

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**CE CASECNAN WATER AND
ENERGY COMPANY, INC.,**

Petitioner,

-versus-

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

CTA CASE No. 9006

For: Refund

Members:

DEL ROSARIO, P.J., *Chairperson*

UY, and

MINDARO-GRULLA, JJ.

Promulgated:

OCT 19 2018 : 12:50 am

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review,¹ with Supplemental Petition for Review,² filed by petitioner CE Casecnan Water and Energy Company, Inc. (CE Casecnan) on March 12, 2015 and June 11, 2015, respectively, pursuant to Section 7(a)(1)³ of Republic Act (RA) No. 1125,⁴ as amended, as

¹ *Dockets*, Vol. I, pp. 6-17.

² *Dockets*, Vol. I, pp. 124-137.

³ Sec. 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

- (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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⁴ Act Creating the Court of Tax Appeals.

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well as Section 3(a)(1)⁵ of Rule 4 and Section 4(a)⁶ of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner CE Casecan seeks the issuance of a tax credit certificate (TCC) in the total amount of Seven Million Seven Hundred Fifty Seven Thousand Four Hundred Sixty Eight and 99/100 Pesos (₱7,757,468.99), allegedly representing unutilized input value-added tax (VAT) paid for the 1st quarter to the 4th quarter of calendar year (CY) 2013.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Pantabangan, Nueva Ecija. The primary purpose of petitioner's business is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (NIA) and for the supply of water for agricultural purposes to the National Irrigation Administration (the "Project"); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to

⁵ Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

- (a) Exclusive original over or appellate jurisdiction to review by appeal the following:

- (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

⁶ Sec. 4. Where to appeal; mode of appeal.-

- (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

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end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by law to corporations wholly or partially owned by Filipino citizens."⁷

Petitioner is registered with the BIR as a value-added tax (VAT) taxpayer with Taxpayer Identification No. 004-500-931-000.⁸

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously paid taxes, as provided by law. He may be served summons, pleadings and other processes at his office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On November 4, 2014, CE Casecan filed with the CIR an administrative claim for refund of its excess and unutilized input VAT for the 1st quarter to the 4th quarter of CY 2013 in the amount of ₱22,944,645.77.⁹

On March 11, 2015, its original Petition for Review was filed by CE Casecan.

On March 31, 2015, an Answer¹⁰ was filed by the CIR. The CIR's Pre-Trial Brief¹¹ was filed on April 21, 2015, while CE Casecan's Pre-Trial Brief¹² was filed on January 29, 2016.

On May 8, 2015, CE Casecan received from the CIR Tax Credit Certificate (TCC) No. 200600004679 dated April 8, 2015 in the amount of ₱15,142,641.11, representing input VAT for the 1st to 4th quarters of 2013, which the CIR

⁷ Joint Stipulations of Facts and Issues, Par. 3, *Dockets*, Vol. I, p. 413-414.

⁸ *Ibid.*, par. 4, p. 414.

⁹ *Ibid.*, par. 5, p. 414.

¹⁰ *Dockets*, Vol. I, pp. 90-100.

¹¹ *Dockets*, Vol. I, pp. 103-106.

¹² *Dockets*, Vol. I, pp. 171-182.

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granted out of the total input VAT claimed by CE Casecnan in the amount of ₱22,944,645.77.

The following amounts of CE Casecnan's input VAT were disallowed by the then CIR in her decision on CE Casecnan's administrative claim for refund:

Input VAT on goods/items reclassified as capital goods	₱ 6,651,205.10
Input VAT claims on amortized capital goods.	635,855.07
Input VAT paid to the Bureau of Customs (BOC) on importations which were included in the authority to issue VAT credit/refund but were excluded in the tax credit certificate issued.	470,408.82
TOTAL	₱ 7,757,468.99

Because of the partial grant of the CIR as to CE Casecnan's claim, on June 11, 2015, a Motion for Leave to File and Admit Supplemental Petition for Review (with Motion for Partial Withdrawal) with attached Supplemental Petition for Review¹³ was filed by CE Casecnan. On September 16, 2015, *sans* CIR's comment, the Court granted CE Casecnan's Motion for Leave to File and Admit Supplemental Petition for Review (with Motion for Partial Withdrawal).¹⁴ Accordingly, the Supplemental Petition for Review was admitted and the original Petition for Review was partially withdrawn, but only up to the extent of ₱15,187,176.71 of CE Casecnan's claim for refund. No answer was filed by the CIR to the Supplemental Petition for Review (with Motion for Partial Withdrawal).¹⁵

The parties filed their Joint Stipulation of Facts and Issues (JSFI)¹⁶ on March 15, 2016, which was approved by the Court *via* Resolution¹⁷ dated March 22, 2016.

On March 23, 2016, CE Casecnan filed a Motion to Commission an Independent Certified Public Accountant,¹⁸

¹³ *Dockets*, Vol. I, pp. 117-123.

¹⁴ Resolution, *Dockets*, Vol. I, pp. 151-153.

¹⁵ Records Verification dated October 7, 2015, *Dockets*, Vol. I, p. 154.

¹⁶ *Dockets*, Vol. I, pp. 413-423.

¹⁷ *Dockets*, Vol. I, p. 444.

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which was granted by the Court *via* Resolution¹⁹ on April 28, 2016. The ICPA Report was filed by CE Casecan on May 19, 2016.

CE Casecan presented witnesses Ms. Leilah Yasmin E. Alpad on April 19, 2016²⁰ and ICPA Commissioner Mr. Emmanuel Y. Mendoza on July 28, 2016.²¹

On August 25, 2016, CE Casecan filed its Formal Offer of Evidence²² offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-2", "P-7" to "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-20-1", "P-21-1" to "P-21-30", "P-22-1" to "P-22-49", "P-23-1A", "P-23-1B" to "P-23-19A", "P-23-19B", "P-24-1A" to "P-24-1G", "P-24-15A" to "P-24-15G", "P-25", "P-26-1" to "P-26-7", "P-27-1" to "P-27-70", "P-28-1" to "P-28-65", "P-29-1" to "P-29-4", "P-30-1" to "P-30-4", "P-31-1" to "P-31-4", "P-32", "P-33-1" to "P-33-4", "P-34", "P-35-1" to "P-35-3", "P-36-1" to "P-36-12", "P-37", "P-50", "P-50-A", "P-51" and "P-51-A" as its documentary evidence. The CIR filed his Comment (Re: Petitioner's Formal Offer of Evidence)²³ on August 31, 2016.

In a Resolution²⁴ dated October 26, 2016, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-2", "P-7" to "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-20-1", "P-21-1" to "P-21-30", "P-22-1" to "P-22-49", "P-23-1A", "P-23-1B" to "P-23-19A", "P-23-19B", "P-24-1A" to "P-24-1G", "P-24-15A" to "P-24-15G", "P-25", "P-26-1" to "P-26-7", "P-27-1" to "P-27-70", "P-28-1" to "P-28-65", "P-29-1" to "P-29-4", "P-30-1" to "P-30-4", "P-32", "P-33-1" to "P-33-4", "P-34", "P-35-1" to "P-35-3", "P-36-1" to "P-36-12", "P-37", "P-50", "P-50-A", "P-51" and "P-51-A" but denied the admission of Exhibits "P-31-1" to "P-31-4" for not being found on the records of the case.

¹⁸ *Dockets*, Vol. I, pp. 432-435.

¹⁹ *Dockets*, Vol. I, pp. 472-473.

²⁰ Minutes of the hearing, *Dockets*, Vol. I, pp. 459-463.

²¹ Minutes of the hearing, *Dockets*, Vol. I, pp. 493-496.

²² *Dockets*, Vol. II, pp. 505-518.

²³ *Dockets*, Vol. II, pp. 666-668.

²⁴ *Dockets*, Vol. II, pp. 678-679.

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CE Casecnan filed a Motion for Reconsideration²⁵ on November 14, 2016 *sans* comment from the CIR. The Court granted CE Casecnan's Motion for Reconsideration and admitted Exhibits "P-31-1" to "P-31-4" in the Resolution²⁶ dated April 17, 2017.

CE Casecnan's documentary exhibits are as follows:

Exhibit	Description
P-1	Petitioner's Certificate of Filing of Amended Articles of Incorporation issued by the Securities & Exchange Commission (with attached Amended Articles of Incorporation)
P-2	Petitioner's Certificate of Accreditation No. 95-07-12 issued by the Department of Energy ("DOE")
P-3	Petitioner's Bureau of Internal Revenue (BIR) Certificate of Registration
P-4	Amended and Restated Casecnan Project Agreement dated June 26, 1995 between Petitioner and NIA
P-5	Petitioner's Certificate of Compliance No. 10-06-GN8-10701 issued by the Energy Regulatory Commission (ERC)
P-6	Petitioner's administrative claim for refund filed with the BIR-Large Taxpayers Excise Audit Division I on November 4, 2014
P-6-2	Bureau of Internal Revenue Checklist of Mandatory Requirements for Claims for VAT Credit/Refund, with the mark Annex "A"
P-7 to P-14	Petitioner's original and amended Quarterly VAT Returns for the 1 st quarter to 4 th quarter of CY 2013
P-15 and P-16	Petitioner's amended quarterly VAT Returns for the 1 st quarter of CY 2014 to the 2 nd quarter of 2014
P-17	Authority to Issue VAT Credit/Refund dated January 23, 2015
P-18	Tax Debit Memo dated November 12, 2015 signed by Assistant Commissioner (Large Taxpayers Service) Nestor S. Valeroso
P-19	Letter dated January 27, 2015 signed by OIC-Assistant Commissioner Nestor S. Valeroso and addressed to CE Casecnan Water & Energy Co., Incorporated
P-20	Sworn Statement of Ms. Leilah Yasmin E.

²⁵ *Dockets*, Vol. II, pp. 697-700.

²⁶ *Dockets*, Vol. II, pp. 723-724.

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	Alpad filed with the Honorable Court on January 29, 2016
P-20-1	Signature of Ms. Alpad in her Sworn Statement
P-21-1 to P-21-30	Petitioner's VAT Zero-rated Official Receipts (ORs)
P-22-1 to P-22-49	Petitioner's Supporting VAT ORs for sales subject to 12% VAT.
P-23-1A & P-23-1B to P-23-19A & P-23-19B	Supporting VAT ORs and VAT invoices for input VAT on domestic purchases of services
P-24-1A – P-24-1G to P-24-15A – P-24-15G	Supporting VAT ORs, VAT invoices and Petitioner's general ledger for input VAT on domestic purchases of services directly related to construction-in-progress
P-25	Supporting VAT invoice for input VAT on domestic purchases of goods
P-26-1 to P-26-7	Supporting BOC single administrative document (SAD) and statement of settlement of duties and taxes (SSDD) evidencing the actual payment of VAT on importations
P-27-1 to P-27-70	Supporting VAT invoice for input VAT on domestic purchases of capital goods
P-28-1 to P-28-65	Supporting BOC single administrative document (SAD) and statement of settlement of duties and taxes (SSDD) evidencing the actual payment of VAT on importations
P-29-1 to P-29-4	Amended quarterly VAT returns for the 1 st , 2 nd , 3 rd , & 4 th quarters of CY 2014
P-30-1 to P-30-4	Amended quarterly VAT returns for the 1 st , 2 nd , 3 rd , & 4 th quarters of CY 2015
P-31-1 to P-31-4	Petitioner's quarterly summary list of sales for CY 2013
P-32	Petitioner's schedule revenues for CY 2013
P-33-1 to P-33-4	Petitioner's quarterly summary list of purchases for CY 2013
P-34	Petitioner's schedule of input VAT for CY 2013
P-35-1 to P-35-3	Petitioner's schedule of disallowed input VAT for CY 2013
P-36-1 to P-36-12	Certificate of final tax withheld at source for the 1 st , 2 nd , 3 rd , & 4 th quarters for CY 2013
P-37	Petitioner's schedule of capitalizable assets
P-50	ICPA report submitted to this Court on May 19, 2016 by Mr. Emmanuel Y. Mendoza
P-50-A	Signature of Mr. Mendoza in the ICPA report

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P-51	Sworn Statement of Mr. Mendoza
P-51-A	Signature of Mr. Mendoza in the Sworn Statement

The CIR presented his lone witness, Revenue Officer Monica L. Zamora, on June 27, 2017.²⁷

On July 07, 2017, the CIR filed his Formal Offer of Evidence²⁸ offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10" and "R-10-a" as his documentary exhibits. CE Casecnan filed its Comment²⁹ on July 28, 2017.

In the Resolution³⁰ dated September 14, 2017, the Court admitted CIR's Formal Offer of Evidence except Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6" and "R-7" for failure to identify the said Exhibits.

The CIR's documentary exhibits admitted by the Court are as follows:

Exhibit	Description
R-8	Letter of Authority No. 121-2014-00000125 dated 17 November 2014
R-9	Memorandum Report dated 27 January 2015
R-10	Judicial Affidavit of RO Monica L. Zamora
R-10-a	Name and signature of RO Monica L. Zamora

The Memorandum³¹ for the CIR was filed on October 18, 2017, while the Memorandum³² for CE Casecnan was filed on December 13, 2017. Hence, the case was declared submitted for decision on December 20, 2017.³³

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

²⁷ Order, *Dockets*, Vol. II.

²⁸ *Dockets*, Vol. II.

²⁹ *Dockets*, Vol. II.

³⁰ *Dockets*, Vol. II.

³¹ *Dockets*, Vol. II.

³² *Dockets*, Vol. II.

³³ *Dockets*, Vol. II.

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Whether or not CE Casecan is entitled to a refund of and/or issuance of a TCC for its unutilized input VAT for CY 2013 in the amount of ₱7,757,468.99.

In its original Petition for Review, CE Casecan avers that its multipurpose irrigation and power plant project, with an installed capacity of 140-150 MW hydropower generation plant component, has been duly accredited and certified as a Private Sector Generation Facility by the Department of Energy (DOE) as evidenced by its Certificate of Accreditation No. 95-07-12³⁴ issued by the DOE on July 20, 1995. CE Casecan was also issued a Certificate of Compliance No. 10-06-GN8-10701³⁵ by the Energy Regulatory Commission (ERC) for its Hydroelectric Generation Facilities on June 21, 2010.

According to CE Casecan, under Republic Act (RA) No. 9136,³⁶ otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), sales of generated power by generation companies are VAT zero-rated beginning June 26, 2001. Also, Republic Act No. 9337,³⁷ which took effect on November 1, 2005, explicitly provides that sales by power generating companies, like CE Casecan, of electricity produced through renewable sources of energy, such as hydropower, will continue to be zero-rated under Section 108(B)(7)³⁸ of the National Internal Revenue Code (NIRC) of

³⁴ Exhibit "P-2," *Dockets*, Vol. II, p. 536.

³⁵ Exhibit "P-5," *Dockets*, Vol. II, p. 613-618.

³⁶ An Act Ordaining Reforms in the Electric Power Industry, Amending for the purpose certain Laws and for Other Purposes.

³⁷ An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

³⁸ SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

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(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.

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(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower,

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1997. Accordingly, input VAT on power generating companies' purchases of goods and services attributable to their zero-rated sales are allowed to be claimed for refund. As a VAT-registered person whose sales are zero-rated, CE Casecnan is entitled to a refund and/or tax credit of its unutilized input VAT pursuant to Section 112(A)³⁹ of the NIRC of 1997.

According to CE Casecnan, on the following dates, it filed with the BIR its Original Quarterly VAT Returns for the 1st to the 4th quarter of CY 2013, respectively:

Taxable Quarter	Date of Filing of Quarterly VAT Return and Reference No.
1 st	April 25, 2013/101300007221546
2 nd	July 25, 2013/101300007594311
3 rd	October 25, 2013/101300007977165
4 th	January 27, 2014/101400008419260

Subsequently, CE Casecnan filed with the BIR its Amended Quarterly VAT Returns for the 1st quarter to the 4th quarter of CY 2013, reflecting its zero-rated sales of generated power, domestic purchases of non-capital goods and services, purchases of capital goods, services rendered by non-residents and importation of non-capital goods.

geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

³⁹ SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

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For the period covering the 1st quarter to the 4th quarter of CY 2013, CE Casecan incurred unutilized input VAT from its purchases of capital goods as well as non-capital goods, domestic purchases of services, and services rendered by non-residents in the total amount of ₱45,563,530.95. Of the total accumulated input VAT of ₱45,236,415.78, the amount ₱22,944,645.77 is attributable to CE Casecan's zero-rated sales of generated power to NIA under the Project for the 1st quarter to the 4th quarter of CY 2013.

CE Casecan claims that its unutilized input VAT from the 1st quarter to the 4th quarter of CY 2013 attributable to its zero-rated sales of generated power in the aggregate amount of ₱22,944,545.77 was not applied or credited against any output VAT in the same or succeeding quarters.

On November 4, 2014, CE Casecan filed with the BIR LTEAD I an administrative claim for refund of the aforementioned unutilized input VAT in the amount of ₱22,944,645.77, together with supporting documents.

CE Casecan claims that the input VAT paid on its domestic purchases of non-capital goods and services, services rendered by non-residents, importation of non-capital goods and purchases of capital goods are duly supported and covered by VAT invoices and/or official receipts issued by VAT-registered suppliers in accordance with Sections 113⁴⁰ and 237⁴¹ of the NIRC of 1997, or duly

⁴⁰ SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.-*

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

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

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

- (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
- (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

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validated Monthly Remittance Return of Value Added Tax

- (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
- (b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt;
- (c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;
- (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt *Provided*, that the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

(C) *Accounting Requirements.*- Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

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⁴¹ SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*- All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however,* That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

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Withheld filed by it on behalf of non-resident and non-VAT registered suppliers or import entry or other equivalent documents showing actual payment of VAT on the imported goods in accordance with Section 4.110-8⁴² of Revenue Regulations (RR) No. 16-2005,⁴³ as amended.

According to CE Casecan, the unutilized input VAT being claimed for refund are attributable to its zero-rated sales of generated power amounting to a total of ₱2,765,134,894.69 paid in the course of its trade or business, are duly supported by VAT invoices and/or official receipts, withholding VAT returns and import entry or other equivalent documents were not carried forward to the

⁴² SEC. 4.110-8. Substantiation of Input Tax Credits. –

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

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

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

- (a) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
- (b) Input tax on “deemed sale” transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.
- (b) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.
- (c) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT.

⁴³ Consolidated Value-Added Tax Regulations of 2005.

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succeeding taxable quarter or quarters subsequent to the filing of the administrative claim with CIR, and have not been applied or credited against any of its output VAT.

Without resolution of its administrative claim for refund despite the lapse of the 120-day period provided for under Section 112(C)⁴⁴ of the NIRC of 1997, CE Casecnan was constrained to file the instant judicial claim.

On the other hand, the CIR, in his Answer, avers that CE Casecnan failed to show that its purchases of non-capital goods and services were made in the course of its trade and business. It further failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journal showing that it actually paid VAT. It also failed to prove that the input taxes of ₱ 22,944,645.77 allegedly paid on its purchases of goods and services, 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.

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 (RMO) No. 53-98,⁴⁵ hence, there was no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* to the filing of judicial claim in accordance with the NIRC of 1997.

⁴⁴ SEC. 112. *Refunds or Tax Credits of Input Tax.*-

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

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

⁴⁵ Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

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According to the CIR, there is no record of CE Casecnan ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. Far from complying with the checklist of requirements, CE Casecnan merely stated in the petition that it filed an administrative claim for refund together with supporting documents.

Moreover, CE Casecnan's failure to submit documents supporting its claim for refund makes its administrative claim for refund *pro forma*. Thus, without a validly and duly filed administrative claim for refund, the Court is without jurisdiction to entertain the Petition for Review.

However, as stated earlier, on April 8, 2015, the CIR issued TCC No. 200600004679 in favor of CE Casecnan in the amount of ₱15,142,641.11, representing unutilized input VAT for the period of January 1, 2013 to December 31, 2013, which CE Casecnan received on May 8, 2015.

Thus, CE Casecnan filed its Supplemental Petition for Review, limiting the issue in the judicial claim only to the amount of ₱7,757,468.99.

In its Supplemental Petition for Review, CE Casecnan reiterated its contention that it is entitled to refund of its unutilized input VAT. Further, it avers that input VAT relating to capital goods, as long as such purchases are attributable to zero-rated or effectively zero-rated sales transactions, are to be allowed as refund. Thus, the input VAT on goods/items reclassified as capital goods by the CIR in the amount ₱6,651,205.10 should be allowed for refund. Also, as to the amount of ₱470,408.82 of input VAT paid to the BOC on importations, which were included in the authority to issue VAT credit/refund but were excluded in the Tax Credit Certificate (TCC) issued, CE Casecnan claims that it is still the CIR who has the jurisdiction to refund the said amount.

We rule.

DECISION

Section 112(A) of the NIRC of 1997, as amended, lays down the requisites for the refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, quoted hereunder for easy reference:

"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(8)(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(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."

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

1. that the taxpayer-claimant must be VAT-registered;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;

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4. that such input taxes were attributable to zero-rated or effectively zero-rated sales;
5. that the input taxes were not applied against any output VAT liability; and
6. that the claim for refund was filed within the two-year prescriptive period.

This Court shall determine first the timeliness of the filing of CE Casecan's administrative and judicial claims.

As explicitly stated in Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate or refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four (4) taxable quarters of CY 2013 which closed on March 31, 2013, on June 30, 2013, on September 30, 2013, and on December 31, 2013, respectively. Records confirm that petitioner's administrative claim for refund was timely filed, as shown below:

Period Covered (CY 2013)	Close of Taxable Quarter	Last Day for filing of Administrative Claim for Refund	Date of Filing of Administrative Claim for Refund
1 st Quarter	March 31, 2013	March 31, 2015	November 4, 2014
2 nd Quarter	June 30, 2013	June 30, 2015	
3 rd Quarter	September 30, 2013	September 30, 2015	
4 th Quarter	December 31, 2013	December 31, 2015	

As to the timeliness of CE Casecan's judicial appeal, the pertinent provision is Section 112(C) of the NIRC of 1997, as amended, which states:

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

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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

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hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The CIR argues that since CE Casecan failed to submit the required complete documents in support of the administrative claim, there was no valid and duly filed administrative claim for refund. As such, this Court has no jurisdiction to entertain this Petition for Review.

Records reveal that upon filing of the administrative claim on November 4, 2014,⁴⁶ CE Casecan simultaneously submitted the supporting documents, to wit:

1. BIR Registration Certificate
2. Articles of Incorporation and By-Laws (for corporation)/SEC Reg.
3. List of officers of the company / partners
4. 3 Copies of Application for Tax Credit (BIR Form 1914)
5. Copy of BIR Registration Payment for year of claim (BIR Form 0605)/Annual Registration Fee
6. Certified true copy of Quarterly VAT Return corresponding to the period of claim showing that the amount of TCC/refund being claimed was deducted from available input tax, as well as VAT Return/system

⁴⁶ Annex A of Exhibit "P-6," *Dockets*, Vol. II, p. 621.

DECISION

7. Copy of Annual Income Tax Return filed, or in case of quarterly claims the claimant shall submit certified true copy of Quarterly ITR (Form 1701Q or 1702Q)
8. Certified true copy of Audited Financial Statements complete with Notes to Financial Statements duly received by BIR/Authorized Agent Bank (AAB)
9. Sworn statements by the claimant certifying the following:
 - a. The amount of sales declared with breakdown as to amount of zero-rated, taxable and exempt sales
 - b. The company did not file any and / or will not file any similar claim from BOI, BOC and BIR
10. Verification of Delinquent Accounts from the concerned Revenue District Office (RDO)/Regional Collection Division/ Accounts Receivable Monitoring Division/LT Collection Enforcement Division/Large Taxpayers Division
11. Certification that claimant/taxpayer has no similar claim filed with other BIR processing/investigating office
12. Certification from BOI, BOC as well as from DOF-OSS where applicable, that subject taxpayer has not filed similar claim covering the same period
13. Company authorization designating the authorized representative to follow up the claim for VAT refund/credit
14. Affidavit under oath attesting to the completeness of the documents submitted (Annex B) (with copy of Checklist of Requirements as attachment)
15. Schedule of Purchases for period of claim with the following details: Registered Name of Supplier, TIN of Supplier, Invoice No., Date of Invoice, OR No., Date of OR, Amount of Purchase, Input Tax and Total Invoice Amount

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16. Certified true copy of Sales Invoices for purchase of goods or OR with Statement of Account (S.A.) /Billing for services (arranged in accordance with schedule under 3.1)
17. Alphalist of Suppliers with the following information: Name, address and TIN of suppliers and total purchases per supplier
18. Soft copy the Schedule of Purchases (MS Excel) required under 3.1
19. Schedule of Zero-rated, Taxable and Exempt Sales with the following details:

Taxable Sales- Sales Invoice/OR No., Date of Invoice/OR, Name of Buyer/Customer, Peso Value of Sale

Exempt Sales- Sales Invoice/OR No., Date of Invoice/OR, Name of Buyer/Customer, Peso Value of Sale

Zero-Rated Sales- Sales Invoice/OR No., Date of Invoice/OR, Name of Buyer/Customer AWB/BL No., Sales/Receipts in Foreign Currency, Conversion Rate, Peso Value of Sales, Date of Remittance, Name of Bank, Bank Credit Memo No.

20. Certified true copy of Sales Invoices and AWB/BL for sale of goods or Billings/Service Contracts for sale of services (arranged in accordance with schedule required under 4.1)
21. Soft copy of the Schedule of Sales (MS Excel) under 4.1
22. Copy of BIR Authority, in case claimant is using loose-leaf sales invoices/computerized accounting system
23. Schedule of Importations for period of claim with the following details:

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Date of Invoice, Supplier, Description of Goods Imported, AWB/BL No., IED / SN No., Date of Arrival, Total Value, Date of Payment, O.R. No. & VAT Payment

24. Soft copy of the Schedule required under 6.1 (MS Excel)
25. Certified true copy of Import Entry and Internal Revenue Declarations duly validate by bank with O.R.
26. Certified true copy of BOC receipts/Confirmation receipts evidencing payment of VAT
27. Schedule of input tax pertaining to purchases/importation of over Php1 million that is amortized during the period claim
28. Certification of Accreditation from the DOE
29. Certificate of Compliance issued by the ERC
30. Project Agreement between CE Casecnan & NIA
31. BIR Forms 2306
32. Summary of Allocation of Input VAT
33. Books of accounts for 2013
34. BOC Certifications on importations
35. Summary of PDS rate/Tax Code provisions/RR 16-05 provisions
36. BIR Forms 1600
37. Schedule of WVAT payments
38. SAWT (soft copy)

DECISION

Moreover, contrary to the CIR's allegation, CE Casecnan informed him, through its administrative claim for refund filed before the BIR,⁴⁷ that the enumerated documents are considered as the complete supporting documents, *viz*:

"xxx xxx xxx

In compliance with Revenue Memorandum Circular No. 54-2014 issued by the Bureau of Internal Revenue, we are submitting CE Casecnan's documents which are marked "/" in the attached "Annex A" Checklist of Mandatory Requirements for Claims for VAT Credit/Refund. We wish to inform you that these constitute the complete set of documents and schedules of CE Casecnan to support its input VAT claim for the first to fourth quarters of calendar year 2013.

xxx xxx xxx"

The term "complete documents" under Section 112(C) of the NIRC of 1997, as amended, should be understood to refer to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer.⁴⁸ The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted.⁴⁹ Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit.⁵⁰ Moreover, it is basic that the CIR ought to know the tax records of all taxpayers.⁵¹

Moreover, the Supreme Court already explained in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal*

⁴⁷ Exhibit "P-6," *Dockets*, Vol. II, pp. 617-621.

⁴⁸ *CE Casecnan Water and Energy Company, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 8788, May 4, 2016.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 7846 and 7865, January 16, 2012.

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*Revenue*⁵² that it is the taxpayer and not the BIR who determines what relevant supporting documents to submit as basis of its claim. Likewise, the question of "when should the submission of documents be deemed 'completed' for purposes of determining the running of the 120-day period" had already been clarified therein, to wit:

"xxx for purposes of determining **when** the supporting documents have been completed - it is the taxpayer who ultimately determines when complete documents have been submitted for purposes of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing.

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Then, except in those instances where the BIR would require additional documents to fully appreciate a claim for tax credit or refund, in terms **what** additional document must be presented in support of a claim for tax credit or refund- it is the taxpayer who has the right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.

xxx xxx xxx

xxx Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State.

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⁵² G.R. No. 207112, December 8, 2015.

As explained earlier xxx, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. xxx

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. xxx" (Emphases and Italics in the Original; Underlining Supplied.)

Considering the foregoing, the 120-day period must be reckoned from November 4, 2014, the date when CE Casecnan filed its administrative claim together with the complete set of supporting documents.

Applying the above-mentioned rules to the instant case, CE Casecnan's judicial claim filed on March 11, 2015 is well within the period prescribed by law, to wit:

Date of Filing of Administrative Claim and Submission of Documents	November 4, 2014
End of the 120-day period for the BIR Commissioner to decide on the claim	March 4, 2015
End of the 30-day period from the expiration of the 120-day period	April 3, 2015
Date of Filing of the Judicial Claim	March 11, 2015

CE Casecnan having complied with the last requirement, it was also able to comply with the first one. As evidenced by its Certificate of Registration No. OCN 8RC0000049560,⁵³ CE Casecnan is registered, among others, as a VAT taxpayer.

As to the existence of zero-rated sales, this Court has already ruled in previous cases⁵⁴ involving the same parties

⁵³ Exhibit "P-3," *Dockets*, Vol. II, p. 537.
⁵⁴ *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8620, September 16, 2014; *CE Casecnan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8446, December 16, 2013; *CE Casecnan Water and Energy Company, Inc. vs.*

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and issues but different taxable periods, that petitioner's sale of electricity to NIA is zero-rated for VAT purposes. The governing law is Section 108(B)(7) of the NIRC of 1997, as amended by RA No. 9337, and implemented by Section 4.108-5(b)(7) of Revenue Regulations No. 16-2005, which are all quoted below for easy reference:

"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."

"SECTION 4.108-5. Zero-Rated Sale of Services.

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XXX XXX XXX

(b) Transaction Subject to Zero Percent (0%) VAT Rate. - The following services performed in the Philippines by

Commissioner of Internal Revenue, CTA Case No. 8245, May 10, 2013; CE Casecan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue, CTA case Nos. 8041 and 8111, September 11, 2012; CE Casecan Water and Energy Company, Inc. vs. Commissioner of Internal Revenue, CTA case Nos. 8041 and 8788, May 4, 2016.

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VAT-registered persons 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."

Corollary to the above provisions, Section 4.108-3(f) of RR No. 16-2005 states:

"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 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

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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 R.A. No. 9136 (EPIRA). They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities."

Clearly, the sale of power generated through renewable sources of energy is subject to zero percent (0%) VAT.

Same as in the previous cases, CE Casecnan proved in the instant case that (a) its 140-megawatt hydro-electric power plant project has been accredited by the DOE as a Private Sector Generation Facility (PSGF) under the Implementing Rules and Regulations of Executive Order No. 215, as amended;⁵⁵ (b) the ERC has issued Certificate of Compliance No. 10-06-GN8-10701 for its generation facility;⁵⁶ and (c) it generates power through its hydro-electric power plant and subsequently sells it only to NIA in accordance with the Amended and Restated Casecnan Project Agreement dated June 26, 1995.⁵⁷ Thus, petitioner has sufficiently established that it is in the business of power generation and sold the corresponding generated power to NIA as VAT zero-rated sales.

For the four (4) taxable quarters of CY 2013, the receipts of ₱2,765,134,894.69 were derived from the sales of power generation services to NIA, declared by CE Casecnan in its Quarterly VAT Returns as zero-rated sales and were evidenced by official receipts pre-printed with words "zero-rated," detailed as follows:

Exhibit	OR Number	OR Date	OR Amount (In US\$)	Exchange Rate	OR Amount (In Peso)
First Quarter					
P-21-1	0655	25-Jan-13	2,971,752.00	40.40	122,508,960.00
P-21-3	0656	28-Feb-13	2,971,752.00	40.45	122,660,580.00
P-21-4	0657	28-Feb-13	522,485.52	40.45	21,565,856.42
P-21-6	0658	27-Mar-13	2,971,752.00	40.80	123,721,920.00
Sub-Total					390,457,316.42

⁵⁵ Exhibit "P-2," *Dockets*, Vol. II, p. 536.

⁵⁶ Exhibit "P-5," *Dockets*, Vol. II, p. 613.

⁵⁷ Exhibit "P-4," *Dockets*, Vol. II, pp. 538-612.

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Second Quarter					
P-21-8	0659	25-Apr-13	2,971,752.00	41.05	124,480,020.00
P-21-10	0660	24-May-13	2,971,752.00	41.45	125,692,980.00
P-21-12	0661	26-Jun-13	2,971,752.00	43.20	130,999,680.00
Sub-Total					381,172,680.00
Third Quarter					
P-21-14	1001	26-Jul-13	2,971,752.00	43.10	130,696,440.00
P-21-16	1002	27-Aug-13	2,971,752.00	44.00	133,425,600.00
P-21-17	1003	27-Aug-13	1,293,917.25	44.00	58,094,243.68
P-21-19	1004	26-Sep-13	2,971,752.00	43.20	130,999,680.00
P-21-20	1005	26-Sep-13	8,186,062.00	43.20	360,854,977.97
Sub-Total					814,070,941.65
Fourth Quarter					
P-21-22	1006	25-Oct-13	2,971,752.00	42.85	129,938,340.00
P-21-23	1007	25-Oct-13	7,046,369.29	42.85	308,098,901.91
P-21-25	1008	29-Nov-13	2,971,752.00	43.50	131,909,400.00
P-21-26	1009	29-Nov-13	6,695,715.05	43.50	297,207,760.05
P-21-28	1010	26-Dec-13	2,971,752.00	44.10	133,728,840.00
P-21-29	1011	26-Dec-13	3,967,793.66	44.10	178,550,714.66
Sub-Total					1,179,433,956.62
Total Zero-Rated Sales					2,765,134,894.69

As such, petitioner's receipts/collections from its zero-rated sales of electricity generated through a renewable source of energy, particularly, hydropower, are fully substantiated.

CE Casecnan declared in its amended quarterly VAT returns for CY 2013 its sales subject to 12% VAT, in the amount of ₱2,503,597,737.86, and supported by the invoices and official receipts examined,⁵⁸ and the total sales subject to 12% VAT for CY 2013 were all gross receipts from sale of scrap materials and water delivery fees.

For CY 2013, CE Casecnan reported a total amount of ₱25,236,415.78 input VAT arising from its purchases of capital goods as well as non-capital goods and importation of goods, domestic purchases of services, and services rendered by non-residents. Out of unutilized input VAT, the amount of ₱22,944,645.77 is attributable to zero-rated sales, of which ₱15,142,641.11 was eventually refunded by the BIR. The remaining ₱7,757,468.99 is now the subject of this judicial refund.

Records show that the unutilized input VAT of CE Casecnan was properly substantiated and allocable to valid

⁵⁸ Exhibits "P-22-1" to "P-22-49," *Formal Offer of Evidence of CE Casecnan Water & Energy Inc., Folder 1 of 2.*

zero-rated sales net of the portion applied to output VAT.
Thus:

Particulars	Energy Fees (Zero-rated)	Water Delivery Fees (12% VAT)	Miscellaneous Fees (12% VAT)	Total
Total Output VAT	₱ -	₱ 300,295,790.29	₱ 135,938.26	₱ 300,431,728.55
Less: Tax Credits/payments:				
Input VAT allocated from current purchases	23,071,957.49	22,155,831.76	8,626.53	45,236,415.78
VAT withheld on sales to Government	-	125,123,246.15	-	125,123,246.15
Input Tax on Sale to Government closed to Income	-	153,016,712.59	-	153,016,712.59
Total	23,071,957.49	300,295,790.50	8,626.53	323,376,374.52
VAT Payable (Overpayment)	(₱23,071,957.49)	(₱ 0.21)	₱ 127,311.73	(₱ 22,944,645.77)
Total unutilized and excess input VAT applied for refund in the original Petition for Review				₱ 22,944,645.77
Less:				
Input VAT refunded as evidenced by TDM No. 121-15-00087				15,142,641.11
Unsupported Input VAT				44,535.67
Total unutilized and excess input VAT applied for refund in the Supplemental Petition for Review				₱ 7,757,468.99
Less: Not properly substantiated input VAT:				
Input VAT on domestic purchase of services directly related to construction-in- progress posted twice on the schedule of input VAT				242,913.86
Over-application of amortization of input VAT on capital goods				7,644.77
Total properly substantiated input VAT allocable to valid zero-rated sales				₱ 7,506,910.36

The whole amount of ₱22,944,645.77 being claimed by CE Casecnan was applied for refund on the 4th quarter for CY 2013,⁵⁹ and was not carried over to the succeeding periods, from 1st quarter of CY 2014 to the 4th quarter of CY 2015.⁶⁰ Thus, no amount of input VAT was utilized or applied against output VAT liabilities on the succeeding periods. Also, the input VAT withheld on sales to the Government amounting to ₱ 125,123,246.15 that was claimed as tax credit by CE Casecnan are properly supported by certificates of final VAT withheld at source (BIR Form No. 2306)⁶¹ issued by NIA.

⁵⁹ Exhibit "P-14," *Dockets*, Vol. II, pp. 651-658.

⁶⁰ Exhibits "P-29-1" to "P-29-4" and "P-30-1" to "P-30-4," *Formal Offer of Evidence of CE Casecnan Water & Energy Inc., Folder 2 of 2*.

⁶¹ Exhibits "P-36-1" to "P-36-12," *Formal Offer of Evidence of CE Casecnan Water & Energy Inc., Folder 2 of 2*.

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As mentioned earlier, the BIR disallowed unutilized input VAT amounting to ₱ 6,651,205.10 from purchases of goods, services and importations and classified these items as capital goods not subject to refund.

First, based on the findings of Commissioner Mr. Emmanuel Y. Mendoza, in his ICPA Report,⁶² out of the amount of ₱12,930,997.34 pertaining to the total unutilized input VAT with respect to the input VAT reclassified by the CIR as input VAT from purchase of capital goods, as indicated in the schedule of input VAT⁶³ submitted by CE Casecnan, only the amount of ₱12,526,772.64 was fully substantiated.

This issue is not new. In the case of *Northwind Power Development Corporation vs. Commissioner of Internal Revenue*, the Court's Second Division ruled that the input VAT reclassified by the CIR as input VAT from purchase of capital goods therein, such pertain actually to the periodic payments for the turnkey supply of distribution lines and considered instead as purchase of services for purposes of claiming input tax pursuant to Section 4.110-3⁶⁴ of RR No.

⁶² Annexes "B-1" to "B-4" of the ICPA Report.

⁶³ Exhibit "P-34," *Formal Offer of Evidence of CE Casecnan Water & Energy Inc.*, Folder 2 of 2.

⁶⁴ SEC. 4.110-3. Claim for Input Tax on Depreciable Goods.--

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

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

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input

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16-2005 as amended by Revenue Regulation (RR) No. 4-2007.⁶⁵

In this instant case, part of the input VAT reclassified as capital goods are actually domestic purchases of services supported by VAT ORs and VAT invoices⁶⁶ for CY 2013, in the total amount of ₱5,579,539.79.

Also, part of the unutilized input VAT actually pertains to payments for construction in progress and that the invoices, official receipts and general ledger of CE Casecan

taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services. The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

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Construction in progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; Provided, that an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated.

⁶⁵ Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

⁶⁶ Exhibits "P-23-1A" to "P-23-19B," *Formal Offer of Evidence of CE Casecan Water & Energy Inc., Folder 1 of 2.*

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indicate that these transactions are classified into the following categories:

1. Payments for monthly maintenance of access roads;
2. Payments for Power Plant maintenance;
3. Installment payments for improvements on Warehouse, Access Roads, Power Plant, Office and Buildings booked initially as Constructions-in-Progress and subsequently closed to the account under Property, Plant and Equipment subject to depreciation;
4. Payments for installation, inspection and testing of parts of Power Plant; and
5. Payments for consumable parts of Power Plant.

Section 4 of RR 16-2005 as amended by R.R. No. 4-2007 states that payments for construction in progress shall be considered purchase of services for purposes of claiming input tax, to wit:

"SECTION 16. Input Tax on Depreciable Goods.
Sec. 4.110-3 of RR No. 16-2005 is hereby amended to read as follow:

SEC. 4.110-3 Claim for Input Tax on
Depreciable Goods. - ...

(a) ...

Construction in Progress (CIP) is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the

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value of which shall be determined based on the progressed billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit in such transaction can be recognized in the month the payment was made; Provided, that an official receipt of payment has been issued based on progressed billings.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as depreciable capital asset and depreciated." (Underlining Supplied.)

Under Section 4.110-3 of Revenue Regulations RR No. 16-2005, as amended by RR No. 04-2007, construction in progress may be considered for purposes of claiming input tax as a purchase of service, the value of which shall be determined on the progress billings. Thus, Commissioner Mr. Emmanuel Y. Mendoza, in his ICPA Report,⁶⁷ took note of the complete progress billings initially charged to CIPs and the subsequent reclassification entries made by CE Casecanan upon completion to depreciable asset. As verified in the general ledger⁶⁸ of depreciable assets, the input tax claimed during the construction of the asset was not capitalized as part of the depreciable asset's total cost in the books of CE Casecanan. Thus:

Exh Nos.	OR No.	OR Date	Invoice No.	Item Description	VAT (A)	VAT on Cash Retention (B)	For Refund (A+B)
P-24-1A to G	0718 2501	14-Feb-13 2-Aug-13	0700 0786	Installation of sprinkler system	40,178.57	-	40,178.57

⁶⁷ Note 5(a), p. 11.

⁶⁸ Exhibits "P-24-1C, F, G", "P-24-3C,F,G," "P-24-4C,D,G,H,I,J," "P-24-5C,F,I,J," "P-24-6C,F,G," "P-24-6C,F,G," "P-24-7C,F,G," "P-24-7C,F,G," "P-24-8C,F,G"

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P-24-2A to G	0663 0741	27-Dec-12 14-Feb-13	0881 0887	Repainting of tailrace building	79,350.68	3,400.74	82,751.42
P-24-3A to G	0661 0665	25-Oct-12 21-Feb-13	0878 0886	Road Improvement	488,858.58	20,951.08	509,809.66
P-24-4A to J	0743 0747	22-Mar-13 02-Aug-13	0894 0913	Building renovation of project, office upgrading project, and additional works	163,996.90 382,659.42	(16,399.69) 16,399.99	147,597.21 399,059.11
P-24-5A to J	2167 2193 2249	22-Mar-12 21-Jun-12 24-Jan-13	1020 1049 1060	Installation of monorail crane	411,744.38	-	411,744.38
P-24-6A to G	1605 1690	07-Dec-12 25-Apr-13	0017 0147	Motorpool & workshop upgrade and space installation	222,281.74	9,526.36	231,808.09
P-24-7A to G	1606 1691	07-Dec-12 25-Apr-13	0018 0510	Construction of Pauan warehouse Satellite No. 2	110,786.37	4,747.99	115,534.36
P-24-8A to G	1733 003533	27-Jun-13 06-Dec-13	0502 0515	Repainting of miscellaneous structure at Pauan	34,650.23 80,850.54	(3,465.02) 3,465.02	31,185.21 3,465.02
P-24-9A to G	1734 003506	27-Jun-13 13-Sep-13	0505 0511	Repainting of railings & monorail crane structures	18,964.83	(1,896.48)	17,068.34
P-24-10A to G	1735 003525	27-Jun-13 14-Nov-13	0504 0518	Repainting of warehouse flooring & concrete wall	8,668.33 20,226.11	(866.83) 866.83	7,801.50 866.83
P-24-11A to G	0172 0176	29-Apr-13 20-Jun-13	1830 1831	Mitigation of diminished Casecnan intake riverbed phase 1	329,899.92 769,766.49	(32,989.99) 32,989.99	296,909.93 802,756.48
P-24-12A to M	65218 64904 66144 67006	30-Apr-13 28-Feb-13 15-Aug-13 29-Nov-13	1030338 1029894 1031353 1031963	SES Excilation	547,440.27 394,748.06 404,224.70	- - -	547,440.27 394,748.06 404,224.70
P-24-13A to J	2166 2095 2314	22-Mar-12 14-Jun-12 05-Jul-13	1019 1050 1061	Supply & installation of trash rack cleaning machine	228,650.62	-	228,650.62
P-24-14A to J	1352 1267 1453	08-Nov-13 14-Aug-14 23-Jul-15	1253 1291 1326	Office upgrading & building improvement	166,209.84	(16,620.98)	149,588.86
P-24-15A to G	1356 1262	13-Dec-13 25-Apr-14	1261 1278	Road improvement	267,817.21	(26,781.72)	241,035.49
TOTAL							5,064,224.12

Also, a part of the said reclassified input VAT as purchases of capital goods is the amount of input VAT on importation of goods that are supported by BOC Single Administrative Document (SAD) and settlement of duties and taxes evidencing actual payment of VAT in the amount of ₱1,205,568.00.⁶⁹

However, the amount of ₱404,224.70 was not properly substantiated as the domestic purchase of services from Siemen's Inc.⁷⁰ that is directly related to CIPs was posted twice in the schedule of input VAT. Thus, out of the amount of ₱6,651,205.10 being claimed by CE Casecnan for input

⁶⁹ Exhibits "P-26-1" to "P-26-6", *Formal Offer of Evidence of CE Casecnan Water & Energy Inc., Folder 1 of 2.*

⁷⁰ Exhibits "P-24-12J" and "P-24-12K", *Formal Offer of Evidence of CE Casecnan Water & Energy Inc., Folder 1 of 2.*

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VAT on local purchases of non-capital goods and services and on importations of non-capital goods reclassified as capital goods exceeding ₱ 1 million, only the amount of ₱6,408,291.25 shall be allowed for refund, to wit:

Findings	Exhibit No.	Total Input VAT	Ratio of zero-related sales to Total Sales	Input VAT Attributable to Zero-rated Sales
Domestic purchases of services supported by VAT ORs and VAT Invoices				
1 st QTR	P-23-1A to P-23-2B	185,890.16	38.74%	72,008.76
2 nd QTR	P-23-3A to P-23-7B	1,659,608.71	41.33%	685,841.25
3 rd QTR	P-23-8A to P-23-12B	2,471,475.90	59.17%	1,462,447.42
4 th QTR	P-23-13A to P-23-19B	1,262,565.02	60.09%	758,722.93
Subtotal		5,579,539.79		2,979,020.36
Domestic purchases of services directly related to CIPs supported by VAT ORs and/or VAT invoice progress billings				
1 st QTR	P-24-1A to P-24-5H	1,192,081.24	38.74%	461,779.64
2 nd QTR	P-24-6D to P-24-12B	2,050,504.18	41.33%	847,380.67
3 rd QTR	P-24-13G & P-24-13H, P-24-4E & P-24-4F, P-24-12G & P-24-12H	1,022,457.79	59.17%	605,019.36
4 th QTR	P-24-10D to P-24-12K	799,180.90	60.09%	480,257.94
Subtotal		5,064,224.12		2,394,437.61
Input VAT on domestic purchases of goods supported by VAT invoices				
3 rd QTR	P-25	677,440.73	59.17%	400,862.27
TOTAL				5,774,320.24

For amortization of input VAT on capital goods exceeding ₱1 million for CY 2013, the capital assets presented by CE Casecan⁷¹ were traced to the schedule of capitalizable assets⁷² prepared by it and were treated as depreciable assets with an estimated useful life of greater than one (1) year. The amortizations are in order and properly substantiated by VAT invoices⁷³ except for over-application of amortization of input tax presented as follows:

Supplier's Name	Exhibit No.	Invoice No.	Over Amortization of Input Tax	
			Month	Amount
Sim Computer Sales	P-27-4	20526	January	3,855.05
Western Marketing Corporation	P-27-6	053440	May	933.93
Fuji Xerox Philippines Inc.	P-27-7	337739	May	2,904.88
Sim Computer Sales	P-27-8	21592	June	925.00

⁷¹ Exhibits "P-27-1" to "P-27-70", Formal Offer of Evidence of CE Casecan Water & Energy Inc., Folder 1 of 2.

⁷² Exhibit "P-37," Formal Offer of Evidence of CE Casecan Water & Energy Inc., Folder 2 of 2.

⁷³ Exhibits "P-27-1" to "P-27-70", Formal Offer of Evidence of CE Casecan Water & Energy Inc., Folder 2 of 2.

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Sim Computer Sales	P-27-9	21755	June	2,345.03
Advance Microsystems Corp.	P-27-12	39170	July	58.83
Trends and Technologies Inc.	P-27-13	31753	October	5,289.85
TOTAL				16,312.57

Thus, out of ₱635,855.07 being refunded by CE Casecanan as amortization of input VAT on capital goods exceeding ₱1 million for CY 2013, only the amount of ₱628,210.30 shall be refunded, thus:

Findings	Exhibit No.	Total Input VAT	Ratio of zero-related sales to Total Sales	Input VAT Attributable to Zero-rated Sales
Amortized Input VAT on domestic purchases of capital goods supported by VAT invoices				
1 st QTR	P-27-1 to P-27-56	294,780.94	38.74%	114,190.07
2 nd QTR	P-27-1 to P-27-64	309,857.14	41.33%	128,049.95
3 rd QTR	P-27-1 to P-27-66	325,748.06	59.17%	192,755.03
4 th QTR	P-27-1 to P-27-70	321,522.93	60.09%	193,215.25
TOTAL		1,251,909.07		628,210.30

As to the issue that the input VAT was actually paid to the Bureau of Customs, Sections 112(C) and (D) of the NIRC of 1997 states:

"xxx xxx xxx

(C) *Period within which Refund or Tax Credit or 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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(D) *Manner of Giving Refund.* Refund shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission an Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this

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paragraph shall be subject to post audit by the Commission on Audit.” (Underlinings supplied.)

However, Customs Memorandum Order No. 28-2014 issued by the Bureau of Customs specifically states therein:

“II. Coverage

These rules shall cover all claims for refund on input VAT on importations attributable to zero-rated transactions under Section 112 of the NIRC, as amended.

III. Operational Provisions

A. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following supporting documents are attached to the docket forwarded by the BIR:

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xxx xxx xxx

B. If the supporting documents are found to be complete, the entire docket of the claim shall be endorsed to the Chief, Revenue Accounting Division (RAD) this Bureau for verification of payments of duties and taxes, using Tax Credit or if cash payments, it must have been remitted to the Bureau of Treasury (BTr).

xxx xxx xxx

D. Upon receipt of the docket from FMO with the corresponding Evaluation Report, the Secretariat shall determine whether the claimant will avail of cash refund or for issuance of TCC.

E. The Secretariat shall then prepare the corresponding endorsement for signature of the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the cash

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refund or issuance of Tax Credit Certificate based on the amount computed or recommended by the FMO. The signer resolution/endorsement authorizing payment shall be forwarded to the Accounting Division, FMO for the preparation of cash refund or issuance of TCC.

IV. Manner of Payment for Cash Refund

XXX XXX XXX

F. Within five (5) days from receipt of the Endorsement authorizing payment of the cash refund, the FMO shall prepare the request for issuance of Notice of Allocation (NCA) from the DBM, supported with a certification from BTr that the corresponding amount is available under BOC's trust liabilities account, including the following:

- 1) Endorsement signed by the Commissioner or his duly designated Tax Credit Approving Authority authorizing payment of the cash refund;
- 2) Copy of the claimant's application for VAT refund pursuant to Sec. 112 of the NIRC, as amended;
- 3) BIR endorsement to the BOC containing the BIR's determination of the validity of the claim for the VAT refunds on importation pursuant to Section 112 of the NIRC as amended, with the corresponding Authority for the BOC to issue the refund;
- 4) Certification of payments issued by RAD;
and
- 5) Computation of the final amount of cash refund as computed by the Accounting Division, FMO.

G. Upon receipt of the NCA from the DBM, the Accounting Division, FMO shall prepare the

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Disbursement Voucher and forward the same to the BOC Cashier.

xxx xxx xxx” (Underlinings Supplied.)

A part of the reclassified input VAT as purchases of capital goods is the amount of input VAT on importation of goods that are supported by BOC Single Administrative Document (SAD) and settlement of duties and taxes evidencing actual payment of VAT in the amount of ₱1,205,568.00.⁷⁴ Based on the ratio of zero-related sales to total sales, it will constitute ₱633,971.01 as part of input VAT attributable to zero-rated sales. Thus:

Input VAT on importation of goods supported by BOC single administrative document (SAD) and statement of settlement of duties and taxes evidencing the actual payment of VAT				
Findings	Exhibit No.	Total Input VAT	Ratio of zero-related sales to Total Sales	Input VAT Attributable to Zero-rated Sales
2 nd QTR	P-26-1 to P-26-4	444,880.00	41.33%	183,848.79
3 rd QTR	P-26-5 to P-26-6	760,688.00	59.17%	450,122.21
Subtotal		1,205,568.00		633,971.01
TOTAL		12,526,772.63		6,408,291.25

However, based on the foregoing, although it is the BIR that determines the validity of the claim for VAT refunds on importation pursuant to Section 112 of the NIRC of 1997, ultimately, it is the BOC who will issue the cash refund or tax credit certificate to the taxpayer.

Since in the instant case, the Commissioner or the Bureau of Customs was not impleaded as a party to the claim for refund of CE Casecan, this Court does not acquire jurisdiction over the former. Consequently, this Court cannot order the Commissioner or the Bureau of Customs to refund or issue a tax credit certificate with respect to the amount of ₱470,408.82 representing the input VAT paid to the BOC on importations, which were excluded in the authority to issue VAT credit/refund but were excluded in the tax credit certificate issued, as well as the amount of ₱633,971.01 with respect to the input VAT on local purchases of non-capital goods and service and on importations of non-capital goods

⁷⁴ Exhibits “P-26-1” to “P-26-6”, *Formal Offer of Evidence of CE Casecan Water & Energy Inc.*, Folder 1 of 2.

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reclassified as purchases of capital goods exceeding ₱ 1 million, but supported by BOC SAD and statement of settlement of duties and taxes evidencing actual payment of VAT.

Thus, out of the total unutilized input VAT of ₱7,757,468.99 being claimed for refund, it is ascertained that only ₱6,402,530.48 is proper for refund. Thus:

Particulars	Input VAT Attributable to Zero-rated Sales
Input VAT on local purchases of non-capital goods and services and on importations of non-capital goods reclassified as purchases of capital goods exceeding ₱ 1 million, excluding the amount of input VAT on importation of goods supported by BOC SAD and statement of settlement of duties and taxes evidencing the actual payment of VAT.	₱ 5,774,320.24
Amortization of input VAT on capital goods exceeding ₱1 million for CY 2013	628,210.30
TOTAL	₱ 6,402,530.54

WHEREFORE, premises considered, the Petition for Review with Supplemental Petition for Review filed by CE Casecanan Water and Energy Company on March 12, 2015 and June 11, 2015, respectively, are hereby **PARTIALLY GRANTED**. Accordingly, the Commissioner of Internal Revenue is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of CE Casecanan Water and Energy Company, Inc. in the amount of **₱6,402,530.48**, representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2013.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

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's Division.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', is positioned above the printed name.

ROMAN G. DEL ROSARIO
Chairperson, Special 1st Division