REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA CASE NO. 8855**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 07 2016 9:15 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by petitioner Lepanto Consolidated Mining Company, seeks for the issuance of a tax credit certificate in the amount of Sixteen Million Seven Hundred Eighty-Two Thousand Five Hundred Eighty-Six Pesos and 10/100 (₱16,782,586.10), representing its unutilized input value-added tax (VAT) for the first and second quarters of taxable year 2012.

THE FACTS

Petitioner Lepanto Consolidated Mining Company is a duly organized and existing domestic corporation engaged in mining of gold and other precious metals, with principal place of business at 21/F Lepanto Bldg., 8747 Paseo de Roxas St., Makati City.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the authority to grant claims for refund or tax credit under the law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q) for the first and second quarters of taxable year 2012 on the following dates:

Period Covered (2012)	**VAT Return**	**Date Filed**
First Quarter	Original	April 25, 2012[2]
	Amended	May 24, 2012[3]
		September 12, 2012[4]
Second Quarter	Original	July 23, 2012[5]
	Amended	September 12, 2012[6]
		October 3, 2012[7]
		April 10, 2013[8]

On February 27, 2014,[9] petitioner filed before the BIR its administrative claim for tax credit covering the first and second quarters of taxable year 2012. On March 3, 2014,[10] petitioner likewise submitted additional supporting documents.

Consequently, on July 31, 2014, petitioner filed the instant Petition for Review.[11]

In his Answer,[12] respondent raised the following special and affirmative defenses: *jr*

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 118.
[2] Exhibits "P-8-A" and "P-8-B".
[3] Exhibits "P-8-C" and "P-8-D".
[4] Exhibits "P-8-E" and "P-8-F".
[5] Exhibits "P-8-G" and "P-8-H".
[6] Exhibits "P-8-I" and "P-8-J."
[7] Exhibits "P-8-K" and "P-8-L".
[8] Exhibits "P-8-M" and "P-8-N".
[9] Exhibits "P-27" and "P-28".
[10] Exhibit "P-29".
[11] Docket, pp. 6-15.
[12] Docket, pp. 57-62.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

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11. In the case at hand, petitioner's alleged claim for tax credit is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for tax credit is not ipso facto granted because respondent still has to investigate and ascertain the validity of the claim.

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13. Likewise, not only should petitioner establish that it is entitled to the tax credit; it is also imperative for petitioner to prove its compliance with the following:

a. The registration requirements of a VAT taxpayer in compliance with Revenue Regulations 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the National Internal Revenue Code (NIRC);
b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the NIRC;
c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT credit pursuant to Revenue Memorandum Order No. 53-1998 and Revenue Memorandum Circular No. 54-2014, otherwise there would be no sufficient compliance with the filing of an administrative application for tax credit which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the NIRC. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the

judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes in the amount of Sixteen Million Seven Hundred Eighty Two Thousand Five Hundred Eighty Six Pesos and 10/100 (₱16,782,586.10) allegedly incurred by petitioner for the taxable year 2012 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;
e. That petitioner's administrative and judicial claims for tax credit of the unutilized input VAT was filed within the periods provided in Sections 112 (A) and (C) of the NIRC;
f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and /or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC and pursuant to Section 4.110-7 of Revenue Regulations No. 14-2005; and
g. The requirements as enumerated under Section 4.110-7 of Revenue Regulations No. 14-2005.

14. The amount of Sixteen Million Seven Hundred Eighty Two Thousand Five Hundred Eighty Six Pesos and 10/100 (₱16,782,586.10) being claimed by petitioner arising from excess and unutilized input VAT paid and incurred for the taxable year 2012 is not properly documented.

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On November 6, 2014,[13] the case was set for pre-trial conference. On November 26, 2014, the parties submitted their Joint Stipulation of Facts and Issues,[14] which was approved by the Court in the Pre-Trial Order[15] promulgated on December 3, 2014.

During trial, petitioner presented Glenn Ian D. Villanueva, Teofilo Sacpa, and Cherry H. Tan as witnesses. Likewise, petitioner filed its Formal Offer of Evidence.[16]

On the other hand, during the hearing held on August 26, 2015, counsel for respondent manifested that she has no witness to present.[17]

On October 15, 2015, petitioner filed its Memorandum.[18] On the other hand, on September 28, 2015, respondent filed a Manifestation[19] that he is adopting his Answer filed on September 22, 2014 as his Memorandum.

On October 28, 2015,[20] the case was submitted for decision. Hence, this Decision.

THE ISSUE

The parties submitted to this Court the lone issue[21] of whether petitioner is entitled to a tax credit amounting to Sixteen Million Seven Hundred Eighty Two Thousand Five Hundred Eighty Six and 10/100 pesos (₱16,782,586.10), representing input VAT attributable to petitioner's zero-rated export sales in the first half of 2012.

THE RULING

For the period covering January 1, 2012 to June 30, 2012, petitioner filed with the BIR its amended Quarterly VAT Returns, declaring the following:

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[13] Docket, p. 64.
[14] Docket, pp. 118-122.
[15] Docket, pp. 124-128.
[16] Docket, pp. 317-327.
[17] Minutes of Hearing dated August 26, 2015, docket, p. 398.
[18] Docket, pp. 407-434.
[19] Docket, pp. 402-404.
[20] Docket, p. 436.
[21] JSFI, docket, p. 119

	1st Quarter *Exhibit "P-8-E" to "P-8-F"*	**2nd Quarter** *Exhibit "P-8-M" to "P-8-N"*
Vatable Sales/Receipts	₱ 25,123,833.25	₱ 5,502,287.00
Zero-Rated Sales/Receipts	543,798,086.20	502,436,233.15
Total Sales/Receipts	**568,921,919.45**	**507,938,520.15**
Output tax due	**3,014,859.99**	**660,274.44**
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Period	39,632,318.44	30,875,604.13
Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	101,042.20	397,483.80
Total	*39,733,360.64*	*31,273,087.93*
Current transactions		
Purchase of Capital Goods exceeding ₱1M	913,090.00	1,014,991.00
Importation of Goods other than Capital Goods	8,523,280.00	11,050,298.33
Total Current	*9,436,370.00*	*12,065,289.33*
Total Available Input Tax	49,169,730.64	43,338,377.26
Less: Deductions from input tax		
Input tax on capital goods deferred for the succeeding period	730,472.00	811,992.80
VAT Refund/TCC claimed	14,548,794.52	
Total	*15,279,266.52*	*811,992.80*
Total Allowable Input Tax	**33,890,464.12**	**42,526,384.46**
Net VAT Payable	**(30,875,604.13)**	**(41,866,110.02)**
Less: Tax Credits/Payments	-	-
Total Overpayment	**₱(30,875,604.13)**	**₱(41,866,110.02)**

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

"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 or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Pursuant to the afore-quoted provision and as laid down by the Supreme Court in a number of cases,[22] a taxpayer may claim a refund or a tax credit certificate for input taxes paid on purchases of goods and services attributable to zero-rated sales upon compliance with the following requisites:

1. that the taxpayer must be VAT-registered;
2. that the claim for refund must be filed within the two-year 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
6. that the input taxes were not applied against any output VAT liability.

With respect to the first requisite, petitioner is a duly registered VAT taxpayer with the Bureau of Internal Revenue, with Tax Identification No. 000-160-247-000[23] from 1994 up to present.[24]

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[22] *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 195175 & 199645, August 10, 2015; *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, October 19, 2011; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 180345, November 25, 2009; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[23] Exhibit "P-2-A".
[24] Par. 3, Stipulation of Facts, JSFI, docket, pp. 118-119.

With respect to the second requisite, the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*[25] provides:

> "The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT regardless of whether said tax was paid or not.**" *(Emphasis supplied)*

Here, the claim covers the first and second quarters of taxable year 2012, which closed on March 31, 2012 and June 30, 2012, respectively. Counting two years therefrom, petitioner had until March 31, 2014 and June 30, 2014, respectively, within which to file its administrative claim for refund or tax credit.

Records reveal that petitioner filed its claim with the BIR on February 27, 2014,[26] or within the two-year prescriptive period provided for under Section 112(A) of the NIRC of 1997, as amended.

The Court shall now proceed to determine whether petitioner's judicial claim was timely filed. In this regard, Section 112(C) of the NIRC of 1997, as amended, reads:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

[25] G.R. No. 172129, September 12, 2008.
[26] Exhibits "P-27" and "P-28".

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue,*[27] the Supreme Court held that:

> "Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the **period of 120 days**, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the **period of 30 days**, which refers to the period for filing a judicial claim with the CTA. xxx
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> The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period."

Respondent contends that it is incumbent upon petitioner to establish compliance with the checklist of requirements under Revenue Memorandum Order (RMO) No. 53-1998 and Revenue Memorandum Circular (RMC) No. 54-2014. Failure to do so would render the administrative application for refund or tax credit insufficient and would warrant its dismissal.

However, it must be emphasized that it is not within the province of the BIR to determine what documents must be submitted

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[27] G.R. No. 168950, January 14, 2015.

by the taxpayer to support its claim. In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[28], the Supreme Court held that:

> "xxx for purposes of determining ***when*** the supporting documents have been completed – *it is the taxpayer who ultimately determines when complete documents have been submitted for purposes of commencing and continuing the running of the 120-day period.* After all, he may have already completed the necessary documents the moment he filed his administrative claim, in which case, the 120-day period is reckoned from the date of filing. xxx
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> Then, except in those instances where the BIR would require additional documents to fully appreciate a claim for tax credit or refund, in terms ***what*** additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has the right and the burden of providing any and all documents that would support his claim for tax credit or refund. After all, in a claim for tax credit or refund, it is the taxpayer who has the burden to prove his cause of action. As such, he enjoys relative freedom to submit such evidence to prove his claim.
>
> The foregoing conclusion is but a logical consequence of the due process guarantee under the Constitution. Corollary to the guarantee that one be afforded the opportunity to be heard, it goes without saying that the applicant should be allowed reasonable freedom as to when and how to present his claim within the allowable period.
>
> **Thereafter, whether these documents are *actually* complete as required by law – is for the CIR and the courts to determine**. Besides, as between a taxpayer-applicant, who seeks the refund of his creditable input tax and the CIR, it cannot be denied that the former has greater interest in ensuring that the complete set of documentary evidence is provided for proper evaluation of the State. ge

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[28] G.R. No. 207112, December 8, 2015.

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In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

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As explained earlier xxx, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." *(Emphasis supplied)*

In the instant case, petitioner promised to submit the following additional documents in support of its claim:[29]

1. Letter Request for Certification received by the Board of Investments-Department of Finance (BOI-DOF);

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[29] Exhibit "P-29".

2. VAT Return showing the amount of tax credit certificate applied;
3. Schedule of Acquisition and Disposal of PPE for the subject period and Schedule of Amortization of Deferred Input Tax; and
4. BIR Form No. 1914 (3 copies).

Records show that said documents were received by the BIR on March 3, 2014.[30] Moreover, witness Mr. Teofilo Sacpa testified that:[31]

> "22Q: How did the BIR act on the 2 applications for tax credits filed by LCMC?
> 22A: On 27 February 2014, the same day that the applications were filed, the BIR required the submission of certain documents and made the person who filed the applications execute a letter of undertaking to that effect.
>
> 23Q: What were the documents required to be submitted by the BIR?
> 23A: 1. Letter-request for Certification of no filed similar claims received and issued by the Board of Investments of the Department of Finance;
>
> 2. Vat return showing the amount of the tax credit applied for;
>
> 3. Schedule of acquisition and disposal of PPE for the period claimed and schedule of amortization of deferred input tax; and
>
> 4. Form 1914.
>
> 24Q: How did LCMC respond to such requirement by the BIR?
> 24A: On 3 March 2014, LCMC submitted all the required documents for the 2 applications.
>
> 25Q: What is your proof that the BIR required the submission of the said documents and that LCMC complied with the same?

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[30] Id.
[31] Exhibit "P-49".

25A: A letter of undertaking dated 27 February 2014 with stamped date of receipt by the BIR listing the documents required to be submitted and a notation showing that the requested documents were submitted on 3 March 2014.

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28Q: There's a signature appearing on the middle left side of the letter below the notation 'received 3/3/14', whose signature is that?
28A: That's the signature of the BIR personnel who received the letter and the additional documents submitted by LCMC."

Based therefrom, the Court finds that March 3, 2014 is the reckoning date of the 120-day period stated above. Consequently, the vital dates relative to petitioner's claim for the issuance of tax credit certificate are as follows:

Date of Submission of Documents	**End of the 120-day period for the BIR Commissioner to decide on the claim**	**End of the 30-day period from the expiration of the 120-day period**	**Date of Filing of the Judicial Claim**
March 3, 2014[32]	July 1, 2014	July 31, 2014	July 31, 2014[33]

Pursuant to Section 112(C) of the NIRC of 1997, as amended, and the above-quoted cases, petitioner last submitted supporting documents on March 3, 2014. Consequently, respondent is required to act on petitioner's administrative claim for tax credit within 120 days from March 3, 2014, or until July 1, 2014. Considering that the administrative claim remains unacted upon by respondent, petitioner had 30 days from July 1, 2014, or until July 31, 2014 within which to file its judicial claim before this Court. Here, petitioner filed the instant Petition for Review on July 31, 2014, which is well-within the prescriptive period under Section 112(C) of the NIRC of 1997, as amended.

With respect to the third requisite, petitioner posits that its entire gold bullion and copper concentrate product is exported and sold directly to foreign commodities trader abroad. For this purpose,

[32] Exhibit "P-29".
[33] Petition for Review, docket, pp. 6-15.

petitioner was certified by the Board of Investments as an entity engaged in export sales.[34] By virtue thereof, petitioner maintains that its export sales are subject to VAT at zero percent (0%), pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which reads:

> "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);"

Relative thereto, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, require that a VAT taxpayer shall, for every sale, 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:

[34] Exhibit "P-35".

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

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(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* – The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(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

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Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

In addition, the invoice or receipt must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices*. – All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, **issue duly registered** receipts or **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)* *Ju*

"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."

In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,*[35] the Supreme Court took into consideration various documents that may support a taxpayer's claim for refund or tax credit under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Thus:

"To the mind of the Court, these documentary evidence submitted by petitioner, *e.g.*, summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the 'sale and actual shipment of goods from the Philippines to a foreign country.' In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. Moreover, the certification of inward remittances attests to the fact of payment 'in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP.' Thus, petitioner's evidence, juxtaposed with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, as enumerated earlier, sufficiently establish that it is entitled to a claim for refund or issuance of a tax credit certificate for creditable input taxes."

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the

[35] G.R. No. 166732, April 27, 2007.

same Code, Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, and the ruling in *Intel*, any VAT-registered person claiming VAT zero-rated direct export sales may present the following documents to prove its claim, 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 proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In its Quarterly VAT Returns for the first and second quarters of 2012, petitioner declared total zero-rated sales of ₱1,046,234,319.35, broken down as follows:

TAXABLE YEAR 2012	ZERO-RATED SALES/RECEIPTS
First Quarter	₱ 543,798,086.20
Second Quarter	502,436,233.15
TOTAL	**₱1,046,234,319.35**

To substantiate the foregoing, petitioner presented the Summary List of Sales for the first half of 2012[36], Schedule of Exportations[37], Zero-Rated Provisional Invoices[38], Zero-Rated Final Invoices[39], Export Declarations[40], Airway Bills[41], Bank Credit Memos[42], and Bank Certificate of Inward Remittances.[43]

As ascertained by the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Glenn Ian Villanueva, the reported zero-rated sales of ₱1,046,234,319.35 consisted of the following:

	1st Quarter		2nd Quarter		TOTAL	
	In USD	In Peso	In USD	In Peso	In USD	In Peso

[36] Exhibits "P-4A-1" to "P-4A-2".
[37] Exhibits "P-4B-1" to "P-4B-4".
[38] Exhibits "P-5A-1" to "P-5A-32".
[39] Exhibits "P-5B-1" to "P-5B-32".
[40] Exhibits "P-5C-1" to "P-5C-32".
[41] Exhibits "P-5D-1" to "P-5D-32".
[42] Exhibits "P-5E-1" to "P-5E-32".
[43] Exhibits "P-14-A" to "P-14-B".

Sales per related sales invoices (Exhibits P-5B-1 to P-5B-32)	12,850,351.58	553,797,335.03	11,440,567.88	489,276,596.25	24,290,919.46	1,043,073,931.28
Add/(Less): Adjustments						
Prior Quarter Adjustments	28,978.24	1,195,543.51	5,259.42	225,455.33	34,237.66	1,420,998.84
Adjustments Booked in the Succeeding Period	(5,259.42)	(225,455.33)	10,754.33	459,313.51	5,494.91	233,858.18
Treatment Charges – Bullion	26,925.71	1,159,897.64	19,988.84	854,718.60	46,914.55	2,014,616.24
Shipment Partially Recognized Next Quarter	272,427.35	(11,678,141.04)		11,621,916.99	272,427.35	(56,224.05)
Adjustment in ForEx Rates due to Split Sales		(451,093.61)			-	(451,093.61)
Unaccounted Difference				(1,767.53)	-	(1,767.53)
Total	323,071.88	(9,999,248.83)	36,002.59	13,159,636.90	359,074.47	3,160,388.07
Total	**13,173,423.46**	**543,798,086.20**	**11,476,570.47**	**502,436,233.15**	**24,649,993.93**	**1,046,234,319.35**

Based on the foregoing, the total adjustments in the amount of ₱3,160,388.07 shall be denied VAT zero-rating for being unsupported and for not being reflected in the issued zero-rated final invoices.

Likewise, the exportations/shipments in the amount of ₱90,909,330.71 shall also be disallowed for lack of corresponding airway bill, and for being made outside the period of claim, to wit:

Shipment Reference No.	Shipment Date	Exhibit No.	Final Invoice No.	Exhibit No.	Sales in USD	Sales in PHP
1. Without supporting Airway Bill						
			5071	P-5B-1	647,782.32	28,225,171.25
		Sub-total			***647,782.32***	***28,225,171.25***
2. Shipments made outside the period of claim						
31-12	02-Jul-2012	P-5D-31	5128	P-5B-31	787,070.90	33,615,011.07
32-12	06-Jul-2012	P-5D-32	5129	P-5B-32	680,632.85	29,069,148.39
		Sub-total			***1,467,703.75***	***62,684,159.46***
TOTAL					**2,115,486.07**	**90,909,330.71**

Therefore, out of the ₱1,046,234,319.35 zero-rated sales reported by petitioner for the first and second quarters of 2012, only the amount of ₱952,164,600.57 is duly supported by zero-rated sales invoices as proof of sale of goods; airway bills as proof of actual shipment/exportation of goods; and Bank Credit Memos as certified by UCPB through the Bank Certification of Inward Remittance, as proof of collection in acceptable foreign currency, and qualifies for

VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, computed below:

Zero-Rated Sales per Returns		₱ 1,046,234,319.35
Less: Disallowances		
Petitioner's Adjustment without supporting documents	₱ 3,160,388.07	
Without supporting airway bill and shipments made outside the period of claim	90,909,330.71	94,069,718.78
Substantiated Zero-Rated Sales		**₱952,164,600.57**

With respect to the fourth and fifth requisites, petitioner asserts that the claimed input taxes came from importations of capital and consumable goods, all of which are indispensable and used directly in its mining operations.

Based on the Quarterly VAT Returns for the first and second quarters of 2012, the unutilized input VAT on purchases of goods claimed for tax credit is computed as follows:

	1st Quarter	**2nd Quarter**	**Total**
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 101,042.20	₱ 397,483.80	₱ 498,526.00
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	913,090.00	1,014,991.00	1,928,081.00
Total Unamortized Input Tax on Capital Goods exceeding ₱1 Million	₱ 1,014,132.20	₱ 1,412,474.80	₱ 2,426,607.00
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	730,472.00	811,992.80	1,542,464.80
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	**₱ 283,660.20**	**₱ 600,482.00**	**₱ 884,142.20**
Add: Input Tax on Importation of Goods other than Capital Goods	8,523,280.00	11,050,298.33	19,573,578.33
Total Allowable Input Tax	**₱8,806,940.20**	**₱11,650,780.33**	**₱20,457,720.53**
Less: Output Tax	3,014,859.99	660,274.44	3,675,134.43
Excess Unutilized Input VAT	**₱5,792,080.21**	**₱10,990,505.89**	**₱16,782,586.10**

To support its claim, petitioner presented as evidence the Import Entry and Internal Revenue Declarations (IEIRDs),[44] Statement of Settlement of Duties and Taxes (SSDTs),[45] Single Administrative Documents (SADs),[46] Bank Certification on payments by petitioner to the Bureau of Customs (BOC) of taxes and duties[47], and VAT sales invoices and official receipts[48] issued by its suppliers,

[44] Exhibits "P-7-A" to "P-7-EA".
[45] Exhibits "P-12-A" to "P-12-CK".
[46] Exhibits "P-13-A" to "P-13-EK".
[47] Exhibits "P-14-A" to "P-14-B".
[48] Exhibits "P-20-A" to "P-20-AR".

which were examined by the Independent CPA. The Independent CPA findings may be summarized as follows:

Findings	Annex	1st Quarter	2nd Quarter	Total
Input Tax on Importation of Goods other than Capital Goods				
1. Under e2M Customs[49] supported by SADs, certified true copy of the Custom's copy of IEIRDs or original copy of the Declarant's copy of IEIRDs, and SSDTs dated within January to June 2012 and payment verified with Bank Certifications	12-A	₱ 4,867,303.00	₱ 9,229,097.00	₱ 14,096,400.00
2. Under e2M Customs supported by SADs and SDDTs dated within January to June 2012 and payment verified with Bank Certification	12-B	2,768,969.00	544,757.00	3,313,726.00
3. Under e2M Customs supported by SADs, certified true copy of the Custom's copy of IEIRDs or original copy of the Declarant's copy of IEIRDs, and SSDTs but not dated within January to June 2012	12-C	159,497.00	490,637.00	650,134.00
4. Under e2M Customs supported by SADs and SDDTs but not dated within January to June 2012	12-D	733,806.00	742,101.00	1,475,907.00
5. Supported by certified true copy of Custom's copy of IEIRDs with no date indicated and BOC official receipts not dated within January to June 2012	12-E		7,972.00	7,972.00
6. Supported by photocopy Custom's copy of IEIRDs and BOC official receipts, both not dated within January to June 2012	12-F		1,451.33	1,451.33
7. Supported by SADs but not supported by any proof of payment	12-G		18,631.00	18,631.00
8. Supported by photocopy of Informal Import Declaration and Entry and BOC official receipt dated within January to June 2012	12-H		3,194.00	3,194.00
9. Supported only by BOC official receipt not dated within January to June 2012	12-I		6,163.00	6,163.00

[49] Electronic to Customs Mobile System.

Total Input VAT on Importations of Goods other than Capital Goods	**₱8,529,575.00**	**₱11,044,003.33**	**₱19,573,578.33**

Amortization of Input Tax on Capital Goods exceeding ₱1 Million		
1. Charged to expense (not traceable to asset account)	15	₱ 43,419.60
2. Under e2M Customs supported by SADs and SSDTs dated within January to June 2012 and payment verified with Bank Certifications	16	342,196.60
3. Input VAT on importations of capital goods with an aggregate amount exceeding ₱1 Million not supported by any documents	17	498,526.00
Total amortization		**₱884,142.20**

Based on the foregoing, the input VAT of ₱2,924,906.56 shall be disallowed due to the following reasons:

Findings	Annex	Total
Input VAT on Importation of Goods other than Capital Goods		
1. Input VAT on importations under e2M Customs supported by SADs, certified true copy of the Custom's copy of IEIRDs or original copy of the Declarant's copy of IEIRDs, and SSDTs but **not dated within January to June 2012**	12-C	₱ 650,134.00
2. Input VAT on importations under e2M Customs supported by SADs and SDDTs but **not dated within January to June 2012**	12-D	1,475,907.00
3. Input VAT on importations supported by certified true copy of Custom's copy of IEIRDs with **no date indicated** and BOC official receipts **not dated within January to June 2012**	12-E	7,972.00
4. Input VAT on importations supported by **photocopy** Custom's copy of IEIRDs and BOC official receipts, both **not dated within January to June 2012**	12-F	1,451.33
5. Input VAT on importations supported by SADs but **not supported by any proof of payment**	12-G	18,631.00
6. Input VAT on importation supported by **photocopy** of Informal Import Declaration and Entry and BOC official receipt dated within January to June 2012	12-H	3,194.00
7. Input VAT on importation supported only by BOC official receipt **not dated within January to June 2012**	12-I	6,163.00
sub-total		***₱2,163,452.33***
Amortization of Input VAT on Capital Goods exceeding ₱1 Million		
1. Charged to expense **(not traceable to asset account)**	15	₱ 43,419.60
2. **Over-claimed** input VAT amortization under e2M Customs supported by SADs and SSDTs dated within January to June 2012 and payment verified with Bank Certifications	16	219,508.63
3. Input VAT on importations of capital goods with an aggregate amount exceeding P1 Million **not supported by any documents**	17	498,526.00
sub-total		***₱ 761,454.23***
TOTAL DISALLOWANCES		**₱2,924,906.56**

[signature]

Thus, out of the ₱20,457,720.53 input VAT reported by petitioner in the first and second quarters of 2012 Quarterly VAT Returns, only the amount of ₱17,532,813.97 is found to be properly substantiated by supporting documents, computed as follows:

Claimed Input VAT per Returns	₱ 20,457,720.53
Less: Disallowances	2,924,906.56
Substantiated Input VAT	**₱17,532,813.97**

After applying petitioner's substantiated input VAT of ₱17,532,813.97 against its output VAT of ₱3,675,134.43 for the subject period of the claim, there remains an excess input VAT of ₱13,857,679.54, which can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱1,046,234,319.35. Accordingly, only the input VAT of ₱12,611,698.60 is attributable to the substantiated zero-rated sales of ₱952,164,600.57, as computed below:

Substantiated Input VAT	₱ 17,532,813.97
Less: Output VAT	3,675,134.43
Substantiated Excess Input VAT	**13,857,679.54**
Multiply by substantiated zero-rated sales	952,164,600.57
Divided by total declared zero-rated sales	1,046,234,319.35
Excess Input VAT allocated to zero-rated sales	**₱12,611,698.60**

With respect to the sixth requisite, the VAT-registered taxpayer must be able to establish that it has a refundable or creditable input VAT, and the same has not been applied against its output VAT liabilities – information which are supposed to be reflected in the taxpayer's VAT Returns.[50]

Here, although petitioner carried over the claimed input VAT of ₱16,782,586.10, which includes the tax credit of ₱12,611,698.60, to the succeeding quarters up to the first quarter of taxable year 2014,[51] the same remained unutilized until it was deducted as "VAT Refund/ TCC Claimed"[52] in the first quarter of taxable year 2014. Thus, the excess input VAT of ₱41,242,608.96[53] as of the end of the first quarter of taxable year 2014 which was carried over to the

[50] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 159471, January 26, 2011.
[51] Exhibits "P-38" to "P-44".
[52] Line 23D of Exhibit "P-44."
[53] Line 29 of Exhibit "P-44".

succeeding second quarter of taxable year 2014[54] does not include the subject claim.

In sum, petitioner has partially established its entitlement to the issuance of tax credit certificate in the amount of ₱12,611,698.60, which represents its unutilized input VAT for the first and second quarters of taxable year 2012.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱12,611,698.60, representing its unutilized input VAT in the first and second quarters of taxable year 2012.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

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[54] Line 20A of Exhibit "P-45".