

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CARMEN COPPER
CORPORATION,
Petitioner,

CTA Case No. 10201

Members:

- versus -

BACORRO-VILLENA, Acting Chairperson, and,
CUI-DAVID, Jr.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated: JUL 15 2022

x-----x
✓ 4:30 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review¹ filed by Carmen Copper Corporation (**petitioner/CCC**) pursuant to Rule 8, Section 3(a)², in relation to Rule 4, Section 3(a)(1)³ of the Revised Rules of the Court of

¹ Filed on 25 October 2019, Division Docket, Volume I, pp. 6-18.

² **SEC. 3. Who may appeal; period to file petition.** – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

³ **SEC. 3. Cases within the jurisdiction of the Court in Divisions.** – The Court in Divisions shall exercise:

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

...

Tax Appeals⁴ (RRCTA). It prays for the refund of the amount of ₱17,224,951.76, allegedly representing petitioner's unutilized input value-added tax (VAT) from its domestic purchases of goods and services, as well as importation of goods, attributable to its zero-rated sales, covering the period of 01 April 2017 to 30 June 2017⁵ or second (2nd) quarter of taxable year (TY) 2017.

Petitioner is a domestic corporation duly organized and existing under Philippine laws⁶, with registered address at Unit 502-P & 503-P, 5/F, Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City. It is also registered with the Bureau of Internal Revenue (BIR) as VAT taxpayer with Certificate of Registration (COR) No. OCN 8RC0000791446E⁷ issued by the Large Taxpayers Service, Revenue District Office No. 121 (RDO No. 121) – Excise LT Division I. Petitioner likewise maintains a branch located at Atlas Mining Complex, Bo. Don Andres Soriano, Toledo City, Cebu 6038, under its COR No. OCN 8RC0000068157.⁸

Respondent is the duly-appointed Commissioner of Internal Revenue (**respondent/CIR**) empowered to perform the duties of said office including, among others, the power to decide, approve, and grant tax refunds or tax credits as provided for by law, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.⁹

FACTS OF THE CASE

Petitioner is primarily engaged in the business of mining and sale of minerals for domestic and foreign markets.¹⁰ Its respective

(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;

4 A.M. No. 05-11-07- CTA dated 22 November 2005.

5 Summary of the Case, Pre-Trial Order dated 02 March 2020, Division Docket, Volume I, p. 397.

6 Exhibit "P-1", id., Volume II, pp. 431-446.

7 Exhibit "P-2", id., p. 447.

8 Exhibit "P-3", id., pp. 448-449.

9 Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 375.

10 Exhibit "P-1", supra at note 6; Question & Answer (Q&A) No. 6, Judicial Affidavit of Mr. Fernando A. Rimando, id., p. 93.

CORs from the BIR¹¹ and the BOI¹² indicate that it is engaged in the business of copper ore mining and is a “New Producer of Copper Concentrate”.

For the 2nd quarter of TY 2017, petitioner had the following sales for its domestic and foreign markets, with the corresponding output tax:

	Amount	Output Tax
VATable Sales/Receipts ¹³	₱5,923,404.96	₱710,808.60
Sales to Government ¹⁴	842,523.43	101,102.82
Zero Rated Sales/Receipts ¹⁵	2,366,032,147.53	-
Exempt sales ¹⁶	1,002,644.35	-
Total sales¹⁷	₱2,373,800,720.27	₱811,911.42

On the other hand, petitioner’s allowable input tax for the 2nd quarter of TY 2017 totaled to ₱52,294,997.38.¹⁸ After applying a portion thereof to output tax in the sum of ₱811,911.42¹⁹, the excess and unutilized input taxes for the same period amounted to ₱51,483,085.96.²⁰

On 28 June 2019, petitioner filed with the VAT Credit Audit Division (VCAD) an administrative claim for refund²¹ for the said amount of ₱51,483,085.96, with accomplished BIR Form No. 1914²² and its supporting documents.

On 26 September 2019, petitioner received a VAT Refund Notice dated 02 September 2019²³ partially granting its claim for refund in the reduced amount of ₱34,258,134.20, resulting thus in the denial of the amount of ₱17,224,951.76. The latter amount was denied due to, among

¹¹ Exhibit “P-2”, supra at note 7.
¹² Exhibit “P-4”, Division Docket, Volume II, pp. 450-456.
¹³ Lines 15, 15A and 15B, Exhibit “P-7”, id., p. 463.
¹⁴ Lines 16, 16A and 16B, id.
¹⁵ Line 17, id.
¹⁶ Line 18, id.
¹⁷ Lines 19, 19A and 19B, id.
¹⁸ Line 24, id.
¹⁹ Line 19B, id.
²⁰ Line 29, id.
²¹ Exhibits “P-8” and “P-8-a”, BIR Records, p. 237.
²² Exhibits “P-9” and “P-9-a”, Division Docket, Volume II, p. 464.
²³ Exhibit “P-12”, id., pp. 468-469.

others, its alleged non-compliance with item 6.2²⁴ of Annex "A.1"²⁵ of Revenue Memorandum Circular (RMC) No. 47-2019.²⁶

On 08 October 2019, petitioner filed a request for reconsideration²⁷ of the denial with respect to the amount of ₱16,259,111.88.

On 14 November 2019, petitioner received BIR's letter dated 24 October 2019²⁸ denying its request for reconsideration. There, it is stated that the decision earlier rendered (VAT Refund Notice) is considered final. The same letter states that petitioner may nevertheless appeal the said decision with this Court within thirty (30) days from receipt of such earlier decision

PROCEEDINGS BEFORE THIS COURT

On 25 October 2019, petitioner filed the instant petition²⁹ praying that it be declared as entitled to a cash refund in the amount of ₱17,224,951.76. It is also seeking for the VAT Refund Notice to be declared invalid for failure to state the factual and legal bases for the said denial.

On 21 November 2019, respondent filed an Answer³⁰ contending that the petition must be dismissed for petitioner's failure to substantiate its administrative claim for refund. Respondent elaborates that since a decision was rendered in the administrative level, the Court's jurisdiction is strictly appellate in nature, applying the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*³¹ (**Total Gas**). As such, petitioner cannot submit documents which it failed to submit at the administrative level. 

²⁴ Referring to "VAT Payment Certification issued by the BOC Revenue Accounting Division for importation in the current year, including the amortized portion of input VAT, if no previous certification was issued, on importation of capital goods exceeding the PIM threshold".

²⁵ Revised Checklist of Mandatory Requirements on Claims for VAT Refund Pursuant to Section 112(A) of the Tax Code of 1997, as Amended by R.A. No. 10963.

²⁶ Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims Within the 90-Day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended.

²⁷ Exhibits "P-15" and "P-15-a", id., pp. 480-483.

²⁸ Exhibit "P-16", Division Docket, Volume II, p. 558.

²⁹ Supra at note 1.

³⁰ Division Docket, Volume I, pp. 64-70.

³¹ G.R. No. 207112, 08 December 2015.

Respondent added that petitioner has the burden of proof to establish the factual basis of its claim for refund. As the same partakes the nature of exemptions, it would be strictly construed against the claimant and liberally in favor of the taxing authority.

Subsequently, Respondent's Pre-Trial Brief³² was filed on 13 December 2019 while Petitioner's Pre-Trial Brief³³ was filed on 27 January 2020.

In compliance with the Court's directive during the 30 January 2022 pre-trial conference³⁴, the parties submitted their Joint Stipulation of Facts and Issues³⁵ (JSFI) on 19 February 2020. Consequently, on 02 March 2020, the Pre-Trial Order³⁶ was issued.

On 03 June 2020, petitioner presented its three (3) witnesses, namely: Fernando A. Rimando (**Rimando**), Amour A. Belen (**Belen**) and Jiely Abigail A. Balat (**Balat**); and, the Independent Certified Public Accountant (ICPA), Joel C. Romano (**Romano**), for commissioning.³⁷

Rimando testified through his Judicial Affidavit³⁸ that: (1) he is petitioner's Chief Finance Officer (**CFO**); (2) the instant case arose from respondent's partial denial of petitioner's claim for refund; (3) petitioner's main activities are direct export sale of mineral products like copper concentrate, and direct export sales to Philippine Economic Zone Authority (**PEZA**)-registered enterprises, such as Philippine Associated Smelting and Refining Corporation (**PASAR**); (4) petitioner's VATable sales are minimal because these are largely made to local entities, such as telecommunication companies, cooperatives and other domestic corporations; (5) petitioner's exempt sales (which are not really exempt sales in strict sense) are likewise minimal, as these pertain to Philippine Health Insurance Corporation (**PhilHealth**) reimbursements; (6) the excess and unutilized input taxes for the 2nd quarter of TY 2017 are all directly attributable and

³² Division Docket, Volume I, pp. 75-78.
³³ Id., pp. 241-258.
³⁴ See Order dated 30 January 2020, id., p. 356.
³⁵ Id., pp. 375-389.
³⁶ Id., pp. 397-401.
³⁷ See Order dated 03 June 2020, id., p. 402.
³⁸ Id., pp. 89-107.

allocable to petitioner's zero-rated sales; (7) petitioner opted to file a claim for input tax refund for the whole amount of ₱51,483,085.96 instead of carrying it over and using it in the subsequent quarters, as shown in the third (3rd) quarter VAT return³⁹ for TY 2017; (8) petitioner filed its administrative claim for refund⁴⁰ with VCAD on 28 June 2019, together with all the supporting documents which the BIR required; (9) when petitioner filed its administrative claim, the BIR verified the completeness of the documents through a checklist⁴¹ which was provided to petitioner showing that it has completed the requirements; (10) respondent partially granted petitioner's claim in the amount of ₱34,258,134.20 and denied the amount of ₱17,224,951.76 as communicated in a one-page letter (VAT Refund Notice) and one annex (Annex "A")⁴² on 26 September 2019; (11) the said letter provided little information as to the factual and legal bases of the partial denial; (12) with respect to the amount of ₱16,259,111.88 that was denied, his understanding from the said Annex "A" is that the reason for the denial is the failure to submit the VAT Payment Certification issued by the Bureau of Customs (BOC) Revenue Accounting Division (RAD) for the importations made in the previous periods as support for its deferred input taxes; (13) the submission of said document is the BIR's new requirement, with a deadline to submit it until 31 July 2019; (14) on 11 July 2019, petitioner submitted a letter to the BOC dated 09 July 2019⁴³ requesting for the issuance of the required certification; (15) despite constant follow-ups and a written follow-up⁴⁴ on 04 September 2019, the requested document was only released on 06 September 2019, and submitted on the same day to the BIR VCAD; (16) on 08 October 2019, petitioner filed an appeal⁴⁵ with the BIR as regards the ₱16,259,111.88 that was denied due to the alleged non-compliance with the submission of the VAT Payment Certification because they believed they have submitted the same to the BIR; and, (17) on 14 November 2019, petitioner received a letter from the BIR dated 24 October 2019⁴⁶ denying its request for reconsideration and declaring its decision as final (although it may appeal the same to this Court). ↗

³⁹ Exhibit "P-10", id., Volume II, pp. 465-466.

⁴⁰ Supra at notes 21 and 22.

⁴¹ Exhibit "P-11", Division Docket, Volume II, p. 467.

⁴² Supra at note 23.

⁴³ Exhibits "P-13" and "P-13-a", Division Docket, Volume II, p. 470.

⁴⁴ Exhibits "P-14" and "P-14-a", id., p. 479.

⁴⁵ Exhibits "P-15" and "P-15-a", supra at note 27.

⁴⁶ Exhibits "P-16", supra at note 28.

When asked during cross-examination as to whether there is any other reason stated by the BIR in partially denying the claim, Rimando merely referred to his answer to question number 42⁴⁷ in his Judicial Affidavit.⁴⁸ In addition, Rimando also testified that he has read Annex “A” of the denial letter.⁴⁹ Petitioner did not conduct any redirect examination.⁵⁰

Belen assumed the witness stand next and she also testified through her Judicial Affidavit⁵¹ declaring that: (1) she is petitioner’s Financial Accounting Manager and presently in-charge of tax compliance and financial accounting; (2) she prepared a letter dated 29 May 2019⁵², addressed to the BOC for petitioner’s request for VAT Payment Certification on its input taxes on importation; (3) as a result of this request, the BOC issued the certifications on 27 June 2019 and 28 June 2019 relative to current input taxes; (4) she submitted the same to the BIR together with the written claim for refund; (5) on 11 July 2019, petitioner sent another letter dated 09 July 2019⁵³, requesting the VAT Payment Certifications for 2012-2017; (6) the letter sought the issuance of VAT Payment Certification from BOC RAD relative to the deferred input taxes (as the 29 May 2019 letter was for the current input taxes); (7) in the middle of June 2019, she made an inquiry with the BOC, through Army Kristina Alonzo (**Alonzo**), on whether a separate written request covering deferred input taxes on importation should be submitted; (8) Alonzo replied in the negative but instructed her to email the schedule of deferred input taxes (to which she complied on 18 June 2019⁵⁴); (9) when she asked for the certifications on the deferred input taxes, the BOC told her that the BIR has extended the deadline for the same to 31 July 2019; and, (10) she was

⁴⁷ *Question No. 42. What was your understanding of the factual and legal bases of the denial?*

Answer: The letter provided little information as to the factual and legal bases of the partial denial of our claim. Aside from the fact that I know the claim was partially denied because of the letter, the surrounding factual and legal bases thereof was not clear to me when I read the letter, such as which input taxes were denied and which were granted. However, with respect to Php16,259,111.88, I understand from Annex A of the denial letter that the reason for the denial was our failure to submit the VAT Payment Certification issued by the BOC Revenue Accounting Division for the importations made in the previous period supporting our deferred input taxes on importations.

⁴⁸ TSN dated 03 June 2020, p. 7.

⁴⁹ Id., pp. 7-8.

⁵⁰ Id., p. 8.

⁵¹ Division Docket, Volume I, pp. 259-267.

⁵² Exhibits “P-17” and “P-17-a”, id., Volume II, p. 560.

⁵³ Exhibits “P-13” and “P-13-a”, supra at note 43.

⁵⁴ Exhibits “P-20” and “P-20-a”, Division Docket, Volume II, pp. 622-628.

asked to submit a formal letter request covering deferred input taxes which she did as evidenced by the letter submitted on 11 July 2019.

On cross-examination, Belen testified that the certification she submitted to the BIR, together with the written claim for refund on 28 June 2019, is the certification for the current purchases.⁵⁵ On redirect examination, Belen clarified that current purchases refer to importation and not local purchases.⁵⁶ Respondent did not conduct recross-examination.⁵⁷

Petitioner then presented its next witness, Balat, who testified though her Judicial Affidavit⁵⁸ that: (1) she is petitioner's Tax Accountant presently in-charge of tax compliance and other tax matters; (2) she made follow-ups with the BOC regarding the status of their request for VAT Payment Certifications; (3) she personally went to BOC office in Port Area, Manila a few times during the period of July to September 2019; (4) on 05 September 2019, she received an 18-page document⁵⁹ from the BOC in relation to the previous VAT Payment Certifications; (5) the same was submitted to BIR VCAD on 09 September 2019; (6) on 06 September, she received a 42-page document⁶⁰ covering the deferred input tax on importations prior to 2nd quarter of TY 2017 which she submitted to BIR VCAD on the same day; (7) she does not have proof that the said letters were received on 06 and 09 September 2019 since the BIR, as a matter of policy, no longer acknowledges receipt of documents submitted after the filing of the administrative claim; and, (8) even if dated 31 July 2019 or within the deadline for its submission, the BIR still considered it late as the documentary stamp was dated 06 September 2019.

On cross-examination, Balat testified that the VAT Payment Certifications she received from the BOC were submitted to the BIR on 06 and 09 September 2019, respectively, after the administrative claim for refund was already filed in June 2019. As such, these certifications

⁵⁵ TSN dated 03 June 2020, pp. 10-11.

⁵⁶ Id., p. 11.

⁵⁷ Id., p. 12.

⁵⁸ Division Docket, Volume I, pp. 285-292.

⁵⁹ Certification No. 2018-315 dated 17 September 2018, Exhibit "P-18", id., Volume II, pp. 561-578.

⁶⁰ Letter from RAD Chief Emilio L. Jacinto with the attached Certification No. 2019-417 dated 31 July 2019, Exhibit "P-19", id., pp. 579-621.

were not included in the said administrative claim.⁶¹ Petitioner did not conduct any redirect examination.⁶²

Lastly, without objection to Romano’s appointment as the ICPA, the Court approved the motion to commission him as such.⁶³

On 26 August 2020, petitioner presented its last witness, ICPA Romano, who testified through his Judicial Affidavit⁶⁴ that: (1) he was commissioned to make a verification of petitioner’s voluminous supporting documents; (2) he prepared a report and made his recommendation as contained in the ICPA Report dated 03 August 2020⁶⁵; (3) in performing the procedures, they familiarized themselves with the case background, issues involved, position taken by petitioner and actions of respondent; and, (4) based on the results of their verification, an additional amount of ₱15,585,182.32 of input taxes that petitioner claimed represents valid input taxes attributable to its zero-rated sales. Respondent did not conduct cross-examination.⁶⁶

On 10 September 2020, petitioner filed its Formal Offer of Evidence⁶⁷ (FOE). Respondent filed the Comment⁶⁸ thereto on 17 September 2020. On 06 November 2020, the Court resolved⁶⁹ to admit all of petitioner’s documentary evidence, except Exhibits “P-2-a”, “P-3-a”, “P-41-a” to “P-41-e”, “P-58-a” to “P-58-z” and “P-61-a”.⁷⁰ Later on,

⁶¹ TSN dated 03 June 2020, pp. 14-15.
⁶² Id., p. 15.
⁶³ Id., p. 20. See also Order dated 03 June 2020, Division Docket, Volume I, p. 402.
⁶⁴ Exhibits “P-24” and “P-24-A”, Division Docket, Volume I, pp. 405-412.
⁶⁵ Exhibits “P-109”, “P-109-A” and “P-109-B”, ICPA Report.
⁶⁶ TSN dated 26 August 2020, p. 10.
⁶⁷ Division Docket, Volume II, pp. 415-430.
⁶⁸ Id., pp. 629-631.
⁶⁹ See Resolution dated 06 November 2020, id., pp. 635-636.
⁷⁰

Exhibit	Description
“P-2-a”	Petitioner’s Bureau of Internal Revenue (“BIR”) Certificate of Registration for its Head Office and Payment Form.
“P-3-a”	Petitioner’s Bureau of Internal Revenue (“BIR”) Certificate of Registration for its Branch Office and Payment Form.
“P-41-a to P-41-e”	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT official receipts without original copy presented.
“P-58-a to P-58-z”	Importation of capital goods exceeding P1 Million from previous years/quarters supported by SSDTs and IEIRDs/SADs without original copy presented and with VAT payment certification issued by the Bureau of Customs.

however, upon petitioner’s filing of a Motion for Partial Reconsideration⁷¹ (MPR), the Court reconsidered such denial and duly admitted the said exhibits.⁷²

On 20 January 2021, respondent presented Revenue Officer (RO) Denise R. Dayanan (Dayanan), as the sole witness to rebut petitioner’s claim. Through her Judicial Affidavit⁷³, she stated that: (1) she is an RO I at the BIR presently assigned at Tax Audit Review Division (TARD); (2) petitioner was informed of the audit through Tax Verification Notice No. TVN201800083097 dated 28 June 2019⁷⁴; (3) pursuant to Revenue Administrative Order (RAO) No. 6-2017⁷⁵, the findings of VCAD examiners are automatically subject to their review (thus the entire docket was forwarded to TARD on 20 August 2019); (4) petitioner submitted documents in support of its application for VAT refund based on the Checklist of Mandatory Requirements for VAT Credit Claims⁷⁶; (5) the result of her examination is stated in her Memorandum Report dated 02 September 2019⁷⁷; and, (6) a letter dated 02 September 2019⁷⁸ was sent to Rimando informing petitioner that the amount of ₱17,224,951.76 was denied.

On cross-examination, RO Dayanan further testified that: (1) petitioner was not furnished with her Memorandum Report⁷⁹; (2) as far as the BIR is concerned, the explanations are only those that are contained in Annex “A” and there are no other documents which shows the explanations for the denial⁸⁰; (3) the BIR did not find any errors with respect to petitioner’s zero-rated sales⁸¹; (4) petitioner did in fact submitted all the documents required in support of the claim

“P-61-a”	Domestic purchases of capital goods exceeding P1 Million from previous years/quarters supported by VAT invoice without original copy presented and without TIN of petitioner.
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71 Filed on 02 February 2021, Division Docket, Volume II, pp. 644-650.
72 See Resolution dated 18 May 2021, id., pp. 667-670.
73 Exhibits “R-6” and “R-6-A”, id., Volume I, pp. 84-88.
74 Exhibit “R-1”, BIR Records, p. 242.
75 AMENDMENT OF REVENUE ADMINISTRATIVE ORDER (RAO) NO. 2-2014 DATED AUGUST 7, 2014 RELATIVE TO THE ORGANIZATION AND FUNCTIONS OF THE OPERATIONS GROUP, INCLUDING THE SERVICES, DIVISIONS AND SECTIONS UNDER IT.
76 Exhibit “R-2”, BIR Records, p. 238.
77 Exhibit “R-3”, id., pp. 355-370.
78 Exhibit “R-4”, id., pp. 309-310.
79 TSN dated 20 January 2021, p. 7.
80 Id., p. 9.
81 Id.

for refund⁸²; and, (5) the BIR did not directly ask petitioner to submit additional documents but there was a tax advisory for all current claims.⁸³ Respondent did not conduct re-direct examination.⁸⁴

On 21 January 2021, respondent filed its FOE⁸⁵, to which petitioner filed its Comment⁸⁶ on 22 February 2021. On 18 May 2021, the Court admitted all of respondent's documentary evidence.⁸⁷

On 08 June 2021, respondent filed his or her Memorandum⁸⁸ while petitioner filed its own Memorandum⁸⁹ on 02 July 2021, prompting the Court to submit the case for decision on 16 July 2021.⁹⁰

ISSUES

In the Court-approved JSFI, the parties put forward the following issues for resolution:

I.

WHETHER THE DECISION OF RESPONDENT COMMISSIONER OF INTERNAL REVENUE IS CORRECT AND BASED ON THE DOCUMENTS SUBMITTED;

II.

WHETHER PETITIONER CARMEN COPPER CORPORATION IS ENTITLED TO THE REMAINING ₱17,224,951.76 THAT WAS DENIED BY RESPONDENT COMMISSIONER OF INTERNAL REVENUE; AND,

III.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S DENIAL LETTER COMPLIES WITH THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS OF DUE PROCESS.⁹¹

⁸² Id., pp. 9-10.

⁸³ Id., pp. 10-11.

⁸⁴ Id., p. 11.

⁸⁵ Division Docket, Volume II, pp. 639-642.

⁸⁶ Id., pp. 663-665.

⁸⁷ Supra at note 72.

⁸⁸ Division Docket, Volume II, 671-677.

⁸⁹ Id., pp. 680-704.

⁹⁰ See Resolution dated 16 July 2021, id., p. 706.

⁹¹ Id., Volume I, p. 376.

Petitioner argues that the discussion in *Total Gas* as to whether a taxpayer could submit new documents before this Court appears to be an *obiter dictum*. Moreover, the said ruling should apply only if respondent had requested for the submission of specific documents and only in the event of taxpayer's failure to comply will it be precluded from submitting the same before this Court. At any rate, cases filed with this Court are litigated *de novo*.

As to the substantive aspect of the case, petitioner maintains that it has complied with all the requisites for a valid claim for VAT refund.

Lastly, petitioner contends that respondent's denial letter hardly complies with due process requirements under the Constitution on matters of adjudication. According to it, the denial letter lacks sufficient factual and legal bases to properly inform petitioner of the reason for the denial. Thus, the denial letter, insofar as it improperly denied a portion of its claim, must be rendered invalid and the claim for refund should be granted as a necessary consequence.

On the other hand, respondent maintains that since a decision was rendered in the administrative level, the Court's jurisdiction is strictly appellate in nature, applying the principle laid down in *Total Gas*. Resultantly, petitioner cannot submit documents which it failed to submit at the administrative level.

RULING OF THE COURT

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963⁹², otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN). The said provisions read as follows: 

⁹² AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

...

Sec. 110. Tax Credits. — ...

...

(B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

...

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.

...

(C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.



In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however*, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

...

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*⁹³ (**Luzon Hydro**), the Supreme Court laid down the requisites that must concur in order to allow a claim for refund or tax credit for unutilized input tax, to wit:

...

A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.

...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the first (1st) and ninth (9th) requisites, followed by the second (2nd) and seventh (7th) requisites, then the third (3rd), fourth (4th), fifth (5th), sixth (6th) and eighth (8th) requisites, jointly. 

⁹³ G.R. No. 188260, 13 November 2013; Citation omitted.

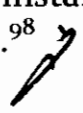
FIRST (1ST) REQUISITE:
PETITIONER IS A VALUE-ADDED TAX
(VAT)-REGISTERED ENTITY.

It is undisputed that petitioner is a VAT-registered taxpayer with Tax Identification Number (TIN) 233-903-100-000, as evidenced by its BIR COR No. OCN 8RC0000791446E.⁹⁴ It also has a branch located in Toledo City, Cebu with TIN 233-903-100-001 under its COR No. OCN 8RC0000068157.⁹⁵

NINTH (9TH) REQUISITE:
PETITIONER'S ADMINISTRATIVE AND
JUDICIAL CLAIMS WERE FILED
WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with the above-cited Section 112(A) and (C) of the NIRC of 1997, as amended, the administrative claim for refund of excess input tax must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The subject claim for refund covers the 2nd quarter of TY 2017 which ended on 30 June 2017. Counting two (2) years therefrom, petitioner's last day to file its administrative claim was on 30 June 2019. Thus, the same was timely filed on 28 June 2019.⁹⁶

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days from the filing on 28 June 2019, or until 26 September 2019, to decide on the administrative claim. Considering that respondent issued a letter dated 02 September 2019⁹⁷ partially denying the same (which was received on 26 September 2019), petitioner had thirty (30) days from such receipt, or until 26 October 2019, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 25 October 2019.⁹⁸ 

⁹⁴ Exhibit "P-2", supra at note 7.

⁹⁵ Exhibit "P-3", supra at note 8.

⁹⁶ Exhibits "P-9" and "P-9-a", supra at note 22.

⁹⁷ Exhibit "P-12", supra at note 23.

⁹⁸ Supra at note 1.

SECOND (2ND) AND SEVENTH (7TH)
REQUISITES:

PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND WHERE APPLICABLE, THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

The 2nd and 7th requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b)⁹⁹, and 108(B)(1) and (2)¹⁰⁰ of

⁹⁹ **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 goods or properties, a value-added tax equivalent to twelve percent (12%) 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.

...

(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);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(b) *Foreign Currency Denominated Sale.* — The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

¹⁰⁰ **Sec. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. –**

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the

the NIRC of 1997, as amended¹⁰¹, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In its VAT return for the 2nd quarter of TY 2017¹⁰², petitioner reported total sales of ₱2,373,800,720.27, broken down as follows:

Line No./Particular	Amount
15 Vatable Sales/Receipt – Private	₱5,923,404.96
16 Sale to Government	842,523.43
17 Zero-Rated Sales/Receipts	2,366,032,147.53
18 Exempt Sales/Receipts	1,002,644.35
Total Sales/Receipts	₱2,373,800,720.27

In support of its declared zero-rated sales (equivalent to \$47,775,873.38¹⁰³), petitioner submitted various documents such as sales invoices¹⁰⁴, provisional/final invoices issued in the previous/succeeding quarters¹⁰⁵, export documents (i.e., bills of lading and export declaration)¹⁰⁶ certificate of inward remittances¹⁰⁷, and its customer’s PEZA Certification.¹⁰⁸

Furthermore, records show that petitioner’s zero-rated sales are comprised of export sale of goods and sale of goods to a PEZA-registered entity under Section 106(A)(2)(a)(1)¹⁰⁹ and (5)¹¹⁰, respectively, of the NIRC of 1997, as amended, broken down as follows: 

consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

101 ...
Prior to the changes brought about by TRAIN.
102 Exhibit “P-7”, Division Docket, Volume II, p. 463.
103 Exhibit “P-27”, USB.
104 Exhibits “P-64” and “P-65”, id.
105 Exhibits “P-67-a” to “P-67-i”, id.
106 Exhibits “P-66-a” to “P-66-r”, id.
107 Exhibit “P-68”, id.
108 Exhibit “P-70”, id.
109 Supra at note 99.
110 **SEC. 106. Value-Added Tax on Sale of Goods or Properties.** —
(A) Rate and Base of Tax. — ...
...
(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[.]
...

Particulars	Amount	Exhibit
Export sale of goods	₱1,581,916,673.22	P-64-a to P-64-i
Sale of goods to a PEZA-registered entity	784,115,474.31	P-65-a to P-65-j
Total zero-rated sales for the 2nd quarter of TY 2017	₱2,366,032,147.53	

Each source of zero-rated sales shall be discussed below, in *seriatim*.

- (i) EXPORT SALE OF GOODS
UNDER SECTION
106(A)(2)(a)(1) OF THE NIRC
OF 1997, AS AMENDED

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended¹¹¹, provides:

...

Sec. 106. Value-Added Tax on Sale of Goods or Properties. -

(A) *Rate and Base of Tax.* - ...

...

(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)[.]

...



¹¹¹ Prior to changes brought about by TRAIN.

Guided by the foregoing, in order for an export sale of goods to qualify as zero-rated, the following essential elements must be present:

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

As discussed above, the *first* essential element is undisputed.

With respect to the *second* essential element, petitioner’s export sales, as culled from the supporting documents together with the ICPA Report¹¹², are summarized as follows:

Customer	Sales Invoice (Provisional or Final)			Bill of Lading/Airway Bill		Per Return	
	Exhibit No.	Date	Invoice No.	Exhibit No.	Date	Amount in USD	Amount in PHP
MRI TRADING AG	"P-64-a"	4/10/2017	Provisional Invoice No. 1810000095	"P-66-a"	4/10/2017	7,613,951.68 (7,487,143.30)	381,306,700.13 (375,854,593.66)
	"P-64-b"	4/29/2017	Provisional Invoice No. 1810000098	"P-66-c"	5/1/2017	8,191,265.57	409,153,715.22
	"P-64-c"	5/2/2017	Final Invoice No. 1820000651	"P-66-e"	2/6/2017 ¹¹³	(296,764.86)	(14,823,404.75)
	"P-64-d"	5/2/2017	Final Invoice No. 1820000652	"P-66-g"	3/4/2017 ¹¹⁴	(212,302.81)	(10,604,525.36)
	"P-64-e"	5/2/2017	Final Invoice No. 1820000654	"P-66-i"	3/28/2017 ¹¹⁵	(76,880.93)	(3,840,202.45)
	"P-64-f"	5/10/2017	Provisional Invoice No. 1810000099	"P-66-k"	5/12/2017	7,998,918.33	399,345,997.63
	"P-64-g"	6/2/2017	Final Invoice No. 1820000685	"P-66-m"	5/1/2017	(150,213.62)	(7,473,127.60)
	"P-64-h"	6/14/2017	Provisional Invoice No. 1810000102	"P-66-o"	6/14/2017	8,204,538.66	406,411,822.52
	"P-64-i"	7/4/2017	Provisional Invoice No. 1810000103	"P-66-q"	7/4/2017	8,218,602.79	398,294,291.54
Total						32,003,971.51	1,581,916,673.22

112 Exhibit "P-109", ICPA Report.
113 Pertains to export sales made during the first (1st) quarter but the final invoice was issued in the 2nd quarter of TY 2017.
114 Id.
115 Id.

As can be gleaned from the table above, the export sale under Provisional Invoice No. 1810000103 amounting to ₱398,294,291.54 (\$8,218,602.79) must be disallowed since the subject thereof was both exported and supported by a provisional invoice outside the period of claim.

Anent the *third* essential element (in relation to 7th requisite), petitioner presented the Reconciliation of Export Sales and Foreign Currency Remittances on Zero-Rated Sale of Goods¹¹⁶ and the Certification¹¹⁷ issued by BDO Unibank, Inc. (BDO), showing that the payments received for its direct exportations are in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

However, a thorough scrutiny of the documents proffered by petitioner would reveal that direct exportations totaling \$20,176.65 (or ₱1,004,743.37) cannot be traced to the inward remittances *per* BDO Certification, to wit:

Sales Invoice			Certificate of Inward Remittance			Difference
Provisional Invoice No.	Final Invoice No.	Net Collectible after Deductions in USD	Reference No.	Date	Amount in USD	
1810000095	1820000718	6,865,802.27	OA1587200-NOI	3/27/2017	2,073,551.81	
			OA1590570-KYJ	3/29/2017	2,018,713.68	
			OA1590570-KYJ	4/12/2017	2,258,629.67	
			C0071869235201	7/6/2017	510,561.37	
					6,861,456.53	4,345.74
1810000098	1820000685	7,303,608.34	IH2104003076496	4/24/2017	2,922,114.97	
			IH2504003095354	4/26/2017	2,133,355.39	
			IH0305003135123	5/4/2017	1,652,113.34	
			IH0606003303758	6/7/2017	592,146.73	
					7,299,730.43	3,877.91
1810000099	1820000750	7,921,542.77	C639050RBK050517	5/8/2017	3,677,389.24	
			C734787RBK050817	5/9/2017	2,143,165.78	
			C544405RBK051517	5/16/2017	869,272.99	
			C770185RBK080317	8/4/2017	1,228,277.21	
					7,918,105.22	3,437.55
1810000102	1820000751	7,744,825.48	C212470RBK053017	5/31/2017	2,761,758.49	
			3981994153JX	6/5/2017	1,694,086.77	
			C543332RBK061317	6/14/2017	2,142,861.32	
			C331177RBK062017	6/21/2017	120,964.73	
			C770185RBK080317	8/4/2017	1,016,638.72	
					7,736,310.03	8,515.45
Total						20,176.65

¹¹⁶ Exhibit “P-80”, USB. Referred to as “Schedule of Inward Remittances submitted by the Petitioner” in the ICPA Report.
¹¹⁷ Exhibit “P-68”, id.

Amount not traced to inward remittance per Certification		
Amount in USD	Forex Rates ¹¹⁸	Amount in PHP
4,345.74	50.08	217,634.66
3,877.91	49.95	193,701.60
3,437.55	49.93	171,636.87
8,515.45	49.53	421,770.24
20,176.65		1,004,743.37

Accordingly, out of petitioner’s ₱1,581,916,673.22 (equivalent to \$32,003,971.51) reported zero-rated sales arising from export sale of goods to MRI TRADING AG, only ₱1,182,617,638.31 could qualify for VAT zero-rating. Thus, the total amount of petitioner’s substantiated zero-rated sales arising from actual export sales is computed as follows:

Particulars	Zero-Rated Sales
Declared Zero-Rated Sales	₱1,581,916,673.22
Less: Disallowances	
Export sales supported by a provisional invoice and Bill of Lading dated outside the period of claim	398,294,291.54
Export sales not traced to inward remittance per bank certification	1,004,743.37
Total Valid Zero-Rated Sales	₱1,182,617,638.31

(ii) SALE TO A PEZA-REGISTERED ENTITY UNDER SECTION 106(A)(2)(a)(5) OF THE NIRC OF 1997, AS AMENDED

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

...
SEC. 106. Value-Added Tax on Sale of Goods or Properties. —

(A) *Rate and Base of Tax.* — ...

...
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate: 7

¹¹⁸ Based on the rates used by the ICPA in the Schedule of Zero-rated Sale of Goods (Exhibit “P-27”, USB).

(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[.]

...

In relation thereto, Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005¹¹⁹, as amended by RR No. 04-2007¹²⁰, also provides:

...

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

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

(a) *Export Sales*. — “*Export Sales*” shall mean:

...

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

“*Considered export sales under Executive Order No. 226*” shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided*, further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and

¹¹⁹

Consolidated Value-Added Tax Regulations of 2005.

¹²⁰

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

accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.¹²¹

...

The special law applicable to this case is RA 7916¹²², as amended by RA 8748.¹²³ Sections 8 and 24 thereof read:

...

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

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

...

*SEC. 24. Exemption from National and Local Taxes. — Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE...*¹²⁴

...

Since, by legal fiction, the ECOZONE is viewed as a foreign territory, a VAT-registered person's sale of goods and services to an entity registered and operating within the ECOZONE in the Philippine customs territory are considered exports to a foreign country subject to

¹²¹ Emphasis, italics and underscoring in the original text.

¹²² AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

¹²³ AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

¹²⁴ Emphasis supplied.

zero percent (0%) VAT. The Supreme Court, in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*¹²⁵, explained:

...
This Court agrees, however, that **PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**

... An ECOZONE or a Special Economic Zone has been described as —

... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT [now, twelve percent (12%)].

...

Based on the foregoing and in relation to the above-cited Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present in order for an export sale to qualify for VAT zero-rating:

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

As determined earlier, petitioner is a VAT-registered person hence the *first* essential element is present.

Relative to the *second* essential element, petitioner presented a PEZA-issued Certification dated 20 December 2016¹²⁶ which confirmed that PASAR, the recipient of the copper and gold, is registered with PEZA and that the same is valid for the year 2017. It likewise stated that PASAR “is a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services, in accordance with Sections 4.106-6 and 4.108-6 of Revenue Regulations No. 16-2005, the Consolidated Value-Added Tax Regulations of 2005”.

Moreover, petitioner presented the corresponding VAT zero-rated sales invoices¹²⁷ issued to PASAR for the sales amounting to a total of ₱784,115,474.31, which are deemed compliant with the invoicing

¹²⁶ Exhibit “P-70”, USB.

¹²⁷ Exhibits “P-65-a” to “P-65-j”, id.

requirements prescribed under Section 113(A) and (B)¹²⁸ of the NIRC of 1997, as amended, in relation to Section 4.113-1 (A) and (B)¹²⁹ of RR No. 16-2005. Thus, petitioner also complied with the *second* essential element.

¹²⁸ **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
...

(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:

...

(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;

...

(3) The date of transaction, quantity, unit cost and description of the goods and 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.

...

¹²⁹ **SEC. 4.113-1.** *Invoicing Requirements.* —

(A) *A VAT-registered person shall issue: —*

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

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

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

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

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

...

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

...

(3) 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.

In sum, and for purposes of compliance with the 2nd and 7th **requisites**, only the amount of ₱1,966,733,112.62 represents petitioner's valid zero-rated sales for the 2nd quarter of 2017, computed as follows:

Export sales	₱1,182,617,638.31
Sales to a PEZA-registered entity	784,115,474.31
Total valid zero-rated sales	₱1,966,733,112.62

THIRD (3RD), FOURTH (4TH), FIFTH (5TH), SIXTH (6TH) and EIGHTH (8TH) REQUISITES:
PETITIONER INCURRED EXCESS AND UNUTILIZED INPUT TAXES ATTRIBUTABLE TO ITS ZERO-RATED SALES.

To reiterate, the 3rd, 4th, 5th, 6th and 8th requisites enumerated in *Luzon Hydro* are as follows:

- a. **3rd requisite:** the input taxes are due or paid;
- b. **4th requisite:** the input taxes are not transitional input taxes;
- c. **5th requisite:** the input taxes have not been applied against output taxes during and in the succeeding quarters; and,
- d. **6th and 8th requisites:** the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales.

With respect to the 4th **requisite**, petitioner's input taxes do not appear to be transitional input taxes, since the same operates to benefit only newly VAT-registered persons; thus, petitioner is deemed to have complied with the said requisite. 

Anent the 3rd requisite, petitioner declared in its VAT return¹³⁰ for the 2nd quarter of TY 2017 excess and unutilized input tax of ₱51,483,085.96 from its domestic purchases and importation of goods other than capital goods, as well as the amortization of capital goods, as shown below:

	2 nd Quarter TY 2017
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from the Previous Quarter	₱92,403,872.95
Input Tax on Purchase of Capital Goods not exceeding ₱1 Million	60,403.00
Input Tax on Domestic Purchases of Goods Other than Capital Goods	794,243.98
Importation of Goods Other than Capital Goods	34,270,317.00
Input Tax on Domestic Purchase of Services	473,694.37
Others	57,772.79
Total Input Tax	128,060,304.09
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	75,765,306.71
Total Allowable Input Tax	₱52,294,997.38
Less: Output Tax on VATable Sales/Receipts	710,808.60
Output Tax on Sales to Government	101,102.82
Total Allowable Input Tax for Refund	₱51,483,085.96

According to ICPA Romano, out of the total allowable input tax of ₱52,294,997.38, only ₱50,656,474.93 was properly substantiated, as summarized hereunder:

Reference	Particulars	Amount
<i>Input VAT on current quarter's importations</i>		
P-30-a to P-30-dl	Current importation of goods supported by SSDTs, IEIRDs or SADs	₱34,218,674.00
P-31-a	Current importation of goods supported by SSDTs	51,643.00
	Input VAT that can be claimed	34,270,317.00
<i>Input VAT on current quarter's domestic purchases</i>		
P-34-a to P-34-jw	Domestic purchase of goods amounting to ₱1,000 or more properly supported by VAT invoices/purchase of services amounting to ₱1,000 or more properly supported by VAT Official Receipts, that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid Authority to Print (ATP) and	174,435.90

¹³⁰ Exhibit "P-7", supra at note 102.

	are dated in the same quarter when the input VAT is claimed	
P-35-a to P-35-mr	Domestic purchase of goods less than P1,000 supported by VAT invoices/purchase of services less than P1,000 supported by VAT Official Receipts with VAT separately shown, valid Authority to Print (ATP) and are dated in the same quarter when the input VAT is claimed	17,402.25
P-36-a to P-36-cg	Domestic purchase of goods amounting to P1,000 or more supported by VAT invoices/purchase of services amounting to P1,000 or more supported by VAT Official Receipts, that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, with valid Authority to Print (ATP), and are not dated within the quarter but within the same taxable year	60,841.23
P-37-a to P-37-jq	Domestic purchase of goods less than P1,000 supported by VAT invoices/purchase of services less than P1,000 supported by VAT Official Receipts with VAT separately shown, valid Authority to Print (ATP) and are not dated within the quarter but within the same taxable year	11,624.58
P-38-a to P-38-h	Domestic purchase of goods supported by VAT invoices/purchase of services supported by VAT Official Receipts with missing/incorrect Petitioner's name but with the Petitioner's complete TIN, address, with valid Authority to Print (ATP), and are dated in the same quarter when the input VAT is claimed or dated before the quarter when the input VAT is claimed but within the same taxable year	4,066.60
P-39-a to P-54	Domestic purchase of goods/services not properly supported by VAT invoice/[OR]	1,057,340.59
	<i>Subtotal</i>	<i>1,325,711.15</i>
P-39-a to P-54	Less: Domestic purchase of goods/services not properly supported by VAT invoice/[OR]	1,057,340.59
	Input VAT that can be claimed	268,370.56
Input VAT on current quarter's importations of capital goods not exceeding P1 million		
P-32-a to P-32-b	Current importation of capital goods not exceeding P1M supported by SSDTs, IEIRDs or SADs	50,403.00
P-33-a to P-33-b	Current importation of capital goods not exceeding P1M not supported by SSDTs, IEIRDs or SADs	10,000.00
	<i>Subtotal</i>	<i>60,403.00</i>
P-33-a to P-33-b	Less: Current importation of capital goods not exceeding P1M not supported by SSDTs, IEIRDs or SADs	10,000.00
	Input VAT that can be claimed	50,403.00
Input VAT on previous quarters/years' importations of capital goods exceeding P1 million		

P-55-a to P-55-ud	Importation of capital goods supported by SSDTs and IEIRDs or SADs from previous quarter/year and with VAT Payment Certification issued by the BOC	15,564,679.12
P-56-a to P-56-c	Importation of capital goods supported by SSDTs only from previous quarter/year and with VAT Payment Certification issued by the BOC	150,866.60
P-57-a to P-57-b	Importation of capital goods supported by SSDTs and IEIRDs or SADs from previous quarter/year and without VAT Payment Certification issued by the BOC	5,203.00
P-58-a to P-58-z	Importation of capital goods supported by SSDTs and IEIRDs or SADs without original copy from previous quarter/year and with VAT Payment Certification issued by the BOC	538,363.22
	<i>Subtotal</i>	<i>16,259,111.93</i>
P-57-a to P-57-b	Less: Importation of capital goods supported by SSDTs and IEIRDs or SADs from previous quarter/year and without VAT Payment Certification issued by the BOC	5,203.00
P-58-a to P-58-z	Less: Importation of capital goods supported by SSDTs and IEIRDs or SADs without original copy from previous quarter/year and with VAT Payment Certification issued by the BOC	538,363.22
	Input VAT that can be claimed	15,715,545.72
<i>Input VAT on previous quarters/years' domestic purchases of capital goods exceeding ₱1 million</i>		
P-59-a to P-59-e	Domestic purchase of capital goods from previous quarters/years supported by VAT invoice that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, and with valid ATP	70,920.80
P-60-a to P-60-k	Domestic purchase of capital goods from previous quarters/years supported by VAT invoice that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, and with loose leaf permit number	280,917.86
P-61-a	Domestic purchase of capital goods from previous quarters/years supported by VAT invoice without original copy presented and without TIN of the Petitioner	3,333.75
P-62-a	Domestic purchases of capital goods not properly supported by VAT Invoices	24,281.95
	<i>Subtotal</i>	<i>379,454.36</i>
P-61-a	Less: Domestic purchase of capital goods from previous quarters/years supported by VAT invoice without original copy presented and without TIN of the Petitioner	3,333.75
P-62-a	Less: Domestic purchases of capital goods not properly supported by VAT Invoices	24,281.95
	Input VAT that can be claimed	351,838.66
Total properly substantiated input VAT		₱50,656,474.94

However, it must be noted that petitioner is a BOI-registered entity, the sales to which shall be accorded automatic VAT zero-rating pursuant to Section 3 of Revenue Memorandum Order (RMO) No. 9-00¹³¹, which provides as follows:

...

SEC. 3. Sales of goods, properties or services made by a VAT-registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:

- (1) The supplier must be VAT-registered;
- (2) The BOI-registered buyer must likewise be VAT-registered;
- (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
- (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and,
- (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer.

...

Record show that petitioner was issued a Certification¹³² by the BOI attesting to the fact that it is a BOI-registered entity with 100% exports for the year covering 01 January to 31 December 2017. Under

¹³¹ Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales.

¹³² Exhibit "P-6", Division Docket, Volume II, pp. 460-462.

the above-cited Section 3(4) of RMO No. 9-00, said Certification shall serve as authority for its local suppliers to avail of the benefits of zero-rating on their sales to petitioner for the year 2017. On the basis of such Certification, no output tax should have been shifted by petitioner's local suppliers. Thus, it follows that petitioner is not entitled to the refund of input tax from its domestic purchases.

In *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*¹³³ (**Coral Bay**), the Supreme Court held that the claimant for refund must direct its action against the seller who shifted the output tax and not against the government:

...
...the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. **Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03, which provides:**

In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.

In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's**

obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

...

Following the principle laid down in *Coral Bay*, petitioner’s proper recourse, as a taxpayer enjoying zero-rated preference, is to claim from its suppliers the amount of VAT that was erroneously shifted by them. Thus, only petitioner’s input tax arising from importations and services rendered by non-residents shall be considered in determining the amount of excess input tax that may be refunded.

Correspondingly, upon further scrutiny of the ICPA Report, the Court finds that an additional amount of ₱822,718.82 should likewise be disallowed, to wit:

Exhibit	Supplier	Amount	Reason
a. <i>Input VAT on Domestic Purchases</i>			
Input VAT on current quarter's domestic purchases		268,370.56	Applying <i>Coral Bay</i> , no input tax on domestic purchases may be claimed for VAT refund
Input VAT on previous quarters/years' domestic purchases of capital goods exceeding ₱1 million		351,838.66	
b. <i>Input VAT on Importations</i>			
"P-31-a"	FLSMIDTH USA INC	51,643.00	Not supported by SAD or IEIRD
c. <i>Amortized Input VAT on Importations</i>			
P-56-a	OUTOTEC FINLAND	148,201.70	Not supported by SAD or IEIRD
P-56-b	OUTOTEC	1,236.40	
P-56-c	TIANJIN WEIDE MINE EQUIPMENT CO., LTD.	1,428.50	
	Total	₱822,718.82	

Out of total allowable input tax per ICPA of ₱50,656,474.94, only the amount of ₱49,833,756.11 represents the substantiated input tax, computed as follows:

Allowable Input Tax per ICPA	₱50,656,474.94
Less: Disallowances per Court’s verification	822,718.82
Substantiated/Valid Input Tax	₱49,833,756.12

Notably, in the subject VAT Refund Notice¹³⁴, respondent also disallowed the amortized input tax of ₱16,259,111.88 due to the alleged non-compliance with RMC No. 47-2019¹³⁵, specifically, as a result of petitioner's failure to submit the VAT Payment Certification from the BOC RAD relative to its deferred input taxes arising from importation.

Respondent then argues that since a decision was rendered in the administrative level, the Court's jurisdiction is strictly appellate in nature, applying *Total Gas*. As such, petitioner cannot submit herein the required VAT Payment Certification which it failed to timely submit at the administrative level.

We find that *Total Gas* is not squarely applicable herein, as petitioner's failure to submit the pertinent VAT Payment Certification is not solely attributable to it. It must be noted that the required VAT Payment Certification is to be issued by the BOC RAD and not a document that is readily in the possession of petitioner at the time when the administrative claim was filed.

As the records bear clearly, as early as 18 June 2019, petitioner's witness, Belen, already complied with the directive of the BOC's Alonzo for her to simply email¹³⁶ the schedule of deferred input taxes on importation as there was allegedly no need to make a separate written request for its certification. Subsequently, however, Belen was required to make a formal letter request as regards such deferred input taxes¹³⁷ which petitioner complied through its letter dated 09 July 2019.¹³⁸

Petitioner's witness, Balat, even testified that she constantly made several personal follow-ups with the BOC for the release of the said certification from July to September 2019¹³⁹, coupled by a written follow-up on 04 September 2019.¹⁴⁰ Despite petitioner's earnest efforts to secure the required certification, the BOC RAD released the VAT

¹³⁴ Exhibit "P-12", supra at note 23.

¹³⁵ Supra at note 26.

¹³⁶ Exhibits "P-20" and "P-20-a", supra at note 54.

¹³⁷ Q&A No. 19, Judicial Affidavit of Ms. Amour A. Belen, Division Docket, Volume I, pp. 265-266.

¹³⁸ Exhibits "P-13" and "P-13-a", supra at note 43.

¹³⁹ Q&A Nos. 5 to 7, Judicial Affidavit of Ms. Jiely Abigail A. Balat, Division Docket, Volume I, pp. 288-289.

¹⁴⁰ Exhibits "P-14" and "P-14-a", supra at note 44.

Payment Certification only on 06 September 2019 (although the same was dated as early as 31 July 2019). Had it been timely issued and released by the BOC RAD to petitioner, the same could have been submitted to the BIR on or before its deadline on 31 July 2019.

With the foregoing, the Court finds it unjust and inequitable to apply *Total Gas* in the case at bar considering that petitioner could not actually be penalized for something beyond its control. Additionally, to construe otherwise will unreasonably place the taxpayer at the mercy of the BOC by the simple expedient of not releasing the requested certification on time.

As warranted herein, in the interest of justice, the Court will thus consider the VAT Payment Certifications released to petitioner in September 2019 in its determination of the refundable amount due to petitioner.

Proceeding to such determination and pursuant to the 6th and 8th requisites, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume, viz:

	Sales Amount ¹⁴¹	% to Total Sales [A]	Valid Input Tax [B = A x Valid Input Tax]	Output Tax [C]	Remaining Output Tax [D = C - B]	Remaining Input Tax
VATable sales	5,923,404.96	0.25%	124,584.39	710,808.60 ¹⁴²	586,224.21	-
Zero-rated sales	2,366,032,147.53	99.67%	49,669,304.72	-	-	49,001,911.19 ¹⁴³
Exempt sales	1,002,644.35	0.04%	19,933.50	-	-	19,933.50 ¹⁴⁴
Sales to government	842,523.43	0.04%	19,933.50	101,102.82 ¹⁴⁵	81,169.32	-
Total	₱2,373,800,720.27	100.00%	₱49,833,756.11¹⁴⁶	₱811,911.42	₱667,393.53	₱49,021,844.69

¹⁴¹ Exhibit “P-7”, supra at note 102.
¹⁴² Line 15B, id.
¹⁴³ Computed as follows: [Valid input tax less remaining output tax pertaining to VATable sales and sales to government (₱49,669,304.72 – (586,224.21+81,169.32))].
¹⁴⁴ The input tax attributable to VAT-exempt sales shall not be allowed as credit against the output tax but should be treated as part of cost or expense (Section 4.110-4 of RR No. 16-2005).
¹⁴⁵ Line 16B, Exhibit “P-7”, supra at note 102.
¹⁴⁶ Difference of ₱0.01 is due to rounding off.

Consequently, only the substantiated unutilized input tax of ₱49,001,911.19 can be attributed to the total zero-rated sales in the amount of ₱2,366,032,147.53; and only the input tax of ₱40,732,194.37 is attributable to the valid zero-rated sales of ₱1,966,733,112.62, as computed below:

Excess Input Tax allocated to Reported Zero-Rated Sales	₱49,001,911.19
Divided by Reported Zero-Rated Sales	2,366,032,147.53
Multiplied by Valid Zero-Rated Sales	1,966,733,112.62
Excess Input Tax Attributable to Valid Zero-Rated Sales	₱40,732,194.37

However, due to the BIR’s previous partial grant of petitioner’s claim in the amount of ₱34,258,134.20¹⁴⁷, the excess input tax attributable to valid zero-rated sales of ₱40,732,194.37 should be further reduced by such amount. Hence, petitioner is entitled to a lesser input tax claim of ₱6,474,060.17, computed as follows:

Excess input tax attributable to valid zero-rated sales	₱40,732,194.37
Less: Input tax refund partially granted by BIR	34,258,134.20
Additional input tax to be refunded	₱6,474,060.17

Lastly, the claimed input tax of ₱51,483,085.96 as of the end of the 2nd quarter of TY 2017, which includes the valid input tax claim of ₱40,732,194.37 was not carried over to the succeeding taxable periods, as evidenced by quarterly VAT returns for 3rd quarter of TY 2017 to 2nd quarter of TY 2020.¹⁴⁸ Verily, petitioner likewise complied with the 5th **requisite** stating that the input tax should have not been applied against output tax during and in the succeeding quarters.

Having disposed of the substantive issues, the Court shall now proceed to tackle the third issue raised by the parties, *i.e.*, whether respondent’s denial letter complies with the constitutional and statutory requirements of due process.

Pertinent to the resolution of the said issue is Section 112(C) of the NIRC of 1997, as amended by TRAIN, which reads as follows:

¹⁴⁷ Exhibit “P-12”, *supra* at note 23.
¹⁴⁸ Exhibits “P-86” to “P-97”, USB.

...

Sec. 112. Refunds or Tax Credits of Input Tax. —

...

(C) *Period within which Refund of Input Taxes shall be Made.*
— In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.*¹⁴⁹

As introduced by TRAIN, respondent is now statutorily required to state in writing the legal and factual basis of the denial of the claim for refund. *However*, while We agree with petitioner that respondent is required by law to state in writing the legal and factual basis of the denial, We herein find that respondent has nevertheless substantially complied with the requirement.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*¹⁵⁰, the Supreme Court citing *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*¹⁵¹, ruled that the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied, to wit:

...

However, the mandate of giving the taxpayer a notice of the facts and laws on which the assessments are based should not be mechanically applied. To emphasize, the purpose of this requirement is to sufficiently inform the taxpayer of the bases for the assessment to enable him or her to make an intelligent protest.

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, **substantial compliance** with Section 228 of the National Internal Revenue Code **is allowed**, provided that the taxpayer would be later apprised in writing of the factual and legal bases of the assessment **to enable him or her to prepare for an effective protest**. Thus:



¹⁴⁹ Emphasis supplied.

¹⁵⁰ G.R. No. 215957, 09 November 2016; Citations omitted, italics in the original text and emphasis supplied.

¹⁵¹ G.R. No. 193100, 10 December 2014.

Although the [Final Assessment Notice] and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.

Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner in writing of the factual and legal bases of the deficiency taxes assessment, **which enabled the latter to file an "effective" protest**, much unlike the taxpayer's situation in Enron. **Petitioner's right to due process was thus not violated.**

...

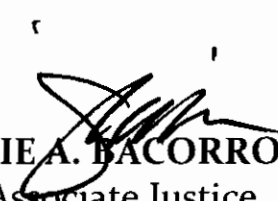
While the aforementioned cases involve assessment and not a claim for refund, the Court is of the view that the same are equally applicable herein considering that Section 228 of the NIRC of 1997, as amended, and the present Section 112(C) thereof are similarly worded in that both provisions require respondent to state in writing the legal and factual basis of his action.

In sum, petitioner has sufficiently proven its entitlement to the refund of the additional, albeit lesser, amount of ₱6,474,060.17, representing the unutilized excess input tax attributable to its zero-rated sales for the 2nd quarter of TY 2017.

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioner Carmen Copper Corporation on 25 October 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor of petitioner Carmen Copper Corporation the reduced amount of ₱6,474,060.17, representing unutilized excess input tax attributable to its zero-rated sales for the second (2nd) quarter of taxable year ended 31 December 2017.



SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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


JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice