REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHIL. GOLD PROCESSING & REFINING CORP., *Petitioner,*	**CTA EB No. 1082** (CTA Case No. 8270)
	Present:
- versus -	Del Rosario, *PJ,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 26 2014 3:45 p.m.

x- x

DECISION

COTANGCO-MANALASTAS, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner, Phil. Gold Processing & Refining Corp., assailing the Decision[1] dated June 11, 2013, and the Resolution[2] dated September 26, 2013, of the Special Second Division of the Court denying petitioner's claim for refund or issuance of tax credit certificate in the amount of P178,505,778.50, allegedly representing unutilized input value-added tax (VAT) for the second quarter of fiscal year ending June 30, 2009.

The Facts

The facts[3], as found by the Court in Division, are as follows:

---

[1] *Rollo*, pp. 31-52.
[2] *Rollo*, pp. 53-58.
[3] *Rollo*, pp. 32-41.

Petitioner Phil. Gold Processing & Refining Corp. is a domestic corporation duly organized and existing under Philippine laws, with business address at 3rd Floor Corinthian Plaza Condominium Bldg., 121 Paseo de Roxas, Legaspi Village, Makati City. It is in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export, in accordance with its original Articles of Incorporation, two Amended Articles of Incorporation, and By-Laws, all of which were approved by and filed with the Securities and Exchange Commission with Registration No. ASO94-00011711. It is likewise registered with the Board of Investments (BOI) on a non-pioneer status as a "New Producer of Gold and Silver Dore", under Certificate of Registration No. 2008-402 issued on February 7, 2008. It is also a VAT-registered entity.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.

On January 26, 2009, petitioner filed with the BIR its Quarterly VAT Return for the second (2nd) quarter of the fiscal year ending June 30, 2009.

On July 9, 2009, the BIR Law Division received a letter dated July 8, 2009, sent by SGV & Co. on behalf of petitioner, wherein the latter sought confirmation that the input taxes paid by petitioner for goods and services purchased can be claimed as a tax refund or credit. The BIR, through Acting Commissioner James H. Roldan, in his letter dated August 3, 2009 to SGV & Co. confirmed that the input taxes paid by petitioner may be claimed as a tax credit or refund.

Thereafter, petitioner filed with the BIR its (amended) Quarterly VAT Return for the 2nd quarter of fiscal year ending June 30, 2009, showing creditable input VAT paid for the said quarter in the amount of P178,505,778.50 on October 27, 2010.

On November 18, 2010, petitioner filed with respondent, through Revenue District Office (RDO) No. 70 in Aroroy, Masbate, an application for tax credits/refunds for its unutilized input VAT in the amount of P178,505,778.50 for the 2nd quarter of fiscal year ending June 30, 2009. On the same date, it also filed a transmittal letter submitting supporting documents for its claim.

Petitioner filed a Petition for Review before the Court in Division on April 14, 2011 for respondent's failure to act on the former's administrative claim.

On July 22, 2011, respondent filed an Answer interposing various special and affirmative defenses.

Petitioner filed its Pre-trial Brief on September 12, 2011 while respondent filed her Pre-trial Brief on September 15, 2011. The pre-trial conference was terminated upon the Court's approval of the Joint Stipulation of Facts and Issues in a Resolution dated October 6, 2011.

On November 9, 2011, upon motion of petitioner, the Court in Division appointed Atty. Clifford E. Chua as Independent Certified Public Accountant.

During trial, petitioner presented two (2) witnesses, namely: Atty. Clifford E. Chua and Atty. Juanita Lilet Dato-Abuel.

Petitioner filed its Formal Offer of Documentary Exhibits on January 10, 2012, offering Exhibits "A" to "HH-1". In a Resolution dated February 15, 2012, the Court in Division admitted all the exhibits, inclusive of their sub-markings, except the following: Exhibits "G-3-b", "L-1", "M-2", "R", "U", "CC", "DD-78", "DD-141", and "R-1".

In the Resolution dated March 23, 2012, the Court in Division partially granted petitioner's Motion for Partial Reconsideration, admitting Exhibits "M-2", "U", "CC", and "DD-78".

On the other hand, during the September 12, 2012 hearing, respondent, through counsel, manifested that she will submit this case for decision without presenting evidence on the ground that she has not received the Report of Investigation of the instant case.

On November 9, 2012, the case was submitted for decision, considering the respective Memoranda of petitioner and respondent, which were both filed on November 6, 2012.

The Special Second Division, in its Decision[4] dated June 11, 2013, denied petitioner's petition for review on the basis of petitioner's failure to submit VAT zero-rated sales invoices and export documents such as export declarations and bills of lading or airway bills. Petitioner's motion for reconsideration was likewise denied in the Resolution[5] dated September 26, 2013.

Aggrieved, petitioner filed the instant *Petition for Review* on November 14, 2013.

Respondent was ordered to file her comment within ten (10) days from receipt of the Resolution[6] dated December 18, 2013. Respondent failed to file her comment.

Considering the arguments/discussion raised by petitioner, this Court resolved to give due course to the petition and ordered the parties to submit their respective memoranda[7].

Petitioner filed its Memorandum[8] on May 14, 2014 while respondent failed to file her memorandum. Thus, the above-captioned case was submitted for decision on July 24, 2014.

The Issues

Petitioner raises the following grounds in support of its petition[9]:

> The Honorable CTA, thru its Special Second Division, committed grave error, if not grave abuse of discretion amounting to lack or excess of jurisdiction, when it denied the petition, even as:

---

[4] *Supra*, Note 1.
[5] *Supra*, Note 2.
[6] *Rollo*, pp. 187-188.
[7] *Rollo*, pp. 191-192, Resolution dated March 20, 2014.
[8] *Rollo*, pp. 193-207.
[9] *Rollo*, p. 15.

a. Respondent never raised in issue, as in fact she practically conceded, that petitioner's export sales are zero rated. There was thus no need to present evidence on the same;

b. In view of the BOI's Certification to the effect that petitioner, a BOI registered company, exported 100% of its total sales for the period January 1 to December 31, 2009, as to qualify it for zero rating, there was no further necessity to prove a new such fact.

Hence, the issue boils down to whether or not the Court in Division erred in denying petitioner's claim for refund on the ground that petitioner failed to submit VAT zero-rated sales invoices and export documents such as export declarations and bills of lading or airway bills.

The Ruling of the Court

The Petition for Review has no merit.

In the instant case, petitioner alleges that it incurred/paid input VAT in the amount of P178,505,778.50 for various goods and services locally purchased as well as for goods purchased/imported from abroad during the second quarter of fiscal year ending June 30, 2009 (or from October 1, 2008 to December 31, 2008) and that these purchases are attributable to its zero-rated sales. As it had no output VAT liability during that period with which it could utilize the input VAT incurred, petitioner asserts that it is entitled to a refund and/or issuance of tax credit certificate for unutilized or unapplied creditable input taxes pursuant to Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

> "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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

For the first and second quarters of fiscal year ending June 30, 2010, petitioner allegedly exported 100% of its mineral products to Metalor Technologies S.A. Refining Corp. in Switzerland and generated sales therefrom in the respective amounts of P1,402,634,124.57 and P1,850,249,674.87 or in the sum of P3,252,883,799.44. These sales were purportedly paid in U.S. Dollars through inward remittance, in accordance with the rules of the Bangko Sentral ng Pilipinas.

Petitioner alleges that such export sales are subject to zero percent (0%) VAT rate under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

> "SEC.106. *Value-Added Tax on Sale of Goods or Properties.—*
>
> (A) *Rate and Base of Tax.—* :xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)."

As discussed in the assailed Decision, Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended, provides that in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. there was a sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Corollary thereto, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, prescribe that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "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
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx

(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;

xxx xxx xxx

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

"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

xxx xxx xxx

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:

xxx xxx xxx

(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;" *(Emphasis supplied)*

In addition to the above-stated requirements, the invoices or receipts must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, *to wit*:

> "SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. . . . ."
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." *(Emphasis supplied)*

Pursuant to the foregoing provisions, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, *to wit*:

1. the sales invoice as proof of sale of goods;
2. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

However, *We* agree with the findings of the Court in Division, quoted below:

> "It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before this Court documents such as official receipts, HSBC Certification, and BNP Paribas Consolidated Cash Statements proving its receipt of foreign currency remittances, however, the same cannot be possibly linked to its alleged export sales for the first and second quarters of fiscal year 2010 since petitioner failed to submit VAT zero-rated sales invoices and export documents such as export declarations and bills of lading or airway bills. Thus, petitioner's alleged export sales for the first and second quarters of fiscal year 2010 in the amount of P3,252,883,799.44 cannot qualify for VAT zero-rating and the alleged input VAT incurred by petitioner for the second quarter of fiscal year 2009 in connection thereto in the amount of P178,505,778.50 cannot be refunded."

Petitioner insists that in view of the Certification issued by the BOI on January 27, 2010 to the effect that petitioner exported 100% of its total sales for calendar year 2009, there was no further necessity to prove that petitioner's export sales are zero rated.

Again, *We* agree with the findings of the Court in Division that the BOI Certification is not sufficient evidence to prove that petitioner's sales are export sales, *to wit*:

> "In the instant case, this Court finds that the BOI Certification for VAT zero-rating issued in favor of petitioner is not sufficient evidence to prove that it exported 100% of its total sales. The pertinent portion of the BOI Certification reads:
>
>> 'Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009 based on the attached documents (Annexes B & C) submitted to the BOI, ...
>>
>> It is understood that based on the affidavit executed by **Phil. Gold Processing & Refining Corp.**, attached as Annex 'A', all information provided herein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.'

> Based on the foregoing, it is clear that the BOI Certification itself is not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country as the information contained therein originally came from petitioner through its affidavit and sales performance. Thus, it is merely self-serving and the presumption of regularity in the performance of BOI's duty in issuing the said certification cannot be applied in this case."

Petitioner is also banking on the following stipulations made by the parties in the Joint Stipulations of Facts and Issues [10] (JSFI) to support its claim that the parties had already stipulated that petitioner's export sales were zero-rated:

> "i) The genuineness and due execution of the Certification dated January 27, 2010 issued by the BOI in favor of Petitioner, which is attached as Annex "E" to the Petition;
>
> j) That the Bureau of Internal Revenue received a copy of the Certification dated January 27, 2010 from BOI;
>
> k) That the BIR – Law Division received the letter dated July 8, 2009 sent by SGV & Co. in behalf of Petitioner, wherein it sought confirmation that the input taxes paid by petitioner for goods and services purchased can be claimed as tax refund or credit;
>
> l) That the BIR, through Acting Commissioner James H. Roldan, in his letter dated August 3, 2009 to SGV & Co. confirmed that the input taxes paid by Petitioner may be claimed as tax credit or refund;
>
> m) The genuineness and due execution of the Letter dated August 3, 2009 sent by the BIR to SGV & Co. (BIR Ruling No. DA (VAT-073) 435-2009;"

However, there is nothing in the above stipulations that expressly stated that petitioner's sales for 2009 were zero-rated export sales.

As discussed earlier, the BOI Certification is not sufficient to prove that there was actual shipment of petitioner's goods from the Philippines to the foreign country as the information contained therein originally came from petitioner through its affidavit and sales performance.

---

[10] Division docket, p. 169.

Moreover, the certification was issued "pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled 'Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales' dated February 02, 2000". Section 3(4) of Revenue Memorandum Order No. 9-2000 shows that the BOI certification is furnished to the suppliers of BOI-registered buyer which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers. Clearly, the BOI Certification in question was not issued to attest to petitioner's export sales in connection with its claim for input VAT refund, rather, said Certification serves as authority for the suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner.

With regard to the BIR Ruling, what was stipulated, particularly in paragraph 1 of the JSFI, is that the BIR confirmed that the input taxes paid by petitioner *may* be claimed as tax credit or refund which means that a refund is possible but not absolute; there is no admission that petitioner's sales in question are attributable to zero-rated export sales. Even a reading of the BIR Ruling does not grant petitioner absolute entitlement to refund and merely contained a general statement based on Section 112 of the NIRC of 1997, as amended, *to wit*:

> "Based on the foregoing, we hereby confirm your opinion that the input VAT on PGPRC's purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales are available as tax credit or refund pursuant to Section 112 of the Tax Code, as amended, and implemented by Section 4.112-1 of RR No. 16.05."[11]

From the foregoing statement, to be entitled to a tax refund or credit, the input VAT payments must be attributable to zero-rated sales, in other words, petitioner has to establish, among others, that zero-rated export sales were actually made (factual basis). After all, the burden of proof is upon the claimant of the tax refund to prove the *factual basis* of his claim.[12]

---

[11] Exhibit "G-3-a", division docket, p. 334.
[12] *Philippine Phosphate Fertilizer Corporation vs. CIR*, G.R. No. 141973. June 28, 2005.

Also, every ruling contains a caveat that "[t]his ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void" which means that the ruling was merely issued based on representations made by the taxpayer at that time and not on the actual facts of the instant case.

Interestingly, petitioner now submits that since it is admittedly registered with the BOI on a non-pioneer status as a "New Producer of Gold and Silver Dore" under Certificate of Registration No. 2008-042 issued on February 7, 2008, the correct provision applicable to its export sales should have been Section 106 (A)(2)(a)(5), *to wit*:

> "SEC.106. *Value-Added Tax on Sale of Goods or Properties.*—
>
> (A) *Rate and Base of Tax.*— xxx
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term 'export sales' means:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws."

This contradicts petitioner's position before the Court in Division, where it stated that its export sales are subject to zero percent (0%) VAT rate under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Specifically, petitioner's witness, Atty. Juanita Lilet dato-Abuel, testified, by way of Judicial Affidavit[13], that:

> "**Q19:** You mentioned that the petitioner is subject to VAT. How does petitioner treat its transaction for VAT purposes?
>
> A: *Petitioner's transactions are subject to VAT at zero-rate under Section 106 (A)(2)(a)(1) of the National Internal Revenue Code ('Tax Code').*"

---

[13] Exhibit "HH", division docket, p. 215.

The petitioner cannot be allowed to adopt a theory distinct and different from that it has previously pursued. Well-settled is the principle that a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[14]

The above notwithstanding, petitioner's argument must still fail because petitioner's export sales do not fall under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended. Section 4.106-5 of RR No. 16-05, as amended, provides what transactions are considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, *to wit*:

> "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:
>
> xxx xxx xxx
>
> (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

[14] *Arroyo vs. House of Representatives Electoral Tribunal*, G.R. No. 118597, July 14, 1995.

> (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and 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.
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided, finally,* that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI."

From the above-quoted provision, transactions that are "considered export sales under Executive Order No. 226" are basically those sales of export products to another export producer or export trader, or sales made to bonded manufacturing warehouses of export-oriented manufacturers, export processing zones (*e.g.*, PEZA-registered enterprise), enterprises registered with the Subic Bay Metropolitan Authority, registered export traders operating bonded trading warehouses, or diplomatic missions, or sales made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported, which is not the case here.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[15]

Finding no reversible error, *We* affirm the assailed Decision dated June 11, 2013 and Resolution dated September 26, 2013 of the Special Second Division.

---

[15] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice