Respondent counters that petitioner is not entitled to refund in the amount of ₱34,847,620.16. He states that based on the VAT Refund Notice dated November 21, 2021, petitioner's claim was denied because its available excess input VAT covering the subject period was not enough to cover the output tax due arising from reclassification of ancillary fees from zero-rated sales to VATable sales pursuant to Section 108(A) of the Tax Code.

Respondent adds that in fact, offsetting the claim for refund on importation from the total output tax payable, petitioner is still liable for output tax in the amount of ₱108,987,916.37, computed as follows:

A. LOCAL PURCHASES		
VAT Refund Claimed	P	25,693,760.05
Less: Disallowances		5,532,319.37
Output tax on ancillary services		138,303,217.16

Net Amount Allowable for VAT Refund/Credit	**P**	**(118,141,776.48)**
B. IMPORTATIONS		
VAT Refund Claimed	P	9,153,860.11
Less: Disallowances		-
Net Amount Allowable for VAT Refund/Credit	**P**	**9,153,860.11**
TOTAL AMOUNT ALLOWABLE FOR VAT REFUND/CLAIM	**P**	**(108,987,916.37)**

Respondent maintains that it is the claimant who has the burden of proof to establish the factual basis of its claim for tax credit or refund, as claims for refund are construed strictly against the claimant partaking the nature of exemption from taxation.

RULING OF THE COURT

The *Petition for Review* is partially granted.

Requisites for the grant of a refund or issuance of tax credit certificate

Section 112 of the Tax Code, as amended by RA No. 10963, otherwise known as the TRAIN Law,[49] provides, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section

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[49] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided*, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Based on this provision, jurisprudence has laid down several requisites that taxpayers engaged in zero-rated sales must comply with to successfully obtain a tax refund/credit of input VAT paid. To aid the discussion, the said requisites are enumerated and arranged, as follows:

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. The administrative claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[50]
>
> 2. In case of full or partial denial of the administrative claim rendered within a period of ninety (90) days from

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[50] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

the date of submission of the official receipts (ORs) or invoices and other documents in support of the application, the judicial claim is filed with this Court within thirty (30) days from receipt of the decision;[51]

With reference to the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;[52]

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;[53]

5. For zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[54] the acceptable foreign currency exchange proceeds therefrom have been duly accounted for in accordance with the BSP rules and regulations;[55]

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;[56]

7. The input taxes are due or paid;[57]

8. 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;[58] and

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[51] *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.
[52] *Supra*, note 50.
[53] *Ibid.*
[54] Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.
[55] *Supra*, note 50.
[56] *Ibid.*
[57] *Ibid.*
[58] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra.

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.[59]

In addition to the above requisites, claimants of tax refunds have the burden of proving not only their entitlement to their claim under substantive law, but also the factual basis of such claim. Thus, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the Tax Code and other implementing rules and regulations,[60] as such is the only way to determine the veracity of their claims.[61] To be sure, strict compliance with all the VAT invoicing requirements provided under tax laws, rules and regulations is mandatory.[62] This ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.[63]

As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim.[64]

Petitioner's administrative and judicial claims for refund were timely filed

The *first* requisite provided in Section 112(A) of the Tax Code, as amended, necessitates the taxpayer to file an administrative claim for input VAT refund within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four (4) quarters of FY ended March 31, 2020. Counting two (2) years from the close of the subject taxable quarters, petitioner had until the following dates to file its administrative claim:

Period Covered	**Close of Taxable Quarter**	**Last Day to File Administrative Claim**
1st Quarter	June 30, 2019	June 30, 2021
2nd Quarter	September 30, 2019	September 30, 2021
3rd Quarter	December 31, 2019	December 31, 2021

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59 *Supra*, note 50.
60 *Team Energy Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 197663 & 197770, March 14, 2018.
61 *Kepco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.
62 *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
63 *Supra*, note 60.
64 *J.R.A. Philippines Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307 (Resolution), August 28, 2013.

4th Quarter	March 31, 2020	March 31, 2022

Since petitioner filed its administrative claim for VAT refund for the period April 01, 2019 to March 31, 2020, with the BIR-Excise LT Audit Division I on June, 25, 2021,[65] the same was timely filed.

The *second* requisite likewise necessitates that the judicial claim must have been filed within thirty (30) days from receipt of respondent's decision, or from the expiration of the ninety (90)-day period under Section 112(C) of the Tax Code, as amended.

Petitioner received respondent's letter[66] denying its administrative claim for refund on November 24, 2021.[67] Thus, petitioner had thirty (30) days from such receipt, or until December 24, 2021, to file an appeal with this Court.

However, on December 21, 2021, this Court issued CTA Circular No. 02-2021[68] suspending the filing of any and all pleadings and other court submissions with the Court from December 21, 2021 to January 3, 2022, in view of the adverse effects of Super Typhoon Odette. Based on the said Circular, the filing period of any and all pleadings and other court submissions that fell due or would fall due during the said period was extended for seven (7) calendar days counted from January 4, 2022.

Moreover, per the Court's Memorandum dated January 5, 2022,[69] work in the Court was suspended from January 6 to 7, 2022, and the personal filing/service of pleadings and other court submissions during the said period was not allowed. Accordingly, the filing/service of pleadings was to be done *via* registered mail, through duly accredited private couriers, or by transmitting them through electronic mail in accordance with the guidelines on electronic filing.

Another Memorandum was issued by the Court on January 7, 2022,[70] which declared, *inter alia*, that personal filing/service of pleadings and other court submissions shall not be allowed. Then, on

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[65] Exhibits "P-18" and "P-19", Docket – Vol. 4, pp. 2003 to 2009.
[66] Exhibit "P-22", Docket – Vol. 4, p. 2013.
[67] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. III, p. 1204; Exhibit "P-22", Docket – Vol. 4, p. 2013.
[68] Re: Extension of Deadlines for Filing of Any and All Pleadings and Other Court Submissions with the CTA in Light of Super Typhoon Odette, CTA Circular No. 02-2021, December 21, 2021.
[69] Subject: WORK SUSPENSION IN THE CTA FROM JANUARY 6 TO 7, 2022.
[70] Subject: WORK ARRANGEMENT IN THE CTA FROM JANUARY 10, 2022 UNTIL FURTHER ORDERS.

January 10, 2022, another Memorandum was issued,[71] stating that pursuant to *En Banc* Resolution No. 4-2021 dated February 24, 2021, pleadings, motions, and other court submissions may be filed by electronic mail through the official and pertinent email address of this Court; and litigants are required to submit the required number of hard copies within five (5) calendar days from the date of filing by email, either by personal filing or licensed courier.

Thereafter, on January 30, 2022, this Court issued a Memorandum,[72] allowing the personal filing/service of pleadings beginning February 1, 2022.

Records show that petitioner filed the instant *Petition for Review via* electronic mail on January 10, 2022, while the hard copy thereof was filed on February 02, 2022.[73] In view of the foregoing, the instant *Petition for Review* was likewise timely made.

Petitioner is a VAT-registered entity

It is undisputed that petitioner satisfied the *third* requisite since it is duly registered with the BIR as a VAT taxpayer with TIN 005-017-501-00000.[74]

Petitioner was able to establish that it was engaged in zero-rated sales or effectively zero-rated sales for FY ended March 31, 2020

The *fourth* requisite requires the taxpayer to be engaged in zero-rated or effectively zero-rated sales.

In its Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of FY ended March 31, 2020 (FY 2020), petitioner reported total sales amounting to ₱3,180,138,168.85, which included zero-rated sales of ₱3,175,749,993.80, as shown below:

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[71] Subject: Filing of Pleadings, Motions, and Other Court Submissions by Email.
[72] Subject: WORK ARRANGEMENT IN THE COURT OF TAX APPEALS BEGINNING 1 FEBRUARY 2022.
[73] *Id.* at 6 to 44.
[74] Exhibit "P-2", Docket – Vol. 4, p. 1642.

Exhibit	Period Covered (FY 2020)	Zero-Rated Sales	Vatable Sales	Total Sales
"P-7"[75]	1st Quarter	₱ 889,448,041.53	₱ 25,387.54	₱ 889,473,429.07
"P-8"[76]	2nd Quarter	888,324,966.20	30,198.23	888,355,164.43
"P-9"[77]	3rd Quarter	939,172,936.80	3,929,017.85	943,101,954.65
"P-10"[78]	4th Quarter	458,804,049.27	403,571.43	459,207,620.70
Total		**₱ 3,175,749,993.80**	**₱4,388,175.05**	**₱3,180,138,168.85**

To support its reported zero-rated sales for the 1st to 4th quarters of FY 2020 amounting to ₱3,175,749,993.80, petitioner submitted the relevant ORs together with the related Statements of Account[79] issued to its clients, NPC and NGCP, to wit:

Registered Name of Payor	OR Exhibit No.	OR No.	OR Date	Zero-rated Sales[80]
PSALM Fao National Power Corporation	"P-70"	20000059	Apr. 25, 2019	₱ 131,812,165.01
PSALM Fao National Power Corporation	"P-71"	20000060	Apr 25, 2019	49,331,775.70
PSALM Fao National Power Corporation	"P-74"	20000063	May 27, 2019	49,789,511.01
PSALM Fao National Power Corporation	"P-75"	20000064	May 27, 2019	134,566,403.12
PSALM Fao National Power Corporation	"P-77"	20000066	June 26, 2019	130,935,010.41
PSALM Fao National Power Corporation	"P-78"	20000067	June 26, 2019	49,573,598.13
PSALM Fao National Power Corporation	"P-82"	20000071	July 26, 2019	126,436,769.04
PSALM Fao National Power Corporation	"P-83"	20000072	July 26, 2019	49,573,598.13
PSALM Fao National Power Corporation	"P-85"	20000074	Aug. 27, 2019	125,068,603.21
PSALM Fao National Power Corporation	"P-86"	20000075	Aug. 27, 2019	49,573,598.13
PSALM Fao National Power Corporation	"P-89"	20000078	Sept. 26, 2019	138,462,488.33
PSALM Fao National Power Corporation	"P-90"	20000079	Sept. 26, 2019	49,573,598.13
PSALM Fao National Power Corporation	"P-92"	20000081	Oct. 25, 2019	179,607,176.46
PSALM Fao National Power Corporation	"P-93"	20000082	Oct. 25, 2019	49,573,598.13
PSALM Fao National Power Corporation	"P-95"	20000084	Nov. 27, 2019	128,855,996.82
PSALM Fao National Power Corporation	"P-96"	20000085	Nov. 27, 2019	49,573,598.13

[75] Docket – Vol. 4, pp. 1663 to 1669.
[76] *Id.* at 1681 to 1687.
[77] *Id.* at 1696 to 1701.
[78] *Id.* at 1712 to 1718.
[79] Exhibits "P-70" to "P-109," USB (Exhibit "P-4686").
[80] See Annex C of the Amended ICPA Report, USB (Exhibit "P-4686") for details.

PSALM Fao National Power Corporation	"P-102"	20000091	Dec. 26, 2019	126,268,776.89
PSALM Fao National Power Corporation	"P-103"	20000092	Dec. 26, 2019	50,101,447.09
PSALM Fao National Power Corporation	"P-104"	20000093	Jan. 24, 2020	128,089,733.37
PSALM Fao National Power Corporation	"P-105"	20000094	Jan. 24, 2020	49,761,682.24
PSALM Fao National Power Corporation	"P-107"	20000096	Feb. 26, 2020	127,087,374.29
PSALM Fao National Power Corporation	"P-108"	20000097	Feb. 26, 2020	49,761,682.24
			Sub-total	***₱2,023,378,184.01***
National Grid Corporation of the Philippines	"P-72"	20000061	Apr. 30, 2019	108,997,971.98
National Grid Corporation of the Philippines	"P-76"	20000065	May 31, 2019	103,950,547.77
National Grid Corporation of the Philippines	"P-81"	20000070	June 28, 2019	130,491,058.40
National Grid Corporation of the Philippines	"P-84"	20000073	July 31, 2019	115,255,819.83
National Grid Corporation of the Philippines	"P-88"	20000077	Aug. 30, 2019	120,228,147.21
National Grid Corporation of the Philippines	"P-91"	20000080	Sept. 30, 2019	114,152,344.19
National Grid Corporation of the Philippines	"P-94"	20000083	Oct. 31, 2019	133,145,406.10
National Grid Corporation of the Philippines	"P-97"	20000086	Nov. 29, 2019	170,326,164.24
National Grid Corporation of the Philippines	"P-101"	20000090	Dec. 27, 2019	51,720,772.94
National Grid Corporation of the Philippines	"P-106"	20000095	Jan. 31, 2020	62,243,087.76
National Grid Corporation of the Philippines	"P-109"	20000098	Feb. 28, 2020	41,860,489.36
			Sub-total	***₱1,152,371,809.78***
			TOTAL	**₱3,175,749,993.79**

A verification of the foregoing ORs confirms that the reported zero-rated sales of ₱3,175,749,993.79 were properly supported by VAT zero-rated ORs.

There is no dispute between the parties as regards the status of petitioner's sale of power or fuel generated through renewable sources of energy to NPC, being clearly subject to 0% VAT pursuant to Section 108(B)(7) of the Tax Code.

The pivotal issue in this case is whether petitioner's sale of ancillary services to NGCP is likewise entitled to 0% VAT rate under the same provision.

Petitioner alleges that in FY ended March 31, 2020, it sold power to NPC under the PPA dated October 11, 1997,[81] and ancillary service capacity or reserve power to NGCP under the ASPA dated November 29, 2017.[82] Since its sales of electricity under its contract with NPC and its sales of ancillary services under its contract with NGCP were purely from the San Roque HEPP, a renewable source of energy, petitioner was paid at 0% VAT rate.

Petitioner submits that the sale of ancillary service capacity or reserve power to NGCP is subject to 0% VAT.

On the other hand, respondent argues that petitioner's ancillary services to NGCP dispatched no energy which is contrary to Section 15(g) of RA No. 9513, otherwise known as the Renewable Energy Act of 2008, as implemented by RR No. 07-2022. Since the ancillary services did not generate energy through renewable sources, the same is subject to 12% VAT per Section 108(A) of the Tax Code.

After a careful review of the parties' respective arguments and supporting evidence, We rule for **petitioner**.

The settled standard is that a tax exemption must be expressed in the statute in clear language that leaves no doubt as to the intention of the legislature to grant such exemption.[83] It should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken.[84] Even if it is granted, the exemption must be interpreted in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[85]

The relevant statute in this case is Section 108 of the Tax Code, as amended by the TRAIN Law,[86] which provides the rules on the imposition of VAT on the sale of services. Section 108(A) thereof provides the general rule, while Section 108(B) specifies the transactions subject to VAT zero-rating, to wit:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> (A) *Rate and Base of Tax.* — **<u>There shall be levied, assessed and collected, a value-added tax equivalent to</u>**

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[81] *Supra*, note 8.
[82] *Supra*, note 9.
[83] *PLDT v. City of Davao*, G.R. No. 143867, August 22, 2001.
[84] *Philippine Long Distance Telephone Co. v. City of Davao*, G.R. No. 143867, March 25, 2003.
[85] *Id.*
[86] *Supra*, note 49.

twelve percent (12%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission by any entity, and distribution companies, including electric cooperatives; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase 'sale or exchange of services' shall likewise include:

xxx xxx xxx

The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

(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.

xxx xxx xxx

(Emphasis supplied)

Based on the foregoing, generally, all kinds of services performed in the Philippines for others for a fee are subject to 12% VAT on gross receipts derived from such services. By way of exception, the law specifies certain transactions or services that are subject to 0% VAT, one of which is the "[s]ale of power or fuel generated through renewable sources of energy such as... hydropower..."

In 2005, RR No. 16-05[87] was promulgated by the Secretary of the Department of Finance to implement the VAT provisions in the Tax Code, including Section 108 thereof. Section 4.108 of the said RR states, *viz.*:

> SECTION 4.108-1. *VAT on the Sale of Services and Use or Lease of Properties.* — Sale or exchange of services, as well as the use or lease of properties, as defined in Sec. 108 (A) of the Tax Code shall be subject to VAT, equivalent to 10% of the gross receipts (excluding VAT).
>
> SECTION 4.108-2. *Meaning of "Sale or Exchange of Services".*— The term "*sale or exchange of services*" means the performance of all kind of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed or rendered by the following:
>
> xxx xxx xxx
>
> SECTION 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 10% VAT on their gross receipts; *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.**
>
> *"Generation companies"* refers 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 the RA No. 9136 (EPIRA). They shall include all

[87] Consolidated Value-Added Tax Regulations of 2005, September 1, 2005.

Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

"Transmission companies" refers to any person or entity that owns and conveys electricity through the high voltage backbone system and/or subtransmission assets, e.g. NPC or TRANSCO. 'Subtransmission assets' shall refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of asset including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve power factor, overhead lines, and the land where such facilities/equipment are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation or transmission.

"Distribution companies" refer to persons or entities which operate a distribution system in accordance with the provisions of the EPIRA. They shall include any distribution utility such as an electric cooperative organized pursuant to Presidential Decree No. 269, as amended, and/or under RA No. 6938, or as otherwise provided in the EPIRA, a private corporation, or a government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA.

For this purpose, a distribution system refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-users.

"Gross Receipts" **under this Subsection (f) shall refer to the following:**

> **(a) Total amount charged by generation companies for the sale of electricity and related ancillary services; and/or**
>
> (b) Total amount charged by transmission companies for transmission of electricity and related ancillary services; and/or
>
> (c) Total amount charged by distribution companies and electric cooperatives for distribution and supply of electricity, and related electric service. The universal charge passed on and collected by distribution companies and electric cooperatives shall be excluded from the computation of the Gross Receipts.

xxx xxx xxx

SECTION 4.108-5. *Zero-Rated Sale of Services.—*

(a) *In general.*— A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. **However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.**

(b) *Transactions Subject to Zero Percent (0%) VAT Rate.*— **The following services performed in the Philippines by a 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)*

After the effectivity of the TRAIN Law on January 1, 2018, several revenue regulations, particularly RR Nos. 13-18[88] and 26-18,[89] were issued, amending the following pertinent sections of RR No. 16-05, among others, as follows:

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

xxx xxx xxx

(f) Sale of electricity by generation, transmission **by any entity including the National Grid Corporation of the Philippines (NGCP)**, and distribution companies **including electric cooperatives** shall be subject to **twelve percent (12%)** VAT on their gross receipts.

xxx xxx xxx

SEC. 4.108-5. *Zero Rated Sale of Services.* —

(a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but

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[88] Regulations Implementing the VAT Provisions under the RA No. 10963, Further Amending RR No. 16-2005, as Amended, March 15, 2018.
[89] Amends Certain Provisions of RR No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund under Section 112 (C) of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN, December 21, 2018.

> shall not result in any output tax. However, the input tax on purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these Regulations.
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate.* — The following services performed in the Philippines by a 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.
>
> xxx xxx xxx
>
> *(Emphasis supplied)*

As can be gleaned from above, the specific rule on the sale of electricity by generation companies is that such sales shall be subject to 12% VAT on their gross receipts, except when the sale of power is generated through renewable sources of energy, such as hydropower, in which case, such sales shall be subject to 0% VAT.

At this juncture, a definition of key terms is essential to determine the proper VAT rate applicable to petitioner's sale of ancillary services to NGCP for FY 2020.

Pursuant to RA No. 9511,[90] NGCP, to whom petitioner sold the subject Ancillary Services, was granted a franchise to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system. It was also authorized to engage in ancillary business and any related business which maximizes utilization of its assets.[91]

Relatedly, under RA No. 9136 or the EPIRA Law,[92] "Ancillary Services" is defined as those services that are necessary to support the

[90] Grant of Electricity Transmission Franchise to the National Grid Corp. of the Phil., December 1, 2008.
[91] Republic Act No. 9511, December 1, 2008.
[92] Electric Power Industry Reform Act of 2001, Republic Act No. 9136, June 8, 2001.

transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Philippine Grid Code.

Under Section 1.6 of ERC Resolution No. 115-01 or the Philippines Grid Code,[93] "Ancillary Services" is likewise defined as support services such as Frequency Regulating and Contingency Reserves, Reactive Power support, and Black Start capability which are necessary to support the transmission capacity and energy that are essential in maintaining power quality and the reliability and security of the Grid. For example, a Contingency Reserve, which is one type of ancillary service, is defined as a generating capacity that is intended to take care of the loss of the largest Synchronized Generating Unit or the power import from a single Grid interconnection, whichever is larger.[94]

Meanwhile, "active power" refers to the time average of the instantaneous power over one period of the electrical wave, measured in Watts (W) or multiples thereof; while "reactive power" pertains to the component of electrical power representing the alternating exchange of stored energy (inductive or capacitive) between sources and loads or between two (2) systems, measured in VAR or multiples thereof.[95]

Given the above-cited definitions, it appears that while "Ancillary Services" is defined as a service or support service, it actually consists of generating units or generating capacity that provide power reserves, power support, or power capabilities.

In relation to the present case, per Section 3 of the ASPA, in relation to Schedule 1 thereof, the Ancillary Services to be provided by petitioner to NGCP was specified, as follows:

AS Type	Firm Capacity Contracted	Non-firm Contracted Capacity
Contingency Reserve (Primary Reserve)	One unit, 100MW, Peak hours referred to in Schedule 2	All available capacity not scheduled under firm arrangement, not more than 100 MW/unit
Regulating Reserve	One unit, 75 MW,	All available

[93] December 2001.
[94] *Id.*
[95] *Id.*

(Secondary Reserve) or Contingency Reserve (Primary Reserve)	Peak hours referred to in Schedule 2	capacity not scheduled under firm arrangement, not more than 100 MW/unit
Dispatchable Reserve (Tertiary Reserve)	N/A	All available capacity not scheduled under firm arrangement, up to 145MW/unit[96]

A perusal of the Ancillary Services Guidelines found in Schedule 2 of the ASPA reveals, among others, that the Contingency Reserve provider must be synchronized to the grid as generator (with at least 5MW load for market based), and the utilization of the Contingency Reserves are conditioned on the Generator tripping or a loss of single-circuit interconnection in the grid; Anticipated Depletion or depleted regulating reserve; and Grid Frequency breached below the 59.7Hz level. The said Guidelines also shows that the Dispatchable Reserve is for the purpose of replenishing the depleted Contingency Reserve, and that when the Regulating Reserve is depleted for certain reasons, the Contingency and/or Dispatchable reserves shall be dispatched.[97]

It further appears from Schedule 7 of the ASPA that the provision of the Firm Contracted Capacity 175MW is sourced from the waters of the San Roque HEPP.[98]

Based on the foregoing, the Ancillary Services sold and provided by petitioner to NGCP in FY 2020 consist of power capacity or power reserve or the availability of power capacity or power reserve fully sourced from a renewable source of energy (*i.e.*, hydropower generated by the San Roque HEPP).

It can be reasonably concluded, therefore, from the general meaning of Ancillary Services under the aforecited laws and issuances and its meaning as provided in the ASPA, that the subject Ancillary Services are not only related to petitioner's sale of electricity and/or power generated from hydropower, but in itself involves the sale of power generated therefrom.

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[96] Exhibits "P-16" Docket – Vol. 4, pp. 1952-1966; Addendum to the ASPA dated December 5, 2017, p. 1984.
[97] Docket – Vol. 4, pp. 1972-1974.
[98] Docket – Vol. 4, p. 1983.

This is confirmed by the testimony of one of petitioner's witnesses, Atty. Jose M. Layug, Jr., whose opinion was received in evidence as one given by an expert witness in the field of energy law and the power industry in the Philippines. Based on his professional background as testified, Atty. Layug has a distinguished track record in the practice of energy law in both the private and public sectors.

In his testimony,[99] Atty. Layug testified on the industry practice when it comes to the sale of power, to wit:

> **Q23: Why do you say that the industry practice also supports your conclusion [that the "sale of power" includes the sale of capacity]?**
>
> A23: In the energy sector, it is an established industry practice for power purchase agreements, power supply agreements, energy conversion agreements and similar agreements involving the sale of power to include both a sale of energy and a sale of capacity. Under power industry practice, the term "power" means (i) energy, in KWh or MWh, and (ii) capacity or demand, in KW or MW and, hence, sale of power covers both sale of energy and sale of capacity. Also, sale of energy requires actual generation and delivery of electricity or energy while sale of capacity requires the seller to make available the capacity of a generating plant without necessarily requiring actual generation and delivery of electricity or energy.
>
> **Q24: What is your basis for saying that it is an established industry practice for agreements involving the sale of power to include both a sale of energy and a sale of capacity?**
>
> A24: I have personally been involved in numerous negotiations where power purchase agreements, power supply agreements and similar agreements quote the sale of power in terms of sale of energy and sale of capacity.
>
> In addition, I have with me a compilation of ERC cases where the ERC approved power purchase agreements where the subject of the sale of power covers both energy and capacity.
>
> xxx xxx xxx

Considering that "power" consists of both energy and capacity or demand, and that the sale of power covers both the sale of energy and capacity, the phrase "Sale of power or fuel generated through renewable sources of energy" in Section 108(B)(7) of the Tax Code cannot be so narrowly interpreted as referring only to power that is actually generated or produced from renewable sources of energy, to the exclusion of power capacity that may likewise be generated or

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[99] *Judicial Affidavit* dated March 6, 2023, Exhibit "P-4692", Docket – Vol. 3, pp. 1440-1459.

produced from such sources. Such interpretation would be unduly restrictive and inconsistent with the State's policy to encourage the development and utilization of renewable energy resources.[100]

More importantly, regarding NGCP's payments to petitioner, Section 6 of the ASPA provides that "NGCP shall pay the amount provided in the AS Power Bill, including Value-Added Tax (VAT), if applicable. The remittance of the VAT shall be in accordance with ERC Resolution No. 20, Series of 2005, as may be applicable and the protocol to be agreed upon by the parties."[101]

Under ERC Resolution No. 20 s. 2005[102] (Implementing the Recovery of VAT and other Provisions of RA No. 9337 Affecting the Electric Power Industry), VAT is imposed, thus:

> II. IMPOSITION OF THE VALUE-ADDED TAX – The appropriate VAT shall be imposed as follows:
>
> (a) FOR GENERATION COMPANIES
>
> 1. The GR of the GC shall mean the total amount paid by the end-user through the DUs to the GC for the sale of electricity and related ancillary services. The latter is billed and collected by the transmission company which shall remit such collection to the concerned GC.
>
> 2. For GC, which generates/sources its power purely from non-renewable, GR shall mean the total amount paid for the electricity sold.
>
> **3. For GC, which generates/sources its power purely from renewable, GR shall be subject to zero percent (0%) VAT rate.**
>
> 4. For GC, which generates/sources its power from a mixture of non-renewable and renewable sources of energy, GR shall mean the total amount paid for the electricity sold from non-renewable energy sources.
>
> 5. At the implementation of the VAT, the GC shall impose the ten percent (10%) VAT rate on the current billing based on the non-renewable energy portion of the prior month's generation mix. The GC shall undertake an annual true up.
>
> xxx xxx xxx

[100] Renewable Energy Act of 2008, Republic Act No. 9513, December 16, 2008.
[101] Docket – Vol. 4, p. 1957.
[102] Exhibit "P-29", Docket – Vol. 4, pp. 1648-1649.

In this case, records show that: **(1)** petitioner is a generation company primarily engaged in the business of generation of electricity or power generation and provision of ancillary services;[103] **(2)** petitioner is registered with the BOI as an operator of a hydroelectric power generating plant with capacity of 345 MW;[104] **(3)** petitioner is a consortium of Marubeni Corporation, Sithe Philippines Holdings, Inc. and Italian Thai Development Public Company Limited on a Build-Operate-Transfer Scheme with the NPC as a duly accredited Block Power Production Facility under the Implementing Rules and Regulations of Executive Order No. 215;[105] **(4)** petitioner owns and operates a three (3) unit rated 345 MW Hydroelectric Power Plant Project located in Pangasinan Province (San Roque HEPP) which was accredited[106] and endorsed[107] by the DOE, and certified compliant by the ERC valid until August 16, 2024;[108] **(5)** petitioner and NGCP entered into the ASPA dated November 29, 2017 for the provision of Ancillary Services;[109] and **(6)** petitioner generated gross receipts from the sale of ancillary services to NGCP during the 1st to 4th quarters of FY 2020.[110]

Applying the abovementioned contractual provision, since petitioner has sufficiently proved that it is a generation company which sold Ancillary Services to NGCP in FY 2020 in the form of power capacity or power reserve generated purely from a renewable source of energy (*i.e.*, hydropower produced by the San Roque HEPP), such sales qualify as zero-rated sales and were, thus, correctly subjected to 0% VAT, in accordance with the aforementioned laws and administrative issuances.

Furthermore, the definition of "gross receipts" is categorically provided for in Section 4.108-3 of RR No. 16-05, which, in relation to generation companies, refers to the "total amount charged by generation companies for the sale of electricity and related ancillary services." This means that the total amount charged by generation companies, which constitutes their gross receipts upon which VAT is imposed, includes charges from the sale of related ancillary services.

It is essential to highlight that while RR No. 13-18 amended Section 4.108-3 of RR No. 16-05 by, *one*, qualifying the entities subject

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103 Exhibit "P-1", Docket – Vol. 4, p. 1603.
104 Exhibit "P-3", Docket – Vol. 4, pp. 1644-1647.
105 Exhibit "P-4", Docket – Vol. 4, pp. 1648-1649.
106 *Id.*
107 Exhibit "P-5", Docket – Vol. 4, pp. 1650-1651.
108 Exhibits "P-6" and "P-6-a", Docket – Vol. 4, pp. 1652-1662.
109 Exhibit "P-16" Docket – Vol. 4, pp. 1952-1966.
110 Exhibits "P-72", "P-76", "P-81", "P-84", "P-88", "P-91", "P-94", "P-97", "P-101", "P-106", "P-109", Docket – Vol. 4, pp. 1652-1662, USB (Exhibit "P-4686"); ICPA Report, Docket – Vol. 3, p. 1361, USB (Exhibit "P-4685").

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to VAT, and *two*, subjecting them to a higher VAT rate of 12% following the TRAIN Law, the portion of Section 4.108-3 of RR No. 16-05 bearing the definition of "gross receipts" was not amended by RR No. 13-18 or other subsequent revenue issuances.

Thus, based on a complete reading of RR No. 16-05, as amended, the tax base for <u>both</u> the 12% or 0% VAT rate is gross receipts, which includes the amount charged by generation companies for <u>both</u> the sale of electricity and/or power <u>and</u> related ancillary services.

It bears noting that administrative issuances have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. Thus, the burden of proving their unconstitutionality or invalidity rests on the party assailing such governmental issuances.[111] Otherwise, the same shall stand.

On the other hand, respondent's justification for reclassifying petitioner's sales of Ancillary Services from zero-rated sales to VATable sales (*i.e.*, that petitioner's Ancillary Services dispatched no energy), is bereft of adequate support or at least further elaboration, hence, deserves scant consideration.

It is true that Section 4.108-5(b)(7) of RR No. 16-05, as amended, provides 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." Nonetheless, as previously discussed, the sale of power generated from renewable sources of energy includes the sale of power capacity generated from the same sources. As such, no rule is violated by petitioner's zero-rating of its sales to NGCP. To be sure, petitioner's Ancillary Services, by its nature and under the ASPA, do not involve the maintenance or operation of the San Roque HEPP.

For these reasons, We find respondent's reclassification of petitioner's ancillary fees from zero-rated sales to VATable sales, per the letter dated November 24, 2021 denying petitioner's application for tax refund, erroneous and not in accordance with the applicable laws and administrative issuances.

Contrarily, We find petitioner to have successfully established that it was engaged in zero-rates sales for the 1st to 4th quarters of FY 2020 in the total amount of ₱3,175,749,993.80.

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[111] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006.

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There is no need to comply with the fifth requisite

For the *fifth* requisite, the taxpayer must prove that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; however, such rule applies only to zero-rated sales under **Section 106(A)(2)(a)(1), (2) and (b)**, and **108(B)(1) and (2)** of the Tax Code, as amended. Since the legal basis for petitioner's zero-rated sales is Section 108(B)(7) of the Tax Code, as amended, petitioner need not comply with the said *fifth* requisite.

The input VAT being claimed do not appear to be transitional input taxes

In its Quarterly VAT Returns for the 1st to 4th quarters of FY 2020, petitioner declared total input VAT of ₱35,374,201.15 from its domestic purchases of goods and services, importation of goods and purchase of services rendered by non-residents, ₱34,847,620.16 of which is the subject of the present claim, as shown below:

FY ended March 31, 2020	**1st Quarter** (Exhibit "P-7")	**2nd Quarter** (Exhibit "P-8")	**3rd Quarter** (Exhibit "P-9")	**4th Quarter** (Exhibit "P-10")	**TOTAL**
Input Tax Due on Capital Goods exceeding ₱1M					
Deferred from previous quarter	₱ 6,121,699.65	₱ 6,358,458.30	₱ 6,006,065.29	₱ 5,835,945.57	₱ 24,322,168.81
Purchase of Capital Goods Exceeding P1M	937,231.02	414,830.96	606,664.14	340,111.26	2,298,837.38
Total	7,058,930.67	6,773,289.26	6,612,729.43	6,176,056.83	26,621,006.19
Less: Deferred for the succeeding period	6,358,458.30	6,006,065.29	5,835,945.57	5,391,830.69	23,592,299.85
Amortized input tax on capital goods exceeding ₱1M	**700,472.37**	**767,223.97**	**776,783.86**	**784,226.14**	**3,028,706.34**
Input Tax Due on Current Purchases of Goods other than Capital Goods					-
Input tax on purchase of capital goods not exceeding ₱1M	83,790.00	44,107.50	-	15,718.93	143,616.43
Input tax on domestic purchases of goods other than capital goods	945,045.20	1,853,843.89	1,235,541.25	1,367,938.53	5,402,368.87
Sub-total	1,028,835.20	1,897,951.39	1,235,541.25	1,383,657.46	5,545,985.30
Input Tax Paid on:					
Importation of goods other than capital goods	6,008,080.00	-	69,143.00	1,536,707.00	7,613,930.00
Input tax on domestic purchases of services	3,057,953.76	7,273,012.49	4,427,505.81	4,308,209.55	19,066,681.61
Services rendered by non-residents	-	59,760.00	-	59,137.90	118,897.90
Sub-total	9,066,033.76	7,332,772.49	4,496,648.81	5,904,054.45	26,799,509.51

FY ended March 31, 2020	1st Quarter (Exhibit "P-7")	2nd Quarter (Exhibit "P-8")	3rd Quarter (Exhibit "P-9")	4th Quarter (Exhibit "P-10")	TOTAL
Input Tax Due on Capital Goods exceeding ₱1M					
Deferred from previous quarter	₱ 6,121,699.65	₱ 6,358,458.30	₱ 6,006,065.29	₱ 5,835,945.57	₱ 24,322,168.81
Purchase of Capital Goods Exceeding P1M	937,231.02	414,830.96	606,664.14	340,111.26	2,298,837.38
Total input tax during the period	**10,795,341.33**	**9,997,947.85**	**6,508,973.92**	**8,071,938.05**	**35,374,201.15**
Less: Output tax	3,046.49	3,623.78	471,482.15	48,428.57	526,580.99
Excess input tax	**₱10,792,294.84**	**₱ 9,994,324.07**	**₱ 6,037,491.77**	**₱ 8,023,509.48**	**₱34,847,620.16**

These amounts do not appear to be transitional input taxes, as understood under Section 111(A) of the Tax Code, as amended, to wit:

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 the 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.

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[112] Since there is no showing that the claimed input VAT consist of transitional input taxes, petitioner has complied with the *sixth* requisite for the grant of input VAT refund.

Not all of petitioner's input VAT being claimed for refund were duly substantiated

Anent the *seventh* requisite in claiming VAT refund, it is of fatal importance that petitioner provides supporting documents to prove that the input taxes claimed during the 1st to 4th quarters of FY 2020 were actually due or paid in accordance with Section 110(A) of the Tax Code, as amended, and as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-05, as amended.

[112] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al., et seq.*, G.R. Nos. 158885 and 170680, April 2, 2009.

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To prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the Tax Code, as amended, as the case may be, as well as, the import entry or other equivalent documents showing actual payment of VAT (for importation of goods) and BIR Form No. 1600 with corresponding payment confirmation (for services rendered by non-residents).

As mentioned earlier, petitioner reported total input VAT of ₱35,374,201.15 from its domestic purchases of goods and services, importation of goods and purchase of services rendered by non-residents. In support thereto, petitioner presented, among others, the suppliers' ORs and invoices, Monthly Remittance Returns of Value-Added Tax and Other Percentage Taxes Withheld Return (BIR Form No. 1600), Statements of Settlement of Duties and Taxes, and Single Administrative Documents[113], which were all examined by the ICPA, Ms. Maria Myla S. Maralit of R.G. Manabat & Co.

Upon verification of the submitted documents and the findings of the ICPA, the input VAT of ₱2,264,636.50 shall be disallowed due to petitioner's failure to meet the substantiation and invoicing requirements prescribed under the VAT law and regulations, summarized as follows:[114]

Particulars	Reference	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Purchases of Goods other than Capital Goods	Annex E, I, M, Q	₱ 26,075.29	₱ 6,706.99	₱ 61,503.10	₱ 34,287.52	₱ 128,572.90
Purchase of Services	Annex G, K, O, S	488,369.70	303,297.21	344,686.30	715,947.70	1,852,300.91
Disallowed input VAT on capital goods exceeding ₱1M in prior years	Annex AA	47,863.23	214,568.47	14,902.42	6,428.57	283,762.69
	Total	**₱562,308.22**	**₱524,572.67**	**₱421,091.82**	**₱756,663.79**	**₱2,264,636.50**

In addition, the input VAT of ₱2,108.36 shall also be disallowed because the supporting document presented as Exhibit "P-4581"[115] was denied admission by the Court as per Resolution dated December 06, 2023.[116]

[113] Exhibits "P-118" to "P-4586", USB (Exhibit "P-4686").
[114] USB (Exhibit "P-4686").
[115] Part of Annex Y and Z of the ICPA Report, USB (Exhibit "P-4686").
[116] Docket – Vol. 5, pp. 2180 to 2181.

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Correspondingly, for purposes of compliance with the *seventh* requisite, out of the total declared input taxes of ₱35,374,201.15, only the amount of **₱33,107,456.29** represents petitioner's valid input VAT for the 1st to 4th quarters of FY 2020, as computed below:

Total reported input VAT		₱ 35,374,201.15
Less: Disallowances		
ICPA findings	₱2,264,636.50	
Court's additional findings	2,108.36	2,266,744.86
Valid input VAT		**₱33,107,456.29**

Since there are both taxable sales and zero-rated sales, the valid input VAT of ₱33,107,456.29 shall be proportionately allocated on the basis of sales volume

The *eighth* requisite requires that 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 the volume of sales.

To recall, petitioner reported taxable sales subject to 12% VAT and qualified zero-rated sales for FY 2020 in the following amounts:

Particulars	Total
Vatable Sales	₱ 4,388,175.05
Zero-Rated Sales	3,175,749,993.80
Total Sales	**₱3,180,138,168.85**

However, since petitioner's input VAT cannot be directly or entirely attributed to any of the sales transactions, the validated and substantiated input VAT of ₱33,107,456.29 shall be allocated proportionately on the basis of the volume of its total sales.

First, the sales ratio of each category of sale shall be computed by respectively dividing the VATable sales and zero-rated sales against petitioner's total sales, in the following manner:

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Nature of Sales	Amount		Sales Ratio
	[a]		*[a ÷ b = c]*
VATable Sales	₱ 4,388,175.05		0.14%
Zero-Rated Sales	3,175,749,993.80		99.86%
Total Sales	**₱3,180,138,168.85**	*[b]*	100.00%

Second, the total input VAT shall be separately multiplied with the VATable sales ratio and zero-rated sales ratio to arrive at the allocated input VAT.

The Court notes that in the case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue* (Chevron),[117] the Supreme Court declared that it is erroneous to charge the validated and substantiated input taxes against the taxpayer's output taxes, and use the resulting amount as the basis for computing the allowable amount for refund. The High Court clarified that the substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability, which is not for the Court to determine and rule in a judicial claim for refund under Section 112(A) of the Tax Code. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes.[118] Verily, this Court has no power to make an assessment.[119]

Guided by the foregoing pronouncements, in computing for the allocated input VAT, considering that the validated and substantiated input VAT cannot be used as basis for determining the taxpayer's output taxes, it is the taxpayer's declared total input VAT that should be multiplied with the VATable sales ratio, so as not to alter or in any way modify or affect the taxpayer's output VAT liability. As such, petitioner's allocated input VAT shall be computed, as follows:

	Amount	Sales Ratio	Allocated Input VAT
	[d]	*[c]*	*[d x c = e]*
Input VAT attributable to VATable sales	₱ 35,374,201.15[120]	0.14%	₱ 48,811.77
Input VAT attributable to zero-rated sales	33,107,456.29[121]	99.86%	33,061,772.33

[117] G.R. No. 215159, July 5, 2022.
[118] *Ibid.*
[119] *Ibid.*
[120] Total declared input VAT.
[121] Valid input VAT.

Thus, only the amount of **₱33,061,772.33** represents petitioner's valid input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY 2020.

The input taxes have not been applied against output taxes during and in the succeeding quarters

In *Chevron*,[122] the Supreme Court likewise held that:

> ...the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: **(1) charged against output tax from regular 12% VAT-able sales, and any unutilized or 'excess' input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of 'excess' creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence. *(Emphases supplied)*

Clearly, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or

2. Refund all of the input taxes attributable to zero-rated sales.

Here, records show that petitioner chose the *first* option, *i.e.*, its total input VAT incurred for FY 2020 was applied against its output VAT for the same period, and the remaining unutilized excess input

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[122] *Supra*, note 117.

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VAT of ₱34,847,620.16 is the subject of the present claim for refund, as shown below:

FY 2020	1st Quarter (Exhibit "P-7")[123]	2nd Quarter (Exhibit "P-8")[124]	3rd Quarter (Exhibit "P-9")[125]	4th Quarter (Exhibit "P-10")[126]	TOTAL
Total input tax during the period	₱ 10,795,341.33	₱ 9,997,947.85	₱ 6,508,973.92	₱ 8,071,938.05	₱ 35,374,201.15
Less: Output tax	3,046.49	3,623.78	471,482.15	48,428.57	526,580.99
Excess input tax	**₱10,792,294.84**	**₱ 9,994,324.07**	**₱6,037,491.77**	**₱8,023,509.48**	**₱34,847,620.16**

Hence, the refundable input VAT shall be computed net of output tax liability.

Since petitioner's input VAT allocated to VATable sales in the amount of ₱48,811.77 is not enough to cover its output VAT liability amounting to ₱526,580.99 (as declared in the above-stated Quarterly VAT Returns), the valid input VAT allocated to total zero-rated sales in the amount of ₱33,061,772.33 shall then be utilized against the remaining output VAT due of ₱477,769.22. Therefore, only the remaining input VAT of ₱32,584,003.11 can be attributed to petitioner's entire zero-rated sales in the amount of ₱3,175,749,993.80, as computed below:

Output VAT	₱ 526,580.99
Less: Valid input VAT allocated to vatable sales	48,811.77
Output VAT Still Due	**₱ 477,769.22**
Valid input VAT allocated to zero-rated sales	₱ 33,061,772.33
Less: Output VAT Still Due	477,769.22
Excess Input VAT attributable to zero-rated sales	**₱ 32,584,003.11**

Finally, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained that while petitioner carried over the input VAT subject of this claim amounting to ₱34,847,620.16 in the succeeding quarters, the same was ultimately deducted as VAT Refund/TCC Claimed (Line 23D) in its 4th Quarterly VAT Return for FY 2021.[127] Accordingly, the subject claim no longer formed part of the excess input VAT of ₱30,149,602.19[128] as of the end of the 4th quarter of FY

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[123] Docket – Vol. 4, p. 1664.
[124] *Id.* at 1682.
[125] *Id.* at 1697.
[126] *Id.* at 1713.
[127] Exhibit "P-14", Docket – Vol. 5, p. 1794.
[128] Line 29, Exhibit "P-14", Docket – Vol. 5, p. 1794.

2021 that was carried over in the succeeding quarters/periods.

With this, petitioner is deemed to have fulfilled the *ninth* requisite for the refund of input VAT under Section 112(A) of the Tax Code, as amended.

In fine, petitioner has sufficiently proven its entitlement to the refund or issuance of tax credit certificate in as much as the amount of **₱32,584,003.11**, representing its excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY 2020.

WHEREFORE, premises considered, the present *Petition for Review* is **PARTIALLY GRANTED.**

Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner with the amount of **₱32,584,003.11**, representing petitioner's excess and unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of FY 2020.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

I CONCUR:

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

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

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice, Chairperson

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice