

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

THIRD MILLENIUM OIL MILL, INC.,
Petitioner,

C.T.A. CASE NO. 7583

Members:

- versus -

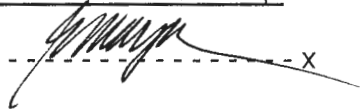
ACOSTA, Chairperson
UY, and
FABON-VICTORINO, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

FEB 03 2010; 3:00pm

X ----- X



DECISION

UY, J.:

Before the Court is a Petition for Review filed by Third Millenium Oil Mill, Inc., praying for the refund or issuance of a tax credit certificate in the amount of THREE MILLION EIGHT THOUSAND NINE HUNDRED THIRTY FIVE PESOS AND 81/100 CENTAVOS (P3,008,935.81), allegedly representing its unutilized input value-added tax (VAT) attributable to zero-rated sales for the four quarters of taxable year 2005.

THE FACTS

Culled from the evidence on record and as stipulated by the parties, these are the facts of the case.



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Petitioner, Third Millennium Oil Mills, Inc., is a corporation registered in accordance with Philippine laws, with Securities and Exchange Commission (SEC) License No. A20019187. It is engaged in the production of crude oil, copra cake, meals, pellets, and in the wholesale of agricultural raw materials and live animals. Its principal office is located at Room 403, CSP Building, 815 Quezon Avenue, Quezon City.¹

Petitioner is registered with the Board of Investments (BOI)², in accordance with the provisions of the Omnibus Investments Code of 1987³, as a non-pioneer enterprise with pioneer incentives, being located in less developed areas, for the production and sale of crude coconut oil and copra cake. It is likewise registered with the Bureau of Internal Revenue (BIR) as a VAT entity, with Tax Identification No. (TIN) 208-989-512-000.⁴

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.⁵

For the four quarters of taxable year 2005, petitioner filed with the BIR its Quarterly VAT Returns (BIR Form No. 2550Q), including the amendments for the second and fourth quarters of 2005, on the following dates:⁶

¹ Par. 1, Joint Stipulation of Facts and of Issues (JSFI), Docket, p. 48.

² Certificate of Registration No. 2001-065, Exhibit "J", Docket, pp. 118-121.

³ Executive Order No. 226.

⁴ Certificate of Registration dated January 10, 2001, Exhibit "I", Docket, p. 117.

⁵ Par. 2, JSFI, Docket, p. 48.

⁶ Par. 3, JSFI, Docket, p. 49.



Period Covered	Original Return Filed On	Exhibit	Amended Return Filed On	Exhibit
1st Quarter-2005	April 21, 2005	A	-	-
2nd Quarter - 2005	July 26, 2005	B	July 28, 2005	C
3rd Quarter - 2005	October 24, 2005	D	-	-
4th Quarter - 2005	January 25, 2006	E	April 8, 2006	F

In the aforementioned Quarterly VAT Returns⁷, petitioner reflected the following details:

Exh.	2005	Zero-Rated Sales	Exempt Sales	Taxable Sales	Output VAT	Input VAT
		(a)	(b)	(c)	(d)	(e)
L-3	1st Qtr	P 364,129,690.56		P 2,905,124.73	P290,512.47	P 651,504.40
L-4	2nd Qtr	440,351,183.31		1,710,550.91	171,055.09	806,613.07
L-5	3rd Qtr	451,947,481.00		1,185,484.54	118,548.45	890,655.15
L-6	4th Qtr	373,102,204.71	P17,499,271.50	396,936.36	39,693.64	1,469,133.64
	Total	P1,629,530,559.58	P17,499,271.50	P 6,198,096.54	P619,809.65	P3,817,906.26

Petitioner avers that P3,008,935.81 of the declared input VAT for the four quarters of taxable year 2005 is attributable to its zero-rated export sales and the same remains unapplied against any output VAT.

Relying on Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed with the BIR a letter dated June 19, 2006⁸ which was received on June 26, 2006, requesting the refund of the amount of P3,008,935.81 representing unutilized input VAT credits attributable to zero-rated sales for the four quarters of taxable year 2005.

For respondent's failure to act on petitioner's claim, petitioner filed before this Court a Petition for Review on March 28, 2007.

⁷ Exhibits "A", "C", "D", and "F".

⁸ Exhibit "H", Docket, pp. 114-116.

In the Answer dated May 17, 2007⁹ which was filed on May 22, 2007, respondent interposed the following special and affirmative defenses:

“5. The petitioner failed to prove that it is entitled to a probable refund of excess VAT credits in accordance with legal requirement on the carry-over of the credits to the succeeding period;

6. The claim for refund is still under examination by the respondent's Bureau;

7. The burden of proof is upon the petitioner to prove that it is entitled to the claim for refund or issuance of tax credit certificate;

8. The grant of claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority;

9. The taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.”

Thereafter, pre-trial was held on July 26, 2007 and the parties jointly agreed to submit a Joint Stipulation of Facts and Issues within twenty (20) days from said date.¹⁰ On September 18, 2007, parties submitted the aforesaid required pleading and was approved in the Resolution dated September 20, 2007.

During trial, petitioner presented documentary and testimonial evidence primarily aimed at proving its supposed entitlement to the refund or issuance of a tax credit certificate in the total amount of P3,008,935.81 representing alleged unutilized input VAT attributable to zero-rated sales for the four

⁹ Docket, pp. 25-27.

¹⁰ Minutes of Hearing, July 26, 2007, Docket, p. 36.



quarters of taxable year 2005; while respondent manifested that he is submitting the case for decision based on the pleadings considering that he has no witness to present. Accordingly, the parties were given thirty (30) days to file their respective memorandum.¹¹ In a Resolution dated February 6, 2009¹², both parties failed to file their Memoranda; hence, the case was deemed submitted for decision.

Hence, this Decision.

THE ISSUES

The parties jointly stipulated the following issues¹³ for the Court's resolution:

- "1. Whether or not the input value-added taxes of the Petitioner for the 1st, 2nd, 3rd and 4th quarters of taxable year 2005 arose from export sales or zero-rated sales;
2. Whether or not the input value-added tax, which allegedly are attributable to export sales or zero-rated sales, remains unapplied against any output value-added tax;
3. Whether or not petitioner has sufficiently substantiated by documentary evidence its claim for refund."

Simply put, the issue is: whether or not petitioner is entitled to its claim for the refund or issuance of a tax credit certificate in its favor the amount of P3,008,935.81, allegedly representing its unutilized input VAT attributable to zero-rated sales for the four quarters of taxable year 2005.

THIS COURT'S RULING

Section 112(A) of the NIRC of 1997, as amended, lays down the requisites for claims for refunds or tax credits of input tax due or paid

¹¹ Minutes of Hearing, December 8, 2008, Docket, p. 145.

¹² Docket, p. 147.

¹³ Proposed Joint Issues, JSFI, Docket, p. 49.



attributable to zero-rated or effectively zero-rated sales. It reads:

“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. xxx”

Based on the foregoing, petitioner must comply with the following requisites to be entitled to a refund or issuance of a tax credit certificate, to wit:

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

We shall first address the fifth requisite as it affects the jurisdiction of this Court to entertain the present appeal. Needless to state, to inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the validity of its entire proceedings.¹⁴

The prevailing jurisprudence that establishes the period within which to file the claim for refund or tax credits of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy***

¹⁴ *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.



Quezon, Inc.).¹⁵ The pertinent portion of the High Tribunal's Decision reads:

"The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112(A) of the NIRC pertinently reads:

(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: xxx. (Emphasis ours.)

The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.** As the CA aptly puts it, albeit it erroneously applied the aforementioned Sec. 112(A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued.' Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.** xxx" (Emphasis supplied)

Based on the afore-quoted jurisprudence, the reckoning of the prescriptive period shall commence from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.

Applying the foregoing jurisprudence in the case at bench, counting

¹⁵ G.R. No. 172129, September 12, 2008.

from March 31, 2005, June 30, 2005, September 30, 2005 and December 31, 2005, the close of each taxable quarters of the year 2005, both the administrative claim and the Petition for Review filed on June 26, 2006¹⁶ and March 28, 2007, respectively, fall within the two-year prescriptive period.

Now this Court shall determine whether or not petitioner complied with the other remaining requisites in order to be entitled to refunds or tax credits of input tax due or paid attributable to zero-rated or effectively zero-rated sales.

Petitioner maintains that its export sales of crude coconut oil which amount to more than ninety percent (90%) of its total sales are subject to zero percent (0%) VAT under Section 106(A)(2)(a) of the NIRC of 1997, as amended.¹⁷

A scrutiny of petitioner's Schedule of Export Sales and Collection¹⁸ revealed that the amount of P1,629,530,559.58, treated by petitioner as zero-rated sales in its Quarterly VAT Returns for the four quarters of taxable year 2005, consisted of sales to the following entities:

Sold to	Amount
Granexport Manufacturing Corporation	P 104,387,694.16
Pilipinas Kao Incorporated	880,482,233.86
Subtotal	P 784,869,928.02
United Malaya Products Trading Corp	P 30,755,418.62
Procter & Gamble	762,169,500.62
Sandakan Edible Oils	51,735,712.32
Subtotal	P 844,660,631.56
Total Sales	P1,629,530,559.58

¹⁶ Exhibit "H", supra.

¹⁷ Ibid.

¹⁸ Exhibit "L-22".

Petitioner's sales to Pilipinas Kao Incorporated, an entity duly registered with the Philippine Economic Zone Authority (PEZA)¹⁹ in the amount of P680,482,233.86, covered by VAT zero-rated sales invoices²⁰, cargo receipts²¹, and bills of lading²², qualify for VAT zero-rating, pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, which provides:

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

(A) *Rate and Base of Tax.* —

xxx

xxx

xxx

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

(a) *Export Sales.* — The term 'export sales' means:

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

Sales by a VAT taxpayer from the Customs Territory to a PEZA-registered entity are considered export sales under Executive Order (E.O.) No. 226, otherwise known as the "Omnibus Investments Code of 1987", the relevant portions of which read as follows:

"ARTICLE 23. 'Export Sales' shall mean the Philippine port F.O.B. value, determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer or the net selling price of export

¹⁹ Exhibit "L-31", p. 287.

²⁰ Exhibit "L-31", pp. 11, 14, 16, 18, 21, 23, 27, 31, 34, 36, 39, 41, 44, 46, 48, 50, 53, 56, 58, 61, 63, 65, 72, 76, 79, 81, 84, 86, 88, 95, 98, 100, 103, 105, 108, 110, 112, 115, 117, 120, 122, 124, 127, 130, 138, 140, 142, 145, 147, 150, 158, 161, 163, 165, 180, 182, 185, 187, 190, 192, 209, 211, 214, 221, 224, 228, 231, 233, 236, 238, 248, 250, 253, 255, 258, 260, 262, 270, and 272.

²¹ Exhibit "L-31", pp. 12, 22, 24, 28, 32, 35, 37, 40, 42, 51, 73, 109, 193, 215, 222, 225, 229, 232, and 237.

²² Exhibit "L-31", pp. 15, 17, 19, 25, 29, 33, 45, 47, 49, 54, 57, 59, 62, 64, 66, 74, 77, 80, 82, 85, 87, 89, 97, 99, 101, 104, 106, 111, 113, 116, 118, 121, 123, 125, 128, 131, 139, 141, 144, 146, 148, 151, 159, 162, 164, 166, 181, 183, 186, 188, 191, 210, 212, 223, 227, 234, 239, 249, 251, 254, 256, 259, 261, 263, 271, and 273.

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

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

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

Moreover, in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*,²³ the Honorable Supreme Court held as follows:

"Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales.

²³ G.R. No. 150154, August 9, 2005.



Zero-rating of export sales primarily intends to benefit the exporter (*i.e.*, the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

Relevant thereto, the imposition of zero percent VAT on sales made by a VAT taxpayer, like herein petitioner, to a PEZA-registered entity was further clarified in Revenue Memorandum Circular (RMC) No. 74-99, the pertinent provisions of which read:

"SECTION 3. Tax Treatment Of Sales Made By A VAT Registered Supplier from the Customs Territory, To A PEZA Registered Enterprise. -

(1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:

(a) *Sale of goods (i.e., merchandise).* - This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

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(2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:

(a) *Sale of goods (i.e., merchandise).* - This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.

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(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs

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Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to Art. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to 0% VAT, pursuant to Section 108(B)(3), NIRC in relation to the provisions of R.A. 7916 and the 'Cross Border Doctrine' of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property of services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of issuance of this Circular."

Similarly, per petitioner's approved Application for VAT Zero-Rate²⁴, petitioner's sales to Granexport Manufacturing Corporation, an exporter accredited by the Bureau of Export Trade and Promotion²⁵, in the amount of P104,387,694.16, which is duly supported by sales invoices²⁶, cargo receipts²⁷, and bills of lading²⁸, qualify for VAT zero-rating under Section 106(A)(2)(a)(3) of the NIRC of 1997, quoted hereunder for reference:

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

(A) Rate and Base of Tax. - xxx

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²⁴ Exhibit "L-31", p. 288.

²⁵ Exhibit "L-31", p. 289.

²⁶ Exhibit "L-31", pp. 1, 4, and 7

²⁷ Exhibit "L-31", pp. 2, 5, and 8

²⁸ Exhibit "L-31", pp. 3, 6, and 9

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

(a) *Export Sales.* – The term ‘*export sales*’ means:

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

As regards the remaining reported zero-rated sales of P844,660,631.56, petitioner presented various export sales invoices²⁹, export declarations³⁰, bills of lading³¹, airway bills³², passbook entries³³, and Summary of Export Sales and Collections³⁴. The aforesaid documentary evidence proved that petitioner sold and shipped its products abroad to foreign buyers, namely: (1) United Malaya Products Trading Corporation in Malaysia; (2) Procter & Gamble Mfg. Co. in USA; and (3) Sandakan Edible Oils in Malaysia. In consideration thereof, petitioner received foreign currency payments, which were inwardly remitted in accordance with the BSP rules and regulations. These export sales fall within those transactions referred to as subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

“SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of

²⁹ Exhibit “L-31”, pp. 68, 90, 91, 132, 133, 153, 154, 168, 169, 170, 174, 175, 195, 196, 197, 202, 203, 204, 216, 240, 241, 242, 243, and 265

³⁰ Exhibit “L-31”, pp. 69, 92, 134, 155, 171, 176, 198, 205, 217, 244, and 266.

³¹ Exhibit “L-31”, pp. 70, 93, 135, 156, 172, 177, 199, 206, 218, 245, and 267.

³² Exhibit “L-31”, pp. 71, 94, 157, 173, 178, 200, 207, 219, 246, and 268.

³³ Exhibit “L-31”, pp. 275-284.

³⁴ Exhibit “L-1”, Annex “X”.

goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

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

(a) *Export Sales.* – The term ‘*export sales*’ means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).”

As petitioner has sufficiently established that all its sales for the four quarters of taxable year 2005, amounting to P1,629,530,559.58, qualify for VAT zero-rating, We shall now look into the amount of unutilized input VAT attributable thereto.

Petitioner presented its Schedule of Purchases and Input VAT for the months of January to December 2005,³⁵ and the related cash vouchers, petty cash vouchers, cash advance liquidation forms, and suppliers’ invoices and official receipts³⁶ in support of the P3,817,906.26 input VAT reflected in its 2005 Quarterly VAT Returns.

Upon verification of the aforesaid documents, the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Edwin F. Ramos³⁷, found

³⁵ Exhibits “L-8” to “L-19”.

³⁶ Exhibits “L-25”, “L-26”, “L-27”, “L-28”, “L-29”, and “L-30”.

³⁷ Partner in Constantino Guadalquiver & Co.

that out of the P3,607,039.44³⁸ input VAT reflected per petitioner's Schedule of Purchases and Input VAT for the months of January to December 2005, only the amount of P3,011,234.72 was properly substantiated by VAT invoices or receipts³⁹. As to the remaining input VAT claim of P595,804.72, the ICPA summarized his findings as follows⁴⁰:

	Findings	Amount
1.)	Input VAT on domestic purchases of services which were supported by TIN V ORs for the period January 2005 to December 2005	P 1,830.96
2.)	Input VAT on domestic purchases of goods which were supported by TIN V invoices for the period January 2005 to December 2005	33,983.94
3.)	Input VAT on domestic purchases of goods that are properly supported by TIN VAT invoices but the petitioner's name was misspelled	17,591.19
4.)	Input VAT on domestic purchases of services that are properly supported by TIN VAT ORs but the petitioner's name was misspelled	16,216.98
5.)	Input VAT on purchases of goods supported by TIN VAT invoices dated January 2005 to December 2005 where the date of BIR printing is not visible	13,204.11
6.)	Input VAT on purchases of services supported by TIN VAT ORs dated January 2005 to December 2005 where the date of BIR printing is not visible	161,426.53
7.)	Input VAT on domestic purchases of services duly supported by TIN-VAT ORs with alterations in the petitioner's name	78.85
	Subtotal	P 244,332.56
8.)	Input VAT on domestic purchases of services not duly supported by original preprinted TIN VAT ORs dated January 2005 to December 2005	P 64,818.02
9.)	Input VAT on domestic purchases of goods and services supported by TIN VAT tape official receipts dated January 2005 to December 2005, which do not bear the petitioner's name and/or TIN0	633.98

³⁸ Exhibit "L-8".

³⁹ Exhibit "L-1", p. 2.

⁴⁰ Exhibit "L-1", pp. 4, 5, and 6.

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10.)	Input VAT on domestic purchases of goods not duly supported by original preprinted TIN VAT invoices dated January 2005 to December 2005	138,504.10
11.)	Input VAT on purchases whose supporting documents dated January 2005 to December 2005 are not in the name of the petitioner	5,895.15
12.)	Input VAT on domestic purchases of services claimed during the period January 2005 to December 2005 but the VAT ORs were not dated within the year 2005	8,790.38
13.)	Input VAT on domestic purchases of goods claimed during the period January 2005 to December 2005 but the VAT invoices were not dated within the year 2005	117,193.62
14.)	Input taxes on purchase transactions recorded during the period January 2005 to December 2005 not supported by any documents	41,418.03
15.)	Input VAT on domestic purchases of services duly supported by original preprinted TIN VAT ORs dated January 2005 to December 2005 but input VAT erroneously computed (overclaimed)	3,724.48
16.)	Input VAT on domestic purchases of goods duly supported by original preprinted TIN VAT invoices dated January 2005 to December 2005 but input VAT erroneously computed (overclaimed)	1,236.33
17.)	Input tax on domestic purchases of services claimed in prior years but reversed in 2005	(31,025.12)
18.)	Input tax on domestic purchases of goods supported by original preprinted TIN non-VAT invoices, stamped with the word "VAT", but not with the phrase "VAT registered as of [effectivity date of RA No. 9337] as required by RR No. 16-2005 effective November 1, 2005	215.18
19.)	Input VAT on purchase of services duly supported by TIN VAT ORs, which does not indicate the year of payment	68.18
	Subtotal	351,472.33
	Total	595,804.89⁴¹

The Court finds the ICPA's Report in order; and accordingly, We adopt the findings contained therein. Petitioner's input VAT claim in the amount of P595,804.89 shall be denied for failure to meet the substantiation

⁴¹ P0.17 difference due to rounding off.

requirements under Sections 110(A) and 113(A) of the NIRC of 1997, as amended, in relation to Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95, and Section 4.110-7 of Revenue Regulations No. 16-05.

Further verification showed a discrepancy in the amount of P210,866.82 between the input VAT claim of P3,817,906.26 as declared per petitioner's 2005 Quarterly VAT Returns, and the input VAT claim of P3,607,039.44 as reflected per Schedule of Purchases and Input VAT for the months of January to December 2005, detailed as follows:

Input VAT per Quarterly VAT Returns	P3,817,906.26
Less Input VAT per Schedules of Purchases and Input VAT	3,607,039.44
Discrepancy	P 210,866.82

Records reveal that part of the aforesaid P210,866.82 discrepancy pertained to the input VAT of P189,160.78⁴², related to petitioner's capital goods purchases for November and December of taxable year 2005, which was not included in the instant claim, as shown below:

Input VAT per Quarterly VAT Returns	P3,817,906.26
Less: Output VAT	619,809.65
Excess Input VAT per Quarterly VAT Returns	P3,198,096.61
Less: Input VAT on capital goods purchased	189,160.78
Unaccounted	0.02
Input VAT claim per Petition for Review	P3,008,935.81

The discrepancy of P189,160.78 shall not affect petitioner's claim; however, the remaining discrepancy of P21,706.04, which forms part of the

⁴² Exhibit "L-20".



subject claim, shall be denied because petitioner failed to substantiate the same.

In sum, out of the P3,817,906.26 input VAT reported per petitioner's 2005 Quarterly VAT Returns, only the amount of P3,200,395.33 represents petitioner's valid input VAT, as computed below:

Input VAT per Quarterly VAT Returns	P3,817,906.26
Less: Disallowances	
Not properly substantiated input VAT per ICPA Report	595,804.89
Discrepancy between the input VAT per VAT Returns and input VAT per Schedules of Purchases and Input VAT	21,706.04
Valid Input VAT	P3,200,395.33

We have observed that the substantiated input VAT of P3,200,395.33 is not entirely attributable to petitioner's zero-rated sales of P1,629,530,559.58, since petitioner had taxable sales in the amount of P6,198,096.54 and VAT-exempt sales in the amount of P17,499,271.50 for the four quarters of taxable year 2005. Thus, the substantiated input VAT of P3,200,395.33 shall be proportionately allocated on the basis of petitioner's total sales of P1,653,227,927.62, as shown below:

	Amount	% to Total Sales
VAT Exempt Sales	P 17,499,271.50	1.0584912%
Zero-Rated Sales	1,629,530,559.58	98.5666001%
Taxable Sales	6,198,096.54	0.3749088%
Total Sales	P1,653,227,927.62	100.0000000%
Substantiated Input VAT	P 3,200,395.33	
Allocated to:		
VAT Exempt Sales	33,875.90	
Zero-Rated Sales	3,154,520.87	
Taxable Sales	11,998.56	
Total Input VAT	P 3,200,395.33	

After deducting the input tax of P11,998.56 attributable to taxable sales from its output VAT liability of P619,809.65, petitioner still has a net amount of P607,811.09 output VAT payable for the year 2005, computed as follows:

Output Tax	P 619,809.65
Less: Input tax attributable to taxable sales	11,998.56
Net Output VAT Payable	P 607,811.09

By deducting the net output VAT payable of P607,811.09 from petitioner's total input tax of P3,154,520.87 attributable to zero-rated sales, a refundable amount of P2,546,709.78, is in order:

Input Tax attributable to Zero-Rated Sales	P 3,154,520.87
Less: Net Output VAT Payable	607,811.09
Net Amount Refundable	P 2,546,709.78

Although petitioner carried over the said claim in its Quarterly VAT Returns for the succeeding first and second quarters of taxable year 2006⁴³, the same remained unapplied until it was deducted as "VAT Refund/TCC Claimed"⁴⁴ from the "Total Available Input Tax" of P9,231,971.53 as of the second quarter of the year 2006. In other words, no amount of the subject claim was carried over/applied to the succeeding third quarter of the year 2006.

By way of resume, We find petitioner to have sufficiently proven its entitlement to a refund or issuance of a tax credit certificate but in the reduced amount of P2,546,709.78 in favor of petitioner, representing unutilized excess

⁴³ Exhibits "O-2", "O-3", and "G".

⁴⁴ Exhibit "G-2".

input taxes attributable to zero-rated sales for the four quarters of taxable year 2005.

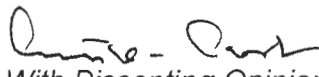
WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **TWO MILLION FIVE HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED NINE PESOS AND 78/100 (P2,546,709.78)**, representing its unutilized input taxes attributable to zero-rated sales for the four quarters of taxable year 2005.

SO ORDERED.

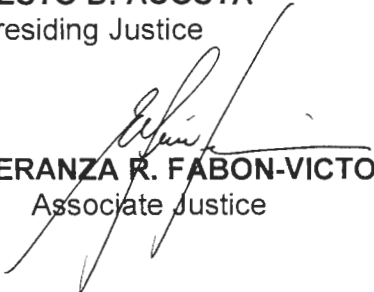


ERLINDA P. UY
Associate Justice

WE CONCUR:



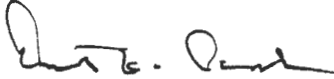
With Dissenting Opinion
ERNESTO D. ACOSTA
Presiding Justice



ESPERANZA R. FABON-VICTORINO
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.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division