**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## ***SECOND DIVISION***

**FILMINERA RESOURCES CORPORATION,**
*Petitioner,*

- versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8610**

**Members:**

Castañeda, *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

**Promulgated:**

MAR 06 2015

4:10 p.m.

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# DECISION

**COTANGCO-MANALASTAS, *J.:***

The case involves a Petition for Review filed by Filminera Resources Corporation seeking the refund or the issuance of tax credit certificate in the amount of ₱51,639,178.25, allegedly representing its unutilized or unapplied creditable input value-added tax (VAT) for the period covering July 1, 2010 to September 30, 2010 or the first quarter of fiscal year ending June 30, 2011.

## STATEMENT OF FACTS

Filminera Resources Corporation (petitioner) is a domestic corporation incorporated under the laws of the Republic of the Philippines. It is engaged in the business of operating coal mines, prospecting explorations, and mining ores, metals, and mineral resources.[1] Petitioner is a registered taxpayer with Certificate of Registration No. OCN8RC0000036160.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 592; Exhibit "A".
[2] Exhibit "B".

her office, including, among others, the duty to act upon claims for refund or issuance of tax credit certificate as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 5, 2007, petitioner entered into an Ore Sales and Purchase Agreement with Philippine Gold Processing and Refining Corporation.[3]

On September 14, 2012, petitioner filed its Application for Tax Credit/Refund with respondent.[4] However, respondent failed to act on the said claim for refund, prompting petitioner to file the instant Petition for Review on February 8, 2013.

Respondent filed her Answer[5] on February 26, 2013, interposing the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau.
>
> 5. The amount of ₱51,639,178.25 allegedly representing unutilized or unapplied creditable input tax for the period 1 July 2010 to 30 September 2010 was not properly documented.
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> 8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. 145526, 16 March 2007:*
>
>> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88

[3] Exhibit "C".
[4] Exhibits "M" and "M-1", docket, pp. 556-558.
[5] Docket, pp. 427-438.

> could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.' (emphasis and underscoring supplied)

The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

**VALUE-ADDED TAX**

(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/ Refund

2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official

receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales.

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contracts showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

**VALUE-ADDED TAX**

A) Requirements from Taxpayers

1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
   a) current year/period
   b) previous year/period
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice/s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely alleged in the petition for review that it submitted complete documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case, it merely has to substantiate the excess amount. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it

> dismissible for absence of jurisdiction on the part of the Honorable Court.
>
> The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.
>
> Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.
>
> Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

Respondent's Pre-Trial Brief[6] was filed on March 5, 2013; while the Pre-Trial Brief (For Petitioner Filminera Resources Corporation)[7] was filed on April 19, 2013.

The parties submitted their Joint Stipulation of Facts and Issues[8] on August 2, 2013, which the Court approved via Pre-Trial Order issued on August 12, 2013.[9]

During trial, petitioner presented Atty. Clifford E. Chua and Joy P. Dompor as witnesses. Petitioner likewise filed its Formal Offer of Evidence on October 31, 2013, submitting Exhibits "A" to "AA-1", inclusive of submarkings. The Court

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[6] Docket, pp. 442-445.
[7] Docket, pp. 447-453.
[8] Docket, pp. 592-594.
[9] Pre-Trial Order, docket, pp. 596-599.

admitted petitioner's exhibits except Exhibits "I-108", "I-186" and "I-322".

On the other hand, respondent's counsel manifested during the hearing on January 20, 2014 that there is no Report on the Investigation, and that the instant case be submitted for decision.[10]

Respondent filed her Memorandum[11] on February 19, 2014; while petitioner filed its Memorandum (For the Petitioner)[12] on March 21, 2014. Thereafter, the case was submitted for decision on March 25, 2014.[13]

## STATEMENT OF ISSUE

The parties presented the following issue to be resolved by this Court:

1. Whether petitioner is entitled to a refund or tax credit in the amount of ₱51,639,178.25 representing alleged unutilized input VAT for the first quarter of fiscal year ending June 30, 2011.

## DISCUSSION/RULING

Petitioner's claim for refund/tax credit of unutilized excess input VAT hinges on Section 112(A) of the National Internal Revenue Code (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

[10] Minutes of the Hearing dated January 20, 2014, docket, p. 692.
[11] Docket, pp. 700-712.
[12] Docket, pp. 720-737.
[13] Resolution, docket, p. 739.

> 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.

Based on the foregoing provision, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. that the claim for refund was filed within the two-year prescriptive period;
2. that there must be zero-rated or effectively zero-rated sales;
3. that input taxes were incurred or paid;
4. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
5. that the input taxes were not applied against any output VAT liability.

Anent the first requisite, the present claim covers the first quarter of fiscal year ending June 30, 2011, which closed on September 30, 2010. Petitioner filed its claim with Revenue District Office No. 121 (Large Taxpayers Service Excise) on September 14, 2012.[14] Thus, the administrative claim for refund was filed well within the two-year period prescribed under Section 112(A) of the NIRC of 1997, as amended.

[14] Exhibit "M", docket, pp. 556-557.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of complete documents in support of the application for tax refund/credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. However, if after the 120-day period, the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days. For easy reference, Section 112(C) of the NIRC of 1997, as amended, is quoted hereunder:

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

Respondent contends that this Court has no jurisdiction to entertain the instant Petition for Review. Respondent adds that the administrative claim filed with the BIR is not valid on account of petitioner's failure to submit documents in support of its administrative claim for refund/tax credit.[15]

Petitioner, on the other hand, alleges that it submitted all the necessary documents in support of its claim for refund or issuance of tax credit certificate on September 14, 2012.[16]

[15] Docket, p. 709.
[16] Docket, p. 722.

Records show that petitioner, upon filing of its administrative claim on September 14, 2012, simultaneously submitted the documents in support thereof. This is evident from petitioner's letter/administrative claim,to wit:[17]

> "Attached are the supporting documents based on the checklist available at your office:
>
> 1. Four (4) original copies of BIR Form No. 1914 Application for Tax Credits/Refunds;
> 2. a) Print out of CD containing Quarterly Summary of Sales & Purchases submitted on October 2010 through EFPS;
>
>    b) Photocopies of supporting documents (official receipts and invoices from suppliers);
>
>    c) Photocopies of Sales Invoices and Official Receipts for the quarter ending Sept. 30, 2010.
> 3. a) Photocopy of Quarterly VAT Return (Form 2550Q) filed on October 20, 2010 through EFPS;
>
>    b) Photocopy of Quarterly VAT Returns for the succeeding quarter (December 31, 2010);
> 4. Photocopy of Ore Sales and Purchase Agreement between FRC and PGPRC dated July 5, 2007;
> 5. Other documents:
>
>    a) Photocopy of Amended Articles of Incorporation;
>
>    b) Photocopy of Certificate of VAT Registration and Annual VAT Registration;
>
>    c) Photocopy of PGPRC's Approved Application for VAT-Zero Rating with the Board of Investment dated July 19, 2010.
> 6. Certification from DOF that no similar claim was filed for the quarter ending September 30, 2010
> 7. Schedule of Sales in CD & Hard copy for the quarter ending September 30, 2010
> 8. Certification Stating the Total Sales for the quarter ending September 30, 2010
> 9. Schedule of Purchases in CD & Hard Copy for the quarter ending September 30, 2010
> 10. Audited Financial Statements for the fiscal year ending June 30, 2011

[17] Exhibit "M", docket, pp. 556-557.

We trust that the foregoing documents will be sufficient to support our application. Please let us know should you need further documents."

Since the records do not show that a written notice was sent by the BIR, informing petitioner that the aforesaid documents are incomplete or requiring petitioner to submit additional documents, the 120-day period started and continued to run from September 14, 2012, the date when petitioner filed its administrative claim together with the supporting documents. This is in accordance with Revenue Memorandum Circular (RMC) No. 029-09, which states that:

III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*

Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. Submission of complete documents necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Officer (RO) for audit/verification;
c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

**In cases where taxpayer failed to comply with the above conditions/requirements**, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises

> during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request.*(Emphasis supplied)*

Moreover, it is well-settled that in VAT refund claims, the alleged non-submission of complete supporting documents in the administrative level is *not* fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[18]

Clearly, pursuant to Section 112(C) of the NIRC of 1997, as amended, petitioner timely filed its appeal by way of a Petition for Review on February 8, 2013, as the same was filed within the 30-day period after the lapse of the 120-day period, which ended on January 12, 2013.

Proceeding to the second requisite, petitioner avers that it exclusively sells its Pre-Production Ore and ROM Ore to Philippine Gold Processing and Refining Corporation (PGPRC), an entity registered with the Board of Investments (BOI)[19] and whose products are 100% exported and paid for in foreign currency duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). Petitioner thus asserts that its sales to PGPRC are subject to zero percent (0%) VAT, pursuant to Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005, which provide:

> SECTION 4.106-5. *Zero-Rated Sales of Goods or Properties.*-xxx
>
> The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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[18] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, January 12, 2011; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.

[19] Exhibit "D".

a) *Export Sales.* -"*Export Sales*" shall mean:

xxx xxx xxx

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

xxx xxx xxx

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**. *(Emphasis supplied)*

In an earlier case[20] involving the same parties and issues but covering different taxable period, this Court denied petitioner's claimed input VAT for its failure to prove that PGPRC is a 100% exporter, to wit:

"Tax refunds are in the nature of tax exemptions. And the claimants of those refunds bear the burden of proving the factual basis of their claims.

Based on the afore-quoted provisions, petitioner must comply with the following requisites in order for its sales to be considered zero-rated:

1. the taxpayer seller must be VAT-registered;
2. the buyer must be a BOI-registered manufacturer/ producer; and
3. the buyer's products must be 100% exported as shown by a certification issued by the Board of Investment.

The Court finds that petitioner failed to comply with the said requisites. Even though petitioner is a VAT - registered entity and its buyer PGPRC is a BOI-registered enterprise engaged in the production of gold and silver dore', evidence failed to prove that PGPRC's products are 100% exported. What PGPRC's BOI Certification merely established

[20] *Filminera Resources Corporation vs. Commissioner of Internal Revenue*, CTA Case Nos. 8528 and 8576, September 25, 2014.

is that its products are geared for export not that all of its products are actually exported. Thus, the transaction entered into by petitioner and PGPRC cannot be considered as zero-rated. Consequently, petitioner is not entitled to a refund."

The Court finds that the present case is no different from the afore-cited case.

Petitioner is a VAT-registered entity as shown by its Certificate of Registration No. OCN8RC0000036160[21] dated January 1, 1997, with Tax Identification Number 000-153-880-000.

To prove its zero-rated sales, petitioner formally offered the following pieces of evidence:

1. Certificate of Registration issued by the BOI to PGPRC on February 7, 2008;[22]
2. Sales invoices that petitioner issued to PGPRC;[23]
3. Application to do Business under the Foreign Investments Act of 1991 and By-Laws filed by LFT Processing Corporation (currently named Philippine Gold Processing and Refining Corporation) to the Securities and Exchange Commision as an export enterprise;[24]
4. Judicial Affidavit of Ms. Joy P. Dompor;[25] and
5. Letter dated August 3, 2009 from BIR Assistant Commissioner James H. Roldan, confirming that input VAT on PGPRC's purchases of goods and services attributable to zero-rated sales are available as tax credit or refund.[26]

Petitioner also attached to the Petition for Review a copy of the certification from BOI[27], confirming that PGPRC exported 100% of its products and stating that the confirmation is valid only for the period July 1, 2010 to June

[21] Exhibit "B".
[22] Exhibit "D".
[23] Exhibits "E" to "E-5" or "J" to "J-5".
[24] Exhibit "L", docket, pp. 509-525.
[25] Exhibits "AA" and "AA-1", docket, pp. 493-506.
[26] Exhibit "N", docket, pp. 559-562.
[27] Annex "D", docket, pp. 66-68.

30, 2011. However, petitioner failed to formally offer the same as part of its evidence.

It is a well-settled rule that the Court shall consider no evidence which has not been formally offered.[28] A piece of evidence must be formally offered in order for it to have a probative value.

Consequently, the failure of petitioner to diligently offer the certification from the BOI, confirming that PGPRC exported 100% of its products, as required under Section 4.106-5(a)(5) of RR No. 16-2005, became fatal to its petition.

**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** due to insufficiency of evidence.

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**WE CONCUR:**

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

**CAESAR A. CASANOVA**
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.

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

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[28] Section 34 of Rule 132 of the Rules of Court.

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice