REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NO. 9954**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 16 2021 10:00 am

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AMENDED DECISION

DEL ROSARIO, *P.J.*:

For resolution is petitioner's **MOTION FOR RECONSIDERATION (WITH MOTION FOR LEAVE OF COURT TO REOPEN THE CASE FOR THE RECALL OF A WITNESS)** posted on March 11, 2021,[1] without respondent's comment despite due notice,[2] assailing the Court's Decision dated February 2, 2021, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED.**
>
> Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to petitioner Carmen Copper Corporation the total amount of **₱28,912,016.82**, representing petitioner's excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:

[1] Docket, pp. 547 to 573.

[2] Records Verification Report dated July 16, 2021 issued by the Judicial Records Division of this Court; *cf.* Resolution dated June 9, 2021.

(i) **₱20,041,479.05**, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,

(ii) **₱8,870,537.77**, pertaining to the difference between the amount of ₱28,912,016.82, representing the duly substantiated excess and unutilized input VAT on petitioner's importation of goods attributable to petitioner's zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of ₱20,041,479.05 as indicated in *(i)*.

SO ORDERED."

Petitioner prays for: *(i)* the reconsideration and reversal of the said Decision; (ii) rendition of a new one ordering respondent to refund or issue a Tax Credit Certificate to petitioner, in the amount of ₱22,128,978.80; and, (iii) the reopening of the case to allow petitioner to recall the Independent Certified Public Accountant (ICPA) to further elaborate on the ICPA's findings and conclusions that petitioner's sales were all zero-rated, in the interest of substantial justice and to afford petitioner full opportunity to present its case.

Petitioner argues as follows:

(i) Strict construction finds no application where the statute itself mandates liberality in favor of the taxpayer;

(ii) Inward remittance is not required on export sales under Section 106(2)(a)(5) of the National Internal Revenue Code (NIRC) of 1997, as amended;

(iii) Board of Investment (BOI)-registered enterprises are entitled to value-added tax (VAT) zero-rating on their export sales under Section 106(2)(a)(5) of the National Internal Revenue;

(iv) The exporter need not wait for its export sales to be paid before it could determine whether its sales qualify for VAT zero-rating;

(v) Petitioner's zero-rated sales invoice of USD3,414,660.71 dated July 4, 2016 is required by accounting rules to be declared in the 2nd quarter of 2016;

(vi) The doctrine in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue* ("*Coral Bay* case")[3] applies only to Philippine Economic Zone Authority (PEZA)-registered enterprises, not to BOI-registered enterprises;

(vii) The denial letter failed to comply with the requirement of due process of the Constitution;

(viii) Zero-rated sales are not disputed nor the lack of it raised as a defense; and,

(ix) There is a need to recall petitioner's witness, especially the ICPA, to further explain the zero-rated sales to the satisfaction of the Court based on evidence on record.

THE COURT'S RULING

Petitioner fails to justify its Motion for Leave of Court to Reopen the Case for the Recall of a Witness

Anent petitioner's *Motion for Leave of Court to Reopen the Case for the Recall of a Witness*, petitioner claims that there is a need to recall the ICPA, to further explain the zero-rated sales to the satisfaction of the Court based on evidence on record. It believes that the best person to explain and help the Court to resolve the factual issues is the ICPA himself, who testified and provided a report that he was able to trace the payments to the sales invoices. Petitioner avers that the recall of the ICPA is just part of the functions of the ICPA to explain his report to the Court.

Additionally, petitioner contends that the untraceability of the sales invoices to the inward remittance was only discovered by the Court when it decided the case. It alleges that the issue of whether the sales invoices could be traced to the inward remittances was never brought up since respondent himself had audited the same and found the same to be fully substantiated. It further asserts that the ICPA never had the opportunity to explain his report as regards this issue as he was never cross-examined by respondent or asked by the Court on such point.

[3] G.R. No. 190506, July 13, 2016.

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Moreover, petitioner submits that Section 8 of Republic Act (RA) No. 9282, as amended, categorically provides that this Court shall not be governed strictly by technical rules of evidence.

As such, petitioner prays for leave to recall the ICPA to further explain the conclusion as stated in the ICPA Report in the interest of substantial justice and to afford the petitioner full opportunity to present its case.

Petitioner's *Motion for Leave of Court to Reopen the Case for the Recall of a Witness*, however, must fail.

Undoubtedly, the Court has discretion to grant leave for the recall of a witness pursuant to Section 9, Rule 132 of the Rules of Court, *viz.*:

> "Sec. 9. *Recalling witness.* — After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require."

The foregoing, notwithstanding, the Court's discretion may not be exercised in a vacuum, as it depends on the circumstances attendant to a particular case. The discretion to recall a witness may not properly be invoked by an applicant's mere general statement that there is a need to recall a witness *"in the interest of justice"*, or *"in order to afford a party full opportunity to present his case"*, or that *"there seems to be many points and questions that should have been asked"* in the earlier interrogation. To regard expressed generalities such as these as sufficient ground for recall of witnesses would make the recall of witness no longer discretionary but ministerial. Something more than the bare assertion of the need to propound additional questions is essential before the Court's discretion may rightfully be exercised to grant or deny recall. There must be a satisfactory showing on the movant's part, for instance, that particularly identified material points were not covered in the cross-examination, or that particularly described vital documents were not presented to the witness whose recall is prayed for, or that the cross-examination was conducted in so inept a manner as to result in a virtual absence thereof. Absent such particulars, there would be no foundation for a trial court to authorize the recall of any witness.[4]

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[4] Refer to *People of the Philippines vs. Hon. Rivera, Judge, Branch 129, Regional Trial Court of Kalookan City, et al.*, G.R. No. 98376, August 16, 1991.

Clearly, petitioner's invocation of substantial justice, in order to afford it full opportunity to present the case, is not sufficient to justify its motion to recall the ICPA. To stress, there must be a satisfactory showing of some concrete and substantial basis for the recall. The Court sees none in the present case.

Furthermore, petitioner's claim that there is a need to recall the ICPA to further elaborate on the ICPA's findings and conclusions that its sales were all zero-rated, does not also support its motion.

It is worthy to note that the Court is not bound by the findings of the ICPA, as provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, thus:

> "SEC. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis added)*

The findings and conclusions of the ICPA are not conclusive upon the Court. As a corollary, the latter is free to either adopt (completely or partially) or even disregard, the said findings and conclusions, after making its own verification and evaluation of the same and the evidence on record. Petitioner cannot then insist that the ICPA's findings are sufficient to validate its claims, since the ultimate determination rests upon the Court based on the evidence presented.

To be sure, the ICPA findings on petitioner's zero-rated sales *vis-à-vis* the pertinent pieces of evidence presented to support the said zero-rated sales were taken into consideration, and were thoroughly examined by the Court in arriving at its conclusions in the assailed Decision.

For the above reasons, the Court finds it unnecessary to recall the ICPA to testify on the latter's *Report* and the evidence presented, which were already verified, evaluated and scrutinized by the Court.

Exports sales of US$18,701,088.48 or ₱866,024,428.16 were not traced to the inward remittances per bank certifications

As discussed in the assailed Decision, jurisprudence has laid down certain requisites for the successful prosecution of a claim for tax credit certificate/refund of input VAT filed under Section 112(A) and (C) of the NIRC of 1997, as amended, which include, among others, "*that the taxpayer is engaged in zero-rated or effectively zero-rated sales*". To obtain a credit/refund of input VAT, albeit only to the extent disallowed at the administrative level, as in this case, it is imperative for petitioner to prove that it had valid zero-rated or effectively zero-rated sales for the subject period, and that it has complied with the prescribed substantiation and invoicing requirements, among others.

The findings/disallowances on the claimed zero-rated sales and input taxes subject for reconsideration are discussed hereunder.

Petitioner argues that its documentary and testimonial evidence showed that it satisfied the elements of zero-rated sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Petitioner insists that there is nothing in the provision of the aforesaid Section that requires the inward remittance of export sales proceeds, as what appears to be an essential requirement is the actual shipment of goods from the Philippines to a foreign country. With the liberalization of *Bangko Sentral ng Pilipinas* (BSP) rules on foreign exchange and trade transactions, proof of inward remittances of foreign currency export sales proceeds is no longer required, citing Revenue Memorandum Circular (RMC) No. 42-2003. Besides, granting, for the sake of argument, that foreign inward remittance is required, the ICPA was able to trace the total export sales to the remittances without any refutations from respondent. According to petitioner, to require that the export sales invoices be traced to the inward remittances before the same could receive VAT zero-rating treatment implicitly requires that the export sale of goods must be paid first. Petitioner was unable to fully understand the findings of the Court, particularly, the table of computation found on pages 30 to 31 of the assailed Decision, showing how the Court arrived at the disallowed zero-rated sales of US$18,701,088.48, because of lack of explanation. Petitioner posits that it cannot verify from the sales invoices the amount of deductions and adjustments found in the table of the Court's computation; and, that the said computation does not show why some of the remittances traced per ICPA findings were excluded therein.

Moreover, petitioner avers that even if it cannot be deemed compliant with Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, its export sales remain zero-rated under Section 106(A)(2)(a)(5) of the same Code. Relative thereto, petitioner contends that Executive Order (EO) No. 226 does not mention that the consideration must be paid for in acceptable foreign currency accounted for under BSP rules. Since petitioner is a BOI-registered exporter, there is no requirement for its sales to be denominated or paid in foreign currency, to be considered export sales.

The Court finds the foregoing arguments untenable.

To reiterate, one of the requisites for the grant of refund or issuance of a tax credit certificate, pursuant to Section 112 of the NIRC of 1997, as amended, is that, for zero-rated sales under Section 106(A)(2)(a)(1), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BSP rules and regulations. Corollary, pursuant to Section 106(A)(2)(a)(1) of the same Code, in order for an export sale to qualify as zero-rated, there must be a sale by a VAT-registered person and actual shipment of goods from the Philippines to a foreign country, and such sale was 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.

On the basis thereof, it is clear that it is not only the fact of actual exportation of goods that needs to be proven. It is equally important for the claimant to prove the fact of payment of said export sales in acceptable foreign currency accounted for in accordance with the BSP rules and regulations. While petitioner submitted the Summary of inward remittances of zero-rated sales and Certifications purportedly showing the payments for its export sales in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, the mere submission thereof does not suffice as it is equally important that the claimed export sales be traced to the corresponding foreign currency inward remittances shown therein.

Thus, contrary to petitioner's understanding, it does not necessarily mean that the reported export sales for the period must be traced to the foreign currency inward remittances for the same period or that the export sales proceeds must be inwardly remitted during the period before it can be reported as zero-rated sales for the said period. As consistently being applied by the Court, the VAT zero-rated invoice is petitioner's proof of sale of goods for the period and the corresponding bank certification of inward remittances may attest to the fact of payment in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, regardless of the date when the same was remitted.

While the bank certification of inward remittance may attest to the fact of payment in acceptable foreign currency accounted for in accordance with the BSP rules and regulations, other documents may also prove compliance thereto. As clarified in RMC No. 42-2003,[5] the requirement of full documentation of proof of inward remittances of export proceeds is no longer enforced on instances when offsetting arrangements exist, to wit:

> **Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular NO. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?**
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> A-8: In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;

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[5] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters. July 15, 2003.

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d. Documents or correspondence regarding offsetting arrangements;
e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
f. Documents to prove actual export of goods;
g. Documents to prove that the sales are zero-rated sales.

As can be discerned from the said RMC, the submission of proof of inward remittances of foreign currency payments for export sales was not abolished but merely relaxed, in cases where there are offsetting arrangements, which do not entail inward remittances. And, in such cases, the above documents are acceptable pieces of documentary evidence proving the payment in foreign currency accounted for in accordance with the BSP rules and regulations. But, in cases other than those involving offsetting arrangements, the documentation of inward remittances of export proceeds subsists.

In the present case, there is no showing that petitioner had offsetting arrangements for the payments of its export sales; other than the proof of sale and actual export of goods, none of the additional requirements listed above was presented by petitioner to prove the same. Hence, petitioner's submission of the summary of inward remittance and bank certification of inward remittances is warranted.

In any event, the Court finds it worthy to revisit the Court's table of computation, showing the amounts not traced to inward remittance per bank certification to further clarify and explain the details therein.

A second look on the Summary of inward remittances of zero-rated sales,[6] together with the relevant sales invoices and Certifications[7] of inward remittance, reveals that the export sales not traced to inward remittance per bank certification must be reduced by US$30,090.22 or ₱1,391,070.87[8] since the net amount of US$6,204,038.61 for the said sales were fully traced to the Certificate of inward remittance *(see highlighted portion on the table below).* Consequently, out of the properly substantiated export sales of US$74,181,036.40 or ₱3,443,356,964.68 per the Decision,[9] only the amount of US$18,701,088.48 or ₱864,633,357.30 cannot be traced

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[6] Exhibit "P-14", ICPA Report, Annex A-6.
[7] Exhibits "P-33-1" to "P-33-3".
[8] ₱1,391,070.87 = US$30,090.22 x 46.23 (Forex Rate used per "Schedule of Zero-Rated Sale of Goods" [Exhibit "P-30"])
[9] Docket, p. 526, third paragraph.

with certainty to the inward remittances per bank certifications, as detailed hereunder:

Invoice No. (w/ Exh. Nos.)	Sales during the quarter (in US$)	Total Sales per Invoice (in US$)	Deductions/ Adjustments per Invoice and Bank Charges (in US$)	Net Amount (in US$)	Remittances per Cert. of inward remittance (Exh. "P-33-1" & "P-33-3") Date	Amount (in US$)	Amount not traced to inward remittance per bank cert. (in US$)
[redacted]							
					11-Apr-2016	1,813,453.33	
					15-Apr-2016	623,972.04	
1810000052 ("P-37-2A")	7,640,282.12	7,640,282.12	841,236.76	6,799,045.36		*2,437,425.37*	4,361,619.99
					16-Mar-2016	2,633,225.29	
					21-Mar-2016	2,392,886.80	
					15-Sep-2016	517,805.44	
1810000050 ("P-37-3A")	7,642,482.64	7,642,482.64	832,025.27	6,810,457.37		*5,543,917.53*	1,266,539.84
					09-Mar-2016	1,391,014.15	
					15-Sep-2016	549,509.17	
1810000049 ("P-37-4A")	7,123,529.12	7,123,529.12	800,839.49	6,322,689.63		*1,940,523.32*	4,382,166.31
					30-Mar-2016	2,470,129.46	
					18-Apr-2016	328,757.49	
					08-Aug-2016	265,925.64	
1810000051 ("P-37-5A")	3,574,478.15	3,574,478.15	300,929.46	3,273,548.69		*3,064,812.59*	208,736.10
					19-Apr-2016	2,834,558.83	
					10-May-2016	818,265.39	
					09-Aug-2016	227,002.60	
1810000053 ("P-37-6A")	4,654,526.23	4,654,526.23	382,215.50	4,272,310.73		*3,879,826.82*	392,483.91
					25-Apr-2016	2,387,647.13	
					15-May-2016	366,590.82	
					09-Aug-2016	117,080.33	
1810000054 ("P-37-7A")	3,518,999.69	3,518,999.69	297,672.03	3,221,327.66		*2,871,318.28*	350,009.38
					29-Jan-2016	4,560,391.07	
					28-Apr-2016	841,958.08	
1820000347 ("P-37-8A")	611,349.59	6,250,301.32	847,952.18	5,402,349.14		*5,402,349.15*	-
1820000362 ("P-37-9A")	160,656.03	6,524,663.76	887,745.03	5,636,918.73		-	160,656.03
1820000363 ("P-37-10A")	207,296.40	6,632,694.96	917,453.26	5,715,241.70		-	207,296.40
1820000364 ("P-37-11A")	76,433.12	6,468,074.60	895,688.84	5,572,385.76		-	76,433.12
1820000365 ("P-37-12A")	5,758.66	6,614,312.64	896,994.58	5,717,318.06		-	5,758.66
1820000366 ("P-37-13A")	86,766.58	6,841,079.69	895,661.41	5,945,418.28		-	86,766.58
					27-Apr-2016	3,528,300.60	
					02-May-2016	1,651,975.65	
					18-May-2016	771,863.02	
					05-Oct-2016	477,101.53	
1810000055 ("P-37-14A")	7,374,722.92	7,374,722.92	842,947.02	6,531,775.90		*6,429,240.80*	102,535.10

					27-May-2016	2,110,785.15	
					06-Jun-2016	359,492.60	
					09-Sep-2016	230,956.83	
1810000059 ("P-37-15A")	3,184,538.07	3,184,538.07	295,327.62	2,889,210.45		*2,701,234.58*	187,975.87
					24-May-2016	2,561,566.14	
					03-Jun-2016	379,780.10	
					09-Sep-2016	311,821.99	
1810000058 ("P-37-16A")	3,808,274.46	3,808,274.46	368,101.74	3,440,172.72		*3,253,168.23*	187,004.49
					23-May-2016	3,147,965.30	
					09-Sep-2016	241,249.04	
1810000056 ("P-37-17A")	4,053,512.53	4,053,512.53	371,680.91	3,681,831.62		*3,389,214.34*	292,617.28
					13-Jun-2016	446,886.43	
					15-Jun-2016	1,891,111.17	
					22-Jun-2016	401,208.17	
1810000061 ("P-37-18A")	6,588,486.69	6,588,486.69	824,948.26	5,763,538.43		*2,739,205.77*	3,024,332.66
					01-Jun-2016	358,450.84	
					06-Jun-2016	1,979,958.04	
					10-Jun-2016	489,011.41	
1810000060 ("P-37-19A")	6,804,042.24	6,804,042.24	821,657.10	5,982,385.14		*2,827,420.29*	3,154,964.85
					06-Jan-2016	3,858,954.74	
					03-Jun-2016	645,053.52	
1820000377 ("P-37-20A")	82,117.21	6,370,053.06	873,840.83	5,496,212.23		*4,504,008.26*	82,117.21
					22-Jun-2016	3,307,396.32	
					14-Sep-2016	482,751.82	
1810000062 ("P-37-21A")	4,168,575.04	4,168,575.04	380,361.97	3,788,213.07		*3,790,148.14*	-
1820000346 ("P-37-22A")	33,025.16	6,332,192.69	885,313.84	5,446,878.85		-	33,025.16
					27-May-2016	2,304,161.16	
					09-Sep-2016	252,710.48	
1810000057 ("P-37-23A")	2,985,630.34	2,985,630.34	290,709.16	2,694,921.18		*2,556,871.64*	138,049.54
1820000345 ("P-38-1A")	(234,536.81)						
Total	**74,181,036.40**						**18,701,088.48**

The amount of US$18,701,088.48 is converted to Philippine Peso as follows:

Invoice No.	Amount not traced to inward remittance per bank certification		
	Amount (in US$)	**Foreign Exchange Rate[10]**	**Amount (in PhP)**
1810000052	4,361,619.99	46.12	201,157,913.94
1810000050	1,266,539.84	46.02	58,286,163.44
1810000049	4,382,166.31	46.02	201,667,293.59
1810000051	208,736.10	46.20	9,643,607.82
1810000053	392,483.91	46.76	18,352,547.63
1810000054	350,009.38	46.89	16,411,939.83
1820000362	160,656.03	46.85	7,526,735.01
1820000363	207,296.40	46.85	9,711,836.34
1820000364	76,433.12	46.85	3,580,891.67
1820000365	5,758.66	46.85	269,793.22
1820000366	86,766.58	46.85	4,065,014.27
1810000055	102,535.10	46.55	4,773,008.91
1810000059	187,975.87	46.78	8,793,511.20
1810000058	187,004.49	46.75	8,742,459.91
1810000056	292,617.28	46.55	13,621,334.38
1810000061	3,024,332.66	46.43	140,419,765.40
1810000060	3,154,964.85	46.22	145,822,475.37
1820000377	82,117.21	46.76	3,839,390.16
1820000346	33,025.16	46.07	1,521,469.12
1810000057	138,049.54	46.55	6,426,206.09
Total	**18,701,088.48**		**864,633,357.30**

The amounts of deductions/adjustments shown on the table above were composed of the deductions and adjustments indicated on the invoices and the bank charges per ICPA Summary of inward remittances of zero-rated sales or Certification of inward remittance. For example, for the first line item of sales above with Invoice No. 1820000356, the deductions/adjustments in the amount of ₱696,652.27 may be broken down as follows:

Deductions and Adjustments appearing in the Invoice	
Deductions (under Final Value column)	₱690,949.77
Less: Adjustment on Shipment	346.52
Other Finance Charges	(6,029.02)
Net Amount	₱696,632.27
Bank Charges (₱5.00 per remittance based on the Cert.)	20.00
Total Deductions/Adjustments	**₱696,652.27**

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[10] Based on the rate used per the "Schedule of Zero-Rated Sale of Goods" (Exhibit "P-30").

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Furthermore, although the ICPA, in the Summary of inward remittances of zero-rated sales, presented various amounts of remittances, to which the export sales amounts were allegedly traced, only the amounts of remittances included in the table above were verified by the Court as pertaining to the corresponding export sales. Other alleged remittances were excluded in the computation since the amounts thereon were either not supported by Certificate of inward remittance or do not tally with the figures per the submitted bank certifications. Hence, it cannot be ascertained whether the alleged inward remittances indeed pertain to the subject export sales.

As to the computation of the figures appearing in the "Amounts not traced to inward remittance per bank cert. (in US$)" column above, mostly, the amounts were arrived at by deducting the total amounts under "Remittances per Cert. of inward remittance" from the amounts under "Net Amount (in US$)". However, for the sales with Invoice Nos. 1820000362 to 1820000366 and 1820000346, the amounts not traced is equivalent to the amount of sales reported during the quarter since none of the said sales were verified from the Certifications of inward remittance. And for the sales with Invoice No. 1820000377, although there were remittances of ₱4,504,008.26 pertaining to the total sales of ₱5,496,212.23, which include the upward sales adjustment of ₱82,117.21 reported during the quarter, there remains an unremitted amount of ₱992,203.97 (₱5,496,212.23 less ₱4,504,008.26). As such, the amount of ₱82,117.21 is treated as not traced to inward remittance as it is considered forming part of the unremitted amount of ₱992,203.97.

In fine, since the export sales of US$30,090.22 or ₱1,391,070.87 also qualify for VAT zero-rating, and consequently, the amounts not traced to inward remittance per bank certification was reduced to ₱864,633,357.30, petitioner's valid zero-rated sales for the 2nd quarter of taxable year 2016 shall accordingly be adjusted to ₱2,578,723,607.38, as shown below:

Properly substantiated Zero-Rated Sales per assailed Decision	₱ 3,443,356,964.68
Less: Amounts not traced to inward remittance per bank certification as adjusted	864,633,357.30
Adjusted Valid Zero-Rated Sales	**₱2,578,723,607.38**

Anent petitioner's assertion that even if it is not compliant with Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, its export sales remain zero-rated under Section 106(A)(2(a)(5) of the same Code, the same has no leg to stand on.

Although petitioner made mention of Section 106(A)(2)(a)(5) in its *Petition for Review,*[11] when it stated that its sales are zero-rated under Section 106(A)(2)(a)(1), (2)(i); and (5) of the NIRC of 1997, as amended, the latter failed to provide details as to which sales qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the said Code or any justification for such sales to qualify therefor.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provides:

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

Relative thereto, Section 4.106-5 of Revenue Regulations (RR) No. 16-2005, as amended, also provides:

> "SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.*- xxx
>
> The following sales by VAT -registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export sales.* – '*Export Sales*' shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> ***'Considered export sales under Executive Order No. 226'*** shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another

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[11] Docket, p. 17, par. 34. *om*

> export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided, further*, That *pursuant to EO 226 and other special laws*, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones *pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones*; (3) *sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227*; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not."

Pursuant to the above provisions, it is not required that the consideration must be paid for in acceptable foreign currency accounted for under BSP rules. However, the following conditions must be met in order for an export sale to qualify for VAT zero-rating under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended: (1) the sale was made by a VAT registered person; and (2) the sale of goods must be to an entity entitled to incentives under EO No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

Petitioner may have established that it is a VAT-registered person. However, nothing in the records would show that its sales were made to an entity entitled to incentives under EO No. 226 and other special laws. No piece of evidence was offered to show proof to that effect. Not even the *Report* of the ICPA shows any discussion or finding on petitioner's compliance with Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. Hence, petitioner's contention as to the VAT zero-rating of its export sales under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, being a mere allegation, bears no weight in the absence of sufficient and substantial proof.

Zero-rated sales of US$3,974,660.71 or ₱188,200,311.43 are not fully compliant with the substantiation and invoicing requirements

In the assailed Decision,[12] the Court, upon further verification of the ICPA's findings, confirmed that petitioner's export sales of goods amounting to US$3,974,660.71 or ₱188,200,311.43, as detailed below, were not properly substantiated:

	Reference to ICPA Report/ Exhibit No.	Amount	
		In USD	In PhP
Not properly substantiated:			
Export sales or zero-rated sales supported by invoices only	Annex A-5 Invoices (Exhibits "P-39-1A")	560,000.00	25,886,000.00
Export sales or zero-rated sales that were properly supported by invoices and bill of lading but invoices were dated outside the period of claim	Annex A-9 Invoices and bill of lading (Exhibits "P-37-24A" and "P-37-24B")	3,414,660.71	162,314,311.43
Total		**3,974,660.71**	**188,200,311.43**

As regards the export sales of US$560,000.00 or ₱25,886,000.00, petitioner did not provide details or justification for the same. Hence, the disallowance thereof shall not be disturbed.

Anent the export sales of US$3,414,660.71 or ₱162,314,311.43, petitioner asserts that as a mining company, it must recognize the same as sales in its books even if the goods are not covered by invoice pursuant to Philippine Accounting Standards (PAS) No. 18. Petitioner insists that it is not violating any specific provision of the law or regulations when it already recognizes sales in its books albeit the goods are on hold at the port and no sales invoices were issued until after the goods were shipped. The fact that the shipment was made on July 4, 2016, or only four (4) days after the end of the 2nd quarter, would show that the reporting of the sale in advance (prior to the issuance of the sales invoice) is consistent with PAS 18.

Petitioner's assertions lack merit.

Section 113(A)(1) and (B)(3) of the NIRC of 1997, as amended, explicitly requires that the sale of goods or properties must be

[12] Docket, p. 526, second paragraph.

supported by a VAT invoice, which must contain, among others, the date of the transaction, thus:

> "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 VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (3) The date of transaction, xxx"

Verily, petitioner's sale of goods should be properly substantiated by VAT invoice, which is its proof of sale, showing the date of the sales transaction or the date when the sale actually transpired.

While petitioner presented the provisional invoice[13] and bill of lading[14] to support the export sales of US$3,414,660.71 or ₱162,314,311.43, the examination by the Court of such invoice and bill of lading revealed that the same should be disallowed on the ground that the invoice was dated outside the period of claim. The said supporting invoice apparently represents sales transaction for the 3rd quarter of 2016 as the same was dated July 4, 2016, which is clearly beyond the scope of the present claim for refund (2nd quarter of 2016).

Considering that the export sales of US$3,414,660.71 or ₱162,314,311.43 is not duly substantiated by VAT zero-rated invoices dated within the period of claim, the Court's denial of VAT zero-rating thereon is in order.

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[13] Exhibit "P-37-24A".
[14] Exhibit "P-37-24B".

Input taxes on domestic purchases were disallowed as petitioner is a BOI-registered enterprise

In the assailed Decision, the Court disallowed petitioner's input taxes on domestic purchases of goods and services on the ground that the said purchases of the latter, being a BOI-registered entity with 100% exports for the year covering the subject period of claim, are zero-rated, hence, no input VAT should be paid on such purchases, rendering the petitioner not entitled to a refund of input VAT therefrom. This is consistent with the jurisprudential pronouncements in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue (Coral Bay)*[15] that the proper party to seek the tax refund should be the suppliers and not the petitioner. Consequently, only the input VAT arising from petitioner's importations was considered in determining the amount refunded.

Petitioner disagrees with the ruling of the Court that as a BOI-registered enterprise, the former should not be passed on with VAT on its purchases. It contends that only purchases of raw materials or packaging materials of BOI-registered enterprises are entitled to VAT zero-rating and that the doctrine in *Coral Bay* case applies only to PEZA-registered enterprises, not to BOI-registered enterprises.

Petitioner's arguments are unsound.

As aptly discussed in the assailed Decision, pursuant to Section 3 of Revenue Memorandum Order (RMO) No. 9-00, the sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to certain requirements.

Clearly, petitioner's local purchases of goods, properties or services are subject to VAT at zero percent (0%) rate, the latter being a BOI-registered entity with 100% exports. Hence, the VAT on such purchases should not be passed on by the local suppliers to petitioner. Also, the said RMO explicitly refers to sales of goods, properties or services and does not limit the sales accorded VAT zero-rating to sales of raw materials or packaging materials.

Moreover, in *Coral Bay,* the Supreme Court held that in cases where the taxpayer paid the input VAT, notwithstanding that under

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[15] G.R. No. 190506, June 13, 2016.

the law it is VAT zero-rated, its recourse is not against the government but against the suppliers who shifted to it the output VAT. In the said case, there was no distinction or categorical statement, which would limit the application of the aforesaid doctrine only to PEZA-registered entities. When there is no such distinction, there is no valid reason to bar the application of the doctrine espoused in the instant case.

Here, since petitioner paid the input VAT on its local purchases, albeit the said purchases are VAT zero-rated, its recourse is to seek reimbursement from its suppliers who shifted the VAT to petitioner and not to claim a refund from the government. To allow petitioner to claim a refund of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Thus, the Court's disallowance of petitioner's input VAT on domestic purchases of goods and services is appropriate.

Correspondingly, considering that only the zero-rated sale of ₱1,391,070.87 was reconsidered resulting to the valid zero-rated sales in the increased amount of ₱2,578,723,607.38, the said adjusted valid zero-rated sales of ₱2,578,723,607.38 shall be incorporated in the computation of the refundable input VAT in the assailed Decision,[16] all else being the same.

Petitioner's remaining input VAT of ₱40,738,105.61 can be attributed to the total zero-rated sales of ₱3,631,557,276.11. Consequently, only the input VAT of ₱28,927,621.59 is attributable to the valid zero-rated sales of ₱2,578,723,607.38, computed as follows:

Excess Input VAT allocated to Total Zero-Rated Sales	₱ 40,738,105.61
Divided by Total Zero-Rated Sales	3,631,557,276.11
Multiplied by Valid Zero-Rated Sales	2,578,723,607.38
Excess Input VAT attributable to Valid Zero-Rated Sales	**₱ 28,927,621.59**

Thus, petitioner is entitled to VAT refund in the amount of ₱28,927,621.59, representing the latter's excess and unutilized input VAT on importation of goods attributable to its zero-rated sales for the 2nd quarter of taxable year 2016.

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[16] Docket, p. 541.

However, considering that respondent had already approved in favor of petitioner, the amount of ₱20,041,479.05 as net allowable VAT Refund, which entirely pertains to petitioner's input VAT on importations, per Letter dated September 19, 2018,[17] issued by Assistant Commissioner of Internal Revenue (ACIR), Ms. Erlinda A. Simple, the said amount of ₱20,041,479.05 shall be offset against the refundable input VAT of ₱28,927,621.59, as found by this Court, to properly account for the remaining input VAT refund that must be rightfully accorded to petitioner for the 2nd quarter of TY 2016.

Accordingly, petitioner is entitled to the ***additional*** input VAT refund in the amount of ₱8,886,142.54 (₱28,927,621.59 less ₱20,041,479.05), instead of the amount of ₱8,870,537.77, as determined in the assailed Decision.

Be that as it may, it is already well-settled that statutes that grant exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. **Tax refunds <u>in relation to VAT</u> are in the nature of such exemptions.**[18] Thus, contrary to petitioner's stance, the subject refund claim cannot be given a liberal construction.

As a corollary, even when respondent did not dispute petitioner's zero-rated sales, nor raise as a defense the lack thereof, the same is of no moment. This is so because the taxpayer is charged with the heavy burden of proving that such taxpayer has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case. In fact, even if We were to consider respondent's acts as a lapse in the observance of procedural rules, such lapse does not work to entitle petitioner to a tax refund when the established and uncontested facts have shown otherwise.[19]

To reiterate, cases filed before this Court are litigated *de novo*. Thus, petitioner should prove every minute aspect of its case by

[17] Exhibit "P-11", Docket, pp. 411 to 412.
[18] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue,* G.R. No. 178090, February 8, 2010.
[19] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

presenting, formally offering and submitting to this Court all evidence required for the successful prosecution of its administrative claim.[20]

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Leave of Court to Reopen the Case for the Recall of a Witness*, is **DENIED** for lack of merit.

However, petitioner *Motion for Reconsideration* is **PARTIALLY GRANTED.** Accordingly, the Court's Decision dated February 2, 2021, is hereby amended to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.
>
> Respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** to petitioner Carmen Copper Corporation the total amount of **₱28,927,621.59,** representing petitioner's excess and unutilized input VAT on importations attributable to zero-rated sales for the 2nd quarter of taxable year 2016, broken down as follows:
>
> (i) **₱20,041,479.05**, granted per Letter dated September 19, 2018 of Ms. Erlinda A. Simple, Assistant Commissioner of Internal Revenue; and,
>
> (ii) **₱8,886,142.54**, pertaining to the difference between the amount of ₱28,927,621.59, representing the duly substantiated excess and unutilized input VAT on petitioner's importation of goods attributable to petitioner's zero-rated sales for the 2nd quarter of taxable year 2016 as found by the Court, and the amount of ₱20,041,479.05 as indicated in *(i)*.
>
> **SO ORDERED.**"

[20] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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