REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ORICA PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 9647

Members:

- versus -

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 04 2020
9:0 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Orica Philippines, Inc. (**petitioner**) seeking the refund or issuance of Tax Credit Certificate (**TCC**) in the amount of ₱18,021,462.87, representing its alleged unutilized input value-added tax (**VAT**), attributable to its export sales

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[1] Section 3, Rule 4 of RRCTA; Filed on 09 August 2017, Division Docket, pp. 10-23.
Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
...

for the second quarter of fiscal year (**FY**) that ended on 30 September 2015 or for the period 01 January 2015 to 31 March 2015.

Petitioner is a corporation registered with the Securities and Exchange Commission (**SEC**) and Bureau of Internal Revenue (**BIR**) with Taxpayer's Identification Number (**TIN**) 000-059-661-000. It is primarily engaged in the manufacture and sale of industrial explosives, nitro glycerin, ammonium nitrate, black powder, nitrocellulose, including gun cotton, detonators, detonating fuses, safety fuses, and other substances.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**CIR**) vested with authority, among others, to decide, approve and grant applications for refund and/or issuance of TCC representing a taxpayer's excess internal revenue tax payments.

The factual antecedents follow.

For the second quarter of FY ending 2015 or for the period of 01 January 2015 to 31 March 2015, petitioner generated a total sales amounting to ₱596,472,847.10. Out of the total sales for the said covered period, ₱335,657,670.35 were treated as sales subject to zero percent VAT since they were revenues earned from goods sold to non-resident foreign corporations or manufacturers/producers registered with the Board of Investments (**BOI**), whose products are 100% exported. Considering that the zero-rated sales comprised a large portion of petitioner's total revenue for the period, the input VAT relating to the said sales allegedly remained unutilized.

On 30 March 2017, petitioner filed, with the BIR's Large Taxpayers Service, Excise Large Taxpayers Audit Division I, a claim for refund or issuance of a TCC, representing the unutilized input VAT amounting to ₱18,021,462.87.

On 10 July 2017, petitioner received an undated letter (from the Large Taxpayers Service, Excise Large Taxpayers Audit Division I) denying its refund application.

Feeling aggrieved, petitioner filed before this Court a Petition for Review on 09 August 2017, praying for a refund or for the issuance of a TCC in the amount of ₱18,021,462.87.

After twice moving for an extension of time, respondent filed[2] an Answer (To the Petition for Review dated August 9, 2017) where he cited the following as grounds to deny petitioner's plea for relief, to wit: (1) Non-compliance with Revenue Memorandum Order (**RMO**) No. 53-98 Annex B-1[3] for failure to submit a Certification from Bureau of Customs (**BOC**) that petitioner have not filed similar claim covering the same period and non-submission of importation documents; (2) Non-submission of complete bank credit memos to prove inward receipts of foreign currency for export sales and dollar remittance reconciliation of export sales and dollar remittance in violation of Section 112[4] of the National Internal Revenue Code (**NIRC**) of 1997, as

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2 On 06 November 2017.

3 Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

4 **SEC. 112. *Refunds or Tax Credits of Input Tax.*** –
(A) *Zero-rated or Effectively Zero-rated Sales.* – any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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. *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.
(B) *Cancellation of VAT Registration.* – A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
(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.-
(D) *Manner of Giving Refund.* - Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: *Provided,* That refunds under this paragraph shall be subject to post audit by the Commission on Audit.

amended; and, (3) Petitioner failed to comply with invoicing requirements under Section 113[5] of the NIRC of 1997, as amended.

Respondent further added that petitioner has outstanding liabilities and that the issuance of a TCC cannot be given due course until the delinquency assessments have been resolved or paid.

Later, the Court issued a Notice of Pre-Trial Conference on 20 November 2017 and set the case for Pre-Trial Conference on 15 February 2018. Petitioner filed its Pre-Trial Brief on 09 February 2018, while respondent filed his Pre-Trial Brief on 13 February 2018.

After the Pre-Trial Conference, the parties filed their Joint Stipulation of Facts and Issues (**JSFI**) on 02 March 2018, which the Court approved in a Resolution dated 12 March 2018. The Pre-Trial was terminated thereafter.[6]

At the trial proper, petitioner presented as first witness its Tax Analyst, Jesson P. Cortes (**Cortes**). On the witness stand, he testified on the circumstances leading to the filing of the tax refund application. As Tax Analyst, he also stated his responsibilities and they included the preparation, review and filing of tax returns. As such, he was made aware that more than 50% of petitioner's revenues were export sales and sales to entities registered with the BOI. Hence, at least 50% of the input VAT attributable to the said transactions remained to be unutilized. He likewise identified petitioner's documentary exhibits.[7]

Petitioner's second witness, Mikhail J. Escoto (**Escoto**), the Senior Consultant of Isla Lipana & Co., testified on petitioner's outstanding liabilities for income tax and VAT and its application for compromise settlement, the approval of which was still pending at the time he executed his Judicial Affidavit.[8]

Petitoner's third witness, Emmanuel Y. Mendoza (**Mendoza**), is the Court-commissioned Independent Certified Public Accountant

[5] **SEC. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.*
[6] On 05 April 2018, the Court issued the Pre-Trial Order.
[7] See TSN dated 24 April 2018; Exhibit "P-42", Judicial Affidavit, Division Docket, pp. 410-419.
[8] TSN dated 15 May 2018; Exhibit "P-36", Judicial Affidavit, id., pp. 193-197.

(**ICPA**).[9] He testified on the result of his examination of petitioner's documents from which he concluded that petitioner had zero-rated sales for the second quarter of FY 2015 and these were from the (1) direct exportation and (2) domestic sale to BOI-registered companies of industrial explosives. Likewise, these zero-rated sales were reported for VAT purposes and duly substantiated.

Later, except for "P-4-A"[10], "P-5-A"[11], "P-13"[12], "P-13-A"[13], and "P-13-B"[14], the Court admitted all of petitioner's documentary exhibits.[15]

Respondent, for his part, presented his lone witness, Revenue Officer Ms. Edalyn Naty Dayacap (**RO Dayacap**).[16] She testified on petitioner's administrative claim for refund and the procedure she undertook in evaluating the claim.

In a Resolution dated 28 June 2019[17], the Court admitted all of respondent's exhibits when they were offered. Still later, the Court ordered the filing of the parties' respective memoranda. With the filing of the parties' memoranda, the Court submitted the case for decision in a Resolution dated 09 August 2019.[18]

ISSUE

As the parties so stipulated in their JSFI, they submitted this lone issue for the Court's resolution:

> WHETHER PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND IN THE AMOUNT OF EIGHTEEN MILLION TWENTY ONE THOUSAND FOUR HUNDRED SIXTY TWO PESOS & 87/100 (₱18,021,462,87), REPRESENTING UNUTILIZED INPUT VALUE-

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9 Exhibit "P-38", Judicial Affidavit, id., pp. 247-266.

10 Described as "*Relevant Electronic Filing and Payment System (eFPS) Confirmation numbers in each returns*"; Formal Offer of Evidence with Manifestation, id., p. 271.

11 Id.

12 Described as "*Duly received letter request for the refund of Petitioner's excess/unutilized input tax credits for the covered period*"; Formal Offer of Evidence with Manifestation, id., p. 273.

13 Described as "*Date reflected in the Letter for Request for refund of its unutilized input tax credits*"; Formal Offer of Evidence with Manifestation, id., p. 273.

14 Described as "*Signature above the name Roselle Y. Caraig*"; Formal Offer of Evidence with Manifestation, id., p. 273.

15 See Resolutions dated 10 October 2018, id., pp. 331-338 and 28 June 2019, id., pp. 538-544.

16 Exhibit "R-9", Judicial Affidavit, id., pp. 139-143.

17 Supra at note 15.

18 Division Docket, p. 578.

ADDED TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE SECOND QUARTER OF FY ENDED 30 SEPTEMBER 2015 OR THE PERIOD OF 01 JANUARY 2015 TO 31 MARCH 2015.[19]

ARGUMENTS

In its Memorandum, petitioner anchored its claim for refund or issuance of TCC on Section 112[20] of the NIRC of 1997, as amended, correlated with Section 4.112-1 of Revenue Regulations (**RR**) 16-2005[21], providing for the remedy of refund or issuance of TCC for excess/unutilized input tax incurred from purchases of goods and services attributable to VAT zero-rated sales. Petitioner claimed to have complied with all the requirements, thus entitling it to refund or issuance of TCC. Petitioner relied on the supposed concurrence of the following requisites:

a. That the taxpayer is VAT-registered;
b. That the administrative and judicial claims for refund were filed within the prescriptive period provided under the Tax Code and its pertinent regulations;
c. That the taxpayer is engaged in zero-rated or effectively zero-rated sales and that the sales were paid for in acceptable foreign currency exchange and the proceeds have been duly accounted for in accordance with BSP rules and regulations pursuant to Section 108(B)(2) of the Tax Code;
d. That the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of petitioner were duly supported by VAT invoices or official receipts in accordance with Sections 113 and 237 of the NIRC;
e. That the claimed input VAT payments were not applied against any output tax in the succeeding periods.

According to petitioner, not only did it prove that it is a VAT-registered taxpayer as shown in its BIR Certificate of Registration; the parties likewise stipulated on its registration as such. It also insisted that it was able to establish that it had export sales and sales to entities registered with the BOI, both subject to zero percent VAT. The input VAT attributable to such sales purportedly remained unutilized. It maintained that these transactions were duly substantiated and it was

[19] Issue, Pre-Trial Order dated 05 April 2018, id., p. 208.
[20] Supra at note 4.
[21] *Consolidated Value-Added Tax Regulations of 2005.*

able to prove that the claimed input VAT were not applied against output VAT in the succeeding periods.

As regards the non-submission of Certification from the BOC, stating that no similar claim was filed covering the same period (cited as one of the grounds for denial of its administrative claim), petitioner contended that its absence is not fatal as it is not one of the requirements for claiming a refund. For petitioner, its Sworn Statement certifying that it did not file any and/or will not file any similar claim before the BOC sufficed and the Certification from BOC would be superfluous.

As for the absence of complete bank credit memos to prove inward receipts of foreign currency for export sales as well as the reconciliation of export sales and dollar remittance, petitioner insisted that this should not result in the full denial of its claim. Rather, the denial of the claim should be limited to the unreconciled or unsubstantiated portion only.

Respondent, on the other hand, remained firm in his stance that the claim for refund was properly denied following petitioner's failure to comply with Sections 112 and 113 of the NIRC of 1997, as amended; particularly, the non-submission of Certification from BOC stating that petitioner did not file any similar claim covering the same period and non-submission of complete bank credit memos to prove inward remittance of foreign currency for export sales and dollar remittance reconciliation of export sales and dollar remittance.

RULING OF THE COURT

After a careful review of the records, the Court finds the instant Petition for Review bereft of merit.

Petitioner anchors its claim for refund or issuance of TCC on Section 112(A) and (C) of the NIRC of 1997, as amended, which provides:

...

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

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

...

(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.**[22]

...

Based on the afore-quoted provision, a taxpayer engaged in zero-rated transactions may apply for a claim for refund or issuance of TCC for unutilized input VAT subject to the following requirements:

22 Supra; emphasis supplied.

...

1. the taxpayer is engaged in sales which are zero-rated (i.e., export sales) or effectively zero-rated;
2. the taxpayer is VAT-registered;
3. the input taxes are incurred or paid;
4. the claim must be filed within two (2) years after the close of the taxable quarter when such sales are made;
5. 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 is yet to be against the output tax;
6. the input taxes are not applied against any output tax liability; and,
7. in case of zero-rated sales under Section 106(A)(2)(a)(1)[23] and (2), Section 106(B)[24] and Section 108(B)(1) and (2)[25], the

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

(A) *Rate and Base of Tax.* - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor. *Provided,* That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

...

(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);

(2) Sale of raw materials or packaging materials to a non[-]resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

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

...

(B) *Transactions Deemed Sale.* – The following transactions shall be deemed sale:

(1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;

(2) Distribution or transfer to:

(a) Shareholders or investors as share in the profits of the VAT-registered persons; or

(b) Creditors in payment of debt;

(3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and

(4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

[25] **SEC. 108.** ***Value-added Tax on Sale of Services and Use or Lease of Properties.*** –

...

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[26]

...

Did petitioner comply with the above requisites? The Court responds in the negative.

I. TIMELY-FILED ADMINISTRATIVE AND JUDICIAL CLAIM FOR REFUND

Before the Court proceeds to the substantive issues, it deems propitious to first determine the timeliness of the petition as this is vital in claims for refund as well as in conferring jurisdiction unto this Court.

Per requisite No. 4, pursuant to Section 112(A)[27] of the NIRC of 1997, as amended, the administrative claim must be filed within two (2) years after the close of the taxable quarter when the zero-rated sales were made. In the case at bar, the claim covers the second quarter of FY ending 30 September 2015 or the period of 01 January 2015 to 31 March 2015. Counting two years from the close of the subject taxable quarter, petitioner had until 31 March 2017 within which to file its administrative claim.

The CIR is given one hundred twenty (120) days from the date of submission of complete documents in support of the application to decide on the administrative claim. In case of full or partial denial of the claim for tax refund or tax credit or the failure on the part of the CIR to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from 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 this

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(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in the business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)[.]

26 *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, 27 April 2007, 522 SCRA 657, 685.

27 Supra at note 4.

Court. Concomitantly, what is appealable to this Court is the CIR's decision or his inaction within 120 days, which is deemed as a denial.

Based on the foregoing, petitioner's administrative and judicial claims were seasonably filed, the material dates of which are summarized below:

Period Covered	Date of filing of Administrative Claim	Date of receipt of denial	End of 30 days	Date of Filing of Judicial Claim
January 1 to March 31, 2015	March 30, 2017	July 10, 2017[28]	August 9, 2017	August 9, 2017

With both the administrative and judicial claims timely filed, the Court thus validly assumed jurisdiction over the instant case.

The Court shall now make a determination of whether petitioner complied with the rest of the requirements for purposes of claiming refund or issuance of TCC.

II. PETITIONER IS A VAT-REGISTERED TAXPAYER

Petitioner has sufficiently established that it is a registered VAT taxpayer with the BIR as shown in its BIR Certificate of Registration (BIR Form No. 2303).[29]

III. PETITIONER IS ENGAGED IN ZERO-RATED SALES

Petitioner's amended 2nd Quarter VAT return (BIR Form No. 2550-Q)[30] filed with the BIR shows that it declared zero-rated sales for the second quarter of FY 2015 ended 30 September 2015 of ₱335,657,680.35 and vatable sales of ₱260,815,166.80. *Per* ICPA's verification[31], petitioner's zero-rated sales were generated from two sources as follows:

28 Paragraph (e), Stipulation of Facts, JSFI, Division Docket, p. 172.
29 Exhibit "P-3", id., p. 298.
30 Exhibit "P-6", id., p. 304.
31 Exhibit "P-40", Amended ICPA Report, Table 2, p. 6.

Direct exportation	P 192,628,598.28
Domestic sale to BOI registered companies	143,029,082.07
TOTAL	**P 335,657,680.35**

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides that export sales are subject to VAT at zero percent (0%), *viz*:

> ...
>
> **SEC. 106.** ***Value-Added Tax on Sale of Goods or Properties.*** –
>
> (A) *Rate and Base of Tax.* – ...
>
> ...
>
> (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)[.][32]
>
> ...

In order for an export sale to qualify as zero-rated, 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 and services; and,
4. The payment was accounted for in accordance with the rules and regulations of the BSP.[33]

...

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[32] Emphasis supplied.
[33] See Section 106, NIRC.

From the above, any VAT-registered person claiming VAT zero-rating on direct export sales must have presented 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;[34] and,
3) statement from the Central Bank [now *Bangko Sentral ng Pilipinas*] or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations.[35]

...

In relation to the first condition, Section 113(A)(1),(B)(1),(2)(c), and (3) of the NIRC of 1997, as amended, and Section 4.113-1(A)(1),(B)(1) and (2)(c) of RR No. 16-2005[36] provide that a VAT-registered taxpayer 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
...

(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);

34 Section 16(c)(1)(i) of RR No. 5-87, as amended by RR No. 3-88, *Revenue Regulations Amending Sections 16 and of Revenue Regulations No. 5-87.*
35 Section 16 (c)(1)(ii) of RR No. 5-87, as amended by RR No. 3-88, *Revenue Regulations Amending Sections 16 and of Revenue Regulations No. 5-87.*
36 Supra at note 21.

(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:

...

(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;

...

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; ...[37]

...

SEC. 4.113-1. ***<u>Invoicing Requirements</u>***. --

(A) A VAT-registered person shall issue: --

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

...

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 Receipts 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**:

...

(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[.][38]

...

[37] Emphasis supplied.

[38] Emphasis supplied and emphasis in the original text.

Per verification of the substantiation of the export sales, petitioner was able to support them with VAT zero-rated invoices[39] compliant with the above, thus satisfying the first requisite (of substantiation).

Likewise, petitioner satisfied the second substantiation requirement for majority of its export sales by presenting the corresponding export declaration for each, summarized as follows:

Supported with export declarations				
Invoice Number	**Invoice Date**	**Exhibit Number**	**Dollar Amount**	**Peso Amount**
30028438	19-Jan-15	P-16-23	189,300.25	8,456,988.67
30028420	19-Jan-15	P-16-24	46,209.12	2,064,392.44
30028436	19-Jan-15	P-16-25	213,370.50	9,532,327.09
30028421	26-Jan-15	P-16-26	123,696.06	5,458,954.52
30028422	23-Jan-15	P-16-27	153,227.25	6,762,225.00
30028557	23-Feb-15	P-16-28	777,537.30	34,406,025.53
30028614	26-Feb-15	P-16-30	144,155.22	6,337,063.47
30028553	17-Feb-15	P-16-31	73,437.80	3,251,458.60
30028552	18-Feb-15	P-16-32	129,069.10	5,708,726.29
30028558	17-Feb-15	P-16-29	244,765.90	10,837,010.22
30028627	27-Feb-15	P-16-33	559,821.15[40]	24,609,737.75
30028556	17-Feb-15	P-16-34	186,378.00	8,251,885.95
30028555	17-Feb-15	P-16-35	248,541.60	11,004,179.34
30028554	17-Feb-15	P-16-36	51,149.20	2,264,630.83
30028551	17-Feb-15	P-16-37	171,619.20	7,598,440.08
30028550	18-Feb-15	P-16-38	47,050.60	2,081,048.04
30028549	17-Feb-15	P-16-39	54,453.00	2,410,906.56
Subtotal			***3,413,781.25***	***151,036,000.38***
Not supported with export declaration				
30028437	19-Jan-15		147,952.60	6,609,782.41
30028559	17-Feb-15		3,218.60	142,503.00
30028560	23-Feb-15		58,162.72	2,573,700.36
30028612	25-Feb-15		191,819.75	8,471,143.80
30028613	11-Feb-15		16,000.00	709,440.00
30028627	27-Feb-15		525,159.88	23,086,028.33
Subtotal			***942,313.55***	***41,592,597.90***
TOTAL			**4,356,094.80**	**192,628,598.28**

39 Exhibit "P-16-1 to P-16-22".

40 Only $559,821.15 of $1,084,981.03, the invoice amount, was substantiated by the export declaration.

IV. ABSENCE OF SUPPORTING DOCUMENTS TO PROVE FOREIGN CURRENCY PAYMENTS

Notwithstanding the concurrence of the two substantiation requirements, petitioner was, however, *unsuccessful* in sufficiently adducing supporting documents to prove that the foreign currency payments were inwardly remitted.

While petitioner presented certain pages of its bank statements[41] showing deposits totaling to $6,611,759.46 as proof of inward remittance, the total deposits ($6,611,759.46) reflected in the bank statements do not tally with the total dollar amount of the export sales ($4,356,094.80) as evidenced by the VAT zero-rated invoices. By simply comparing the amounts reflected in the bank statements with the aggregate amount of the export sales evidenced by invoices, it *cannot* be readily deduced from the bank statements that the amount credited actually correspond to the subject export sales. Additionally, the deposits column in the bank statement with handwritten notation "Export-Feb. 2015" is indecipherable.

Insisting on its compliance with this particular requirement and in its attempt to corroborate the bank statements, petitioner also included e-mails from the supposed payor, Orica International Pte Ltd, showing the screenshots of the posting date of the payables and document date. Unfortunately for petitioner, the actual date of payment or remittance is conspicuously not reflected as well.

More importantly, the recipient bank did not also certify the said pages of the bank statements where the payments for the subject export sales were supposedly inwardly remitted. These bank statements are, at best, considered as self-serving documents and cannot be given full credence for purposes of allowing a claim for refund.

In RR 3-88[42], one of the documents needed in claims for refund or issuance of TCC is a statement from the BSP or any of its accredited agent banks that the proceeds of the sale in acceptable foreign

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41 Exhibit "P-16-40".
42 Supra at note 35.

currency were inwardly remitted and accounted for in accordance with applicable banking regulations. Furthermore, in the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund[43] on Dollar Remittances, one of the items required is the schedule and copy of Bank Credit Memos to prove inward receipts of foreign currency for export sales. Regrettably, petitioner failed to submit the bank issued Bank Credit Memos; or alternatively, the Certificate of Inward Remittance that the recipient bank likewise issued.

Petitioner's failure to submit a bank-certified credit memo or the Certificate of Inward Remittance is fatal to its claim. Indubitably, it is crucial that the proof of inward remittance of the payments in foreign currency be traced back to the export sales to which it relate. In this case, the unequivocal reference between the subject export sales and the inward transmittal of payments is missing.

Based on the foregoing, the Court is thus constrained to agree with respondent that petitioner's $4,356,094.80 export sales (equivalent to ₱192,628,598.28) could not qualify for VAT zero-rating.

V. PETITIONER'S SALES TO BOI-REGISTERED ENTERPRISES MUST BE DISALLOWED FOR VAT ZERO-RATING

As regards the constructive export sales made to BOI-registered companies or entities entitled to exemptions under special laws, Sections 106(A)(2)(a)(5) and (c) of the NIRC of 1997, as amended, read as follows:

> ...
> **SEC. 106. *Value-Added Tax on Sale of Goods or Properties.*** —
>
> (A) *Rate and Base of Tax.* — ...
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term "***export sales***" means:

[43] Annex A, RMC 54-2014, *Clarifying Issues Relative to the Application for Value Added Tax (VAT) Refund/Credit under Section 112 of the Tax Code, As Amended.*

...

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;

...

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.[44]

...

Relative thereto, Sections 4.106-5 of RR No. 16-2005[45], as amended, also provides:

...

SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties*. – ...

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) **Export sales.** – *"Export Sales"* shall mean:

...

(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 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

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44 Emphasis supplied.
45 Supra at note 21.

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.

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and ***Provided*, finally, that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**[46]

Further, Section 3 of RMO 9-2000[47] provides:

...
SEC. 3. *Sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions*:

(1) The supplier must be VAT-registered[;]
(2) The BOI-registered buyer must likewise be VAT-registered;
(3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. **For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;**
(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned **BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers**; and[,]
(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly-registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in

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[46] Emphasis supplied and underscoring in the original text.
[47] *Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales*

> the VAT-invoice the name and BOI-registry number of the buyer[.][48]
>
> ...

From the forgoing, for sales to BOI-registered entities to be considered as zero-rated, petitioner must present the Certification issued by the BOI. Upon careful scrutiny of the BOI certificates from petitioner's customers (registered with the BOI), the Court finds that the validity period of all the certificates does not cover the subject sales (01 January to 31 March 2015). Below is the summary of petitioner's sales to BOI-registered entities:

Exhibit No.	Customer	Validity Period	Peso Amount
BOI certification does not cover the concerned period			
P-17-171	Carmen Copper Corporation	January 1 to December 31, 2016	50,896,804.35
P-17-172	Greenstone Resources Corporation	July 1, 2016 to June 30, 2017	3,200,357.60
P-17-173	Lepanto Consolidated Mining Co.	January 1 to December 31, 2017	6,459,325.00
P-17-174	Oceanagold (Philippines), Inc.	January 1 to December 31, 2016	58,836,931.12
Subtotal			*119,393,418.07*
No BOI certification			
	Philex Mining Corporation		23,635,664.00
TOTAL			**143,029,082.07**

With the above, the Court cannot, therefore, consider the sales to BOI-registered entities as subject to zero percent VAT for non-compliance with the requirements of RMO 9-2000.

Following petitioner's failure to satisfy the documentary requirements for claiming a refund of unutilized input VAT, its reported total zero-rated sales (in its Amended 2nd Quarterly VAT Return for FY ending 30 September 2015 or the period 01 January to 31 March 2015) amounting to ₱335,657,680.35, must be disallowed for purposes of refund or issuance of TCC.

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48 Emphasis supplied.

With the disquisitions above, the Court finds it no longer necessary to further discuss the other requisites.

On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[49]

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

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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49 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.

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
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice