REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAZI BAY RESOURCES DEVELOPMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6260

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 18 2003

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DECISION

The petition seeks for an issuance of tax credit certificate in the amount of P5,979,578.00 allegedly representing unutilized input value-added tax for the taxable year 1999.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws, with principal office located at Rm. 107, FCC Building, 119 Rada Street, Makati City.[1] It is engaged in the mining business which includes exploration, development and operation of mining properties for purposes of commercial production of limestone for the subsequent export sale of the same.[2]

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[1] Joint Stipulation of Facts, par. 1.
[2] *Ibid*, par. 4

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a value-added tax (VAT) taxpayer, with Certificate of Registration bearing RDO Control No. 96-047-005989.[3] It is also registered with the Board of Investments (BOI) as a direct exporter of limestone with a registered capacity of 5,500,000 metric tons per year under Executive Order No. 226 with BOI Registration No. EP-95-369 issued on January 26, 1996.[4]

On February 4, 2000, petitioner simultaneously amended its quarterly VAT returns for the four quarters of taxable year 1999 *(Exhibits D-1, E-1, F-1 & G-1)*. These returns were simultaneously amended again on February 8, 2001[5] declaring the following information:

		1st Quarter (Exhibit D)		2nd Quarter (Exhibit E)		3rd Quarter (Exhibit F)		4th Quarter (Exhibit G)
Zero Rated Sales	P	243,401.00	P	163,000.00	P	228,038.00	P	293,500.00
Input Tax Carried Over From Previous Quarter	P	9,481,911.23	P	1,816,484.60	P	2,761,257.28	P	4,271,985.37
Input Tax on Domestic Purchases		1,816,484.60		944,772.68		1,510,728.09		1,707,592.00
Total Available Input Tax	P	11,298,395.83	P	2,761,257.28	P	4,271,985.37	P	5,979,577.37
Less: Deduction from Input Tax								
Any VAT Refund/TCC Claimed		9,481,911.23		-		-		-
Net Creditable Input Tax	P	1,816,484.60	P	2,761,257.28	P	4,271,985.37	P	5,979,577.37

Pursuant to BIR Revenue Audit Memorandum Order No. 2-93, petitioner filed with the Department of Finance One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center the separate applications for tax credit input taxes paid during the four quarters of 1999 in the aggregate amount of P5,979,578.00.[6]

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[3] Exhibit C.
[4] Exhibit B.
[5] Joint Stipulation of Facts, pars. 6-9.
[6] *Ibid.* par. 10.

As of this date, neither the Commissioner of Internal Revenue nor the Department of Finance One Stop Shop Tax Credit and Duty Drawback Center has granted petitioner's claim for refund for calendar year 1999. Section 112(D) likewise provides that the Commissioner shall grant the refund or issue a 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 for refund. In the case of a full or partial denial, the law provides that the taxpayer affected may, within thirty (30) days from receipt of the decision or after the expiration of the 120-day period, appeal the same to the Court of Tax Appeals.[7]

Thus, petitioner filed the instant petition on March 30, 2001 to preserve its right to avail of the judicial recourse.

In his Amended Answer filed on July 17, 2001, respondent raised the following Special and Affirmative Defenses:

a) Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

b) The petitioner has no legal capacity to file the instant claim for refund of its alleged unutilized input taxes for the four (4) quarters of 1999. Under Revenue Memorandum Order No. 9-2000, sales of goods, properties and services made by VAT registered suppliers to BOI registered exporters shall be accorded automatic zero-rating and that is, without the necessity of applying for and securing approval of the application for zero-rating as provided under Revenue Regulations No. 7-95;

c) The petitioner being a BOI-registered direct exporter of limestone, and considering the sales of goods, properties or services made by VAT-registered supplier to the petitioner is automatic zero-rated, there is no value-added tax (VAT) that has to be passed on to the petitioner. Consequently,

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[7] *Id.*, par. 11.

the petitioner would not gain input taxes on their purchases of goods, properties or services and importation of capital goods;

d) Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

e) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

f) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

g) It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended as well as the requirements provided for in Revenue Regulations No. 5-87 as amended by Revenue Regulations No. 3-88;

h) Claims for refund are construed strictly against the claimant for the same partakes (sic) the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

To buttress its case, petitioner presented documentary and testimonial evidence. However, respondent merely submitted the case for decision without presenting any evidence.[8]

The parties likewise jointly stipulated the issues to be resolved in this case, to wit:

1. Whether or not Petitioner has unapplied or unutilized creditable value added tax inputs as of December 31, 1999 in the total amount of P5,979,578.00 arising from its domestic purchases of goods and services and importation of capital goods which is the proper object of a claim for refund pursuant to Section 112 of the National Internal Revenue Code of 1997, as amended;

2. Whether or not Petitioner engages in exportation of limestone;

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[8] CTA Records, page 305.

3. Whether or not the said creditable value added tax inputs of Petitioner for the four quarters of calendar year 1999 are substantiated by documentary evidence in the form of invoices and official receipts; and

4. Whether or not the said unapplied or unutilized creditable value added tax for the four quarters of calendar year 1999 was carried forward to the succeeding taxable quarters and applied against any of the value-added tax output liability of the Petitioner for the said period.

Petitioner alleges that since its sales were exported, it is qualified to claim a refund or issuance of a tax credit certificate of its unutilized VAT input tax pursuant to Section 112 and Section 106(A)(2)(a)(1) of the 1997 Tax Code, as amended, which provide:

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.

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

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

x x x

> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term *'export sales'* means:
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> (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).

Accordingly, on March 29, 2001, petitioner filed four separate Applications for Tax Credit/Refund of Value-Added Tax Paid with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance.[9]

Relative to the issue of whether or not petitioner is engaged in the exportation of limestone, the parties mutually agreed that petitioner is engaged in the mining business which includes exploration, development and operation of mining properties for purposes of commercial production of limestone for the subsequent export sale of the same.[10] Anent the issue of whether or not petitioner has unapplied or unutilized creditable value added tax inputs as of December 31, 1999 in the total amount of P5,979,578.00 from its domestic purchases of goods and services and importation of capital goods, we rule in the affirmative. Exhibit G shows that petitioner's creditable input VAT as of December 31, 1999 amounted to P5,979,577.37. To substantiate said amount of creditable input VAT, petitioner submitted numerous invoices and official receipts.[11] Likewise, petitioner did not

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[9] Exhibits H to O.
[10] Joint Stipulation of Facts, par. 4.
[11] Exhibits CC-1 to CC-1139.

carry over to the succeeding taxable quarter the said creditable input VAT of P5,979,577.37.[12]

Nevertheless, resolving the above-stipulated issues does not positively answer the pivotal issue of whether or not petitioner is entitled to the claim sought for.

Pursuant to CTA Circular 1-95, as amended by CTA Circular No. 10-97, petitioner engaged the services of SGV & Co. to examine the veracity of the summaries of input VAT and export sales relative to its claim for refund. A report dated March 9, 2002 of the independent CPA was submitted[13] stating the following findings and observations:

> Findings and Observations
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> A. Export Documents
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> 1. We noted that the invoice dates and numbers indicated in the export declarations supporting the export commercial invoices do not correspond to the invoice date and number indicated in the invoice to which a particular export declaration is attached (*Exhibit W*). We were, however, able to trace the volume of export sales [in metric tons (MT)] indicated in the export invoice to the attached export declaration, the consignee for the buyer and the vessel to which the goods were loaded.
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> 2. We noted that all of the Company's export sales are not supported by bills of lading. We were informed, however, that the bills of lading were in the possession of the company's shippers.
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> B. Inward Remittances
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> In support of the amount of inward remittances, the Company provided us with a "Certification" issued by its receiving bank (i.e., Hongkong Shanghai Bank Corporation). However, this pertains only to the month of October. As an alternative procedure for the rest of the months not covered by any bank certification, we

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[12] Exhibits P, P-5.
[13] Exhibit R.

> traced the amounts of inward remittances by Coral Resources Trading, Incorporated, its sole customer, for the year 1999 from the Statement of Bank Account issued by the Company's receiving bank.
>
> These procedures provide us information on the amount of inward remittances received by the Company from Coral Resources Trading Incorporated. However, we were <u>not able to ascertain whether these remittances pertain to the Company's export sales</u>. Based on the Company's representation, these remittances are simply applied against the export sales on a first-in-first-out basis.
>
> From the procedures that we performed, we noted <u>that the amount of inward remittance</u> (from the Certification and traced from the Statement of Bank Account) <u>does not correspond to the amount of export sales per "Summary List of Export Sales"</u>. The amount of inward remittance is higher by **US$341,941.76** (*Exhibit Y*). (Underscoring supplied.)
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> Moreover, we would like to mention the following observations for the additional information of the Honorable Court:
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> 1. We noted that the amount of export sales reported in the Company's Quarterly VAT Returns are in US Dollars.
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> 2. We noted that there are undeclared export sales amounting to **US$1,137,119.24** *(Exhibit X)*, which is the difference between the total amount of export sales indicated (in) the Amended Quarterly VAT Returns and the total amount of export sales indicated in the Summary List of Export Sales.

Taking into account the foregoing findings and observations of the independent CPA and after a painstaking review of all the evidence presented, we find that petitioner is not entitled to a refund of alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales.

Firstly, petitioner failed to present other export documents to affirm the authenticity of the export sales. Based on the Summary of Export Sales, petitioner has a total export sales in the amount of $2,065,058.24.00 which was supported by commercial invoices

(Exhibits Z-1-1 to Z-1-16). Out of the aforesaid amount, petitioner only declared in its VAT returns the sum of $927,939.00, representing only 45% of its total export sales for the year 1999. Although petitioner's sales were supported by commercial invoices, it, however, failed to present other export documents such as bills of lading and export declarations that would prove that it had indeed exported its products.

Reiterating Section 106(A)(2)(a)(1), "export sales" means 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. In relation thereto, Section 4.100-2 of Revenue Regulations No. 7-95 also provides:

> **SEC. 4.100-2.** ***Zero-rated sales.*** - A zero-rated sale by a VAT-registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
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> The following sales by VAT-registered persons shall be subject to 0%:
>
> (a) Export sales
>
> "*Export sales*" shall mean:
>
> (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 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).

In the case of ***The Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, CA-G.R. SP. NO. 59452, promulgated on February 19, 2001***, the Court of

Appeals denied the claim for refund of Philippine Bobbin because of its failure to submit collective export documents, to quote:

> "By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100(a)(2) of the National Internal Revenue Code (then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.
>
> Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, **taken collectively**, are the best means to prove the exportation of goods." (Emphasis supplied.)

In addition, the independent CPA reported that they were not able to ascertain whether the documents for inward remittances pertain to petitioner's export sales. Under Section 106(A)(2)(a)(1) of the Tax Code and Section 4.100-2 of Revenue Regulations No. 7-95, a taxpayer seeking a refund of input tax attributable to its export sales must prove the remittance of foreign currency payments corresponding thereto (***Itogon-Suyoc Mines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5030, January 07, 1999 and Philippine Bobbin Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5585, February 8, 2000***). A claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like exemptions, are construed strictly against the taxpayer.[14]

WHEREFORE, petitioner's claim for issuance of tax credit certificate in the amount of P5,979,578.00 allegedly representing unutilized input value-added tax for the taxable year 1999 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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[14] Citibank, N.A. vs. Court of Appeals, 280 SCRA 459.