REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

PHIL. GOLD PROCESSING & REFINING CORP.,	**CTA CASE NO. 8962**
Petitioner,	Members:
	Bautista, *Chairperson*
- versus -	***Fabon-Victorino,*** *and*
	Ringpis-Liban, JJ.
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUL 22 2016 10:10 a.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Phil. Gold Processing & Refining Corp. ("PGPRC") on January 5, 2015, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section 3(a)(1)*[6], *Rule 4 of the Revised Rules of the Court of Tax Appeals*

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[1] *Records, CTA Case No. 8962, Vol. 1, Petition for Review,* pp. 6-104, with annexes.

[2] *Sec. 7. Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] *Rule 4. Jurisdiction of the Court, Sec. 3. Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise: (a) Exclusive original over or appellate jurisdiction to review by appeal the following: (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in

("RRCTA")[7], which seeks for the Court to render judgment ordering respondent Commissioner of Internal Revenue ("CIR") to refund or to issue a tax credit certificate ("TCC") in favor of PGPRC in the amount of Thirty-Seven Million Three Hundred Ninety-Three Thousand One Hundred Ninety-Five Pesos (Php37,393,195.00) representing unutilized or unapplied creditable input Value-Added Tax ("VAT") for the period July 1, 2012 to September 30, 2012 or the first quarter of its taxable year ("TY") ended June 30, 2013.[8]

The Parties

Petitioner PGPRC, formerly registered as "LFT Processing Corporation,"[9] is a domestic corporation duly organized in accordance with Philippine laws,[10] with the primary purpose of engaging in the "business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatsoever process, method, or mode in which such activities can be carried out; and in conjunction with the foregoing[,] to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment[] whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof[.]"[11]

It is a VAT-registered entity with TIN No. 004-498-686-000 and OCN 8RC0000036156 issued on July 9, 2012 and registered since March 15, 1996,[12] and is likewise registered with the Board of Investments ("BOI") on a non-pioneer status as a New Producer of Gold and Silver Doré.[13]

Respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), with the power and authority to

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relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx

[7] *A.M. No. 05-11-07-CTA,* November 22, 2005.

[8] *Records, Vol. 1, Petition for Review, Prayer,* p. 11.

[9] *Id., Vol. 2, Exhibit "P-1," Amended Articles of Incorporation ("AOI"),* p. 436.

[10] *Id., Certificate of Filing of Amended AOI,* pp. 434-484, with annexes.

[11] *Id., Amended AOI,* pp. 436-437.

[12] *Id., Exhibit "P-4," Certificate of Registration,* p. 494; see *BIR Records, Vol. 1, Authority to Print,* p. 396.

[13] *Id., Exhibit "P-3," Board of Investments ("BOI") Certificate of Registration,* p. 486.

perform the duties of her office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law.[14]

The Facts

On February 7, 2008, PGPRC was issued a BOI Certificate of Registration No. 2008-042.[15]

On May 15, 2013, PGPRC filed its Quarterly VAT Return or BIR Form No. 2550-Q for the period ending September 30, 2012, reflecting the amounts of Php43,096,909.95 as Total Available Input Tax, Php37,393,195.00 as VAT Refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.[16]

On August 8, 2014[17], PGPRC filed its Application for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for a TCC, covering the period July 1, 2012 to September 30, 2012, in the amount of Php37,393,195.00 based on *Section 112 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")* and *Section 4.112 of Revenue Regulations ("RR") No. 16-05.*[18]

On September 8, 2014, the BIR issued Letter of Authority ("LOA")-411-2014-00000125, authorizing Revenue Officers ("RO") Jennifer Agamata and Jovelyn Borromeo and Group Supervisor ("GS") Angelita Martinez of Revenue Region No. 040 – VAT Credit Audit Division to examine PGPRC's books of account and other accounting records for VAT for the period July 1, 2012 to September 30, 2012 pursuant to Mandatory Audit – Claim for VAT TCC; the same was received by PGPRC on even date.[19]

On December 2, 2014, BIR Deputy Commissioner Nelson M. Aspe wrote a letter to PGPRC denying the claim for TCC for the reason that it cannot be ascertained whether such foreign currency remittances actually pertain to PGPRC's export sales for the subject period of claim.[20]

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[14] *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"),* p. 264.
[15] *Id., Vol. 2, Exhibit "P-3," BOI Certificate of Registration,* p. 486.
[16] *Id., Exhibit "P-12," BIR Form No. 2550-Q,* pp. 514-516.
[17] *Id., Exhibit "P-13-a," BIR Form No. 1914,* p. 520.
[18] *Id., Exhibit "P-13," BIR Form No. 1914,* p. 520; *BIR Records, Vol. 1,* p. 489.
[19] *BIR Records, Vol. 1, Letter of Authority ("LOA"),* p. 491.
[20] *Id., Denial of Administrative Claim,* p. 542.

Unsatisfied with the denial of its claim, PGPRC filed the present Petition for Review[21] on January 5, 2015.

On January 20, 2015, the Court issued Summons[22] to the CIR, ordering her to file her Answer to the Petition for Review within fifteen (15) days from receipt thereof. The BIR Litigation Division received the same on January 22, 2015.[23]

On February 4, 2015, the CIR filed a Motion for Extension of Time to File Answer[24] praying for an extension of thirty (30) days from February 6, 2015 or until March 8, 2015, within which to file her Answer, which was granted by the Court in its Resolution[25] dated February 9, 2015.

On March 6, 2015, the CIR filed her Answer[26], raising the following Special and Affirmative Defenses:[27]

> 4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.
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> 5. The power of taxation is an inherent attribute of sovereignty, the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered.
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> 6. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority.
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> 7. Tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State.

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[21] *Records, Vol. 1, Petition for Review,* pp. 6-104, with annexes.
[22] *Id., Summons,* p. 105.
[23] *Id.*
[24] *Id.* at 107-110.
[25] *Id.* at 112.
[26] *Id., Answer,* pp. 113-118.
[27] *Records, Vol. 1, Answer,* pp. 114-116; emphases retained.

Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.

8. Thus, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

9. Further, taxes paid and collected are presumed to have been made in accordance with the laws and regulations.

10. In the case at hand, petitioner's claim for tax refund is subject to administrative and routinary investigation and examination by the [BIR]. A claim for tax refund is not ipso facto granted because respondent still has to investigate and ascertain the validity of the claim.

11. It is incumbent upon petitioner to establish its right to tax refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of tax refund.

12. Likewise, not only should petitioner establish that it is entitled to tax refund, it is also imperative that petitioner prove its compliance with the following:

    a. The registration requirement of a VAT taxpayer in compliance with [RR] No. 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the [1997 NIRC];

    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 [1997 NIRC];

    c. Proof of compliance with the prescribed checklist of requirements to be submitted in cases involving a claim for VAT refund pursuant to Revenue Memorandum Order [("RMO")] No. 53-1998 and Revenue Memorandum Circular [("RMC")] No. 54-2014. Otherwise, there would be no sufficient compliance with the filing of an administrative application for tax refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the [1997 NIRC]. This requires the submission of complete documents in support of the application filed with the [BIR] 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 Petition for Review;

d. That the petitioner's alleged zero rated sales complied with the requirements set forth in Section 108 of the [1997 NIRC];

e. That the input taxes in the amount of Thirty Seven Million Three Hundred Ninety Three Thousand One Hundred Ninety Five Pesos ([Php]37,393,195.00) allegedly representing unutilized Input VAT were directly attributable to its zero rated sales and such have not been applied against any Output VAT and were not carried over to the succeeding taxable quarter or quarters;

f. That petitioner's administrative and judicial claims for tax refund [were] filed within the periods provided in Sections l 12 (A) and (C) of the [1997 NIRC];

g. That petitioner's local purchases and importation of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts under Sections 110 (A) (2) and 113 of the [1997 NIRC]; and

h. The requirements as enumerated under Section 4-1 10-7 of [RR] No. 14-2005.

13. It is noteworthy that the alleged unutilized Input VAT claimed by petitioner was not properly documented.

14. It has been uniformly and consistently held by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim for tax refund. In the case at hand, petitioner failed to present clear and convincing evidence to merit a tax refund.

15. The case of [CIR] v. Pilipinas Shell Petroleum Corporation emphatically pointed out that:

> Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. **Upon the person claiming an exemption from tax payments rests the**

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> **burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer,** as taxes are the lifeblood of the government. []

16. Following the premise above, petitioner has the burden of proving that the right to such tax refund indubitably exists and a well-founded doubt is fatal to its claim.

On April 17, 2015 and April 22, 2015, the CIR and PGPRC filed their respective Pre-Trial Briefs.[28]

On May 6, 2015, the parties filed their Joint Stipulation of Facts and Issues ("JSFI").[29]

On May 27, 2015, a Pre-trial Order[30] was issued by the Court terminating the Pre-Trial Conference.

On June 1, 2015, PGPRC filed its Motion to Amend JSFI[31] with attached Amended JSFI[32]. This was granted by the Court in its June 20, 2015 Resolution[33], which likewise served as the Amended Pre-Trial Order.

On September 30, 2015, PGPRC filed its Formal Offer of Exhibits ("FOE")[34], which was resolved by the Court in its Resolution[35] dated October 28, 2015.

During the hearing on December 1, 2015, the CIR manifested that she will no longer present any evidence and in *lieu* thereof, will just file

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[28] *Records, Vol. 1, Respondent's Pre Trial Brief,* pp. 123-127; *Pre-Trial Brief,* pp. 128-144.
[29] *Id., JSFI,* pp. 264-278;
[30] *Id., Pre-Trial Order ("PTO"),* pp. 280-286.
[31] *Id.* at 287-290.
[32] *Id., Amended JSFI,* pp. 308-322.
[33] *Id.,* at 359-360.
[34] *Records, Vol. 2, Petitioner's Formal Offer of Exhibits ("FOE"),* pp. 420-433.
[35] *Id., Amended PTO,* pp. 622-623.

a memorandum.[36] This was confirmed by the Court in its Resolution[37] dated December 10, 2015.

PGPRC filed its Memorandum[38] on January 8, 2016; while on January 12, 2016, the CIR filed by registered mail her Manifestation[39] that she is adopting her Answer as her Memorandum.

Thereafter, the Court resolved to submit the case for decision through its Resolution[40] dated January 26, 2016; hence, this decision.

The Issue[41]

WHETHER PGPRC IS ENTITLED TO A REFUND AND/OR THE ISSUANCE OF A TCC IN THE TOTAL AMOUNT OF THIRTY-SEVEN MILLION THREE HUNDRED NINETY-THREE THOUSAND ONE HUNDRED NINETY-FIVE PESOS (PHP37,393,195.00) REPRESENTING UNUTILIZED OR UNAPPLIED CREDITABLE INPUT VAT FOR THE PERIOD JULY 1, 2012 TO SEPTEMBER 30, 2012 OR THE FIRST QUARTER OF TY ENDING JUNE 30, 2013.

Petitioner's Arguments[42]

PGPRC alleges that it has fully complied with all the requirements under *Section 112(A) of the 1997 NIRC;* that it is a VAT-registered entity; that it exports 100% of its processed gold and silver ores; that said exports are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"); that it is engaged in zero-rated sales, with no sales subject to 12% VAT; and that its claim is substantiated with documentary evidence.

It alleges that it filed its Quarterly VAT Return for the 1st Quarter of the year ended June 30, 2012, showing the creditable input VAT of Php37,393,195.00 it paid on account of various importations of goods; that the said Return shows no output VAT liability with which it can

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[36] *Records, Vol. 2, Minutes of Hearing dated December 1, 2015,* p. 624.
[37] *Id.* at 626.
[38] *Id., Petitioner's Memorandum,* pp. 627-640.
[39] *Id.* at 642-645.
[40] *Id.* at 648.
[41] *Id., Vol. 1, PTO,* p. 281.
[42] *Records, Vol. 2, Petitioner's Memorandum,* pp. 629-636

utilize the input VAT; and that, consequently, it filed a claim for refund and/or issuance of a TCC representing unutilized or unapplied creditable input VAT.

PGPRC further claims that the BIR confirmed that the input VAT on its local purchases and importations of goods and services, among others, attributable to zero-rated sales can be claimed as tax credit or refund; and that *BIR Ruling No. DA (VAT – 073)435-2009* confirmed that the input VAT paid by PGPRC for goods and services, among others, attributable to zero-rated sales are available as tax credit or refund.

Respondent's Counter-Arguments[43]

On the other hand, the CIR counter-argues that tax credit or refund, like tax exemption, is strictly construed against the taxpayer; that taxes paid and collected are presumed to have been made in accordance with the laws and regulations; that tax refunds are not *ipso facto* granted, and is subject to administrative and routinary investigation and examination; and that PGPRC has the burden to prove entitlement to its claim.

The CIR insists that PGPRC's judicial claim refund is not valid since its alleged unutilized input VAT claimed was not properly documented.

The Ruling of the Court

The Court has jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative claim for refund, *Section 112(A) of the 1997 NIRC*, provides as follows:[44]

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

[43] *Records, Vol. 1, Answer,* pp. 114-116.
[44] Underscoring ours.

(A) *Zero-Rated or Effectively Zero-Rated Sales.*- any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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As to the timeliness of the judicial claim for refund, *Section 112(C) of the 1997 NIRC,* in relation to *RR No. 16-2005*[45], provides as follows:[46]

SEC. 112. *Refunds or Tax Credits of Input Tax.* -

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

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the

[45] *Consolidated Value-Added Tax Regulations of 2005,* effective November 1, 2005.
[46] Italics retained, underscoring ours.

> one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.
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Corollary, *Section 4.112-1(d) of RR No. 16-2005* states the following:[47]

> *Sec. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.*
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> xxx xxx xxx
>
> *(d) Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.

Based on *Section 112(A) of the 1997 NIRC*, PGPRC has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide on the claim. In case of denial, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*, grants PGPRC thirty (30) days to file its judicial claim with the CTA.

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[47] Italics retained, underscoring ours.

Records disclose that the subject period covers July 1, 2012 to September 30, 2012,[48] hence, the taxable quarter closes on September 30, 2012. Therefrom, PGPRC had two (2) years or until September 30, 2014 to file its administrative claim for refund.

On August 8, 2014[49], PGPRC filed its administrative claim for refund through BIR Form No. 1914, asking specifically for a TCC, in the amount of Php37,393,195.00.[50] Attached thereto are supporting documents, *per* Judicial Affidavit[51] of Atty. Juanita Lilet D. Abuel, Treasurer of PGPRC. Pursuant to *RMC No. 54-2014*[52], a notarized Sworn Certification by the same Atty. Abuel, certifies that the documents submitted are complete and are the only ones that will be submitted to support the refund claim.[53] The BIR, then, had one hundred and twenty (120) days from August 8, 2014 or until December 6, 2014 to decide on the claim.

Within the prescriptive period and on December 2, 2014, the BIR denied the claim for TCC for the reason that it cannot be ascertained, based on the documents presented, whether such foreign currency remittances actually pertain to PGPRC's export sales for the subject period of claim.[54] Therefore, PGPRC can file its judicial claim for refund thirty (30) days from receipt of such denial.

PGPRC failed to present in evidence the original copy of the BIR's denial, which provides the date when the same was received.[55] However, based on the Judicial Affidavit of Atty. Abuel, the same was received on December 4, 2014.[56]

The Court finds that whether receipt of the denial was made on December 2, 2014 (when the denial was issued), on December 4, 2014 (as claimed by PGPRC), or any day in between the date of issuance of the denial and the date the judicial claim was filed, the latter was still

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[48] *Records, Vol. 2, Exhibit "P-12," BIR Form No. 2550-Q,* pp. 514-516.
[49] *Id., Exhibit "P-13-a," BIR Form No. 1914,* p. 520.
[50] *Id., Exhibit "P-13," BIR Form No. 1914,* p. 520; *BIR Records, Vol. 1,* p. 489.
[51] *Id., Vol. 1, Exhibit "P-18," Amended Judicial Affidavit ("JA") of Atty. Juanita Lilet D. Abuel, Q48,* p. 300.
[52] June 11, 2014.
[53] *BIR Records, Vol. 1, Sworn Certification,* p. 486.
[54] *Id., Denial of Administrative Claim,* p. 542.
[55] See *Records, Vol. 2, Exhibits "P-17" and "P-17-a," Denial of Administrative Claim,* p. 552; in relation to petitioner's *FOE* which offered *Exhibit* "P-17" (Letter of Denial) but not *Exhibit* "P-17-a" (PGPRC's receiving stamp dated December 12, 2014 instead of December 4, 2014), p. 428, and the Court Resolution dated October 28, 2015 denying *Exhibit* "P-17" for failure to present the original for comparison, pp. 622-623.
[56] *Records, Vol. 1, Exhibit "P-18," Amended JA of Atty. Juanita Lilet D. Abuel, Q49,* p. 301.

timely filed pursuant to *Section 1, Rule 22 of the Revised Rules of Court*, to wit:[57]

RULE 22
Computation of Time

SECTION 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. <u>If the last day of the period</u>, as thus computed, <u>falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.</u> (n)

To illustrate, on one hand, if receipt was on December 2, 2014, the last day will fall on January 1, 2015, a regular holiday. The next working day will only be on January 5, 2015, since January 2, 2015 is a special non-working day and both January 3, 2015 and January 4, 2015 fall on a weekend. On the other hand, if receipt was on December 4, 2014, the last day will fall on January 3, 2015. Using the same reasoning that January 3, 2015 and January 4, 2015 fall on Saturday and Sunday, respectively, the next working day will still be on January 5, 2015. As to any other day of receipt between December 2, 2014 and January 5, 2015, the same will still be within the prescriptive period.

Therefore, the instant Petition for Review filed on January 5, 2015 was made within the period provided by law.

Considering that both the administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the case at bar.

PGPRC is entitled to the issuance of a TCC, *albeit* at a reduced amount.

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is the

[57] Italics retained, underscoring ours.

claimant's burden to prove the factual basis of a claim for refund or tax credit.[58]

Thus, based on the afore-cited *Section 112(A) of the 1997 NIRC*, PGPRC must prove compliance with the following requisites to be entitled to its claim for refund or TCC of its unutilized input VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;

2. The input taxes were incurred or paid;

3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. The input taxes were not applied against any output tax liability; and

5. The claim for refund was filed within the two (2)-year prescriptive period.

Anent the fifth (5th) requisite, the Court already discussed that the instant Petition for Review was filed on time, hence, it now proceeds to determine compliance with the remaining requisites.

As to the first (1st) and third (3rd) conditions, PGPRC has conflicting and unclear bases for its claim that the subject sales are VAT zero-rated.

In the Petition for Review, it used as basis *Section 108 of the 1997 NIRC*[59] or *Section 108(b)(1) of the 1997 NIRC*[60]; in the Amended Judicial Affidavit of its witness Atty. Abuel, she cited *Section 106(A)(2)(a)(1) of the 1997 NIRC*[61]; in the Judicial Affidavit of the Court-Appointed Independent Certified Public Accountant ("ICPA"), Atty. Clifford E.

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[58] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[59] *Records, Vol. 1, Petition for Review, par. 6*, p. 8.
[60] *Id., par. 10*, p. 9.
[61] *Id., Exhibit "P-18," Amended JA of Atty. Juanita Lilet D. Abuel, Q18 and Q19*, p. 294.

Chua, he cited *Section 106(A)(2)(a)(1) of the 1997 NIRC*;[62] and in Petitioner's Memorandum, it failed to cite the exact provision.[63]

Considering the fact that PGPRC's witnesses used *Section 106(A)(2(a)(1) of the 1997 NIRC* as basis, the Court will consider this. PGPRC avers that it is a VAT-registered entity that exports one hundred percent (100%) of its processed gold and silver ores, in exchange for payment in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[64]

Based on the above contention of PGPRC, its claim of zero-rated sales falls under *Section 106(A)(2)(a)(1) of the 1997 NIRC*, which reads as follows:[65]

> SECTION 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 [BSP]; xxx

In an earlier CTA case also involving PGPRC, the following were required by the Court in order for the export of goods to be considered VAT zero-rated:[66]

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[62] *Records, Vol. 1, Exhibit "P-195," JA of Atty. Clifford E. Chua, Q19*, pp. 412-413.
[63] *Id., Vol. 2, Petitioner's Memorandum*, pp. 627-640.
[64] *Id., Clause 3.1*, p. 629.
[65] Italics retained, underscoring ours.
[66] *Phil. Gold Processing & Refining Corp. v. CIR*, CTA Case No. 8270, June 11, 2013, which denied petitioner's claim for refund/TCC; this case was appealed to the *CTA En Banc* and docketed as *Phil. Gold Processing & Refining Corp. v. CIR*, CTA *EB* No. 1082, November 26, 2014, which affirmed such dismissal; and was the subject of a Petition for Review on *Certiorari* with the

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 1997 NIRC*. 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.

Section 113(B)(2)(c) of the 1997 NIRC, as implemented by *Section 4.113-18(2)(c) of RR No. 16-05*, as amended, requires that if the sale is subject to zero percent VAT, the term "zero-rated sale" should be written or printed prominently on the invoice or receipt.

For the period July to September 2012, PGPRC actually shipped its processed gold and silver ore to its foreign buyers. It generated export sales in the total amount of USD58,035,041.76 as shown in its zero-rated VAT sales invoices, summarized as follows:

INV. NO.	DATE	EXH.	CUSTOMER	USD	REMARKS WITH ZERO VAT NOTATION
0130	7/31/12	P-14	Metalor Technologies SA	8,210,539.29	Yes
0131	7/31/12	P-14-a	BNP Paribas Bank	1,361,146.70	Yes
0132	7/31/12	P-14-b	Standard Chartered PLC	1,516,332.99	Yes
0133	7/31/12	P-14-c	West LB AG	1,393,592.05	Yes
0134	8/31/12	P-14-d	Metalor Technologies SA	12,535,858.97	Yes
0135	8/31/12	P-14-e	BNP Paribas Bank	1,365,976.50	Yes
0136	8/31/12	P-14-f	Standard Chartered PLC	1,521,736.40	Yes
0137	8/31/12	P-14-g	West LB AG	1,398,421.85	Yes
0138	9/30/12	P-14-h	Metalor Technologies SA	24,426,576.21	Yes
0139	9/30/12	P-14-i	BNP Paribas Bank	1,372,566.00	Yes

Supreme Court docketed as GR No. 215643, February 25,2015, which was likewise denied; entry of judgment was made on April 7, 2015.

0140	9/30/12	P-14-j	Standard Chartered PLC	1,527,241.80	Yes
0141	9/30/12	P-14-k	West LB AG	1,405,053.00	Yes
TOTAL				**58,035,041.76**	

The peso equivalent of the afore-stated total export sales is Php2,431,361,070.95, as reflected in PGPRC's Quarterly VAT Return for the period July to September 2012.[67]

To prove that the foreign currency proceeds of its export sales were inwardly remitted in accordance with the rules and regulations of the BSP, PGPRC submitted a Certification issued by the Hongkong and Shanghai Banking Corporation Limited ("HSBC")[68], bank statements from BNP Paribas Corporate & Investment Banking[69], and export documents such as Export Declaration, Provisional Invoice, Transport Permit and Airway Bill[70]. However, a scrutiny of these documents reveals that, out of the reported USD58,035,041.76 export sales, only the amount of USD55,693,915.44 has corresponding foreign currency remittances, as reflected in the said HSBC Certification, detailed as follows:

REFERENCE	USD	EXHIBIT
PAY120711C000865	17,299,955.00	P-20-i
PAY120808C005821	20,038,576.44	P-20-z
PAY120917C001807	18,355,384.00	P-20-ss
TOTAL	**55,693,915.44**	

Thus, PGPRC's total valid export sales subject to zero percent VAT under *Section 106(A)(2)(a)(1) of the 1997 NIRC*, for the period July to September 2012 amounted to only USD55,693,915.44, with the peso equivalent of Php2,333,280,269.70, as computed below:

Total Export Sales in USD			Php	58,035,041.76
Less: Disallowed Export Sales in USD				(2,341,126.32)
Valid Zero-Rated Sales in USD			Php	55,693,915.44
Declared Zero-Rated Sales in Php			Php	2,431,361,070.95
Multiplied by:				
Valid Zero-Rated Sales in USD	Php	55,693,915.44		
÷ Total Export Sales in USD		58,035,041.76		0.959660125
TOTAL VALID ZERO-RATED SALES IN PHP			**PHP**	**2,333,280,269.70**

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[67] *Records, Vol. 2, Exhibit "P-12," line 17,* p. 515.
[68] *Id., Exhibit "P-20,"* p. 553.
[69] *ICPA Report, Vol. 1, Exhibits "P-20" to "P-20-g."*
[70] *Id., Exhibits "P-23" to "P-38-c."*

After having resolved that PGPRC complied with the first requisite - that it had VAT zero-rated sales for the period July to September 2012 in the total amount of Php2,333,280,269.70, the Court proceeds to determine compliance with the second, third and fourth requisites - whether PGPRC incurred input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of PGPRC.

In its Quarterly VAT Return for the first quarter of TY ending June 30, 2013, PGPRC reported the amount of Php37,393,195.00[71] representing input taxes on purchases of importations of goods other than capital goods amounting to Php311,609,958.34.[72]

Based on the examination conducted by the Court commissioned ICPA[73] of the documents supporting PGPRC's claimed input VAT such as Import Entry and Internal Revenue Declarations ("IEIRDs") and Statements of Settlement of Duties and Taxes ("SSDTs"),[74] input VAT in the amount of Php31,259.00[75] should be disallowed due to absence of proper supporting documents.

Therefore, only the remaining input VAT supported with IEIRDs and SSDTs[76] for the first quarter of TY ending June 30, 2013 in the amount of Php37,361,944.64[77] represent PGPRC's valid input VAT, computed as follows:

Input VAT Claim	Php	37,393,195.00
Less: Disallowance		31,259.00
TOTAL VALID INPUT VAT	**PHP**	**37,361,936.00**[78]

Since PGPRC's sales for the first quarter of TY ending June 30, 2013 were all direct export sales, the substantiated input VAT of Php37,361,936.00 is entirely attributable thereto. However, as previously stated, PGPRC has export sales with no corresponding foreign currency remittances, hence, only the input VAT in the amount of Php35,883,549.98 can be attributed to PGPRC's valid zero-rated

[71] *Records, Vol. 2, Exhibit "P-12," line 21H,* p. 515.
[72] *Id., line 21G,* p. 515.
[73] *Id., Exhibit "P-21,"* pp. 597-616.
[74] *ICPA Report, Vol. 2, Exhibits "P-193" to "P-194."*
[75] *Records, Vol. 2, Exhibit "P-21," Annex "F,"* p. 615.
[76] *ICPA Report, Vols. 1 and 2, Exhibits "P-39" to "P-192."*
[77] *Records, Vol. 2, Exhibit "P-21," Annex "E,"* pp. 613-614.
[78] Rounding off difference of Php8.64 from Php37,361,944.64.

sales for the first quarter of TY ending June 30, 2013, computed as follows:

Valid Input VAT			Php	37,391,936.00
Multiplied by:				
Valid Zero-Rated Sales in Php	Php	2,333,280,269.70		
÷ Total Zero-Rated Sales *per* VAT Return		2,431,361,070.95		0.959660125
VALID INPUT VAT ATTRIBUTABLE TO VALID ZERO-RATED SALES			**PHP**	**35,883,549.98**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter/s, PGPRC's Quarterly VAT Return for the subject period of claim showed that it had no output tax liability against which the claimed input VAT may be applied or credited.[79] Additionally, PGPRC's input taxes for the first quarter of TY 2013 in the amount of Php37,393,195.00 was deducted as "VAT Refund/TCC Claimed"[80] in the Quarterly VAT Return for the same taxable quarter preventing the carry-over or application of such input taxes in the next taxable quarter/s.

In view of the foregoing, PGPRC was able to prove its entitlement to a TCC of its unutilized excess input VAT attributable to its zero-rated sales for the first quarter of TY ending June 30, 2013, *albeit* in the reduced amount of Php35,883,549.98

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Phil. Gold Processing & Refining Corp. in the reduced amount of **THIRTY-FIVE MILLION EIGHT HUNDRED EIGHTY-THREE THOUSAND FIVE HUNDRED FOURTY-NINE AND 98/100 PESOS (PHP35,883,549.98).**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[79] *Records, Vol. 2, Exhibit "P-12," line 15B,* p. 515.
[80] *Id., line 23D,* p. 515.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII 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