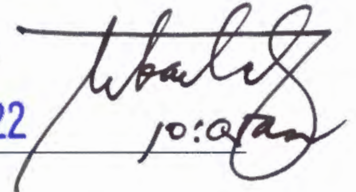
REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC., *Petitioner,*	**CTA EB NO. 2485** (CTA Case No. 9838)
	Present:
-versus-	**DEL ROSARIO**, *PJ,* **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 2 5 2022 

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review filed by Maxima Machineries, Inc. ("**Petitioner**"),[1] under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals ("**RRCTA**").[4] It seeks the

[1] Dated 18 June 2021, received by the Court on 22 June 2021; *Rollo*, pp. 1-18.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[4] A.M. No. 05-11-07-CTA.

reversal of the Decision of the First Division dated 6 October 2020 ("**Assailed Decision**"),[5] and Resolution dated 31 May 2021 ("**Assailed Resolution**"),[6] in CTA Case No. 9838 entitled *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is a domestic corporation duly organized under and by virtue of the laws of the Philippines, with principal business address at 908 Quezon Avenue cor. Dr. Garcia St. Paligsahan, Quezon City NCR, Second District, Philippines 1103.[7] It is likewise duly registered with the Bureau of Internal Revenue ("**BIR**") with Taxpayer Identification Number ("**TIN**") 006-618-023-000. Petitioner is a VAT-registered taxpayer.[8]

Respondent, on the other hand, is the Commissioner of Internal Revenue ("**CIR**"), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**"), or other laws or portions thereof administered by the BIR.[9] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

Petitioner filed with the BIR its quarterly Value-added tax ("**VAT**") Returns for the period covering 1 October 2015 to 31 December 2015 (third quarter of the fiscal year ("**FY**") ending 31 March 2016) on 22 January 2016.[10] On 22 April 2016, petitioner filed its quarterly VAT return for the period covering 1 January 2016 to 31 March 2016 (fourth quarter of the FY ending 31 March 2016).[11]

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[5] *Rollo,* pp. 22-94; penned by Presiding Roman G. Del Rosario, with Associate Justice Catherine T. Manahan, concurring.
[6] *Id.*, pp. 969-974.
[7] Division Docket, Volume I, p. 94.
[8] *Id.*, p. 119.
[9] Section 4, NIRC, as amended.
[10] Division Docket, Vol. I, pp. 142-146.
[11] *Id.*, pp. 147-150.

Both the third quarter and fourth quarter VAT returns for the FY ending 31 March 2016 were amended. The amended third quarter[12] and fourth quarter[13] VAT returns were filed on 28 December 2017.

On 29 December 2017, petitioner filed with the BIR its administrative claims for tax credits/refunds of ₱13,838,236.48 for the third quarter of the FY ending 31 March 2016[14] and ₱18,301,540.46 for the fourth quarter of the FY ending 31 March 2016,[15] or in the total amount of ₱32,139,776.94.

On 20 April 2018, petitioner received the denial of its administrative claims for refund issued by the BIR through OIC-Assistant Commissioner for Large Taxpayers Service, Teresita M. Dizon.[16]

Aggrieved from the BIR's denial of its administrative claims for tax credit/refund, petitioner filed a Petition for Review before the Court of Tax Appeals ("**CTA**") on 18 May 2018. This was raffled to the Court's First Division ("**Court in Division**").

Petitioner alleged in the petition that its claim for tax refund should be granted because all the elements necessary are present, citing the requirements outlined in *San Roque Power Corporation vs. Commissioner of Internal Revenue.*[17]

Respondent then filed a Motion for Additional Time to File Answer on 19 June 2018,[18] which the Court in Division granted in an Order dated 21 June 2018.[19] Another Motion for Additional Time to File Answer was filed by respondent on 19 July 2018,[20] which was again granted by the Court in Division on 24 July 2018.[21]

On 23 August 2018, respondent filed his Answer.[22]

[12] *Id.*, pp. 145-146.
[13] *Id.*, pp. 149-150.
[14] Exhibit "P-34", *id.*, p. 50.
[15] *Id.*, p. 51.
[16] Par. 39, Statement of Facts and Antecedent Proceedings, Petition for Review, CTA Docket, Vol. I, p. 19; Admitted in par. 2 of respondent's Answer, CTA Docket, Vol. I, p. 219.
[17] G.R. No. 180345, 25 November 2009.
[18] Division Docket, Vol I, pp. 200-201.
[19] *Id.*, p. 205.
[20] *Id.*, pp. 207-208.
[21] *Id.*, p. 211.
[22] *Id.*, p. 219.

According to the respondent, the judicial claim should be denied for petitioner's failure to substantiate its claims for refund. He further contended that he is correct in denying petitioner's claims for refund as petitioner failed to comply with the requirements provided under the laws and implementing rules and regulations that pertain to zero-rated transactions and input tax/VAT from importation.

Respondent added that refund claims are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language, considering that they partake in the nature of tax exemptions.

On 29 November 2018, Pre-Trial Briefs were filed by petitioner[23] and respondent. [24]

The Pre-Trial Conference was held on 6 December 2018.[25] The Joint Stipulation of Facts and Issues was filed by petitioner and respondent on 19 December 2018. [26] The Pre-Trial Order[27] was issued on 4 March 2019. The Court also terminated the Pre-Trial in the same Order.

During the trial, petitioner presented testimonial and documentary evidence. As contained in its Formal Offer of Evidence,[28] petitioner's formally offered exhibits were admitted in the Court's Resolution dated 11 June 2019.[29]

On his part, respondent likewise presented documentary and testimonial evidence. Respondent's formally offered exhibits contained in his Formal Offer of Evidence on 20 June 2019[30] were admitted in the Court's Resolution dated 2 October 2019.[31]

[23] *Id.*, pp. 552-568.
[24] *Id.*, pp. 578-581.
[25] Order issued on December 6, 2018; *id.*, pp. 583-585.
[26] *Id*, pp. 591-603.
[27] *Id*, Vol. II, pp. 662-670.
[28] *Id*, pp. 692-709.
[29] *Id*, pp. 798-801.
[30] *Id.*, pp. 810-813.
[31] *Id.*, pp. 872-875.

Considering the filing of petitioner's Memorandum[32] on 19 November 2019, and respondent's Memorandum [33] on 15 November 2019, the case was submitted for decision on 4 December 2019.[34]

On 6 October 2020, the Court in Division promulgated its Decision [35] denying petitioner's Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing, the Petition for Review filed on May 18, 2018 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner received the Decision on 13 October 2020.[36]

On 28 October 2020, petitioner filed a Motion for Reconsideration.[37] Respondent failed to file his comment on the Motion.[38] On 8 February 2021, the Motion for Reconsideration was deemed submitted for resolution.[39]

On 31 May 2021, the Motion for Reconsideration was denied by the Court in Division.[40] The dispositive portion of the Resolution reads:

> **WHEREFORE**, premises considered, petitioner's "Motion for Reconsideration" filed on October 28, 2020, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 22 June 2021, petitioner filed the instant Petition before the CTA *En Banc*.[41]

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[32] *Id.*, pp. 885-925.
[33] *Id.*, pp. 876-884.
[34] *Id.*, p. 927.
[35] *Supra* at note 5.
[36] *Id.*, p. 932.
[37] Division Docket, Vol. II, pp. 1007-1019.
[38] *Id.*, p. 1335.
[39] *Id.*, p. 1342.
[40] *Id.*, pp. 1345-1356.
[41] *Supra* at note 1.

On 29 November 2021, the Court *En Banc* issued a Resolution ordering the respondent to file his comment on the Petition for Review within ten (10) days.[42]

On December 13, 2021, the Court *En Banc* received respondent's "Comment/Opposition Re: Petitioner's Petition for Review."[43]

On February 17, 2022, the case was submitted for decision.[44]

ISSUES

Petitioner forwards the main issue to be resolved by the Court *En Banc* as follows:

> WHETHER OR NOT THE HONORABLE CTA FIRST DIVISION ERRED IN FINDING THAT PETITIONER HAS NO EXCESS INPUT VAT AVAILABLE FOR REFUND.

PETITIONER'S ARGUMENTS

Petitioner posits that the Court in Division erred in ruling that Marubeni Corporation – Japan could not be considered a non-resident foreign corporation ("**NRFC**") because a company is registered with the Securities and Exchange Commission ("**SEC**") with the name Marubeni Corporation.[45] According to petitioner, such is merely the Philippine Branch Office of Marubeni Corporation – Japan,[46] and petitioner's transaction was with Marubeni Corporation – Japan.[47]

Petitioner likewise argues that the Court in Division was wrong in stating that it had insufficient input VAT, claiming that it had excess input VAT carried forward from previous periods,[48] which respondent never disputed.[49] Citing the Rules of Court and jurisprudence regarding burdens of proof and presumptions, the amount of excess input VAT carried forward from previous periods should be maintained according to petitioner.[50]

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[42] *Rollo*, pp. 190-191.
[43] *Rollo*, p. 192.
[44] *Rollo*, p. 202.
[45] Petition for Review, par. 47; *Rollo*, p. 11.
[46] *Id.*, par. 49; *Rollo*, p. 12.
[47] *Id.*, par. 50.
[48] *Id.*, par. 54.
[49] *Id.*, par. 55.
[50] *Id.*, pars. 57-66.

RESPONDENT'S ARGUMENTS

Respondent insists that he is correct in denying petitioner's claims for refund considering its alleged failure to submit certifications from government agencies that provided tax incentives for certain transactions, errors in recording its sales amount, and misalignment of figures in the invoices which did not indicate that the sales were subjected to VAT zero-rate.[51] Respondent further contends that the administrative claims for refund were filed beyond the two years after the close of the taxable quarter when the zero-rated sales were made.

THE RULING OF THE COURT *EN BANC*

The instant Petition is not impressed with merit.

The Court *En Banc* has jurisdiction over the instant Petition.

Before we proceed to the merits of the case, we shall first determine whether the Court *En Banc* has jurisdiction and whether the instant Petition was timely filed.

On 6 October 2020, the Court's First Division promulgated its Decision denying petitioner's Petition for Review.[52] The said Decision was received by petitioner on 13 October 2020.[53]

On 28 October 2020, petitioner filed a Motion for Reconsideration against the Decision within the period provided under Section 3(b), Rule 8[54] of RRCTA.

On 31 May 2021, the said Motion for Reconsideration was denied by the Court in Division through a Resolution,[55] which petitioner received through counsel on 7 June 2021.

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[51] Comment, par. 12; *Rollo*, p. 193.
[52] *Supra* at note 5.
[53] *Supra* at note 36.
[54] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[55] *Supra* at note 40.

The instant Petition was filed on 22 June 2021, likewise within the period provided under Section 3(b), Rule 8[56] of RRCTA.

Having settled that the Petition was timely filed, we likewise rule that the CTA *En Banc* has jurisdiction to take cognizance of this Petition under Section 2(a)(1), Rule 4[57] of RRCTA.

After a careful examination and consideration of the instant Petition for Review, it is noted that the main arguments raised in the Petition are mere reiterations of matters which have already been considered, weighed, and resolved in the assailed Decision and Resolution.

Nevertheless, this Court finds it necessary to recapitulate and further elucidate some points that have been discussed in the assailed Decision and Resolution.

The Court in Division correctly declared that petitioner is not entitled to its claim for refund.

We shall now determine whether the Court in Division erred in finding that petitioner has no excess input VAT, and corollary, whether petitioner is entitled to a refund of unutilized input VAT attributable to zero-rated sales.

Section 112(A) and (C) of the NIRC of 1997,[58] as amended, provides:

> *Section 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

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[56] *Supra* at note 54.
[57] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
[58] Provision quoted is the wording prior to the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which is not yet effective and applicable on the instant claim for refund.

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.

(B) ... ...

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

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

In the assailed Decision,[59] the Court in Division stated that to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the claimant must prove that:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period both at the administrative and judicial levels;
3. there must be zero-rated or effectively zero-rated sales;
4. input VAT were incurred or paid;
5. the input VAT due or paid were attributable to zero-rated sales or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

[59] Page 6, Decision promulgated on 6 October 2020, CTA Case No. 9838.

Comprehensively, as culled from jurisprudence, particularly *Commissioner of Internal Revenue vs. Toledo Power Co.*,[60] the requisites for claiming unutilized or excess input VAT under Section 112 of the NIRC of 1997, as amended, are as follows:

> As to the timeliness of the filing of the administrative and judicial claims:
>
> 1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[61]
>
> 2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;[62]
>
> With reference to the taxpayer's registration with the BIR:
>
> 3. the taxpayer is a VAT-registered person;[63]
>
> In relation to the taxpayer's output VAT:
>
> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[64]
>
> 5. for zero-rated sales under Sections 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 BSP rules and regulations;[65]
>
> As regards the taxpayer's input VAT being refunded:
>
> 6. the input taxes are not transitional input taxes;[66]
>
> 7. the input taxes are due or paid;[67]

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[60] G.R. Nos. 195175 & 199645, 10 August 2015, 766 SCRA 20-33.
[61] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and AT&T Communications Services Philippines, Inc., G.R. No. 182364, 3 August 2010.
[62] *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[63] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*

8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[68] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[69]

We discuss each requisite in *seriatim*.

First requisite: The administrative claims are filed with the BIR within two years after the close of the taxable quarter when the sales were made.

By way of reiteration, Section 112(A) of the NIRC of 1997, as amended,[70] provides:

> *Section 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: ... ... [*Emphasis and underscoring supplied.*]

Records show that petitioner's administrative claims for refund were timely filed on 29 December 2017. The relevant dates are presented below:

Period	Date of filing	Close of the quarter	Deadline of filing claim for refund
Third quarter (1 October 2015 to 31 December 2015)	22 January 2016	31 December 2015	31 December 2017

[68] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue. supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[69] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and AT&T Communications Services Philippines, Inc., *supra*.
[70] Provision quoted is the wording prior to the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which is not yet effective and applicable on the instant claim for refund.

Fourth quarter (1 January 2016 to 31 March 2016)	22 April 2016	31 March 2016	31 March 2018

Considering that the administrative claims for refund were filed within the two-year period prescribed under Section 112(A) of the NIRC of 1997, as amended, We rule that the administrative claims were timely filed.

Second requisite: The judicial claim is filed with the Court in Division within the mandatory 30-day period to appeal.

Section 112(C) of the NIRC[71] provides:

> *Section 112. Refunds or Tax Credits of Input Tax.* -
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. [*Emphasis and underscoring supplied.*]

The quoted provision has been the subject of numerous cases before the Supreme Court. Based on the foregoing, the CIR has 120 days from the date of submission of complete documents to rule on an administrative claim of a taxpayer. In case of denial of the claim for tax refund or credit, either in whole or in part, or if the CIR failed to act on an application within the prescribed period, the taxpayer shall file a judicial claim by filing an appeal before the CTA within 30 days from the receipt of the decision denying the claim or after the expiration the 120-day period. The 120-day period is mandatory and

[71] Provision quoted is the wording prior to the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which is not yet effective and applicable on the instant claim for refund.

jurisdictional.[72] Otherwise, non-observance of the period would warrant the dismissal of a petition filed before the CTA as it would not acquire jurisdiction over the claim.[73]

This Court finds that the judicial claim, *i.e.*, the Petition for Review before the Court in Division, was timely filed. Noting that the administrative claims for refund were filed on 29 December 2017, the BIR had 120 days, or until 28 April 2018 to decide on the claim. On 20 April 2018, petitioner received the BIR's denial of its administrative claims for refund.[74] Thus, it had thirty (30) days from 20 April 2018, or until 20 May 2018, to file a Petition for Review before the Court in Division. Petitioner has timely done so on 18 May 2018.

Third requisite: Petitioner is a VAT-registered taxpayer.

In determining whether petitioner is VAT-registered, reference may be made to its Certificate of Registration (BIR Form No. 2303).

A perusal of the petitioner's Certificate of Registration[75] indeed reveals that it is a VAT-registered taxpayer. As this is undisputed, we rule that the third requisite has been complied with.

Having settled that petitioner is a VAT-registered taxpayer, and its administrative and judicial claims have been timely filed, we now proceed to determine whether it is entitled to its claim for refund of unutilized input VAT attributable to zero-rated sales.

Fourth requisite: Petitioner is engaged in zero-rated or effectively zero-rated sales.

Petitioner reported total sales of ₱2,740,186,115.69, which included VAT zero-rated sales amounting to ₱742,641,360.36 for the third and fourth quarters of the FY ending 31 March 2016, broken down as follows:

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[72] *Hedcor Sibulan, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 202093, 15 September 2021.
[73] *Commissioner of Internal Revenue vs. Aichi Forging Co. of Asia, Inc.*, G.R. No. 184823, 6 October 2010, 646 SCRA 710-732.
[74] Par. 39, Statement of Facts and Antecedent Proceedings, Petition for Review, CTA Docket, Vol. I, p. 19; Admitted in par. 2 of respondent's Answer, CTA Docket, Vol. I, p. 219.
[75] *Id.*, p. 119.

	3rd Quarter	4th quarter	Total
VATable sales	₱971,182,118.47	₱1,016,822,856.25	₱1,988,004,974.72
Sales to government	2,491,611.11	7,048,169.50	9,539,780.61
Zero-rated sales or receipts	396,978,672.96	345,662,687.40	742,641,360.36
Exempt sales or receipts	-	-	-
Total	₱1,370,652,402.54	₱1,369,533,713.15	₱2,740,186,115.69

It claimed that its zero-rated sales include sale of goods and services to entities registered with the Philippine Economic Zone Authority ("**PEZA**"), Subic Bay Metropolitan Authority ("**SBMA**"), Clark Development Authority ("**CDA**"), [76] Cagayan Economic Zone Authority ("**CEZA**"), Clark Development Corporation ("**CDC**"), and Board of Investments ("**BOI**").[77] It likewise claimed that part of its zero-rated sales pertain to indent commissions received from NRFCs which are subject to zero-rate under Section 108(B)(2) of the NIRC of 1997, as amended.[78]

Zero-rated sales of goods are enumerated under Section 106(A)(2) of the NIRC of 1997, as amended, while zero-rated sales of services are enumerated under Section 108(B) of the same law.

Sales of goods and services by a VAT-registered taxpayer, such as petitioner, to entities located in the Ecozones, as well as, to BOI-registered entities whose products are 100% exported, are considered *"export sales"* subject to zero (0%) VAT rate pursuant to Sections 106(A)(2)(a)(3), (5) and (c) and 108(B)(3) of the NIRC of 1997, as amended, and as implemented by Sections 4.106-5 and 4.108.5 of Revenue Regulations ("**RR**") No. 16-2005,[79] as amended.[80]

In the proceedings with the Court in Division, petitioner's zero-rated sales of goods and services for the period of claim amounting to **₱143,066,770.58** were disallowed based on the findings and exceptions noted by the Court-commissioned Independent Certified Public Accountant ("**ICPA**"). [81] In addition, the Court in Division disallowed petitioner's zero-rated

[76] Properly called as the Clark Development Corporation ("CDC").
[77] Par. 33, pages 8 to 9, Petition for Review, CTA EB Case No. 2485 (CTA Case No. 9838); Pages 8 to 18, Decision promulgated on 6 October 2020, CTA Case No. 9838.
[78] Par. 34, page 9, *id;* Pages 18 to 21, *id.*
[79] Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.
[80] Page 14, Decision promulgated on 6 October 2020, CTA Case No. 9838.
[81] Pages 23 to 24, *id.*

sales amounting to **₱41,377,407.15**[82] for failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005. The Court in Division further disallowed its sales of services to Marubeni Corporation and Hyundai Corporation in the total amount of **₱108,557,506.98**[83] for failure to qualify as zero-rated sales of services under Section 108(B)(2) of the NIRC of 1997, as amended, *viz.:*

Customers	**3rd Quarter**	**4th Quarter**	**Total**
Marubeni Corporation	₱66,920,636.01	₱40,768,097.86	₱107,688,733.87
Hyundai Corporation	-	868,773.11	868,773.11
Total	**₱66,920,636.01**	**₱41,636,870.97**	**₱108,557,506.98**

Accordingly, out of the reported zero-rated sales of ₱742,641,360.36, only the amount of ₱449,639,675.65 was considered as valid zero-rated sales for the third and fourth quarters of FY ending March 31, 2016. The computation is presented in the assailed Decision[84] as follows:

	3rd Quarter	**4th Quarter**	**Total**
Total reported zero-rated sales or receipts	₱396,978,672.96	₱345,662,687.40	₱742,641,360.36
Less: Disallowed zero-rated sales			
Per ICPA Report	76,267,086.04	66,799,684.54	143,066,770.58
Per Court's Verification, due to:			
Non-compliance with invoicing requirements	21,575,906.83	19,801,500.32	41,377,407.15
Failure to qualify as sales of services to NRFCs	66,920,636.01	41,636,870.97	108,557,506.98
Allowed zero-rated Sales	**₱232,215,044.08**	**₱217,424,631.57**	**₱449,639,675.65**

In the instant case, petitioner claims that Marubeni Corporation-Japan should be considered an NRFC and its sale of services amounting to ₱107,688,733.87 should be allowed VAT zero-rating.[85] It did not dispute the Court in Division's disallowance of the sales of services to Hyundai Corporation and Daewoo International Corporation as zero-rated sales.

Petitioner contends that the Court in Division maintained its ruling that Marubeni Corporation–Japan could not be considered an NRFC because there is a company registered with the SEC with the name Marubeni Corporation;[86] that Marubeni

[82] Pages 24 to 37, *id.*
[83] Pages 18 to 21, *id.*
[84] Page 38, *id.*
[85] Petition for Review, par. 52; *Rollo*, page 13.
[86] Petition for Review, par. 47; *Rollo*, page 11.

Corporation is merely the Philippine Branch Office of Marubeni Corporation-Japan; [87] that Marubeni Corporation-Japan cannot just simply be considered a resident foreign corporation because of the mere existence of its branch office in the Philippines.[88]

Petitioner further contends that following the spirit of the Supreme Court ruling in *Marubeni Corp. vs. Commissioner of Internal Revenue* (*Marubeni*),[89] the Court in Division erred in ruling that Marubeni Corporation-Japan is not considered an NRFC relative to petitioner's transactions directly with the Head Office of Marubeni Corporation in Japan, which did not involve Marubeni's branch office in the Philippines.[90]

We are not convinced.

Under Section 108(B)(2) of the NIRC of 1997, as amended, the following essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), to wit:

> 1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[91]
>
> 2. The payment for such services were made in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules;[92]
>
> 3. The services fall under any of the categories under Section 108 (B) (2),[93] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[94] and,

[87] *Id.*, par. 49; *Rollo*, page 12.
[88] *Id.*, par. 51.
[89] G.R. No. 76573, 14 September 1989, 258 SCRA 295-308.
[90] *Id.*, par. 49; Rollo, page 12.
[91] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, 8 February 2017.
[92] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205,
22 January 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, 29 June 2005.
[93] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*
[94] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.*

4. The services must be performed in the Philippines by a VAT-registered person.[95]

To be considered as an NRFC doing business outside the Philippines, each entity must be supported, at the very least, by **both**: (1) a SEC Certification of Non-Registration of Corporation /Partnership; **and** (2) proof of registration/incorporation in a foreign country, *i.e.*, an Articles of Foreign Incorporation/Association or printed screenshots of the US Securities and Exchange Commission (SEC) Website showing the state/province/country where the entity was organized.[96] The first document proves that the entity is not doing business in the Philippines, while the latter document shows that the entity is doing business outside the Philippines. Taken together, the said documents establish that the entity is an NRFC not engaged in business in the Philippines.[97]

In the case of *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.*,[98] the Supreme Court said:

> The Court accords the CTA's factual findings with utmost respect, if not finality, because the Court recognizes that it has necessarily developed an expertise on tax matters. Significantly, both the CTA Division and CTA *En Banc* gave credence to the aforementioned documents as sufficient proof of NRFC 69 status. The Court shall not disturb its findings without any showing of grave abuse of discretion considering that the members of the tax court are in the best position to analyze the documents presented by the parties.
>
> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court a quo's findings. To the Court's mind, the SEC Certifications of Non-Registration show that these affiliates [clients] are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates [clients] are registered to operate in their respective home countries, outside the Philippines are prima facie evidence that their clients are not engaged in trade or business in the Philippines.

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[95] Sec. 108 (B), NIRC of 1997, as amended.
[96] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippines ROHQ*, CTA EB No. 2015, 29 November 2019.
[97] Resolution, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9453, March 16, 2022.
[98] G.R. No. 234445, 15 July 2020.

In this case, records reveal that petitioner submitted a SEC Certificate of Non-Registration of Company attesting that the SEC records do not show the registration of **Marubeni Corporation-Japan** as a corporation or as a partnership. However, petitioner failed to present proof of registration or foreign incorporation of **Marubeni Corporation-Japan.**

The SEC Certificate explicitly states:

> THIS IS TO CERTIFY that the records of this Commission do not show the registration of **Marubeni Corporation-Japan** as a corporation or as a partnership. However, the registered company name similar to said entity is **Marubeni Corporation** (SEC Reg. No. F000000493).

As to **Marubeni Corporation**, while petitioner was able to submit proof of its foreign incorporation, it failed to present Marubeni Corporation's SEC Certificate of Non-Registration. On the contrary, and as quoted above, the SEC Certificate provides that there exists a company Marubeni Corporation.

Based on the foregoing legal and jurisprudential pronouncements, neither **Marubeni Corporation-Japan** nor **Marubeni Corporation** can be considered as NRFC doing business outside the Philippines. Thus, the indent commissions earned and received by the petitioner from either of them, failed to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

Petitioner invokes the *Marubeni* case in arguing that for VAT refund purposes, a foreign corporation, albeit maintaining a branch office in the Philippines, may be considered as an NRFC if transactions are done directly with the foreign corporation and independently of its Philippine branch.

In *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue,*[99] which also involved herein parties, We categorically held that a foreign corporation is deemed to be doing business in the Philippines **through its branch office**; thus, the services rendered to it would not qualify for VAT zero-rating, *viz.:*

> The *Marubeni case* involved Marubeni Corporation's claim or refund or issuance of a tax credit in the amount of P229,424.40 representing profit tax remittance erroneously paid on the dividends remitted by Atlantic Gulf and Pacific Co.

[99] Resolution, CTA EB Case No. 2282 (CTA Case No. 9598), March 18, 2022.

of Manila (AG&P) to Marubeni Corporation. The issue therein was whether or not the dividends received by Marubeni Corporation from AG&P are effectively connected with its conduct of business in the Philippines (through its Philippine branch) as to be considered branch profits subject to the 15% branch profit remittance tax.

The Supreme Court ruled that income derived by a foreign corporation directly and independently of its branch office in the Philippines cannot be attributed to the branch office. Though Marubeni Corporation has a Philippine branch, **the latter had no participation whatsoever in the investment that was made by Marubeni Corporation in AG&P of Manila**. Hence, the Philippine-sourced income derived through the payment of dividends by AG&P of Manila to Marubeni Corporation shall be considered as income of Marubeni Corporation and shall not be attributed to its Philippine branch.

Petitioner's reliance on the *Marubeni case* is misplaced.

The Marubeni case involves **income derived by a foreign corporation from its investment in the Philippines while the present case involves sales made by petitioner to a foreign corporation which is found to be doing business in the Philippines.**

The *Marubeni case* enunciated the doctrine that the Philippine branch of a foreign corporation possesses a separate and distinct personality from that of its head office **for income tax purposes**. Thus, when a foreign corporation transacts business in the Philippines **independently** of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, and not of its Philippine branch. For **income tax purposes**, the taxpayer is the foreign corporation, not the branch of the resident foreign corporation.

In a claim for refund of input VAT attributable to zero-rated sales, however, Section 108 (B) (2) of the NIRC of 1997, as amended, is explicit that in order for a sale of services to be considered as zero-rated, the recipient of the services must be a foreign corporation engaged in business outside of the Philippine or a non-resident person not engaged in business who is outside the Philippines when the services were performed.

For VAT purposes, sales to a foreign corporation that maintains a branch office in the Philippines, **regardless of the latter's participation in the transaction**, would suffice to remove the transaction within the ambit of Section 108 (B) (2) of the NIRC of 1997, as amended. **The foreign corporation is deemed to be doing business in the Philippines through its**

> **branch office, thus, the services rendered to it would not qualify for VAT zero-rating.** [*Emphasis and underscoring supplied.*]

Accordingly, a foreign corporation with a branch office is deemed to be doing business in the Philippines. It cannot be classified as a non-resident foreign corporation for purposes of taxation. The NIRC of 1997, as amended, is clear in defining a non-resident foreign corporation as "a foreign corporation not engaged in trade or business within the Philippines."[100]

Further elucidating the phrase "engaged in trade or business within the Philippines" is the pronouncement of the Supreme Court in the landmark case of *Commissioner of Internal Revenue vs. British Overseas Airways Corp.*,[101] *viz.*:

> There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. **The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization.** "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, **such as the appointment of a local agent, and not one of a temporary character.**" [*Emphasis and underscoring supplied.*]

Marubeni Corporation's establishment of a Philippine Branch Office, which petitioner admitted, [102] evinces "a continuity of commercial dealings and arrangements." Indubitably, petitioner's claim that Marubeni Corporation or Marubeni Corporation-Japan should be considered an NRFC doing business outside of the Philippines is bereft of merit.

Hence, petitioner's sale of services to Marubeni Corporation or Marubeni Corporation-Japan in the total amount of ₱107,688,733.87 failed to satisfy the requirement for VAT zero-rating under Section 108 (B)(2) of the NIRC of 1997, as amended.

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[100] Section 22(I), NIRC of 1997, as amended.
[101] G.R. Nos. L-65773-74, 30 April 1987, 233 SCRA 406-438 cited in *Sitel Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 201326, 8 February 2017, 805 SCRA 464-488.
[102] Petition for Review, par. 49.

As the ruling of the Court in Division pertaining to other disallowed zero-rated sales is undisputed, this Court need not belabor to discuss them.

Thus, We agree with the conclusion reached by the Court in Division that out of the reported zero-rated sales of **₱742,641,360.36**, only the amount of **₱449,639,675.65** is considered as valid zero-rated sales for the third and fourth quarters of FY ending March 31, 2016.

We quote, with approval, the pertinent ruling of the Court in Division, *viz.*:

> The Court finds the observations of the ICPA to be in order and adopts the above findings insofar as the denial of VAT zero-rating in the amount of **₱143,066,770.58** is concerned.
>
> Upon further evaluation, the Court additionally finds that the reported zero-rated sales in the amount of **₱41,377,407.15** should also be denied VAT zero-rating for petitioner's failure to comply with the invoicing requirements under the NIRC of 1997, as amended, and RR No. 16-2005, ...
>
> Thus, the total disallowances in petitioner's reported total zero-rated sales as per the Court's verification are as follows:

Disallowances per Court's further verification	**3rd Quarter**	**4th Quarter**	**Total**
Sale of services to non-resident client not qualified for VAT zero-rating under Sec. 108 (B) (2) of the NIRC of 1997, as amended	₱66,920,636.01	₱41,636,870.97	₱108,557,506.98
Sale of goods supported by VAT invoices but with unreadable details (date, payor details, or amount)	21,410,374.83	19,776,948.32	41,187,323.15
Sale of goods supported by incomplete documents	165,532.00	-	165,532.00

Disallowances per Court's further verification	**3rd Quarter**	**4th Quarter**	**Total**
Sale of goods to entity without BOI certification	-	24,552.00	24,552.00
Total disallowances per Court's verification	**₱88,496,542.84**	**₱61,438,371.29**	**₱149,934,914.13**

In sum, out of the reported zero-rated sales of ₱742,641,360.36, only the amount of ₱449,639,675.65 shall be considered as valid zero-rated sales for the third and fourth quarters of FY ending March 31, 2016, detailed below:

	3rd Quarter	**4th Quarter**	**Total**
Total Reported Zero-rated Sales	₱396,978,672.96	₱345,662,687.40	₱742,641,360.36
Less: Sales denied of VAT zero-rating			
Per ICPA Report	76,267,086.04	66,799,684.54	143,066,770.58
Per Court's further verification	88,496,542.84	61,438,371.29	149,934,914.13
Valid Zero-rated Sales	**₱232,215,044.08**	**₱217,424,631.57**	**₱449,639,675.65**

Fifth requisite: Petitioner's zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B) (1) and (2), were paid for in acceptable foreign currency exchange proceeds and have been duly accounted for under BSP rules and regulations.

We likewise rule that petitioner is compliant with this requisite.

Other than those zero-rated sales which were disallowed for issues mentioned above, there are no exceptions noted by the commissioned ICPA nor issues raised in the assailed Decision and Resolution about payments in foreign currency exchange in the remaining allowed zero-rated sales. Further, petitioner submitted bank certificates of inward remittances as part of its evidence.[103]

[103] Exhibit P-98-b; page 20, Decision promulgated on 6 October 2020, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9838.

Sixth requisite: Petitioner's input taxes are not transitional.

Section 111(A) of the NIRC of 1997, as amended, provides:

> *Section 111. Transitional/Presumptive Input Tax Credits.* —
>
> (A) Transitional Input Tax Credits. — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

Transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials, and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[104]

A perusal of petitioner's filed VAT returns for the third and fourth quarters of the FY ending 31 March 2016 reveals that petitioner claimed no transitional input taxes. There is likewise no indication to this Court that the taxpayer is a newly VAT-registered person entitled to claim the transitional input tax credit.

Thus, We rule that the sixth requisite, *i.e.*, that petitioner's input taxes are not transitional, has been complied with.

Seventh requisite: There are creditable input taxes that are due or paid.

As stated in the assailed Decision, for the third and fourth quarters of FY ending 31 March 2016, petitioner declared allowable input VAT for ₱172,726,014.12 arising from its amortization of input VAT on purchases of capital goods

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[104] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, 2 April 2008.

exceeding ₱1 million, domestic purchases and importation of goods other than capital goods, and domestic purchases of services,[105] broken down as follows:

For the 3rd quarter - ₱ 65,308,243.64
For the 4th quarter - ₱ 107,417,770.48

Out of the input VAT amounting to ₱172,726,014.12, input taxes in the total amount of ₱69,360,496.12 are considered allocable between 12% VATable sales and zero-rated sales. Upon examination of the documents, the ICPA noted exceptions in the total amount of ₱64,132,726.65, which the Court in Division disallowed as input tax for allocation for failure to meet the substantiation and invoicing requirements under Sections 110 (A), 113 (A) and (B), and 237 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-2, 4.110-8, and 4.113-1 of RR No. 16-2005, as amended.[106]

Upon further verification, the Court in Division also disallowed the total amount of ₱2,156,947.65 due to non-compliance with the invoicing requirements and variance in input VAT claimed.[107]

Given the foregoing disallowances, the Court in Division ruled in the assailed Decision that petitioner's total valid input VAT for allocation is ₱3,070,821.82,[108] *viz.*:

	3rd Quarter	4th Quarter	Total
Total Common Input Tax for Allocation	**₱31,205,691.64**	**₱38,154,804.48**	**₱69,360,496.12**
Less:			
Disallowances per ICPA Exceptions	29,109,871.90	35,022,854.75	64,132,726.65
Disallowances per Court's further verification	976,816.92	1,180,130.73	2,166,947.65
Total Valid Common Input Tax for Allocation	**₱1,119,002.82**	**₱1,951,819.00**	**₱3,070,821.82**

[105] Pages 38 to 39, Decision promulgated on 6 October 2020, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9838.
[106] Pages 41 to 43, *id.*
[107] Pages 43 to 70, *id.*
[108] Pages 70 to 71, *id.*

However, upon re-examination of the evidence, the Court in Division reconsidered and allowed input tax amounting to ₱45,075,149.00 which was disallowed due to non-submission of certification from the authorized agent bank (**"AAB"**) as to payment of customs duties and taxes.[109]

As a result, petitioner's total valid input VAT subject to allocation had been increased from ₱3,070,821.82 to ₱48,145,970.82.

We quote the pertinent ruling of the Court in Division in the assailed Resolution:[110]

> As stated in the assailed Decision, the Court, upon verification, disallowed the following items even though they were included by the ICPA in the computation of the valid allocable common input tax of petitioner, as follows:

	3rd Quarter	**4th Quarter**	**Total**
Supported by IEIRDs/SADs and SSDTs and traced to E2M schedule [but with no Certification from authorized agent bank (AAB) as to payment of taxes]	22,141,311.00	22,933,838.00	45,075,149.00
Supported by IEIRDs/SADs and traced to E2M schedule [but with no SSDT and Certification from AAB]	6,471.00	-	6,471.00
Supported by IEIRDs/SAD, and SSDT and traced to E2M but dated in the prior quarters falling in the same taxable year	2,742,780.00	2,501,314.00	5,244,094.00
Domestic purchase of goods properly supported by VAT Invoice/purchase of services properly supported by VAT OR, that are issued in the name of the Petitioner with the Petitioner's complete TIN, address, business style, and with valid ATP but are dated in the prior quarter falling in the same taxable year	51,614.76	40,478.93	92,093.69
Domestic purchase of goods properly supported by VAT Invoice/purchase of services properly supported by VAT OR, that are issued in the name of the Petitioner	820,151.67	1,389,727.51	2,209,879.18

[109] Page 9, Resolution promulgated on 31 May 2021, *Maxim Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9838.
[110] Pages 8 to10, *id.*

> with the Petitioner's complete TIN, address, and with valid ATP but without business style
>
> Upon re-examination of the evidence, the Court shall, however, reconsider and allow input taxes amounting to ₱45,075,149.00 which were previously disallowed for being "[s]upported by IERDs/SADs and SSDTs and traced to E2M schedule [but with no Certification from authorized agent bank (AAB) as to payment of taxes]."
>
> The presentation of a certification from an authorized agent bank (AAB) is not indispensable to prove the payment of taxes. Customs Administrative Order (CAO) No. 10-2008[111] dated November 12, 2008, has discontinued the practice of having to present the Import Entry and Internal Revenue Declaration (IEIRD)/ Single Administrative Document (SAD) to AABs for machine validation. Under the electronic-to-mobile (e2m) customs system, the Bureau of Customs (BOC) issues the Statement of Settlement of Duties and Taxes (SSDT) to the importer for those with complete payment of customs duties and taxes. Thus, what is incumbent is that petitioner presents, at the very least, BOTH the: (1) IEIRD/SAD which must contain the necessary details and statements as required by law, rules and regulations, albeit sans machine validation by the AABs as will be discussed hereunder; and (2) SSDTs which show that the BOC has received the payment of customs duties and taxes through the AABs.
>
> In view of the foregoing, the adjusted valid input taxes of petitioner subject for allocation is **₱48,145,970.82**. ...[112]

We concur with the Court in Division in reconsidering and allowing input taxes amounting to ₱45,075,149.00. The ICPA noted that these are supported by Import Entry and Internal Revenue Declaration ("**IEIRD**")/ Single Administrative Document ("**SAD**") and traced to the Electronic to Mobile ("**E2M**") schedule,[113] which We rule to be sufficient proof of payment of input taxes.

Section 4.110-8 of RR No. 16-2005,[114] as amended, provides:

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[111] Subject: Payment Application Secure System Version 5.0 (PASS5) dated 12 November 2008.

[112] *Toyota Motor Philippine Corporation vs. Commissioner of Customs*, CTA Case No. 9250, 19 January 2021; *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, C.T.A. EB Case No. 2282 (C.T.A. Case No. 9598) (Resolution), 18 March 2022.

[113] Page 41, Decision promulgated on 6 October 2020, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9838.

[114] *Supra* at note 79.

> *Section 4.110-8. Substantiation of Input Tax Credits.* — (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents and must be reported in the information returns required to be submitted to the Bureau:
>
> (1) **For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods**. [*Emphasis and underscoring supplied.*]

Further, as cited by the Supreme Court in *Taganito Mining Corp. vs. Commissioner of Internal Revenue,* [115] Customs Administrative Order No. 2-95 provides:

> 2.3 **The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected**. In lieu thereof, the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official:
>
> 2.3.1 **Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes**. [*Emphasis and underscoring supplied.*]

We note, however, that the input VAT available for allocation between 12% VATable sales and zero-rated sales before the disallowances should be ₱69,294,413.47, and not ₱69,360,496.12, broken down in the assailed Decision [116] as follows:

	3rd Quarter	4th Quarter	Total
Total current input tax for the current quarter	₱65,308,243.64	₱107,417,770.48	₱172,726,014.12
Less:			
Input tax directly attributable to VATable sale of machineries from current purchases	9,407,909.06	35,626,985.17	45,034,894.23
Input tax directly attributable to government sales from current purchases	**8,230.31**	**57,852.34**	**66,082.65**
Input tax directly attributable on current purchases not sold within the quarter	23,719,153.52	31,823,307.34	55,542,460.86
Input tax directly attributable to zero-rated sales of machineries from current purchases	975,489.41	1,812,673.50	2,788,162.91

[115] G.R. No. 201195, 26 November 2014, 748 SCRA 774-789

[116] Page 39, Decision promulgated on 6 October 2020, *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9838.

Current input tax available for allocation	₱31,197,461.34	₱38,096,952.13	₱69,294,413.47

Accordingly, the difference between ₱69,294,413.47 and ₱69,360,496.12 in the amount of ₱66,082.65 represents the input tax directly attributable to government sales from current purchases that the Court in Division omitted to deduct.

Section 4.110-4 of RR No. 16-2005,[117] as amended, provides:

> Section 4.110-4. Apportionment of Input Tax on Mixed Transactions.— A VAT-register~d person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> 1. All the input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; Provided, that **input taxes that can be directly attributable to VAT taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes** arising from sales to non-Government entities. [*Emphasis and underscoring supplied.*]

Thus, petitioner's adjusted valid input tax subject for allocation would now be **₱48,079,888.17**, *viz.*:

	3rd Quarter	**4th Quarter**	**Total**
Total valid common input tax for allocation based on the Court in Division's Decision dated 6 October 2020	₱ 1,119,002 82	₱ 1,951,819.00	₱ 3,070,821.82
Add: Input tax reconsidered in the Court in Division's Resolution dated 31 May 2021	22,141,311.00	22,933,838.00	45,075,149.00
Less: Adjustment noted by the Court *En Banc* in this Decision (Input tax directly attributable to government sales)	(8,230.31)	(57,852.34)	(66,082.65)
Total Valid Common Input Tax for Allocation	**₱23,252,083.51**	**₱24,827,804.66**	**₱48,079,888.17**

[117] *Supra* at note 79.

Eighth requisite: Petitioner's input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

Under Section 112 of the NIRC of 1997, as amended, only input VAT attributable to zero-rated sales may be the proper subject of refund. If the taxpayer is engaged in transactions subject to the regular and zero rates of VAT, Section 4.112-1 of RR No. 16-2005[118] provides guidance, to wit:

> Where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and taxable (including sales subject to final withholding VAT) or exempt sales of goods, 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, only the proportionate share of input taxes allocated to zero-rated or effectively zero-rated sales can be claimed for refund or issuance of a tax credit certificate.

This is a similar mechanism found in Section 4.110-4 of the same regulation, which provides that "if any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for the input tax credit."

Considering the disallowances and the omission mentioned in this Court's discussion of the seventh requisite, the adjusted allocable input VAT of the petitioner is **₱48,079,888.17.**

The input VAT is then allocated as follows:

	3rd Quarter	4th Quarter	Total
Input VAT available for allocation	₱23,252,083.51	₱24,827,804.66	₱48,079,888.17
Multiply by: 12% VAT-subject sales per amended return	971,182,118.47	1,016,822,856.25	1,988,004,974.72
Divided by: Total sales	1,370,652,402.54	1,369,533,713.15	2,740,186,115.69
Input VAT allocated to 12% VAT-subject sales	₱16,475,371.64	18,433,631.84	₱34,909,003.48

	3rd Quarter	4th Quarter	Total
Valid input VAT for allocation	₱23,252,083.51	₱24,827,804.66	₱48,079,888.17
Multiply by: Zero-rated sales per amended return	396,978,672.96	345,662,687.40	742,641,360.36

[118] *Id.*

Divided by: Total sales	1,370,652,402.54	1,369,533,713.15	2,740,186,115.69
Input VAT allocated to zero-rated sales	₱6,734,443.57	₱6,266,399.72	₱13,000,843.29

	3rd Quarter	4th Quarter	Total
Input VAT allocated to 12% VAT-subject sales	₱23,252,083.51	₱24,827,804.66	₱48,079,888.17
Multiply by: Sales to government per amended return	2,491,611.11	7,048,169.50	9,539,780.61
Divided by: Total sales	1,370,652,402.54	1,369,533,713.15	2,740,186,115.69
Input VAT allocated to government sales	₱42,268.30	₱127,773.84	₱170,042.14

In sum, the amount of **₱48,079,888.17** is allocated as follows:

For 12% VAT-subject sales-	₱34,909,003.48
For zero-rated sales -	13,000,843.29
For government sales -	170,042.14

We now proceed to consider the input VAT amounts that are directly attributable to zero-rated sales.

This Court cannot consider the input tax directly attributable to zero-rated sales of machinery and spare parts which were imported in prior years but sold during the third and fourth quarters of the FY ending 31 March 2016 amounting to ₱3,944,928.22 and ₱6,873,408.21 respectively, as the records are bereft of any proof as to their substantiation. No returns were likewise presented to show whether these amounts were reflected in the petitioner's VAT returns for prior quarters. As such, this Court is constrained to disallow such.

However, in relation to petitioner's input tax directly attributable to zero-rated sales of machinery from current purchases of the third and fourth quarter of the FY ending 31 March 2016 amounting to ₱3,944,928.22 and ₱6,873,408.21, respectively, this Court finds the above amounts to be valid as the Court in Division and the ICPA found no exceptions to such.

With the above findings, We finally compute the valid input VAT which can be attributed to petitioner's zero-rated sales:

	3rd Quarter	4th Quarter	Total
Common input VAT allocated to zero-rated sales	₱6,734,443.57	₱6,266,399.97	₱13,000,843.54
Add: Input tax directly attributable to zero-	975,489.41	1,812,673.50	2,788,162.91

	3rd Quarter	4th Quarter	Total
machineries from current purchases			
Total allowable input VAT attributable to zero-rated sales	₱7,709,932.98	₱8,079,073.47	₱15,789,006.45

We likewise compute the valid input VAT which can be attributed to 12% VAT-subject sales:

	3rd Quarter	4th Quarter	Total
Common input VAT allocated to 12% VAT-subject sales	₱16,475,371.65	₱18,433,631.84	₱34,909,003.48
Add: Input tax directly attributable to 12% VAT-subject sales of machineries from current purchases	9,407,909.06	35,626,985.17	45,034,894.23
Total allowable input VAT attributable to 12% VAT-subject sales	₱25,883,280.71	₱54,060,617.01	₱79,943,897.71

Accordingly, this Court finds that petitioner's adjusted input VAT attributable to zero-rated sales for the third and fourth quarters of the FY ending 31 March 2016 amounted to **₱15,789,006.45.**

<u>Ninth requisite: Petitioner's input tax has not been applied against its output VAT.</u>

Section 110(B) of the NIRC of 1997, as amended, provides the mechanism of offsetting output VAT against input VAT, *viz*:

> (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.

As indicated above, it is the excess of the input tax/VAT attributable to zero-rated sales by a VAT-registered taxpayer that may be refunded or credited.

The bone of contention in the instant Petition is the ninth requisite. To reiterate, the Court in Division, although finding that petitioner has creditable input VAT attributable to zero-rated sales, ruled that such input VAT is insufficient to cover petitioner's output VAT.

Petitioner's amended VAT returns for the third and fourth quarters of the FY ending 31 March 2016 [119] reveal an overpayment of ₱280,743,831.43 and ₱209,050,901.11, respectively.

First, We make a re-computation of the petitioner's output VAT liability solely for the purpose of determining petitioner's entitlement to its claims for refund.

As discussed above, the purported sale to NRFCs amounting to ₱72,766,922.19 and ₱41,636,870.97 for the third and fourth quarters of the FY ending 31 March 2016, respectively, or the total amount of ₱114,403,793.16, could not qualify as zero-rated sales for failure to prove that the purchasers of services are indeed NRFCs.

	3rd Quarter	**4th Quarter**	**Total**
Marubeni Corporation	₱66,920,636.01	₱40,768,097.86	₱107,688,733.87
Hyundai Corporation	-	868,773.11	868,773.11
Daewoo International Corporation	5,846,286.18	-	5,846,286.18
	₱72,766,922.19	₱41,636,870.97	₱114,403,793.16

As such, these sales should give rise to output VAT liability. The computation for the additional output VAT liability is presented below:

	3rd Quarter	**4th Quarter**	**Total**
Regular VAT-subject sale to alleged NRFCs	₱72,766,922.19	₱41,636,870.97	₱114,403,793.16
Multiply by: VAT rate	12%	12%	12%
Additional output VAT	₱8,732,030.66	₱4,996,424.52	₱13,728,455.18

With the additional output VAT, We compute the adjusted output VAT of the petitioner to be ₱125,572,878.21 and ₱127,860,947.61 for the third and fourth quarters of the FY

[119] *Supra* at notes 12 and 13.

ending 31 March 2016, respectively, or the total amount of ₱ 253,433,825.82, *viz.*:

	3rd Quarter	4th Quarter	Total
15B - Output VAT from VATable sales/receipts – Private	₱116,541,854.22	₱122,018,742.75	₱238,560,596.97
16B - Output VAT on sale to government	298,993.33	845,780.34	1,144,773.67
Additional output VAT liability	8,732,030.66	4,996,424.52	13,728,455.18
Adjusted output VAT	₱125,572,878.21	₱127,860,947.61	₱253,433,825.82

Second, We proceed to determine whether the amount of input VAT is sufficient to cover the output VAT as computed by this Court.

We note that a substantial portion of the alleged overpayments by petitioner can be traced from "Item 20A Input Tax Carried Over from Previous Quarter", which amounted to ₱435,817,931.49 on the third quarter amended VAT return and ₱280,743,831.43 on the fourth quarter amended VAT return.

Unfortunately for petitioner, the prior quarter returns, *i.e.*, first and second quarter returns for the FY ending 31 March 2016 and other prior year VAT returns, were not presented for perusal and examination by the Court. Petitioner likewise failed to present the VAT invoices or official receipts mandated under Section 110 (A) (1) and (B) of the NIRC of 1997, as amended, to substantiate the carry-over of excess input VAT from previous periods.

While respondent has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer-claimant, like petitioner, must still present substantial evidence to prove its claim for refund. As we have said, there is no automatic grant of a tax refund.[120] Petitioner must prove every minute aspect of its case required for the successful prosecution of its claim, for cases before this Court is litigated *de novo.*[121]

For failure to prove the validity of petitioner's Input Tax Carried Over from Previous Quarter, We cannot consider such

[120] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company*, G.R. No. 173854, 15 March 2010, 629 SCRA 405-418.
[121] *Wellform Trading Corp. vs. Commissioner of Internal Revenue*, G.R. No. 252424 (Notice), 27 July 2020, citing *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, 10 April 2019; *Commissioner of Internal Revenue vs. Philippine National Bank*, 744 Phil. 299-312 (2014)

in our computation of whether the taxpayer has not applied the computed valid input VAT against output VAT.

This Court is well aware that petitioner has instituted claims of refund of input VAT on previous quarters, and thus, petitioner may have submitted its prior quarter returns before this Court. However, courts do not take judicial notice of the contents of records in other cases tried or pending in the same court, even when those cases were heard or are pending before the same judge or justice.[122]

Further, assuming that We can admit petitioner's prior quarter returns as evidence in this instant petition, this Court cannot place its blind reliance on the filed prior quarter returns. We note that this Court has repeatedly denied petitioner's Petition for Review involving claims for refund of prior quarters which are based on petitioner's prior period returns.[123] Specifically, in *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue,*[124] We ruled that petitioner failed to fully substantiate its input tax carried over, which thus cannot be validly applied against petitioner's output tax.

Finally, the available input VAT shall be further diminished by the exceptions found by the ICPA, as reduced by the reversals made in relation to petitioner's submission of IEIRDs, and by the exceptions found by Court in Division.

On the basis of the evidence presented and solely for the purpose of determining petitioner's entitlement to refund of input VAT, the revised computation is shown below:

	3rd Quarter	**4th Quarter**	**Total**
Output tax due	₱125,572,878.21	₱127,860,947.61	₱253,433,825.82
Less: Allowable input tax			
Attributable to zero-rated sales	- 7,709,932.98	- 8,079,073.47	-15,789,006.45
Attributable to 12% VAT-subject sales	- 25,883,280.71	- 54,060,617.01	-79,943,897.71
VAT payable (Excess input VAT)	₱91,979,664.52	₱65,721,257.13	₱157,700,921.65

[122] *Calamba Steel Center Inc. vs. Commissioner of Internal Revenue*, G.R. No. 151857, 28 April 2005, 497 SCRA 23-40.
[123] *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 9499, 28 January 2020; *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 2054 (C.T.A. Case No. 9210) (Resolution), 23 September 2020; *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 9723, 3 December 2020; *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 9453, 30 June 2021; *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 9453 (Resolution), 16 March 2022; *Maxima Machineries, Inc. vs. Commissioner oj Internal Revenue*, C.T.A. EB Case No. 2282 (C.T.A. Case No. 9598) (Resolution), 18 March 2022.
[124] C.T.A. EB Case No. 2054 (C.T.A. Case No. 9210), 11 February 2020.

Although differing in computation, We are one with the this Court's First Division in ruling that petitioner is not entitled to a refund of input VAT. After our judicious and meticulous examination of the supporting documents and our careful re-computation of petitioner's VAT liability, We have determined that petitioner has no excess input VAT which will entitle it to a refund.

With petitioner failing to comply with the ninth requisite for the grant of the claim of refund of input VAT attributable to the zero-rated sale, this Court rules that the claim for refund at bar should not be granted, as there is nothing to refund at this point.

The Court may resolve issues not specifically raised by the Parties.

Petitioner likewise contends that this Court cannot rule on the validity of the input VAT carry-over from the previous period since the parties never raised it as an issue.

We disagree.

Under Section 1, Rule 14 of the RRCTA, this Court, whether sitting in Division or *En Banc*, is not precluded from ruling on issues not raised that are necessary for an orderly disposition of the case.

The Supreme Court, in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[125] affirmed the authority of this Court to rule on issues not raised by the parties under the mentioned section, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. ... ...
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope

[125] G.R. No. 183408, July 12, 2017.

> of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." [*Emphasis and underscoring supplied.*]

At this juncture, We deem it appropriate to call the attention of the petitioner regarding its claims for refund previously decided by the Court *En Banc* and the Court in Division.[126]

In CTA EB Case No. 2054,[127] We ruled that the Court in Division was correct in finding that petitioner has no excess input VAT which may be the subject of a claim for refund, even if this was not put in issue by the parties. In CTA EB Case No. 2282,[128] We ruled that the Court in Division committed no reversible errors in denying petitioner's claim for refund due to failure to comply with substantiation requirements on its importation and sale to NRFCs.

Frustratingly for petitioner, the denial of the refund claims involves the same issues which could have been addressed in subsequent cases, including the instant petition. Instead, petitioner, through its counsel appears to have obstinately clung to its legal theories, seemingly disregarding contrary discussions by this Court.

A lawyer owes his client the responsibility to study his case well by taking note of the latest applicable laws and jurisprudence which may aid him in defending his client. Failure to do so shows that a lawyer is remiss in his duty towards his client.[129] The legal profession dictates that it is not the mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal, and fervor in the protection of the client's interest.[130] An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence.[131] Unwavering loyalty displayed to a client also serves the ends of justice.[132] As such, consistent with its responsibility, it behooves counsel for petitioner to consider prior rulings of this

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[126] *Supra* at note 123.
[127] *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 2054 (C.T.A. Case No. 9210), 11 February 2020.
[128] *Maxima Machineries, Inc. vs. Commissioner of Internal Revenue*, C.T.A. EB Case No. 2282 (C.T.A. Case No. 9598), 29 June 2021.
[129] *Arquelada vs. Philippine Veterans Bank*, G.R. No. 139137, 31 March 2000, 385 SCRA 1200-1221
[130] *Celedonio vs. Estrabillo*, A.C. No. 10553, 5 July 2017, 813 SCRA 12-22.
[131] *Ford vs. Daitol*, A.C. No. 3736 (Resolution), 16 November 1995, 320 SCRA 53-59.
[132] *Bondoc vs. Datu*, A.C. No. 8903, 30 August 2017, 817 SCRA 299-308.

Court of the same nature to successfully support its client's claim for refund.

An applicant for tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by tax laws and regulations.[133] Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[134]

Considering all the foregoing, We see no compelling reason to depart from the ruling of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated October 6, 2020, and the Resolution dated May 31, 2021, of the Court's First Division in CTA Case No. 9838 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(With Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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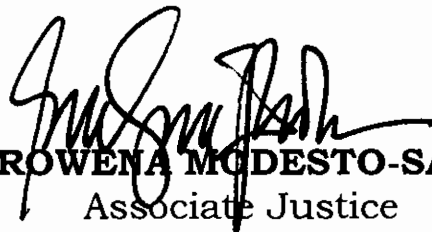
[133] *Philippine Gold Processing and Refining Corp. vs. Commissioner of Internal Revenue*, G.R. No. 222904 (Notice), July 15, 2020.
[134] *Commissioner of Internal Revenue vs. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, 12 February 2013, 703 SCRA 310-434

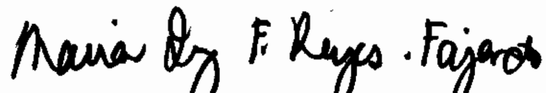
(With due respect, I join the Separate Opinion of the Presiding Justice)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the Separate Opinion of the Presiding Justice)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC., Petitioner,	**CTA EB NO. 2485** (CTA CASE NO. 9838)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, and **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 2 5 2022 10:05am

x - x

SEPARATE OPINION

***DEL ROSARIO, P.J.*:**

I concur in the *ponencia* in denying the instant Petition for Review for lack of merit, and affirming the assailed Decision dated October 6, 2020 and Resolution dated May 31, 2021, both rendered by the Court in Division.

However, I wish to clarify certain modifications to the computation of petitioner's refund claim made in the *ponencia*.

The ponencia disallowed additional input value-added tax (VAT) in the amount of ₱66,082.65 representing input VAT attributable to government sales from current purchases

The *ponencia* ruled to additionally disallow the amount of ₱66,082.65 representing input VAT directly attributable to government sales from current purchases.

Review of the evidence presented, however, does not show that such additional disallowance is merited. Although the amount of ₱66,082.65 was included in petitioner's computation for the common input VAT to zero-rated sales as alleged in its Petition for Review[1] and administrative claim filed before respondent,[2] this amount was not traced by the Court-commissioned Independent Certified Public Accountant (ICPA) from the evidence offered by petitioner.

It is the duty of the ICPA to "perform audit functions in accordance with the generally accepted accounting principles, rules and regulations", which includes the "[e]xamination and verification of receipts, invoices, vouchers and other long accounts" and "[m]aking findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence."[3]

Although the findings of the ICPA are not conclusive upon the Court,[4] such may be considered or given weight in determining the propriety of petitioner's refund claim.[5]

In the Report, the ICPA was able to trace the entire input taxes amounting to ₱172,726,014.32. But the ICPA was not able to identify which of the petitioner's input VAT were directly attributable to sales to government. Thus, there is no basis for the additional disallowance of ₱66,082.65.

The ponencia treated the disallowed zero-rated sales in the amount of ₱114,413,793.16 as VATable sales

In the assailed Decision, the Court in Division ruled that the total disallowed zero-rated sales amounted to ₱114,403,793.16 for failure of petitioner to prove that the purchasers of services were non-resident foreign corporations (NRFCs) pursuant to Section 108(B)(2) of the NIRC of 1997, as amended. The *ponencia* held that such sales

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[1] Petition for Review, CTA Docket, Vol. I, pp. 42-44
[2] Application for Refund/TCC, Exhibit "P-34", CTA Docket, Vol. I, pp. 52-88.
[3] Section 2, Rule 13, Revised Rules of the Court of Tax Appeals, as amended.
[4] Section 3, Rule 13, Revised Rules of the Court of Tax Appeals, as amended.
[5] *Davao City Water District vs. Commissioner of Internal Revenue*, CTA EB No. 1472 (CTA Case Nos. 8505 and 8575), February 27, 2018.

should be treated as VATable sales, thus incurring additional output VAT for petitioner in the total amount of ₱13,728,455.18.[6]

Section 113(D) of NIRC of 1997, as amended, provides for the instances when sales are considered to be VATable, *viz.*:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –
>
> x x x x x x x x x
>
> (D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt.-
>
> (1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word "VAT";
>
> (a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:
>
> (i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and
>
> (ii) A 50% surcharge under Section 248(B) of this Code;
>
> (b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.
>
> (2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT exempt sale,' the issuer shall be liable to account for the tax imposed in section 106 or 108 as if Section 109 did not apply."

There is nothing in the above-quoted provision of the law which states that disallowed zero-rated sales due to non-compliance with the requisites under Section 108(B)(2) of the NIRC of 1997, as amended, shall be considered as VATable sales.

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[6] ₱114,403,793.16 x 12% = ₱13,728,455.18.

In *Commissioner of Internal Revenue vs. Euro-Philippines Airlines Services, Inc.*,[7] the Supreme Court ruled that non-printing of the words "zero-rated" on the VAT official receipt or invoice does not make the sale VATable since such instance is not included in Section 113(D) of the NIRC of 1997, as amended. By analogy, the Court cannot add another instance, *i.e.,* non-compliance with Section 108(B)(2), to the list provided for in Section 113(D).

In addition, to treat disallowed zero-rated sales as VATable sales and, thus, increase the VAT liability of petitioner is akin to an assessment, which is outside the scope of the present refund claim. The alleged sales to NRFCs were disallowed for the purposes of the refund claim only, and not to assess petitioner, which opens the door to unwarranted and unscrupulous examination by the tax authorities.

ALL TOLD, I *CONCUR* in denying the instant Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

[7] G.R. No. 222436, July 23, 2018.