REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION, Petitioner,	CTA Case No. 8804
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 23 2017 3:30 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed by Coral Bay Nickel Corporation involves a claim for refund or issuance of tax credit certificate in the amount of TWENTY-TWO MILLION FIVE HUNDRED SEVENTY-SEVEN THOUSAND TWO HUNDRED NINETY PESOS AND FIFTY-THREE CENTAVOS (₱22,577,290.53), allegedly representing unutilized input value-added tax (VAT) from its purchases of goods and services attributable to its VAT zero-rated sales for the period January 1, 2012 to December 31, 2012.

First, the facts.

Petitioner Coral Bay Nickel Corporation is a domestic corporation registered with and licensed by the Securities and Exchange Commission to engage in the manufacture and exportation of nickel/cobalt mixed sulfide, with principal office

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[1] Docket, pp. 1-9.

address at Barangay Rio Tuba, Municipality of Bataraza, Palawan.[2] It is a VAT-registered entity with BIR Certificate of Registration No. OCN 8RC0000035523 and Taxpayer's Identification Number (TIN) 005-961-540-000.[3] It is also registered with the Philippine Economic Zone Authority (PEZA) as evidenced by its PEZA Registration Certificate No. 02-072 dated December 27, 2002.[4]

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the head of the Bureau of Internal Revenue (BIR), with the power to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Diliman, Quezon City.

On September 1, 2004, petitioner entered into an Off-Take Agreement[5] for the export of its nickel cobalt mixed sulfide with Sumitomo Metal Mining Co., Ltd. (SMMC), a corporation organized and existing under the laws of Japan.

During the taxable year (TY) 2012, petitioner exported to SMMC its nickel cobalt mixed sulfide in the aggregate amount of ₱13,745,668,226.82. In the same period, it purchased goods and services which were consumed and rendered outside the PEZA Zone, to which it incurred input VAT in the aggregate amount of ₱22,577,290.53.

As a VAT-registered entity, petitioner filed all its Monthly and Quarterly VAT Returns for TY 2012, and amendments thereto, through the Electronic Filing and Payment System (eFPS) of the BIR.[6]

On November 28, 2013, petitioner filed with the Large Taxpayers Excise Audit Division I (LTEAD I) of the BIR an administrative claim for refund for its alleged unutilized input VAT for TY 2012 in the amount of ₱22,577,290.53, attaching

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[2] Pars. 4 and 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 252; Exhibits "P-7" and "P-8", docket, pp. 1318-1332.
[3] Par. 6, Summary of Admitted Facts, JSFI, docket, p. 252; Exhibit "P-6", docket, p. 1317.
[4] Par. 7, Summary of Admitted Facts, JSFI, docket, p. 252; Exhibit "P-1", docket, p. 1302.
[5] Exhibit "P-28", docket, pp. 1388-1400.
[6] Exhibits "P-12" to "P-27".

thereto an Application for Tax Credits/Refunds (BIR Form No. 1914) and all supporting documents. [7]

On April 14, 2014, petitioner, citing respondent's inability to act on its administrative claim for refund/tax credit, filed the instant Petition for Review.

In his Answer[8], respondent argues that petitioner's claim for refund/tax credit has neither factual nor legal basis. He claims Revenue Memorandum Circular (RMC) No. 42-2003, particularly Paragraphs Q-5 and A-5 thereof, clarified that claims for input VAT based on invoices/receipts issued upon the effectivity of RMC No. 74-99 filed by PEZA-registered companies, regardless of the type or class of PEZA registration, should be denied.

Paragraph Q-3 of the same RMC further provides that in cases where despite the BIR's approval of application for zero-rating of the supplier of exporters-claimant, this supplier still issued VAT invoices which became the basis of the claim for tax credit, the claim for input tax credit by the exporter-claimant should be denied without prejudice to the latter's right to seek reimbursement of the VAT paid, if any, from the supplier. Thus, exporter-claimant must be vigilant that the invoices and receipts issued by its supplier do not carry any VAT component because with approved zero-rating from the BIR, such supplier will report its sales as zero-rated, says respondent.

The Pre-Trial Order[9] was issued on September 16, 2014, terminating the pre-trial conference.

To substantiate its claim for refund/tax credit, petitioner presented: (1) John S. Barrientos, the QS/CSR Manager of SMCC Philippines, Inc.; (2) Engr. Zosimo Oliver P. Villa, a Geodetic Engineer; (3) Allen Roy T. Catacutan, its Tax and Audit Officer; and (4) Joseph Cedric V. Calica, the Court-

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[7] Par. 8, Summary of Admitted Facts, JSFI, docket, p. 252; Exhibits "P-9" to "P-10", docket, pp. 1333-1339.
[8] Docket, pp. 89-98.
[9] Docket, pp. 261-267.

commissioned Independent Certified Public Accountant (ICPA).

John S. Barrientos testified[10] that he is the QS/CSR Manager of SMCC Philippines, Inc. (SMCC) whom petitioner engaged to construct the following: (1) Laborers Row House; (2) Bus Terminal; (3) JTA Dormitory; (4) RTN Runway; and (5) Foreman's Duplex.

In its billing for the projects, SMCC imputed VAT as the goods and services provided by it were consumed and performed outside the PEZA zone. Petitioner paid the VAT as shown in the receipts/invoices he identified in court.

Geodetic Engineer Zosimo Oliver P. Villa, declared[11] that petitioner engaged his services to plot the coordinates in order to determine whether its construction projects, *viz.,* Laborer's Row House, Bus Terminal, JTA Dormitory, RTN Runway, and Foreman's Duplex, were outside the Rio Tuba Economic Processing Zone as specified in Presidential Proclamations Nos. 304 and 1352. As requested, he conducted an ocular inspection and prepared a plan for the said projects. Based on the Garmin Etrex GPS, which is commonly used by Geodetic Engineers, petitioner's construction projects were outside the PEZA Zone.

Petitioner's Tax and Audit Officer **Allen Roy T. Catacutan**,[12] testified that he reviews the computations, remittances, and payments of petitioner's tax liabilities with the BIR as well as submits reportorial requirements to other government agencies like the PEZA, thus, he is in custody of all the tax returns and documents filed by petitioner with them. He likewise oversees the claims for refund of petitioner and the corresponding BIR audit as a result thereof, if any.

He opined that as an export-oriented enterprise, petitioner is entitled to refund of its unutilized input VAT attributable to its zero-rated sales for TY 2012. Petitioner

[10] Exhibit "P-55", docket, pp. 1184-1189.
[11] Exhibit "P-56", docket, pp. 1175-1181.
[12] Exhibit "P-57", docket, pp. 1197-1209.

incurred the said excess and unutilized input VAT from its domestic purchases of goods and services which were consumed and rendered outside the Rio Tuba Export Processing Zone. He added that the goods and services were used to construct housing facilities and roads located outside the PEZA Zone. The said facilities were necessary in the production of petitioner's export products under its PEZA registered activities. Since the goods and services were consumed outside the PEZA Zone, the suppliers of these goods and services subjected their sales to petitioner to VAT.

Witness Catacutan continued to state that petitioner has unutilized input VAT since its exportation of nickel cobalt mixed sulfide with SMMC qualifies as VAT zero-rated sales in accordance with Section 106(A)(2)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner was not able to utilize its input VAT for the four (4) quarters of TY 2012 in the total amount of ₱22,577,290.53, as shown in petitioner's quarterly VAT Returns for 2012 and 2013 which he presented before Court.

ICPA **Joseph Cedric V. Calica** testified[13] that per his examination and verification of the voluminous documents supporting petitioner's claim for refund, petitioner has unutilized input VAT in the total amount of ₱21,091,927.38.

With the issuance of the Resolutions[14] dated November 26, 2015 and June 7, 2016, petitioner rested its case.

To support his defense, respondent presented his lone witness, Revenue Officer III **Malik Dimakuta**, who testified[15] that he was one of the Revenue Officers (ROs) authorized to examine the books of accounts and other accounting records of petitioner for TY 2012 relative to its claim for refund of unutilized input VAT. After their audit examination, they prepared a Memorandum[16] dated January 16, 2014, recommending the denial of petitioner's claim for refund for lack of legal and factual bases.

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[13] Exhibit "P-64", docket, pp. 1452-1472.
[14] Docket, pp. 1497-1500 and vol. 4, pp. 1575-1576, respectively.
[15] Exhibit "R-4", docket, pp. 106-110.
[16] Exhibit "R-2".

In the letter[17] dated June 4, 2014 which was served to petitioner on June 10, 2014, respondent denied petitioner's claim for refund of unutilized input VAT.

On September 8, 2016, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.[18]

After the parties filed their respective memoranda, the instant case was deemed submitted for decision on November 24, 2016.

THE ISSUE

Per the parties' Joint Stipulation of Facts and Issues, the lone issue for the Court's consideration is as follows:[19]

> WHETHER PETITIONER IS ENTITLED TO REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE (TCC) IN THE AMOUNT OF ₱22,577,290.53 ALLEGEDLY REPRESENTING UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR TAXABLE YEAR 2012.

THE COURT'S RULING

Under Section 112 (A) and (C) of the NIRC of 1997, as amended,[20] a taxpayer engaged in zero-rated or effectively

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[17] Exhibit "R-3".
[18] Docket, pp. 1592-1593.
[19] Issue to be Resolved, JSFI, docket, p. 252.
[20] 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

zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and

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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.

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.

6. that the input taxes were not applied against any output VAT liability.

As to the timeliness of the filing of the administrative claim with respondent, Section 112(A) of the NIRC of 1997, as amended, mandates that the application for refund/tax credit of unutilized excess input VAT 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 present claim covers the four taxable quarters of 2012 which closed on March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012. Counting two years from the said dates, petitioner had until March 31, 2014, June 30, 2014, September 30, 2014, and December 31, 2014, respectively, within which to file its administrative claim for refund/tax credit. Evidently, the administrative claim for refund[21] in the amount of ₱22,577,290.53 filed with the BIR's LTEAD I on November 28, 2013 is well within the two-year prescriptive period.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the CIR has 120 days from the date of submission of complete documents in support of the application for refund/tax credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer may appeal the adverse ruling with this Court within 30 days from receipt thereof. However, if after the 120-day period the CIR fails to act on the application for refund/tax credit, taxpayer may appeal such inaction to this Court within 30 days.

In this case, petitioner simultaneously submitted its supporting documents[22] upon filing of its administrative claim. The record does not show that a written notice was sent by the BIR informing petitioner that the documents it submitted were incomplete or that it should submit additional documents. Hence, the 120-day period started and continued

[21] Exhibit "P-9", docket, pp. 1333-1338.
[22] As enumerated in Exhibit "P-9", docket, p. 1338.

to run from November 28, 2013, the date when petitioner filed its administrative claim with all its supporting documents, or until March 28, 2014. Since respondent failed to act on said claim after the lapse of the 120-day period, petitioner had 30 days, or until April 27, 2014, within which to file a Petition for Review with this Court. In fine, the instant petition was also seasonably filed on April 14, 2014.

Petitioner is a VAT-registered entity.

Petitioner's BIR Certificate of Registration No. OCN 8RC0000035523, with Taxpayer's Identification Number 005-961-540-000[23] indubitably show that it is a duly registered VAT entity.

Petitioner is engaged in zero-rated sales.

It was established that petitioner, for the four quarters of 2012, exported nickel cobalt mixed sulfide to SMMC, a corporation organized and existing under the laws of Japan. Petitioner claims that the said exportations of nickel cobalt mixed sulfide are subject to zero percent (0%) VAT rate in accordance with Section 106(A)(2)(a) of the NIRC of 1997, as amended[24].

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[23] Par. 6, Summary of Admitted Facts, JSFI, docket, p. 252; Exhibit "P-6", docket, p. 1317.

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

(A) *Rate and Base of Tax.* –

xxx xxx xxx

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

(a) *Export Sales.* – The term *'export sales'* means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

Under the cited provision, for an export sale to qualify as zero-rated, the following conditions must be present:

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

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

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

4. that the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, as amended, provides that a VAT taxpayer, like 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:

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(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" *(Emphasis 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:

x 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;" *(Emphasis supplied)*

In addition to the above requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended[25].

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[25] 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 (₱25.00) or more, **issue duly registered** receipts or **sale** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

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.

Per the cited provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238 of the same Code, and Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (1) sales invoice, as proof of sale of goods; (2) 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 as proof of 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 must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Record unveils the fact that petitioner submitted relevant documents such as sales invoices, credit memos, official receipts and bills of lading[26], inward foreign remittances advice issued by the Bank of Tokyo-Mitsubishi UFJ[27], general ledgers[28] and audited financial statements[29] in support of its zero-rated sales of ₱13,745,668,226.82, which were reported in its Quarterly VAT Returns for the four quarters of 2012, as follows:

Exhibit	Period covered	Zero-Rated Sales
P-14, docket, vol. 3, p. 1346	1st Quarter	₱ 3,675,533,234.94
P-17, docket vol. 3, p. 1355	2nd Quarter	2,979,964,684.04
P-20, docket, vol. 3, p. 1364	3rd Quarter	2,964,800,059.38
P-24, docket, vol. 3, p. 1376	4th Quarter	4,125,370,248.46
	Total	**₱13,745,668,226.82**

26 Exhibits "P-102-1" to "P-102-88".
27 Exhibits "P-108-1" to "P-108-26".
28 Exhibits "P-106-1" to "P-106-5".
29 Exhibit "P-155".

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Based on the Schedule of Gross Sales[30], out of the reported zero-rated sales of ₱13,745,668,226.82, only the zero-rated sales amounting to ₱13,030,295,435.16 (equivalent to US$307,583,171.37), were actually shipped to SMMC as evidenced by bills of lading and covered by corresponding zero-rated VAT sales invoices, to wit:

Bill of Lading		**Sales Invoice**			**Equivalent Amount of Sales (in PHP)**
Exhibit	**Date**	**Exhibit**	**Date**	**Amount (in USD)**	
P-102-64	30-Jan-12	P-102-1	18-Jan-12	28,766,188.24	637,862,124.26 618,127,186.68
		Adjustments:			
		P-102-21 *(SI 0136)*	13-Jun-12	211,463.51	9,074,745.07
		P-102-23 *(CM 0049)*	13-Jun-12	(5,430.89)	(233,061.64)
		Net		28,972,220.86	1,264,830,994.37
P-102-65	24-Feb-12	P-102-5	11-Feb-12	20,398,355.78	443,826,862.53 444,970,295.51
		Adjustments:			
		P-102-30 *(CM 0051)*	7-Jul-12	(2,274,836.28)	(96,164,154.07)
		P-102-32 *(CM 0050)*	7-Jul-12	(11,900.05)	(503,050.81)
		Net		18,111,619.45	792,129,953.16
P-102-66	30-Mar-12	P-102-8	23-Mar-12	34,659,699.02	709,249,979.44 769,020,843.46
		Adjustments:			
		P-102-33 *(CM 0053)*	4-Aug-12	(6,869,401.45)	(287,731,749.13)
		P-102-35 *(CM 0052)*	4-Aug-12	(15,529.70)	(650,477.01)
		Net		27,774,767.87	1,189,888,596.76
P-102-70	27-Apr-12	P-102-15	18-Apr-12	30,102,979.97	627,522,951.09 662,901,491.28
		Adjustments:			
		P-102-36 *(CM 0055)*	3-Sep-12	(3,653,552.72)	(153,683,041.61)
		P-102-39 *(CM 0054)*	3-Sep-12	(11,508.03)	(484,073.77)
		Net		26,437,919.22	1,136,257,326.99
P-102-71	30-May-12	P-102-19	17-May-12	14,845,771.48	302,048,862.93 331,256,902.63
		Adjustments:			
		P-102-47 *(CM 0059)*	2-Oct-12	(1,083,001.63)	(45,190,409.03)
		P-102-50 *(CM 0058)*	2-Oct-12	(27,262.36)	(1,137,576.50)
		Net		13,735,507.49	586,977,780.03
P-102-72	22-Jun-12	P-102-22	14-Jun-12	27,588,366.41	281,851,678.96 902,075,477.16
		Adjustments:			
		P-102-48 *(CM 0061)*	2-Oct-12	(1,041,191.46)	(43,445,796.04)
		P-102-51 *(CM 0060)*	2-Oct-12	(26,843.16)	(1,120,084.53)
		Net		26,520,331.79	1,139,361,275.55

[30] Exhibit "P-102", docket, pp. 507-510.

P-102-77	18-Jul-12	P-102-31	7-Jul-12	15,415,433.18	331,421,677.39 320,234,929.43
		Adjustments:			
		P-102-52 *(SI 0142)*	5-Nov-12	200,989.07	8,326,575.19
		P-102-54 *(CM 0062)*	5-Nov-12	(29,319.60)	(1,214,652.38)
		Net		15,587,102.65	658,768,529.63
P-102-78	15-Aug-12	P-102-34	1-Aug-12	25,685,875.03	547,066,435.55 528,812,125.96
		Adjustments:			
		P-102-55 *(CM 0063)*	4-Dec-12	(21,992.99)	(904,021.84)
		P-102-56 *(SI 0145)*	4-Dec-12	1,160,752.34	47,712,724.93
		Net		26,824,634.38	1,122,687,264.60
P-102-79	26-Sep-12	P-102-38	10-Sep-12	29,517,620.23	621,581,979.69 620,047,197.67
				29,517,620.23	1,241,629,177.36
P-102-83	24-Oct-12	P-102-49	8-Oct-12	31,453,109.21	628,046,808.52 684,397,079.48
				31,453,109.21	1,312,443,888.00
P-102-84	24-Nov-12	P-102-53	12-Nov-12	31,457,294.68	701,824,753.71 601,388,050.29
				31,457,294.68	1,303,212,804.00
P-102-85	27-Dec-12	P-102-57	20-Dec-12	31,191,043.54	680,154,104.49 601,953,740.22
				31,191,043.54	1,282,107,844.71
Total				**307,583,171.37**	**13,030,295,435.16**

However, a scrutiny of the Schedule of Incoming Foreign Remittances Advice[31] reveals that from the sales of ₱13,030,295,435.16, found to be properly substantiated by bills of lading and VAT zero-rated sales invoices, the amount of ₱124,162,917.61 was not inwardly remitted, as shown below:

Sales Invoice		**Inward Remittance**		**Sales without corresponding inward remittance**	
Date	**Amount (in USD)**	**Exhibit**	**Amount (in USD)**	**Amount (in USD)**	**Peso equivalent[32]**
18-Jan-12	28,972,220.86	P-108-2	25,889,569.42		
		P-108-11	3,082,651.44	-	-
11-Feb-12	18,111,619.45	P-108-3	18,358,520.21	-	-
23-Mar-12	27,774,767.87	P-108-5	31,193,729.12	-	-
18-Apr-12	26,437,919.22	P-108-7	27,092,681.97	-	-
17-May-12	13,735,507.49	P-108-10	13,361,194.34	-	-

[31] Exhibit "P-108", docket, p. 583.
[32] Computed based on the amounts on the preceding Table above [Equivalent Amount of Sales (in Php) ÷ Sales Invoice Amount (in USD)].

		P-108-17	374,313.15		
14-Jun-12	26,520,331.79	P-108-12	24,829,529.77		
		P-108-18	1,690,802.02	-	-
07-Jul-12	15,587,102.65	P-108-13	13,873,889.86		
		P-108-20	1,713,212.79	-	-
01-Aug-12	26,824,634.38	P-108-14	23,117,287.53		
		P-108-22	3,707,346.85	-	-
10-Sep-12	29,517,620.23	P-108-16	26,565,858.21	2,951,762.02	124,162,917.61
08-Oct-12	31,453,109.21	P-108-19	28,307,798.29		
		P-108-24	6,700,220.86	-	-
12-Nov-12	31,457,294.68	P-108-21	28,311,565.21		
		P-108-25	3,380,120.67	-	-
20-Dec-12	31,191,043.54	P-108-23	28,071,939.18		
		P-108-26	4,219,534.13	-	-
	307,583,171.37			**2,951,762.02**	**124,162,917.61**

Thus, only the amount of **₱12,906,132,517.55** (₱13,030,295,435.16 less ₱124,162,917.61) qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Petitioner has input taxes attributable to its zero-rated sales which were not applied against any output VAT.

Per Certificate of Registration No. 02-072 issued by PEZA last December 27, 2002,[33] petitioner is a duly PEZA-registered Ecozone Export Enterprise at the Rio Tuba Export Processing Zone.

Section 8 of Republic Act (RA) No. 7916, as amended, mandates that the PEZA shall manage and operate the Ecozones as a separate customs territory[34], thus, creating the legal fiction that the Ecozone is a foreign territory. As a result, sales made by a supplier from the Customs Territory to a

[33] Par. 7, Summary of Admitted Facts, JSFI, docket, p. 252; Exhibits "P-1", "P-3", "P-4", "P-5", docket, pp. 1302, 1312-1316; "P-2", docket, pp. 1516-1524.
[34] SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* - The ECOZONES shall be managed and operated by the PEZA as separate customs territory.
The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.

purchaser in the Ecozone shall be treated as exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.[35]

Since an Ecozone is regarded as a foreign territory, the sales of goods, properties and services to PEZA-registered enterprises made by VAT-registered suppliers from the customs territory are subject to VAT at zero percent rate. This is the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.,*[36] to wit:

> Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent.

In the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.,*[37] the High Tribunal made the following pronouncements:

> The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

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[35] *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.
[36] G.R. No. 149671, July 21, 2006.
[37] G.R. No. 150154, August 9, 2005.

xxx xxx xxx

> Indubitably, **no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity.** The VAT treatment of sales to it, however, varies depending on whether the supplier from the Customs Territory is VAT-registered or not.
>
> **Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales.** Zero-rating of export sales primarily intends to benefit the exporter (*i.e.,* the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales. *(Emphasis supplied)*

In view of the foregoing, the sale of goods, properties and services by VAT-registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. Since no input VAT is paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to a refund or issuance of tax credit certificate from their domestic purchases of goods, properties and services.[38]

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[38] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* CTA EB Case No. 403, May 29, 2009, affirmed by the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016.

However, it should be emphasized that the VAT zero-rating on the sales of goods, properties or services by a VAT-registered entity to a PEZA-registered entity applies when such goods, properties or services are consumed, used or rendered within the Ecozone and in connection with the registered activities of the PEZA entity. In other words, if the sales of goods, properties or services are consumed, used or rendered within the Customs Territory, *i.e.,* outside the Ecozone, such sales by a VAT-registered entity to a PEZA-registered entity shall be subject to twelve percent (12%) VAT.

Petitioner claims that the paid input VAT on its domestic purchases of goods and services which were attributable to its zero-rated sales were consumed and rendered outside the PEZA zone. Petitioner claims that it engaged the services of SMCC Philippines, Inc. for the constructions of its Laborer's row house, Bus Terminal, JTA Dormitory, RTN Runway and Foreman's Duplex, which were outside the PEZA zone. Given that the purchases of goods and services were consumed or rendered outside the PEZA zone and within the customs territory, these purchases shall be subject to 12% VAT.

To prove its contention, petitioner presented VAT invoices and official receipts (ORs)[39] issued by its suppliers, survey plans[40], and townsite map[41] relating to its domestic purchases of goods and services consumed or rendered outside the PEZA zone.

Petitioner also presented its Tax and Audit Officer Allen Roy T. Catacutan, who declared[42] that the excess and unutilized input VAT was incurred from the VAT passed on by petitioner's suppliers on its domestic purchases of taxable goods and services which were consumed or rendered outside the Rio Tuba Export Processing Zone.

The declaration of witness Catacutan was confirmed by witness John S. Barrientos, the QS/CSR Manager of SMCC

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[39] Exhibits "P-29" to "P-40-a", docket, pp. 1401-1429.
[40] Exhibit "P-44", docket, p. 1572; Exhibits "P-45" to "P-52-c", docket, pp. 1477-1484.
[41] Exhibits "P-53" to "P-53-d", docket, p. 1485.
[42] Exhibit "P-57", docket, pp. 853-867.

Philippines, Inc., its local supplier, saying that SMCC imposed VAT on its billings to petitioner for the construction of Laborers Row House, Bus Terminal, JTA Dormitory, RTN Runway and Foreman's duplex located outside the PEZA zone.

Independent Geodetic Engineer Zosimo Oliver P. Villa, who personally examined and surveyed the land where the Palawan Special Economic Zone and petitioner's office are located, corroborated the foregoing testimonies saying that the construction projects were all located outside the PEZA Zone. Therefore, the purchases of goods and services by petitioner from SMCC Philippines, Inc., described in the sales invoices and ORs, were consumed and performed outside of the PEZA Zone.

In fine, petitioner was able to establish that its local purchases of goods and services from SMCC were consumed and rendered outside the PEZA zone. Hence, the input VAT relative to such purchases may be refunded by petitioner in line with the Destination Principle which provides that the destination of the goods determines its taxation or exemption from tax.[43] *Ergo*, petitioner's purchases of goods and services from SMCC, which were consumed outside the PEZA zone, do not qualify for VAT zero-rating, and accordingly, are subject to 12% VAT.

Since these goods and services were subjected to 12% VAT, petitioner paid the input VAT thereon. Hence, petitioner is entitled to claim for refund or issuance of TCC for its unutilized input VAT on local purchases of goods and services consumed and rendered outside the PEZA zone.

In its Quarterly VAT Returns for the four quarters of TY 2012, petitioner reported input VAT in the total amount of ₱22,577,290.54, broken down as follows:

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[43] Value Added Tax, 2007 Edition, Mamalateo, Victorino C., pp. 13-14.

Particulars	1st Quarter (Exhibit P-14)	2nd Quarter (Exhibit P-17)	3rd Quarter (Exhibit P-20)	4th Quarter (Exhibit P-24)	Total
Input tax deferred on Capital Goods Exceeding ₱1M from previous quarter	₱ 693,371.11	₱ 600,762.31	₱ 728,613.20	₱ 632,291.39	₱ 2,655,038.01
Add: Input tax on purchase of Capital Goods exceeding ₱1M	-	224,196.43	-	-	224,196.43
Total	₱ 693,371.11	₱ 824,958.74	₱ 728,613.20	₱ 632,291.39	₱ 2,879,234.44
Less: Input tax on purchase of Capital Goods exceeding ₱1M deferred for the succeeding period	600,762.32	728,613.20	632,291.39	550,966.61	2,512,633.52
Amortization of Input tax on purchases of capital goods exceeding ₱1M	**₱ 92,608.79**	**₱ 96,345.54**	**₱ 96,321.81**	**₱ 81,324.78**	**₱ 366,600.92**
Add: Input taxes on current purchases					
Domestic Purchases of Goods Other than Capital Goods	₱ 120,958.48	₱ 637,260.98	₱ 89,347.97	₱ 223,538.91	₱ 1,071,106.34
Domestic Purchase of Services	7,140,370.32	3,786,863.10	5,368,923.12	4,843,426.74	21,139,583.28
Total input tax on current purchases	**₱7,261,328.80**	**₱4,424,124.08**	**₱5,458,271.09**	**₱5,066,965.65**	**₱22,210,689.62**
Total input taxes for the period	**₱7,353,937.59**	**₱4,520,469.62**	**₱5,554,592.90**	**₱5,148,290.43**	**₱22,577,290.54**

However, since only the purchases from SMCC were proved as consumed and rendered outside the PEZA zone, only the corresponding input VAT of ₱12,646,024.95 from such purchases, as detailed below, represents petitioner's valid input VAT attributable to its zero-rated sales:

Supplier	Exhibit	Amount
SMCC Philippines Inc	P-29	₱ 3,937,630.15
SMCC Philippines Inc	P-30	1,076,785.71
SMCC Philippines Inc	P-31	751,607.14
SMCC Philippines Inc	P-32	8,571.43
SMCC Philippines Inc	P-33	976,512.39
SMCC Philippines Inc	P-34	498,214.29
SMCC Philippines Inc	P-35	1,431,964.29
SMCC Philippines Inc	P-36	46,917.86
SMCC Philippines Inc	P-37	1,092,857.14
SMCC Philippines Inc	P-38	1,112,678.58
SMCC Philippines Inc	P-39	1,046,250.00
SMCC Philippines Inc	P-40	666,035.97
Total		**₱12,646,024.95**

The rest of the input VAT from petitioner's purchases, which it failed to prove as consumed outside the PEZA zone shall be disallowed from its claim.

Since petitioner's reported sales for the four quarters of 2012 were all direct export sales, the substantiated input VAT of ₱12,646,024.95 is entirely attributable thereto. Consequently, only the substantiated input VAT of ₱11,873,651.48 is attributable to the valid zero-rated sales of ₱12,906,132,517.55, computed as follows:

Valid Input VAT	₱ 12,646,024.95
Divide by Total Reported Zero-rated Sales	13,745,668,226.82
Multiplied by Valid Zero-Rated Sales	12,906,132,517.55
Input VAT attributable to Valid Zero-Rated Sales	**₱ 11,873,651.48**

As to whether the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's Quarterly VAT Returns 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.[44] While it appears that the claimed input VAT was carried over by petitioner in its succeeding first quarter of 2013[45], the same remained unutilized as petitioner still had no output tax liability for the said period. Moreover, the present claim was deducted as "VAT Refund/TCC Claimed" in petitioner's Quarterly VAT Return for the first quarter of TY 2013.[46] Hence, the subject claim no longer formed part of the excess input VAT of ₱5,084,892.37[47] as of the end of the first quarter of 2013, and it is already precluded from being applied to future VAT liability, if any.

WHEREFORE, the Petition for Review filed by Coral Bay Nickel Corporation on April 14, 2014, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱11,873,651.48**

[44] Line 19B, Exhibits "P-14", "P-17", "P-20", and "P-24", docket, pp. 1346, 1355, 1364, and 1376.
[45] Exhibit "P-27", docket, pp. 1385-1387.
[46] Exhibit "P-27", Line 23D, docket, p. 1385.
[47] Exhibit "P-27", Line 29, docket, p. 1386.

representing its unutilized input VAT attributable to its zero-rated sales for the period January 1, 2012 to December 31, 2012.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

Ma. Belen ...
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice