Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8669

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

Promulgated:
MAR 2 6 2015
4:30 p.m.

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DECISION

CASANOVA, *J.*:

This Petition for Review [1] filed by petitioner Phil. Gold Processing & Refining Corp. on July 4, 2013 seeks the refund or issuance of tax credit certificate in the amount of Seventy Three Million Eight Hundred Fifty Five Thousand Five Hundred Twenty and 39/100 Pesos (₱73,855,520.39), representing its unutilized or unapplied creditable input taxes for the period July 1 to December 31, 2010.

The facts as found in the records of this case are as follows:

Petitioner Phil. Gold Processing & Refining Corp. is a domestic corporation duly organized and existing under Philippine laws with business address at 3rd Floor, Corinthian Plaza Building, 121 Paseo de Roxas, Legaspi Village, Makati City. [2] It is in the business of

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[1] Docket, pp. 6-18.
[2] Par. 2, Petition for Review, Docket, p. 6.

processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, in particular gold and silver dore.[3] It is registered with the Bureau of Internal Revenue as a Value-Added Taxpayer with Tax Identification No. 004-498-686-000 issued on March 15, 1996.[4] Petitioner is likewise registered with the Board of Investments (BOI) with a non-pioneer status as a "New Producer of Gold and Silver Dore" under Certificate of Registration No. 2008-042 issued on February 7, 2008.[5] It exports one Hundred Percent (100%) of its processed gold and silver ore.[6]

On the other hand, 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 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

On April 27, 2011, petitioner filed with the BIR its amended Quarterly Value Added Tax Returns[8] for the first and second quarter of the fiscal year ended June 30, 2011, showing creditable input VAT it paid on account of its various importations of goods with the following amount:

Taxable Quarter (FY ending June 30, 2011)	**Creditable Input VAT**
1st Quarter	₱36,748,544.39
2nd Quarter	₱37,106,976.00

In a letter dated July 8, 2009[9], petitioner sought the BIR's confirmation that the input VAT on its purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales can be claimed as tax credit or refund pursuant to Section 112 of the NIRC, as amended.

[3] Exhibit "P-1", "P-1-a", "P-1-b" and "P-1-c".
[4] Exhibit "P-4".
[5] Par. 4, Petition for Review, Docket, p. 7; Exhibit "P-3".
[6] Exhibit "P-5".
[7] Par. 1, Joint Stipulation of Facts and Issues, Docket, p. 264.
[8] Exhibit "P-9" and "P-10".
[9] Exhibit "P-7".

In BIR Ruling No. DA (VAT-073) 435-2009 dated August 3, 2009 [10], respondent through Assistant Commissioner James H. Roldan, confirmed petitioner's entitlement to claim tax credit or refund.

Accordingly, on September 25, 2012, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF One-Stop Shop) two (2) Applications for Tax Credits/Refunds (BIR Forms 1914)[11]. The claim amounted to ₱73,855,520.39, representing petitioner's unused input VAT paid for the first and second quarters of fiscal year ended June 30, 2011. However, they were unaccompanied by a separate written claim for refund.[12]

Due to the inaction of respondent to resolve its administrative claim for refund, petitioner filed the instant Petition for Review[13] on July 4, 2013.

Within the extended time granted by the court, respondent filed her Answer[14] on August 28, 2013, interposing the following special and affirmative defenses:

> Petitioner is not entitled to claim for refund or tax credit for failure to file a written claim for refund. Section 204 of the National Internal Revenue Code of 1997, as amended requires that the taxpayers should file in writing with the Commissioner a claim for credit or refund, within two (2) years after the payment of tax. The law reads:
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> > SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may –a
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[10] Exhibit "P-8".
[11] Exhibits "P-11" and "P-12".
[12] Par. 2, Joint Stipulation of Facts and Issues, Docket, p. 264.
[13] Docket, pp. 6-18.
[14] Docket, pp. 142-155.

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (emphasis supplied)
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In the case of Commissioner of Internal Revenue vs Rosemarie Acosta, the Supreme Court explained that a taxpayer claiming a tax refund must first file a written claim for refund, categorically demanding recovery of taxes with the Commissioner of Internal Revenue. Pertinent portion of the decision reads:

> In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court. This obviously is intended, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure.
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> Thus, on the first issue, we rule against respondent's contention. Entrenched in our

> jurisprudence is the principle that tax refunds are in the nature of tax exemptions which are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. As tax refunds involve a return of revenue from the government, the claimant must show indubitably the specific provision of law from which her right arises; it cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language *actually used* by the legislature in granting the refund. To repeat, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied in this jurisdiction.

Petitioner claims for refund on input VAT on its purchases or importation of various goods to be used in its operations or production of gold/silver bullions, attributable to zero-rated sales. Pursuant to Section 112 of the National Internal Revenue Code of 1997, VAT-registered person may apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales within two (2) years after the close of the taxable quarter when the sales were made.

> ***SEC. 112. Refunds or Tax Credits of Input Tax. –***
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> **(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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Petitioner submitted instead, only BIR Form No. 1914. Absent a written claim for refund, the Commissioner of Internal Revenue will not be able to act on petitioner's claim for refund. There being no written claim which categorically demands a refund, BIR Form No. 1914 cannot be considered a claim for refund, consequently the two (2) year period within which to file a claim for refund has already prescribed.

Assuming that petitioner filed a claim for refund in accordance with the requirements of the law, and mere filing of BIR Form No. 1914 can be given due course, still it is not entitled to such claim. Petitioner failed to submit complete documents required under Revenue Memorandum Order No. 53-98 dated June 1, 1998, in relation to Section 112(C) of the NIRC of 1997. The said Memorandum Order requires that complete documents must be submitted relevant to substantiate a claim for refund with the Bureau of Internal Revenue.

To support its claim, it is imperative for petitioner to prove and substantiate its claim for refund otherwise, petitioner's claim must fail. Here, petitioner submitted with the Department of Finance (One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center), merely five (5) documents in support of its application for tax refund, way far from the requirements of the law.

> 'In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.' (Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012)

In the case of Microsoft Philippines vs Commissioner of Internal Revenue, the Supreme Court held that 'The taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.

Clearly, the Commissioner of Internal Revenue was deprived of the opportunity to examine, evaluate and act on petitioner's application for tax refund. Petitioner violated the doctrine of exhaustion of administrative remedies. The doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of a cause of action which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicate a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act.

A claim for refund is subject to routinary investigation/examination by the BIR. Administrative authority must be given opportunity to decide the matter, to act and correct the errors in the administrative forum.

It has been held by the Supreme Court that a claim for refund is not ipso facto granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim. To support its claim, it is imperative for petitioner to prove and substantiate its claim for refund, otherwise, petitioner's claim must fail.

It is a settled rule that all administrative remedies must be availed of before a party is allowed to seek judicial intervention. The doctrine of exhaustion of administrative remedies rests upon the presumption that the administrative body, board or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. Hence, before resort to the courts can be obtained, all administrative remedies available should first be exhausted. The respondent did not comply with the evidentiary requirements mandated by law and jurisprudence. This failure to adduce evidence in the administrative claim justifies the denial by inaction by the Commissioner. Therefore the judicial claim should likewise be denied.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.

In its Petition for Review, petitioner contends that its revenues derived from the export sales of the processed minerals are subject to Value Added Tax at zero percent (0%) rate pursuant to Section 108 (B)(1) of the NIRC, as amended. It is a requirement in Section 108 of the NIRC that the recipient of services is doing business outside the Philippines, to be subject to a zero (0%) percent rate. Petitioner, therefore must prove that it rendered services to persons engaged in business conducted outside the Philippines. The Supreme Court explained in the case of *Commissioner of Internal Revenue vs Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* that it is an essential condition for qualification to zero-rating that the recipient of such services is doing business outside the Philippines;

> 'The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines.** While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b) where the listed services must be **'for other persons doing business outside the Philippines.'** The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.
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> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section

102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.'

In a more recent case of Accenture, Inc., vs Commissioner of Internal Revenue the Supreme Court once again explained the requirements to come within the purview of Section 108 of the Tax Code on zero percent rate:

'We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a verbatim copy of Section 102(b) of the 1977 Tax Code, any interpretation of the latter holds true for the former.

Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a pre-existing one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

Accenture questions the CTA's application of *Burmeister*, because the provision interpreted therein was Section 102(b) of the 1977 Tax Code. In support of its position that Section 108 of the 1997 Tax Code does not require that the services be rendered to an entity doing business outside the Philippines, Accenture invokes this Court's pronouncements in *Amex*. However, a reading of that case will readily reveal that the provision applied was Section 102(b) of the 1977 Tax Code, and not Section 108 of the 1997 Tax Code. As previously mentioned, an interpretation of Section 102(b) of the 1977 Tax Code is an interpretation of Section 108 of the 1997 Tax Code, the latter being a mere reproduction of the former.

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We deny Accenture's Petition for a tax refund.

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:

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> There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*: x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'
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> A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.
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Clearly, it is a requirement for a transaction to qualify for zero-rating under Section 108(B) of the Tax Code, petitioner must specifically prove that the recipient of the service is a non-resident foreign corporation. It is also a requirement that the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations. In the case of Intel Technology Philippines, Inc., vs Commissioner of Internal Revenue, the Supreme Court ruled:

> Under Sections 106 (A)(2)(a)(1) in relation to 112(A) of the Tax Code, a taxpayer engaged in zero-rated or effectively zero-rated transactions may apply for a refund or issuance of a tax credit certificate for input taxes paid attributable to such sales upon complying with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated (like export sales) or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and (5) in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B), **and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.** It is added 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 or entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of the sales.' (emphasis supplied)

Failure of the petitioner to prove that it rendered services to a non-resident foreign corporation and that the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations, warrants denial of its claim for refund.

Finally, tax refunds in relation to the VAT are in the nature of tax exemptions. The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. Taxes are the lifeblood of the nation. Therefore, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government.

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. Hence, a 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. Failure to comply therewith warrants a dismissal of the taxpayer's claim for refund. Respondent humbly submits that petitioner failed to overcome such burden."[15]

A Notice of Pre-Trial Conference[16] was issued by the Court on August 29, 2013, setting the case for Pre-Trial Conference on October 10, 2013.

On September 11, 2013, petitioner filed a Motion for Extension of Time to File Reply (To Respondent's Answer)[17]. It then filed its Reply[18] on September 13, 2013.

The Court noted without action petitioner's Motion for Extension of Time to File Reply, in a Resolution dated September 13, 2013[19].

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[15] Answer, Docket, pp. 143-153.
[16] Docket, p. 156.
[17] Docket, pp. 157-159.
[18] Docket, pp. 160-164.

Respondent filed her Pre-Trial Brief[20] on September 20, 2013 while petitioner filed its Pre-trial Brief[21] on October 4, 2013. Thereafter, the parties filed their Joint Stipulation of Facts and Issues[22] on October 23, 2013. This was adopted by the Court in the Pre-Trial Order[23] promulgated on November 5, 2013.

On November 6, 2013, upon Omnibus Motion[24] of petitioner, the Court commissioned Atty. Clifford E. Chua as the Independent Certified Public Accountant (Independent CPA).[25]

During trial, petitioner presented its witnesses, namely: Atty. Juanita Lilet A. Dato-Abuel, its Treasurer and Atty. Clifford E. Chua, the Court-commissioned Independent CPA.

On January 28, 2014, petitioner filed its Formal Offer of Exhibits[26]. In a Resolution[27] dated February 27, 2014, the Court admitted Exhibits "P-1 to P-6-d", "P-6-g to P-13", "P-16 to P-127-a" and "P-129 to P-213" inclusive of sub-markings.

During the March 3, 2014 hearing[28], counsel for respondent manifested that she has not received any report of investigation and that she has no witness to present in this case. Hence, the parties were ordered to submit their respective memorandum.

Petitioner submitted its Memorandum on March 25, 2014[29] while respondent filed hers on April 8, 2014[30]. Thus, in a Resolution[31] dated April 15, 2014, the case was considered submitted for decision.

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[19] Docket, p. 166.
[20] Docket, pp. 167-171.
[21] Docket, pp. 186-197.
[22] Docket, pp. 264-265.
[23] Docket, pp. 276-281.
[24] Docket, pp. 172-175.
[25] Docket, p. 282.
[26] Docket, pp. 319-335.
[27] Docket, pp. 341-342.
[28] Docket, p. 343.
[29] Docket, pp. 344-356.
[30] Docket, p. 363-383.
[31] Docket, p. 384.

The sole issue stipulated by the parties is whether or not petitioner is entitled to refund and/or issuance of a tax credit certificate in the total amount of Seventy Three Million Eight Hundred Fifty Five Thousand Five Hundred Twenty Pesos and Thirty Nine Centavos (₱73,855,520.39) representing unutilized or unapplied creditable input taxes for the period July 1 to December 31, 2010.[32]

Petitioner contends that it is entitled to a tax refund or issuance of tax credit certificate for unutilized input taxes it paid during the period covering July 1 to December 31, 2010. Petitioner avers that when it filed its administrative claim for refund on September 5, 2012, via two (2) Application for Tax Credits/Refund (BIR Form No. 1914), the documents required to evaluate the claim for refund were attached thereto. Petitioner points out that it completed submission of the documents needed by the One-Stop Center of the DOF to evaluate its claim on February 4, 2013. It also relies 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 argues that petitioner is not entitled to claim for refund or tax credit for failure to file a written claim for refund. She also contends that the petition was prematurely filed since petitioner failed to submit complete documents to the BIR before seeking judicial recourse. Respondent further argues that petitioner failed to prove the requirements of zero-rating under Section 108 (B) (1) of the NIRC, to which it based its claim for refund. Lastly, she claims that petitioner failed to comply with the duly mandated invoicing requirements. Hence, its claim should be denied.

Pertinent to the resolution of this case is Section 112(A) and (C) of the NIRC of 1997, as amended. It provides the basis for administrative and judicial claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, to wit:

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

[32] Joint Stipulation of Facts and Issues, Docket, p. 265.

(A) ***Zero-rated or Effectively Zero-rated Sales.*** - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."

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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 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."** *(Emphasis supplied)*

Based on the foregoing, the following requisites must be complied with by petitioner for it to be entitled to its claim for the refund/tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales:

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 were attributable to zero-rated or effectively zero-rated sales;
4. that the input taxes were not applied against any output VAT liability; and
5. that the claim for refund was filed within the two-year prescriptive period.

The Court finds its appropriate to determine first the timeliness of the filing of the instant claim since it will determine the necessity of resolving petitioner's compliance with the other requisites.

The fifth requisite pertains to the filing of the administrative claim for refund/tax credit certificate. It must be noted that in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[33] the Court emphasized that Section 112(A) and (C) of the Tax Code must be interpreted according to its clear, plain and unequivocal language.

As explicitly stated under Section 112(A), the application for tax credit certificate/refund must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The taxpayer can file his administrative claim for refund or issuance of tax credit certificate anytime within the two-

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[33] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time.[34]

The present claim covers the first and second quarters of fiscal year ending June 30, 2011 which closed on September 30, 2010 and December 31, 2010, respectively. Counting two years from these dates, petitioner had until September 30, 2012 and December 31, 2012 within which to file its administrative claim for refund. Thus, petitioner's filing of two (2) Applications for Tax Credits/Refunds (BIR Form No. 1914)[35] amounting to ₱73,855,520.39 on September 25, 2012, with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center is well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

Respondent, however argues that the two (2) year prescriptive period within which to file a claim has already prescribed. She cited the case of *Commissioner of Internal Revenue vs. Rosemarie Acosta*[36], wherein the Supreme Court held that a taxpayer claiming a tax refund must first file a written claim for refund categorically demanding recovery of overpaid taxes with the Commissioner of Internal Revenue. Respondent contends that since petitioner submitted only BIR Form No. 1914 which cannot be considered a written claim categorically demanding a refund, it is therefore not entitled to claim for refund or tax credit.

The Court finds this argument bereft of merit.

The facts in the present petition and those in the case of *Commissioner of Internal Revenue vs. Rosemarie Acosta* differ. The respondent in the latter case immediately filed a petition for review with the Court of Tax Appeals without filing any written claim before the Commissioner of Internal Revenue. In this case, petitioner filed two(2) Applications for Tax Credits/Refunds (BIR Form No. 1914) with the DOF One-Stop-Shop.

It must be noted that Section 112(A) of the NIRC of 1997, as amended, does not require a specific form of the application for refund/tax credit certificate. The Applications for Tax Credits/Refunds

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[34] *Team Energy Corporation (formerly Mirant Pagbilao Corp.) vs. Commissioner of Internal Revenue,* G.R. No. 190928, January 13, 2014.
[35] Exhibits "P-11" and "P-12".
[36] G.R. No. 154068, August 3, 2007.

(BIR Form No. 1914) filed by petitioner on September 25, 2012, show, among others, the name of the taxpayer, the amount being claimed for tax credit/refund, tax type, period covered, the reason for filing the claim, the printed name and signature of petitioner's representative and the receiving stamp of DOF One-Stop-Shop. This constitutes sufficient compliance the application for refund/tax credit certificate required under Section 112(A) of the NIRC of 1997, as amended because petitioner's intention to effect a claim for refund/tax credit certificate is clearly indicated therein.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides as follows:

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

In applying the above-quoted provision to the instant petition, respondent should have acted on petitioner's applications for refund/tax credit certificate within 120 days from February 4, 2013[37], the date when petitioner submitted additional documents to the DOF One-Stop-Shop. Respondent, therefore had until June 4, 2013 within

[37] Exhibit "P-15".

which to act on petitioner's administrative claim. Now, counting from June 4, 2013, petitioner had 30 days or until July 4, 2013, within which to appeal its claim for refund before this Court. Thus, the instant Petition was timely filed on July 4, 2013.

Respondent, in her Memorandum, contends that petitioner failed to submit complete documents as required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, in relation to Section 112(C) of the NIRC of 1997, as amended. Respondent further states that petitioner submitted with the DOF One-Stop-Shop, merely five (5) documents in support of its application for tax refund, way far from the requirements of the law. Petitioner's alleged failure to adduce evidence in the administrative claim justifies the denial thereof by respondent's inaction and it must allegedly be sustained on judicial appeal.

The Court disagrees with respondent.

There is no need for petitioner to submit the complete documents required under RMO No. 53-98 in relation to Section 112(C) of the NIRC of 1997, as amended. In the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[38], the Supreme Court held:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC,** RR 3-88 **or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.** The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'." *(Emphasis supplied)*

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[38] G.R. No. 205055, July 18, 2014.

Furthermore, it is well-settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is NOT fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[39]

The Court will now proceed to discuss the remaining requisites for input VAT refund.

Petitioner claims that it is a VAT-registered entity that exports 100% of its processed gold and silver ore and such export sales, having been paid for in U.S. Dollars through inward remittance, in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP), are subject to zero percent (0%) VAT pursuant to Section 108(B)(1) of the NIRC of 1997, as amended.

Respondent argues that petitioner failed to prove the requirements under Section 108(B)(1) of the NIRC of 1997, as amended. She further avers that petitioner failed to show that it rendered services to a non-resident foreign corporation and that the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

However, considering that Section 108(B)(1) of the NIRC of 1997, as amended, pertains to zero-rated sales of services, the more applicable provision of law in the instant case is 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.—***

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[39] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company,* CTA EB Case No. 589 (CTA Case No. 7471), September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657 re CTA Case Nos. 7424 and 7492 dated April 4, 2012.

> **(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)."

In order for an export sale to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following conditions must be present:

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;

2.) the sale was made by a VAT registered person;

3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4.) the payment was accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.[40]

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. 16-05, as amended, provide that a VAT taxpayer, like herein

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[40] *Phil. Gold Processing & Refining Corp. vs. Commissioner of Internal Revenue*, CTA EB No. 1082 (CTA Case No. 8270), November 26, 2014.

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 xxx (*underlining 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; (*underlining supplied*)

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

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

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;

2. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and

3. bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

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

Respondent argues that the invoices presented by petitioner are not valid. It contends that the word "zero-rated" should be imprinted on the invoices and not merely affixed.

Section 113 (B)(2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1B(2)(c) of Revenue Regulations (RR) No. 16-05, as amended, requires that 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.

The invoices presented by petitioner are valid. The word "zero-rated" was stamped in the invoices presented by petitioner in support of its claim for refund. The Supreme Court in the case of *Commissioner of Internal Revenue vs. Toledo Power, Inc.*[41], held that the stamping of the word "zero-rated" is sufficient to comply with the law, to wit:

> "In the present case, we agree with the CTA's findings that the words 'zero-rated' appeared on the VAT invoices/official receipts presented by the TPI in support of its refund claim. **Although the same was merely**

[41] G.R. No. 183880, January 20, 2014.

stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word 'zero-rated' was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code."

For the first and second quarters of FY ending June 30, 2011, petitioner actually shipped its processed gold and silver ore to its foreign buyers, Metalor Technologies S.A. Refining Corp. in Switzerland, Standard Chartered PLC in Singapore, BNP Paribas in Great Britain and West LB, also in Great Britain. It generated export sales in the respective amount of US$50,350,014.73 and US$68,539,385.68 or in the sum of US$118,889,400.41 as shown in its zero-rated VAT sales invoices[42] and export documents[43] consisting of airway bills, port declarations, packing lists and provisional invoices, summarized as follows[44]:

Invoice No.	Date	Exhibit	Customer	Amount in US$
1st Quarter of FY 2011 (July to September 2010)				
0037	7/31/2010	"P-16"	Standard Chartered PLC	5,480,446.39
0038	7/31/2010	"P-16"-a	Metalor Technologies SA	9,624,338.53
0039	7/31/2010	"P-16-b"	West LB AG	1,044,775.55
0040	7/31/2010	"P-16-c"	BNP Paribas Bank	1,018,244.50
0041	8/31/2010	"P-16-d"	Standard Chartered PLC	4,978,999.31
0042	8/31/2010	"P-16-e"	Metalor Technologies SA	9,583,635.81
0043	8/31/2010	"P-16-f"	West LB AG	1,048,719.91
0044	8/31/2010	"P-16-g"	BNP Paribas Bank	1,022,193.90
0045	9/30/2010	"P-16-h"	Standard Chartered PLC	5,752,270.32
0046	9/30/2010	"P-16-i"	Metalor Technologies SA	8,714,309.41
0047	9/30/2010	"P-16-j"	West LB AG	1,054,326.90
0048	9/30/2010	"P-16-k"	BNP Paribas Bank	1,027,754.20
			Subtotal	**50,350,014.73**
2nd Quarter of FY 2011 (October to December 2010)				
0049	10/31/2010	"P-16-l"	Standard Chartered PLC	12,269,508.94
0050	10/31/2010	"P-16-m"	Metalor Technologies SA	60,212.45
0051	10/31/2010	"P-16-n"	BNP Paribas Bank	1,211,207.90
0052	10/31/2010	"P-16-o"	West LB AG	1,242,403.75

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[42] Exhibits "P-16" to "P-16-w".
[43] Exhibits "P-20" to "P-48-b".
[44] Exhibit "P-212", Annex A.

0053	11/30/2010	"P-16-p"	Standard Chartered PLC	19,265,662.24
0054	11/30/2010	"P-16-q"	Metalor Technologies SA	5,818,438.76
0055	11/30/2010	"P-16-r"	West LB AG	1,247,047.55
0056	11/30/2010	"P-16-s"	BNP Paribas Bank	1,215,854.14
0057	12/31/2010	"P-16-t"	Standard Chartered PLC	14,835,685.85
0058	12/31/2010	"P-16-u"	Metalor Technologies SA	8,897,876.60
0059	12/31/2010	"P-16-v"	West LB AG	1,253,362.50
0060	12/31/2010	"P-16-w"	BNP Paribas Bank	1,222,125.00
			Subtotal	**68,539,385.68**
			Total	**118,889,400.41**

The peso equivalent of the afore-stated export sales were reflected in petitioner's Quarterly VAT Returns as follows:

Exhibit	**Taxable Quarter (FY ending June 30, 2011)**	**Zero-Rated Sales**
"P-9-a"	1st Quarter	₱ 2,265,172,399.93
"P-10-a"	2nd Quarter	3,004,165,768.39
	Total	**₱ 5,269,338,168.32**

To prove that the foreign currency proceeds of its export sales were inwardly remitted in accordance with the rules and regulations of the BSP, petitioner submitted a Certification[45] issued by the Hongkong and Shanghai Banking Corporation Limited (HSBC) and bank statements[46] from BNP Paribas Corporate & Investment Banking. However, a scrutiny of these documents reveals that, out of the reported US$118,889,400.41 export sales, only the amount of US$114,790,903.11 has corresponding foreign currency remittances, detailed as follows:

Date	**Exhibit**	**Customer**	**Export Sales (In US$)**	**Exhibit**	**Inward Remittance (In US$)**	**Difference (In US$)**
1st Quarter of FY 2010 (July to September 2010)						
				"P-50-e"	578,690.70	
				"P-50-e"	554,312.70	
				"P-50-f"	4,185,402.00	
				"P-50-f"	130,353.30	
7/31/2010	"P-16"	Standard Chartered PLC	5,480,446.39		5,448,758.70	31,687.69

[45] Exhibit "P-50".
[46] Exhibits "P-50-a" to "P-50-f".

7/31/2010	"P-16"-a	Metalor Technologies SA	9,624,338.53	"P-50-e"	9,601,026.58	23,311.95
				"P-50-f"	511,542.85	
				"P-50-f"	533,232.70	
7/31/2010	"P-16-b"	West LB AG	1,044,775.55		1,044,775.55	-
7/31/2010	"P-16-c"	BNP Paribas Bank	1,018,244.50	"P-50-e"	1,018,237.50	7.00
				"P-50-d"	580,913.40	
				"P-50-d"	556,535.40	
				"P-50-e"	3,841,550.70	
8/31/2010	"P-16-d"	Standard Chartered PLC	4,978,999.31		4,978,999.50	(0.19)
8/31/2010	"P-16-e"	Metalor Technologies SA	9,583,635.81	"P-50-d"	9,537,104.54	46,531.27
8/31/2010	"P-16-f"	West LB AG	1,048,719.91		-	1,048,719.91
8/31/2010	"P-16-g"	BNP Paribas Bank	1,022,193.90	"P-50-d"	1,022,186.90	7.00
9/30/2010	"P-16-h"	Standard Chartered PLC	5,752,270.32	"P-50-c"	5,752,263.44[47]	6.88
9/30/2010	"P-16-i"	Metalor Technologies SA	8,714,309.41	"P-50-c"	8,627,929.67	86,379.74
				"P-50-d"	516,294.50	
				"P-50-d"	538,018.40	
9/30/2010	"P-16-j"	West LB AG	1,054,326.90		1,054,312.90	14.00
9/30/2010	"P-16-k"	BNP Paribas Bank	1,027,754.20	"P-50-c"	1,027,747.20	7.00
		Subtotal	**50,350,014.73**		**49,113,342.48**	**1,236,672.25**
2nd Quarter of FY 2010 (October to December 2010)						
				"P-50-b"	4,769,993.00	
				"P-50-b"	352,238.00	
				"P-50-c"	659,563.20	
				"P-50-c"	688,225.20	
				"P-50-c"	5,799,462.89	
10/31/2010	"P-16-l"	Standard Chartered PLC	12,269,508.94		12,269,482.29	26.65

[47] Included in the amount of US$5,802,318.20.

10/31/2010	"P-16-m"	Metalor Technologies SA	60,212.45	"P-50-c"	50,054.76[48]	10,157.69
10/31/2010	"P-16-n"	BNP Paribas Bank	1,211,207.90	"P-50-b"	1,211,207.90	-
				"P-50-c"	633,953.60	
				"P-50-c"	608,450.15	
10/31/2010	"P-16-o"	West LB AG	1,242,403.75		1,242,403.75	-
				"P-50-a"	9,128,971.00	
				"P-50-a"	690,831.50	
				"P-50-a"	662,169.50	
				"P-50-a"	275,818.60	
				"P-50-b"	8,497,940.73	
11/30/2010	"P-16-p"	Standard Chartered PLC	19,265,662.24		19,255,731.33	9,930.91
11/30/2010	"P-16-q"	Metalor Technologies SA	5,818,438.76	"P-50-a"	5,773,335.19	45,103.57
				"P-50-b"	610,772.05	
				"P-50-b"	636,275.50	
11/30/2010	"P-16-r"	West LB AG	1,247,047.55		1,247,047.55	-
11/30/2010	"P-16-s"	BNP Paribas Bank	1,215,854.14	"P-50-a"	1,215,844.70	9.44
				"P-50-a"	284,171.00	
				"P-50-a"	6,406,068.00	
				"P-50-a"	6,678,293.00	
12/31/2010	"P-16-t"	Standard Chartered PLC	14,835,685.85		13,368,532.00	1,467,153.85
12/31/2010	"P-16-u"	Metalor Technologies SA	8,897,876.60	"P-50-a"	8,790,572.66	107,303.94
				"P-50-a"	639,443.00	
				"P-50-a"	613,905.50	
12/31/2010	"P-16-v"	West LB AG	1,253,362.50		1,253,348.50	14.00
12/31/2010	"P-16-w"	BNP Paribas Bank	1,222,125.00		-	1,222,125.00
		Subtotal	**68,539,385.68**		**65,677,560.63**	**2,861,825.05**
		Total	**118,889,400.41**		**114,790,903.11**	**4,098,497.30**

[48] Included in the amount of US$S,802,318.20.

Thus, petitioner's total valid export sales subject to zero percent (0%) VAT under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, for the first and second quarters of FY ending June 30, 2011 amounted to US$49,113,342.48 and US$65,677,560.63, respectively, with the peso equivalent of ₱2,209,536,351.67 and ₱2,878,728,448.43, respectively, totaling ₱5,088,264,800.10, as computed below:

	First Quarter	**2nd Quarter**	**Total**
Total Export Sales in US$	50,350,014.73	68,539,385.68	118,889,400.41
Less: Disallowed Export Sales in US$	1,236,672.25	2,861,825.05	4,098,497.30
Valid Zero-Rated Sales in US$	**49,113,342.48**	**65,677,560.63**	**114,790,903.11**
Declared Zero-Rated Sales per return in Php	2,265,172,399.93	3,004,165,768.39	5,269,338,168.32
Multiplied by:			
Valid Zero-rated Sales in US$	49,113,342.48	65,677,560.63	
÷ Total Export Sales in US$	50,350,014.73	68,539,385.68	
Total Valid Zero-rated Sales in Php	**2,209,536,351.67**	**2,878,728,448.43**	**5,088,264,800.10**

After having resolved that petitioner had VAT zero-rated sales for the first and second quarters of FY ending June 30, 2011 in the total amount of ₱5,088,264,800.13, we proceed to the determination of whether petitioner incurred input taxes in connection thereto and if said input taxes were not applied against any output VAT liability of petitioner.

In its Quarterly VAT Returns for the first and second quarters of FY ending June 30, 2011, petitioner reported the amounts of ₱36,748,544.39 and ₱37,106,976.00, respectively, representing input taxes on importations of goods other than capital goods, to wit:

Importations - Goods other than Capital Goods	**Purchases**	**Input Tax**
First Quarter *(Exhibit "P-9")*	₱ 306,237,869.92	₱ 36,748,544.39
Second Quarter *(Exhibit "P-10")*	309,224,800.00	37,106,976.00
Total	**₱615,462,669.92**	**₱73,855,520.39**

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Based on the examination conducted by the Court-commissioned Independent Certified Public Accountant (ICPA)[49] of the documents supporting petitioner's claimed input VAT such as Import Entry and Internal Revenue Declarations (IEIRDs), Assessment Notices and Statements of Settlement of Duties and Taxes[50], input VAT in the amounts of ₱51,965.00 and ₱6,000.00 for the first and second quarters of FY ending June 30, 2011, respectively, totaling ₱57,965.00 should be disallowed, broken down as follows[51]:

Supplier name		1st Quarter	2nd Quarter	Total
Difference between Input VAT (per Summary List) and Input VAT (per Assessment Notice and Statement of Settlement of Duties and Taxes)				
Weir Minerals Australia Ltd. (*Exh. "P-129-a"*)				
Per Summary List	₱ 17,076.00			
Per AN/SSDT	17,073.00			
Difference	3.00	₱ 3.00	-	₱ 3.00
Weir Minerals Australia Ltd. (*Exh. "P-130-a"*)				
Per Summary List	₱ 64,429.00			
Per AN/SSDT	64,404.00			
Difference	25.00	25.00	-	25.00
Bata Shoe Company (*Exh. "P-211-a"*)				
Per Summary List	₱ 33,277.00			
Per AN/SSDT	27,277.00			
Difference	6,000.00	-	₱ 6,000.00	6,000.00
No Supporting Documents				
Multisafe Consultants		51,937.00	-	51,937.00
TOTAL		**₱ 51,965.00**	**₱ 6,000.00**	**₱ 57,965.00**

Therefore, only the remaining input VAT for the first and second quarters of FY ending June 30, 2011 in the respective amount of ₱36,696,579.39 and or ₱37,100,976.00 in the sum of ₱73,797,555.39 represent petitioner's valid input VAT, computed as follows:

[49] Atty. Clifford E. Chua.
[50] Exhibits "P-51" to "P-211-a".
[51] Exhibit "P-212", Annexes "H", "I" and "K".

	1st Quarter	2nd Quarter	Total
Input VAT Claim	₱36,748,544.39	₱37,106,976.00	₱73,855,520.39
Less: Disallowance	51,965.00	6,000.00	57,965.00
Total Valid Input VAT	**₱36,696,579.39**	**₱37,100,976.00**	**₱73,797,555.39**

Since petitioner's sales for the first and second quarters of FY ending June 30, 2011 were all direct export sales, the substantiated input VAT of ₱73,797,555.39 is entirely attributable thereto. However, as previously stated, petitioner has export sales with no corresponding foreign currency remittances, hence, only the input VAT in the amounts of ₱35,795,256.09 and ₱35,551,844.78 can be attributed to petitioner's valid zero-rated sales in the amount of ₱2,209,536,351.67 for the first quarter and ₱2,878,728,448.43 for the second quarter of FY ending June 30, 2011, computed as follows:

First Quarter of FY 2011		
Valid Input VAT		₱ 36,696,579.39
Multiplied by:		
Valid Zero-rated Sales in Php	₱2,209,536,351.67	
÷ Total Zero-rated sales per return	2,265,172,399.93	97.5438493%
Valid Input VAT attributable to valid Zero-rates Sales for the First Qtr of FY 2011		**₱35,795,256.09**
Second Quarter of FY 2011		
Valid Input VAT		₱ 37,100,976.00
Multiplied by:		
Valid Zero-rated Sales in Php	₱2,878,728,448.43	
÷ Total Zero-rated sales per return	3,004,165,768.39	95.8245540%
Valid Input VAT attributable to valid Zero-rates Sales for the Second Qtr of FY 2011		**₱35,551,844.78**
Total Input VAT attributable to Zero-Rated Sales – First and Second Qtrs of FY 2011		**₱71,347,100.87**

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), petitioner's Quarterly VAT Returns[52] for the subject period of claim showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Additionally, petitioner's reported unutilized input taxes for the first and second quarters of 2010 in the respective amounts of

[52] Exhbiits "P-9-a" and "P-10-a", line 15B.

₱36,748,544.39 [53] and ₱37,106,976.00 [54] were deducted as "VAT Refund/TCC claimed" in the Quarterly VAT Returns for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s.

In view of the foregoing, the Court finds petitioner entitled to a refund or issuance of a tax credit certificate in the amount of ₱71,347,100.87 representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for the first and second quarters of FY ending June 30, 2011.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱71,347,100.87** representing petitioner's unutilized or unapplied creditable input taxes for the period July 1 to December 31, 2010.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[53] Exhibit "P-9-a", line 23D.
[54] Exhibit "P-10-a", line 23D.

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, Second Division

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