Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION
****

PHIL. GOLD PROCESSING AND REFINING CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8301

Present:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 27 2014

2:45 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed on June 28, 2011 by petitioner Phil. Gold Processing & Refining Corp. against the Commissioner of Internal Revenue to seek the refund or issuance of tax credit certificate in the amount of ₱107,502,796.09 allegedly representing unutilized or unapplied creditable input tax for third quarter of the fiscal year ending June 30, 2009.

THE FACTS

Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under Philippine laws, with business address at 3rd Floor, Corinthian Plaza Condominium Building, 121 Paseo de Roxas, Legaspi Village, Makati City. It is engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export,[1] 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 Company Registration No. ASO94-00011711.[2] Petitioner is likewise registered with the Board of Investments on a non-pioneer status as a "New

[1] Par. 1(d), Joint Stipulation of Facts and Issues (JSFI), docket, p. 191.
[2] Exhibits "A", "A-1", "A-2", and "A-3", docket, pp. 278-330.

Producer of Gold and Silver Dore," under Certificate of Registration No. 2008-042 issued on February 7, 2008.[3] It is also a value-added tax (VAT)-registered entity.[4]

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. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed with the BIR its Quarterly VAT Return for the third quarter of the fiscal year ending June 30, 2009, showing creditable input VAT paid on purchases of goods and services and various importation of goods for the said quarter in the amount of P107,502,796.09.[5]

SGV & Co., on behalf of petitioner, sent a letter to the BIR Law Division on July 8, 2009, seeking confirmation that the input taxes paid by petitioner for goods and services purchased can be claimed as a tax refund or credit.[6] On August 3, 2009, the BIR, through Acting Commissioner James H. Roldan, confirmed that the input taxes paid by petitioner may be claimed as tax credit or refund.[7]

As it had no output VAT liability during that period with which it could utilize the incurred input VAT, petitioner filed an administrative claim for refund or issuance of tax credit certificate with BIR Revenue District Office (RDO) No. 70 in Aroroy, Masbate on February 9, 2011 for input taxes paid by petitioner for various purchases of goods and services and importations during the period of January 1, 2009 to March 31, 2009 in the amount of P107,502,796.09.[8] Together with its claim for refund/tax credit, petitioner likewise submitted documents required by the BIR for the evaluation of its refund claim.[9]

Claiming respondent's inaction on the claim,[10] petitioner filed the instant Petition for Review before this Court on June 28, 2011.[11]

In her Answer[12] filed on September 15, 2011, respondent interposed the following special and affirmative defenses:

> "5. Respondent hereby repleads the above admissions and denials as part of special and affirmatve defenses.

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[3] Par. 1(g) JSFI, docket, p. 191; Exhibit "E", docket pp. 342-343.
[4] Par. 1(h) JSFI, docket, p. 191; Exhibit "D", docket p. 341.
[5] Exhibit "H", docket, p. 354.
[6] Par. 1(k), JSFI, docket, p. 191; Exhibit "F", docket, pp. 345-349.
[7] Par. 1(l), JSFI, docket, p. 191; Exhibit "G", docket pp. 350-353.
[8] Par. 1(a), JSFI, docket, p. 190; Exhibit "I", docket p. 355.
[9] Exhibit "GG", docket, p. 248.
[10] Par. 1(b), JSFI, docket, p. 190.
[11] Docket, pp. 11-21.
[12] Docket, pp. 126-138.

6. The Petition for Review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.

6.1. The judicial claim for refund was filed prematurely and warrants the immediate dismissal of the instant petition for review.

6.2. The specific provision of law governing the periods for filing of judicial claims of excess unutilized input taxes attributable to VAT zero-rated sales is Section 112 (D) (now Section 112 (C), as amended by R.A. 9337) of the National Internal Revenue Code (NIRC) of 1997. The said Section provides:

> '**SEC. 112. Refunds or Tax Credits of Input Tax**.
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> xxx
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> (D) *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.'

6.3. Pursuant to the aforequoted Section 112 (C) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of the complete supporting documents to decide the claim for refund. Thus, a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The Bureau of Internal Revenue (BIR) Commissioner cannot decide the application or claim for refund without the complete supporting documents.

6.4. A careful reading of the petition for review, shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the granting of the application for tax refund and to reckon the commencement of the 120-day period for the BIR Commissioner to decide its claim for refund. Petitioner even failed to file a written claim for refund that must categorically demand reimbursement. Instead, on February 9, 2011 petitioner submitted only BIR Form 1914 or Application for Tax Credits/Refund with Revenue District Office No. 70, BIR Masbate, which was attached to the petition as Annex 'K'. Absent a written claim for refund and complete supporting documents, the BIR Commissioner cannot act on the administrative application for refund.

6.5. Considering that petitioner failed to file a written claim for refund and submit supporting documents to respondent when it filed its application for refund on February 9, 2011, the 120 day period shall not begin to run. The law provides that petitioner had 30 days after the lapse of the 120 days, within which, to elevate its claim before the Honorable Court of Tax Appeals. However, in the instant case, the 120 days has not commenced, hence, the filing of the petition for review on June 28, 2011 is premature.

6.7. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

6.8. The hurried recourse of petitioner to this Honorable Court deprived petitioner of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of *Jariol vs. Commission on Elections,* the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

6.9. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (*Agpalo, Statutory Construction, Third Edition 1995, p. 266*). For this reason, the courts construe these provisions of statutes as mandatory *(Ibid. citing Alvero vs. De la Rosa, 76 Phil. 428, 434)*.

6.10. Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, *i.e.,* the claimed cause of action is not ripe for judicial determination and for that a party has no cause of action to ventilate in court. The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action.'

7. Petitioner when it submitted its application for refund before the Office of Revenue District No. 70, BIR Masbate on February 9, 2011, failed to prove the following, viz:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) or Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise, there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim** in accordance with Section 112 of the Tax Code, as amended. This requires the **submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law**. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes of P107,502,796.09 allegedly paid by petitioner on its purchases of goods and services for the period January 1, 2009 to March 31, 2009 or the third quarter of fiscal year ended June 30, 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

8. Petitioner also failed to prove by clear and convincing evidence that the requirements for refund claim were met.

(8.1) There must be a written claim for refund filed by taxpayer with respondent.

(8.2) The claim of refund must be a categorical demand for reimbursement. *Jz*

9. Section 112(D) of the NIRC of 1997 must be read in conjunction with Sections 112(A) and (B), which are hereunder quoted for ready reference:

> 'SEC. 112. ***Refunds or Tax Credits of Input Tax.*** –
>
> **(A)** ***Zero-Rated or Effectively Zero-Rated Sales.*** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x
>
> **(B)** ***Capital Goods.*** – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only **within two (2) years after the close of the taxable quarter when the importation or purchase was made.'** (emphasis supplied)

9.1. The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due 'must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to input VAT regardless of whether said tax was paid or not.**' The reckoning frame would always be the end of the quarter when the pertinent sales or transactions was made, regardless when the input VAT was paid.

9.2. The instant petition is a claim for refund in the amount of One Hundred Seven Million Five Hundred Two Thousand Seven Hundred Ninety Six Pesos and 09/100 (P107,502,796.09) allegedly input vat paid by petitioner on its purchases of goods and services covering the period January 1, 2009 to March 31, 2009, the third quarter of fiscal year ended June 30, 2009. Applying the above-mentioned provision, petitioner shoud have filed its administrative claim for refund on or before March 31 2011. *ge*

9.3. Considering that petitioner failed to file a written claim for refund on or before March 31, 2011, the right of the petitioner to claim for tax refund or credit of its input vat paid for the period January 1, 2009 to March 31, 2009, the third quarter of fiscal year ended June 30, 2009 in the amount of One Hundred Seven Million Five Hundred Two Thousand Seven Hundred Ninety Six Pesos and 09/100 (P107,502,796.09) had already prescribed.

10. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

11. It is well established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant in favor the State.

11.1. The burden of proof in establishing the factual and legal basis for refund claims is on the claimant.

11.2. In the case of *Far East bank & Trust Company vs. Commissioner of Internal Revenue*, the Supreme Court held:

A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

11.3. Indeed, a claim for refund is in the nature of an exemption and is construed in *strictissimi juris* against the taxpayer. In the 2008 case of *M.E. Holding Corp. vs. Court of Appeals* the Supreme Court held that '(w)e reiterate at this juncture that claims for refund/credit, as in the instant case, are in the nature of claims for exemption.'

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavoured in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden

cannot be permitted to exist upon vague implications. (**Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670**).

14. Respondent humbly manifests that this Honorable Court is bereft of jurisdiction to hear and try the instant case, due to failure of the petitioner to exhaust all administrative remedies. Respondent submits that the instant petition for review was filed *prematurely*.

15. In view of the foregoing, for lack of merit and want of jurisdiction, this Honorable Court should therefore dismiss the case outright. In so doing, a long and tedious trial would be dispensed with and the Honorable Court as well as the parties would be spared from undergoing the rigors and expenses of a full blown trial."

Petitioner filed a Reply[13] to respondent's Answer on November 17, 2011, alleging the following arguments:

"1. Petitioner adopts and repleads the allegations contained in its Petition for Review in refutation of the allegations and denials contained in Respondent's Answer.

2. In the Special and Affirmative Defenses contained in her Answer, Respondent avers the Petition was filed prematurely, thus, it should be dismissed for lack of jurisdiction.

2.1. Respondent contends that the Petition is premature because Petitioner allegedly failed to exhaust administrative remedies before filing the instant judicial claim. Petitioner strongly disputes such contention.

a. The records will show that, in accordance with the requirements of the law, specifically Section 112 (C) of the NIRC, as amended, on <u>February 9, 2011</u> (or, within 2 years after the end of the taxable quarter when the sales was made, in this case, March 31, 2011), Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue, RDO No. 70 in Aroroy, Masbate by filing an Application for Tax Credit/Refund (BIR Form 1914) with the pertinent documents, invoices and receipts attached thereto.

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[13] Docket, pp. 156-161.

b. Respondent contends that the documents submitted to RDO No. 70 are not complete in that Petitioner did not file a 'written claim' for refund that 'must categorically demand reimbursement'. First of all, the law does not state that the taxpayer should file a 'written categorical demand for reimbursement'. Rather, what the law simply requires is an 'application' or 'claim' for reimbursement. Neither the Revenue Regulations nor Memorandum Orders can change or require more than what the law does. As in fact, even the pertinent Revenue Regulation and Revenue Memorandum Circular do not require a 'written categorical demand for reimbursement.' Thus, the fact that Petitioner filed an Application for Tax Credit/Refund (BIR Form 1914), attaching therewith the pertinent documents, invoices and receipts, shows that it complied with the requirements of law and pertinent rules and regulations on the matter. If indeed BIR Form 1914 does not sufficiently comply with the requirement of 'application' to be filed as stated in the law, why did BIR have this form imprinted? And in millions of copies at that! Surely, the intent was not just to waste government money.

Truth is, when a taxpayer goes to a BIR office to ask for requirements to be filed in VAT credit or refund, what they will tell you is to accomplish BIR Form 1914 in triplicate and attach thereto such documents as: summary list of purchases (containing certain details) with photocopies of VAT purchase invoices and official receipts for services and properties purchased, summary of importations for the period with photocopies of invoices, import declarations, entry documents, official receipts or confirmation receipts showing payment of VAT and VAT return/s filed for the quarter. All these were attached to the BIR Form 1914 that Petitioner filed with RDO No. 70 in Aroroy, Masbate on February 9, 2011. Moreover, respondent is unable to cite or quote the specific provision of law or regulation requiring that a taxpayer should file a 'written categorical demand for reimbursement' for him to be considered to have submitted the complete documents for his claim.

c. If indeed Petitioner did not comply with the necessary documentary requirement for such claim, Respondent could have notified Petitioner of such fact. But no such notice was received by Petitioner. Instead, on June 28, 2011 Petitioner received Letter of Authority (LOA-070-2011-00000004) dated June 15, 2011 signed by Mr. Diosdado Mendoza, the Regional Director, Legaspi City of Revenue Region No. 010 informing Petitioner that the revenue officers named therein will be examining the books of accounts and other accounting records in connection with the application that it filed. Respondent cannot dispute that if indeed the documentary requirements attached to the application are not complete, a Letter of Authority would not be issued.

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d. In contending that Petitioner failed to submit with the RDO No. 70 complete documents for its claim, Respondent is clearly requiring more than what the law and regulation require. However, the record on file with the RDO No. 70 (Aroroy, Masbate) will show that Petitioner did submit the required documents in support of its application for VAT refund.

3. The following facts are clearly established:

a) This is a claim for unutilized or unapplied creditable input taxes paid by Petitioner for purchases of goods and services, locally and abroad, during the period January 1, 2009 to March 31, 2009;

b) Petitioner filed an administrative claim for refund with the BIR RDO No. 70 in Aroroy, Masbate on February 9, 2011, by filing BIR Form 1914 in triplicate together with the supporting documents, invoices and receipts that the said office required it to file;

d) From February 9, 2011 until June 9, 2011 (120th day after Petitioner's Application for VAT refund was filed), Respondent or the BIR did not take any action on Petitioner's application;

c) Petitioner filed a Judicial Claim by filing the instant Petition for Review with the Honorable Court on June 28, 2011 (or after 139 days from the time it filed the administrative claim);

> d) On June 28, 2011, Petitioner received from the Revenue Region No. 010 – Legaspi City the pertinent Letter of Authority (Annex 'A').
>
> These facts clearly show that the Petition is not premature and that Petitioner did avail of the administrative remedy precedent to filing of the instant case. Hence, the Honorable Court has jurisdiction to hear and decide the instant Petition."

Respondent filed her Pre-trial Brief[14] on November 28, 2011; while petitioner filed its Pre-trial Brief[15] on December 5, 2011. The pre-trial conference was terminated upon the Court's approval of the Joint Stipulation of Facts and Issues in a Resolution[16] dated January 18, 2012.

Upon motion of petitioner,[17] the Court appointed Atty. Clifford E. Chua as Independent Certified Public Accountant (CPA) for the case on February 2, 2012.[18]

During trial, petitioner presented Attys. Clifford E. Chua and Juanita Lilet Dato-Abuel as its witnesses.

Petitioner filed its Formal Offer of Documentary Exhibits[19] on September 13, 2012, offering Exhibits "A" to "GG-1". Respondent filed her Comment (Re: Petitioner's Formal Offer of Evidence)[20] on September 17, 2012. In a Resolution dated October 9, 2012, the Court admitted Exhibits "A" to "C", "D", "E", "E-1", and "F" to "GG-1" and denied Exhibits "C-1" and "E-1-a" for petitioner's failure to submit the duly marked documents.[21]

During the hearing on December 10, 2012, respondent, through counsel, manifested that she will be submitting the case for decision instead of presenting her evidence.[22]

The case was submitted for decision on April 3, 2013, considering the Memorandum each filed by petitioner and respondent on March 11, 2013 and March 25, 2013, respectively.[23]

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[14] Docket, pp. 164-167.
[15] Docket, pp. 169-177.
[16] Docket, p. 205.
[17] Docket, pp. 193-195.
[18] Docket, p. 207.
[19] Docket, pp. 260-277.
[20] Docket, pp. 381-383.
[21] Docket, pp. 386-387.
[22] Docket, p. 397.
[23] Docket, p. 455.

THE ISSUE

The parties jointly submitted the following issue[24] for this Court's resolution:

> "Whether or not petitioner is entitled to refund and/or issuance of a tax credit certificate in the total amount of One Hundred Seven Million Five Hundred Two Thousand Seven Hundred Ninety Six Pesos and Nine Centavos (Php107,502,796.09) representing unutilized or unapplied creditable input taxes for the period January 1 to March 31, 2009."

THE COURT'S RULING

Petitioner argues that it is entitled to a tax refund or issuance of tax credit certificate for unutilized input taxes it paid during the period covering January 1, 2009 to March 31, 2009. Petitioner points out that when it filed its administrative claim for refund on February 9, 2011 via an Application for Tax Credits/Refund (BIR Form No. 1914), photocopies of all BIR-required documents pertinent to its claim for refund were also submitted. Petitioner also relied on BIR Ruling No. DA (VAT-073) 435-2009, which declared that the input VAT paid by petitioner for goods and services that are attributable to zero-rated sales are available as tax credit or refund pursuant to Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent counters that this Court is bereft of jurisdiction since the petition was filed prematurely inasmuch as petitioner failed to submit complete documents to the Bureau of Internal Revenue before seeking judicial recourse. Respondent claims that petitioner's hurried judicial recourse contravened the doctrine of exhaustion of administrative remedies. She further argues that considering that tax refunds are in the nature of tax exemptions and regarded as derogation to the State, the same should be construed in *strictissimi juris* against an entity claiming it.

Pertinent to the resolution of the question regarding this Court's jurisdiction to entertain the present Petition for Review is Section 112(A) and (C) of the NIRC of 1997, as amended, quoted hereunder for ready reference:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,

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[24] Par. 2, JSFI, docket, p. 192.

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

Equally important is the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.,*[25] the applicable parts of which state:

> The pivotal question of when to reckon the running of the two-year prescriptive period, however, has already been resolved in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* where we ruled that Section 112(A) of the NIRC is the applicable provision in determining the start of the two-year period for claiming a refund/credit of unutilized input VAT, and that Sections 204(C) and 229 of the NIRC are inapplicable as "both provisions apply only to

[25] G.R. No. 184823, October 6, 2010.

instances of erroneous payment or illegal collection of internal revenue taxes." xxx

xxx xxx xxx

(T)o be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

xxx xxx xxx

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

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Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of the judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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." The phrase, "within two (2) years xxx apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides

> for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

The taxable quarter covering the period of January 1, 2009 to March 31, 2009 closed on March 31, 2009. Reckoning two years from the said date, petitioner had until March 31, 2011 within which to file its administrative claim for refund. Clearly, the Application for Tax Credits/Refund (BIR Form No. 1914) filed by petitioner on February 9, 2011 falls well within the two-year period set under Section 112(A) of the NIRC of 1997, as amended.

The same provision also provides that within thirty (30) days from receipt of the decision denying the administrative claim for refund or tax credit, or after the lapse of the 120-day period for respondent to act on the claim, the aggrieved taxpayer may file an appeal with this Court.

Since respondent did not act on petitioner's claim for refund or tax credit within the 120-day period provided by law, which lapsed on June 9, 2011, petitioner had 30 days therefrom to seek judicial review. Counting from June 9, 2011, petitioner had until July 9, 2011 to elevate its refund claim before this Court. Therefore, the Petition for Review filed on June 28, 2011 was timely filed. Consequently, the Court has jurisdiction over the present case.

Anent respondent's argument that the instant claim for refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents in support of its administrative claim for refund, the Court rules that such argument is bereft of merit.

This Court already settled this issue in a string of cases, where the Court declared that the failure to submit complete documents in support of the taxpayer's administrative claim is not fatal to the judicial claim. In the case of *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*,[26] this Court held that: *Jr*

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[26] CTA EB No. 775, November 13, 2012, citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012, *Commissioner of Internal Revenue v. Panay Power Company*, CTA EB No. 683, November 29, 2011, *Commissioner of Internal Revenue v. Team Energy Corporation (formerly Mirant Pagbilao Corporation and Southern Energy Quezon, Inc.)*, CTA EB No. 652, October 4, 2011, Consolidated cases of *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 553 and *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 554, July 20, 2010, *Commissioner of Internal Revenue v. San Roque Power Corporation*, CTA EB No. 523, April 15, 2010, *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009.

It has been settled in several CTA *en banc* cases that **judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the complete documents in support of its administrative claim for refund.** In the case of *Philippine Bank of Communications v. Commissioner of Internal Revenue,* we passed upon the issue on the non-submission of supporting documents in the administrative level as NOT fatal to a claim for refund. The pertinent portion of the decision provides:

> **Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during trial.** In the case of *CIR v. Manila Mining Corporation,* it was explained that "Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases." Finally, pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.
>
> xxx The CTA being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. Otherwise stated, **judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on mere allegation of non-submission of complete documents before the BIR.** *(Emphasis supplied)*

Proceeding to the question of whether petitioner duly substantiated its refund claim, Section 112 of the NIRC of 1997, as amended, enumerates the requisites to be entitled to a refund or tax credit, to wit:

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

Petitioner is a VAT-registered taxpayer[27] engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export[28] and is registered with the Board of Investments as a "New Producer of Gold and Silver Dore". Its Certificate of Registration and Specific Terms and Conditions provide that it "shall start commercial operations in January 2009."[29]

Evidence likewise reveals that for the fiscal year ending June 30, 2009, petitioner did not generate any sales.[30] However, for the first and second quarters of fiscal year ending June 30, 2010, petitioner purportedly 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.[31] These sales were allegedly paid for in U.S. Dollars through inward remittance, in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP). Petitioner argues that such export sales are subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* -
>
> 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);"

Based on the afore-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present: *Jr*

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[27] Exhibit "D"; par. 1(h), JSFI, docket, p. 191.
[28] Par. 1 (d), JSFI, docket, p. 191.
[29] Exhibit "C".
[30] Exhibits "M", "N", "CC", "H", "U", and "O".
[31] Exhibit "AA", pp. 4-5.

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

Corollary to the first requisite, 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. 16-2005, as amended, provide 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)* *gz*

Pursuant to the afore-quoted 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) the 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.

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

It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before the Court documents such as official receipts[32], HSBC Certification[33], and BNP Paribas Consolidated Cash Statements[34] proving its receipt of foreign currency remittances, the Court however sees no connection or relevance 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 ending June 30, 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 period covering January to March 2009 in connection thereto in the amount of P107,502,796.09 cannot be refunded.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[35]

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[32] Exhibits "R" to "R-22".
[33] Exhibit "X".
[34] Exhibits "X-1" to "X-20".
[35] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, 309 SCRA 87; *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, 244 SCRA 332; *Commissioner of Customs v. Court of Tax Appeals*, 328 SCRA 822.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice