REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9726

Members:

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

Promulgated:

JUN 05 2020
4:25 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This *Petition for Review* filed by Carmen Copper Corporation on November 27, 2017 prays for the refund of the amount of ₱29,875,350.26[1] that was partially denied by the CIR, allegedly representing excess and unutilized input value-added tax (VAT) attributable to petitioner's zero-rated sales for the 2nd to 4th quarters of taxable year (TY) 2015.

[1] Amended Petition for Review, Docket – Vol. I, pp. 450-462. Originally the claim was ₱145,837,597.01 in the *Petition for Review* filed on November 27, 2017 and the Pre-Trial Order dated May 23, 2018; Docket – Vol. I, pp. 10 to 22 and 228 to 233, respectively.

THE PARTIES

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Philippines, with Securities and Exchange Commission Company Reg. No. CS200414509.[2] It is also registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer, with Taxpayer Identification Number 239-903-100-00000.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office, including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law.[4]

THE FACTS

On June 30, 2017, petitioner filed with the BIR an *Application for Tax Credits/Refunds*[5] and the letter dated June 13, 2017,[6] applying for refund of its alleged excess and unutilized input VAT in the amount of ₱145,837,597.01, for the 2nd to 4th quarters of taxable year 2015, together with the *Checklist of Mandatory Requirements for Claims for VAT Credit/Refund*[7] and the letter dated June 13, 2017 addressed to respondent through the BIR Large Taxpayers Excise Tax Division, stating that the supporting documents for its application submitted by petitioner were photocopies from the originals on file.[8]

Petitioner filed the present *Petition for Review* on November 27, 2017.[9]

Respondent filed his *Answer* through registered mail on February 26, 2018,[10] interposing the following special and affirmative defenses, to wit:

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[2] Exhibit "P-1", Docket – Vol. I, pp. 378 to 394.
[3] Exhibit "P-2", Docket – Vol. II, pp. 395 to 396.
[4] Par. 1, Admitted Fact, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 201.
[5] Exhibit "P-19", Docket – Vol. I, p. 416.
[6] Exhibit "P-18", Docket – Vol. I, p. 415.
[7] Exhibit "P-20", Docket – Vol. I, p. 417-418.
[8] Exhibit "P-21", Docket – Vol. I, p. 419.
[9] Docket – Vol. I, pp. 10 to 25.
[10] Docket – Vol. I, pp. 76 to 82.

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses:

Petitioner is not entitled to refund of its alleged unutilized input VAT.

5. Verification of supporting invoices, official receipts and other documents of petitioner on its purchases of goods and services resulted to disallowance in the amount of P3,618,779.37 due to non-compliance with the invoicing requirements as provided for under Section 113 and 228 of the NIRC of 1997, as amended. Below is the summary of disallowed input tax:

Not in taxpayers name	P115,855.37
Not among those enumerated in Sec. 110 of NIRC of 1997, as amended	P87.64
Not within the period	P349,828.43
Services without official receipt	P12,218.63
Goods with no Invoice	P25,314.98
VAT not separately billed	P430,493.00
Non Vat	P2,044,806.44
Not clear	P244,396.69
With erasure	P899.46
No BIR Permit/Series not indicated	P369,967.72
SOA for ACMDC	P2,400.00
No support	P20,453.96
Excess claim	P167.77
Exempt	P975.43
TOTAL	P3,617,864.52
Duplicate	P914.85
TOTAL	**P3,618,779.37**

6. Review of the amortization of deferred input tax on capital goods resulted to disallowance in the amount of Php7,484,064.42. Details of which are as follows:

Reason for Disallowance	Amount
No IED/Proof of Payment	P6,621,159.60
Input Tax not shown in the Invoice (Domestic)	P121,928.56
No TIN (Domestic)	P276,024.42
No ATP	P162.675.00
No Name of Taxpayer	P12,005.37
Double Claim	P290,271.47
TOTAL CLAIM	**P7,484,064.42**

7. Section 110 (A) (2) (b) of the NIRC of 1997, as amended, states that input tax on capital goods purchased or imported in the period of claim shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds P1,000,000.00.[sic]

8. Likewise, examination of import entry revenue declarations, statement of settlement of duties and taxes and the corresponding bank debit charges to support payment of Value-Added Tax on importation resulted to disallowance in the amount of P269,872.00 pursuant to Section 110 (2) (b) of the NIRC of 1997, as amended.

9. Furthermore, it was observed that input tax on importation of major crusher/grinding parts, pumps/motors and shafts and other major equipment parts were included in the input tax credited for the period April 1, 2015 to December 31, 2015, the corresponding input tax of P18,501,559.87 was also disallowed in accordance with the same provision of the NIRC of 1997, as amended, above-mentioned.

10. Analysis of the claim for VAT credit/refund disclosed that there was a discrepancy amounting to P403.89 between the application for Tax Credit as against VAT returns submitted and the amount per claim, to wit:

Per VAT Return	**Purchases**	**Input Tax**
Purchases-CG X P1M	P 46,736,982.14	P 5,608,437.86
Domestic Purchases-GOCG	P8,452,376.95	P1,014,283.58
Importation-GOCG	P688,000,108.30	P82,560,013.00
Domestic Purchases-Services	P33,029,652.14	P3,963,550.53
TOTAL	P776,219,119.53	P93,146,284.96
Per Summary List		
Local Purchases	P42,652,769.09	P5,118,323.07
Importation	P733,562,983.30	P88,027,558.00
TOTAL	P776,215,752.39	P93,145,881.07
Difference	**P3,367.14**	**P403.89**

It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not ipso facto granted upon filing of the claim.

11. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot be easily surrendered.

12. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers are liberally in favor of the taxing authority.

13. Tax refunds partake of the nature of tax exemption which are a derogation of the power of taxation of the State.

Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.

14. Thus, the petitioner is charged with the heavy burden of proving that it has complied with and satisfied with all the statutory and administrative requirements to be entitled to the tax refund.

15. Likewise, not only should petitioner establish that it is entitled to tax refund, it is also imperative that petitioner prove its compliance with the following:

a. The registration requirement of a VAT taxpayer in compliance with Revenue Regulations No. 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the Tax Code;

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 Tax Code;

c. Proof of compliance with the prescribed checklist of requirements to be submitted in cases involving a claim for VAT refund 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 refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code. 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 Petition for Review;

d. That the petitioner's alleged zero-rated sales complied with the requirements set forth in Section 108 of the Tax Code;

e. That the input taxes in the amount of One Hundred Forty-Five Million Eight Hundred Thirty-Seven Thousand Five Hundred Five Hundred Ninety Seven 01/100 (P145,837,597.01) allegedly representing unutilized Input VAT were directly attributable to its zero rated sales and such have not been applied against any Output VAT and were not carried over to the succeeding taxable quarter or quarters;

f. That petitioner's administrative and judicial claims for tax refund was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code;

g. That petitioner's local purchases and importation of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts under Section 110 (A)(2) and 113 of the Tax Code; and

h. The requirements as enumerated under Section 4-110-7 of Revenue Regulations No. 14-2005.

16. In the case at hand, for failure of petitioner to show that it has strictly complied with the conditions for the grant of the VAT refund/credit, petitioner is not entitled to claim for tax refund/credit. Thus, the instant petition should be denied for lack of merit."

The Pre-Trial Conference was set and held on April 26, 2018.[11] The *Respondent's Pre-Trial Brief* and *Petitioner's Pre-Trial Brief* were both filed on April 20, 2018.[12]

Subsequently, petitioner filed on April 23, 2018 an *Omnibus Motion (i) To allow the presentation of an Expert Witness only after the ICPA Report and the Pre-marking of voluminous Documents (ii) For the Deferral of Testimony of an Expert Witness and the Submission of Judicial Affidavit*,[13] praying that it be allowed (1) to present an expert witness only after the completion of the ICPA Report and the pre-markings of the voluminous import documents to be referred to by the expert witness; and (2) to defer the submission of the expert witness's judicial affidavit within five (5) days before the same is presented for direct testimony. In the Order dated April 26, 2018,[14] the Court granted petitioner's *Omnibus Motion*.

The parties filed their *Joint Stipulation of Facts and Issues* on May 11, 2018,[15] which was approved and adopted by the Court in the Pre-Trial Order dated May 23, 2018.[16] The Court also deemed the Pre-Trial terminated.

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[11] Notice of Pre-Trial Conference dated March 9, 2018, Docket – Vol. I, pp. 87 to 88; Minutes of the hearing held on, and Order dated, April 26, 2018, Docket – Vol. I, pp. 196 and 197, respectively.
[12] Docket – Vol. I, pp. 90 to 94 and 95 to 115, respectively.
[13] Docket – Vol. I, pp. 183 to 186.
[14] Docket – Vol. I, p. 197.
[15] Docket – Vol. I, pp. 201 to 214.
[16] Docket – Vol. I, pp. 228 to 233.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals: (1) Mr. Fernando A. Remando,[17] petitioner's Chief Finance Officer; (2) Mr. Ericson D. Tadeja,[18] the Court-commissioned Independent Certified Public Accountant (ICPA);[19] and (3) Mr. Reynold V. Yabes,[20] petitioner's expert witness.

Thereafter, the *ICPA Report* was submitted to the Court on July 31, 2018[21] and August 20, 2018.[22]

Petitioner filed its *Formal Offer of Evidence* on September 10, 2018.[23] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on September 18, 2018.[24] In the Resolution dated November 16, 2018,[25] the Court admitted petitioner's Exhibits.

On December 3, 2018, respondent manifested that this case was previously handled by Atty. Josephine Doria, who already resigned from the BIR and that the BIR records of this case was forwarded to the Bureau of Customs. Thus, respondent requested for the resetting of his initial presentation of evidence.[26]

On the other hand, petitioner manifested that respondent already partially granted its claim and that petitioner will be filing an *Amended Petition for Review* to reduce the amount in the *Petition*.[27] In the Order dated December 3, 2018,[28] the Court gave respondent fifteen (15) days from receipt of the *Amended Petition for Review* to file his *Amended Answer*.

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[17] Exhibit "P-24", Docket – Vol. I, pp. 116 to 131; Minutes of the hearing held on, and Order dated, June 6, 2018, Docket – Vol. I, pp. 253 and 254, respectively.
[18] Exhibit "P-25", Docket – Vol. I, pp. 288 to 295; Minutes of the hearing held on, and Order dated, August 8, 2018, Docket – Vol. I, pp. 305 and 306, respectively.
[19] *Oath of Commission* dated June 21, 2018, Docket – Vol. I, p. 255; *Judicial Affidavit in lieu of Direct Examination of Mr. Ericson D. Tadeja*, Docket – Vol. I, pp. 237 to 243; Minutes of the hearing held on, and Order dated, June 21, 2018, Docket – Vol. I, pp. 256 and 257 to 258, respectively.
[20] Exhibit "P-29", Docket – Vol. I, pp. 310 to 327; Minutes of the hearing held on, and Order dated, September 5, 2018, Docket – Vol. I, pp. 357 and 358, respectively.
[21] Docket – Vol. I, pp. 263 to 284.
[22] Docket – Vol. I, pp. 307 to 308.
[23] Docket – Vol. I, pp. 360 to 377.
[24] Docket – Vol. I, pp. 430 to 432.
[25] Docket – Vol. I, pp. 436 to 437.
[26] Minutes of the hearing held on, and Order dated, December 3, 2018, Docket – Vol. I, pp. 438 and 439, respectively.
[27] Minutes of the hearing held on, and Order dated, December 3, 2018, Docket – Vol. I, pp. 438 and 439, respectively.
[28] Docket – Vol. I, p. 439.

Subsequently, on January 14, 2019, petitioner filed its *Amended Petition for Review*,[29] praying that the Court render judgment (1) declaring petitioner entitled to a refund in cash in the amount of ₱29,875,350.26, representing petitioner's excess and unutilized input VAT on purchases of goods and services, and importation of goods, for the 2nd Quarter of TY 2015 to 4th Quarter of TY 2015, which input VAT are all attributable to zero-rated sales; and (2) ordering respondent to grant petitioner a refund in the cash amount of ₱29,875,350.26.

Respondent then filed his *Amended Answer* on January 29, 2019,[30] interposing the following special and affirmative defenses:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> 4. Respondent adopts the abovementioned admissions and denials as part of his Special and Affirmative Defenses.
>
> **The petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund.**
>
> 5. Since respondent rendered a Decision in the administrative level, the Honorable Court's jurisdiction becomes strictly appellate in nature. Applying the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (Total Gas, for brevity), the Supreme Court ruled:
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> > "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative case was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim."
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> 6. Applying the foregoing to the instant case, since respondent rendered a decision, the jurisdiction of the Honorable Court shifts from a trial court to an appellate tribunal. The

[29] Docket – Vol. I, pp. 448 to 462.
[30] Docket – Vol. I, pp. 477 to 483.

Honorable Court should confine itself to whether the findings of respondent are consistent with law.

7. In the *Total Gas* case, the Supreme Court is quite emphatic that there can be no such first instance trial stating:

> "It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, **a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.**" (Emphasis supplied)

8. As a matter of fact, in these types of cases, the Supreme Court confined judicial review to the same documents submitted at the administrative level. This was stressed as follows:

> "It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that is [sic] administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA."

9. The scope of judicial review is limited both in its availability and function: the role of the court is not to re-make the decision being challenged, or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached in order to assess whether that decision was flawed and should have be revoked (https://www.out-law/com).

10. As provided by the Supreme Court in the *Total Gas* case, a judicial review is not a trial de novo in the sense that a totally new first instance trial is conducted. Rather, it is an inquiry into whether the findings of the administrative bodies are consistent with law.

11. In a more proper perspective, while the CTA case is a judicial review, it is *trial de novo* in the sense that litigants must present anew their evidence in accordance with the Rules of Court. As the CTA, under Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) is mandated as a court of record, the evidence submitted to the BIR must be properly identified and offered. This was emphasized by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Manila Mining Corporation*** stating: 𝒥𝓁

"Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are ***litigated de novo,*** party litigants should prove every minute aspect of their cases. **No evidentiary value can be given the purchase of invoices or receipts <u>submitted to the BIR</u> as the rules on documentary evidence require that these documents must be formally offered before the CTA.**

This Court notes with approval the following findings of the CTA:

> xxx [S]ale of gold to the Central Bank should not be subject to the 10% VAT-output tax but this does not *ipso facto* mean that [the seller] is entitled to the amount of refund sought <u>as it is required by law to present evidence showing the input taxes it paid during the year in question.</u> What is being claimed in the instant petition is the refund of the input taxes paid by the herein petitioner on its purchase of goods and services. Hence, <u>it is necessary for the petitioner to show proof that it had indeed paid the said input taxes during the year 1991. In the case at bar, Petitioner failed to discharge this duty. It did not adduce in evidence the sales invoice, receipts or other documents showing the input value added tax on the purchase of goods and services.</u>
>
> xxx
>
> <u>Section 8 of Republic Act 1125 (An Act Creating the Court of Tax Appeals) provides categorically that</u> **<u>the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly</u>** <u>if they desire the Court to take such evidence into consideration.</u> (Emphasis and underscoring supplied)

12. Since a Decision has been rendered in the case denying petitioner's administrative claim for refund for failure to substantiate the same, petitioner cannot submit documents it did not submit at the administrative level. Moreso, the Honorable Court is confined to a more limited issue of whether the denial was proper given the evidence submitted at the administrative level. Jc

Petitioner is not entitled to refund in the amount of P29,875,350.26.

13. As stated in the Letter dated 15 September 2017, addressed to Carmen Copper Corporation, verification of documents submitted to substantiate the claim, only the amount of P115,962,246.75 was recommended computed as follows:

PARTICULARS		BIR	BOC	TOTAL
AMOUNT OF CLAIM		P4,192,484.32	P141,645,109.69	P145,837,597.01
Adjustments:				
Disallowed Input Tax from				
1)Amortization of Deferred Input Tax on Capital Goods		P 572,633.35	P 6,911,431.07	P 7,484,064.42
2)Disallowed Input Tax from Importation of Goods		P	P 18,771,431.87	P 18,771,431.87
3)Disallowed Input Tax-Violation Of Invoicing Requirements		3,619,450.08		3,619,450.08
Discrepancy on Input Available For Tax Refund between:				
Per VAT Returns	P93,146,284.96			
Per VAT List	93,145,881.07	403.89		403.89
Total		P4,192,487.32	P 25,682,862.94	P 29,875,350.26
NET ALLOWABLE FOR TAX REFUND		P 0.00	P115,962,246.75	P115,962,246.75

14. Well to consider, taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

15. 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).***

16. 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).***

17. 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 transmitted the *BIR Records* for the present case on March 7, 2019.[31]

Subsequently, respondent presented documentary and testimonial evidence. His lone witness is Mr. Saidamen T. Marohombsar,[32] a Revenue Officer of the BIR.

After the completion of the testimony of respondent's lone witness, counsel for respondent orally offered Exhibits "R-1", "R-2", "R-3", "R-4", "R-5" and the entire *BIR Records*. There being no objection from petitioner's counsel, the Court admitted respondent's Exhibits, and gave the parties thirty (30) days from April 3, 2019 or until May 3, 2019 to file their memoranda.[33]

In view of the filing of respondent's *Memorandum* on April 25, 2019,[34] and the *Memorandum for Petitioner* on June 3, 2019,[35] the case was considered submitted for decision on June 7, 2019.[36]

THE ISSUE

The parties submitted this lone issue for this Court's resolution,[37] to wit:

> **"WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OR ISSUANCE OF TCC OF ITS ALLEGEDLY UNUTILIZED INPUT TAXES IN THE AMOUNT OF PHP145,837,597.01."**

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[31] Respondent's *Compliance*, Docket – Vol. I, pp. 497 to 499.

[32] Judicial Affidavit (of Mr. Saidamen T. Marohombsar), Exhibit "R-5", Docket – Vol. I, pp. 491 to 494; Minutes of the hearing held on, and Order dated April 3, 2019, Docket – Vol. I, pp. 502 and 503, respectively.

[33] Minutes of the hearing held on, and Order dated April 3, 2019, Docket – Vol. I, pp. 502 and 503, respectively.

[34] Docket – Vol. I, pp. 504 to 510.

[35] Docket – Vol. I, pp. 524 to 543; Order dated May 16, 2019, Docket – Vol. I, p. 517; Order dated May 23, 2019, Docket – Vol. I, p. 523.

[36] Resolution dated June 7, 2019, Docket – Vol. I, p. 544.

[37] Stipulated Issue, JSFI, Docket – Vol. I, p. 202.

Petitioner's arguments:

Petitioner argues that it complied with the documentary requirements for a claim for input tax refund at the administrative level; that substantive law supports petitioner's entitlement to the refund claimed for; that petitioner complied with the requisites for a valid claim for input tax refund; that petitioner is VAT-registered and is engaged in zero-rated sales, which facts remain uncontested by respondent; that the input taxes were due or paid and were not transitional input tax; that the input taxes have not been applied against output taxes during and in the succeeding quarters; that input taxes claimed are attributable to zero-rated sales or effectively zero-rated sales; that the acceptable foreign currency exchange proceeds from petitioner's export sales have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; that the input taxes which cannot be directly and entirely attributable to any of the zero-rated or effectively zero-rated sales and taxable or exempt sales shall be proportionately allocated on the basis of sales volume; and that the claim is filed within two years after the close of the taxable quarter when such sales were made.

Respondent's counter-arguments:

Respondent counter-argues that the petition must be dismissed for failure of petitioner to substantiate its administrative claim for refund; that petitioner is not entitled to refund in the amount of ₱29,875,350.26; and that taxes paid and collected by the BIR are presumed to have been made in accordance with law, rules and regulations and the burden to prove otherwise is upon petitioner.

THE COURT'S RULING

The Court shall first ascertain the timeliness of the filing of petitioner's claims as this will determine whether it is still necessary to resolve petitioner's compliance with the other requisites for input VAT refund.

Petitioner's administrative and judicial claims were filed within the prescriptive periods ge

Pursuant to Section 112 (A) of NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thus, petitioner's administrative claims for the 2nd to 4th quarters of TY 2013 were filed within the two-year prescriptive period, as shown below:

Covered Period	**Close of Taxable Quarter**	**Last Day to File Administrative Claim**	**Date of Filing of Administrative Claim**
2nd Quarter TY 2015	June 30, 2015	June 30, 2017	June 30, 2017
3rd Quarter TY 2015	September 30, 2015	September 30, 2017	June 30, 2017
4th Quarter TY 2015	December 31, 2015	December 31, 2017	June 30, 2017

On the timeliness of petitioner's judicial appeal, Section 112 (C) of the NIRC of 1997, as amended, provides the period for filing a judicial claim for the refund or tax credit of input VAT, namely: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[38]

The Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of the complete documents in support of the application for refund or tax 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 the Court of Tax Appeals 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 refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days after the expiration of such 120-day period.

Applying the same to the present case, the following are the pertinent dates to petitioner's judicial claims for refund:

[38] *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

Covered Period	Date of Filing of Administrative Claim	End of the 120-Day Period	End of the 30-Day Period	Date of Filing of Petition for Review
2nd Quarter TY 2015	June 30, 2017	October 28, 2017	November 27, 2017	November 27, 2017
3rd Quarter TY 2015	June 30, 2017	October 28, 2017	November 27, 2017	November 27, 2017
4th Quarter TY 2015	June 30, 2017	October 28, 2017	November 27, 2017	November 27, 2017

Based on the records, petitioner had until November 27, 2017, within which to file its judicial claims for refund of input VAT for the 2nd to 4th quarters of TY 2015.

Thus, the Petition for Review filed on November 27, 2017 was likewise filed within the period prescribed by law.

Having determined that petitioner timely filed both its administrative and judicial claims for refund, the Court shall now proceed to determine petitioner's compliance with the other requisites.

Petitioner, however, failed to comply with the legal requisites to establish that it was engaged in zero-rated or effectively zero-rated sales during the 2nd to 4th Quarters of TY 2015.

Petitioner seeks the refund of its alleged excess and unutilized input VAT it incurred/paid during the 2nd to 4th quarters of TY 2015 in the total amount ₱29,875,350.26.

In claiming the refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales, the pertinent provision of law is Section 112(A) and (C) of the National Internal Revenue Code of 1997 (NIRC), as amended, which states:

"SEC. 112. Refunds or Tax Credits of Input Tax. —

> (A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> 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."

Pursuant thereto, in order to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The taxpayer is VAT-registered;

2. The claim for refund was filed within the prescriptive period both in the administrative and judicial levels;

3. There must be zero-rated or effectively zero-rated sales;

4. The input taxes were incurred or paid;

5. The input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales; and

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

The first two requisites were met by petitioner. However, with regard to item 3 of the foregoing, petitioner failed to support them with complete, adequate and accurate factual substantiation.

The records show that petitioner is registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS200414509. Its Articles of Incorporation show that its primary purpose is to "carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the relevant mining laws."

Petitioner is likewise registered with the Board of Investments as a "New Producer of Copper Concentrate," with BOI Certificate of Registration No. 2006-158.

Petitioner alleges that for the 2nd to 4th quarters of TY 2015, it exported 100% of its copper concentrates. Petitioner also claims that the export sales proceeds were paid for in acceptable foreign currency, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas BSP pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

Under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), it is required that the taxpayer be engaged in zero-rated or effectively zero-rated sales and for zero-rated sales and that the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

> "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);"

Based on the afore-quoted provision, in order 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; *ge*

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, Sections 113(A)(1), (B)(1), (2)(c) and (3) 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, provide that a VAT taxpayer, like herein 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) <u>A VAT invoice for every sale, barter or exchange of goods or properties</u>; 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:
>
> (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" (*Underscoring supplied*) 𝒻𝓌

"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:

(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;" (*Underscoring supplied*)

In addition to the above requirements, the invoice 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)

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."

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 same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

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.

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.

In this case, in order for petitioner's export sales to qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code, it is thus required to issue VAT sales invoices for each sale of goods, the information contained therein must be in compliance with the applicable provisions previously cited, such as, among others, the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In its Quarterly VAT Returns for the 2nd to 4th quarters of TY 2015,[39] petitioner reported total sales amounting to ₱8,750,685,509.15, broken down as follows:

[39] Exhibits "P-5", "P-6", and "P-7", Docket, pp. 399 to 401.

Type of Sales	2nd Quarter	3rd Quarter	4th Quarter	TOTAL
VATable	₱ 9,189,199.54	₱ 5,210,586.17	₱ 1,735,539.57	₱ 16,135,325.28
Sales to Government	-	-	3,099,241.07	3,099,241.07
Zero-rated	2,871,141,286.20	2,895,808,392.15	2,960,233,304.45	8,727,182,982.80
Exempt	1,184,370.00	1,752,170.00	1,331,420.00	4,267,960.00
Total	**₱2,881,514,855.74**	**₱2,902,771,148.32**	**₱2,966,399,505.09**	**₱8,750,685,509.15**

As further detailed in the Schedule of Zero-Rated Sales,[40] petitioner's zero-rated sales amounting to ₱8,727,182,982.80 were derived from its export sales to the following customers:

Customer	Sales in US$	Sales in Ph Pesos
Cliveden Trading AG	₱ 21,516,477.72	₱ 661,294,745.64
Louis Dreyfus Commodities Metals Suisse S.A.	7,000,443.10	328,565,796.90
MRI Trading AG	152,833,830.33	7,014,788,041.94
Samsung C & T Hongkong Ltd.	7,815,004.91	366,680,030.38
Trafigura Pte. Ltd.	7,892,023.74	355,854,367.94
Total	**₱197,057,779.80**	**₱8,727,182,982.80**

The above reported zero-rated sales were duly supported by the corresponding sales invoices,[41] bills of lading (BOL),[42] and BOC export declaration documents[43] to support its zero-rated export sales.[44]

Thus, petitioner satisfactorily complied with the *first* essential document 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 same Code.

As for the *third* essential document, *i.e.,* the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP, petitioner presented the Certification issued by BDO Unibank, Inc.[45] This bank certification shows that the payment is in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

[40] Annex B.1-ICPA, ICPA Report, Exhibit "P-26".
[41] Exhibits "P-10.1-A-ICPA" to "P-10.1-BL-ICPA".
[42] Exhibits "P-12.1-A-ICPA" to "P-12.1-BL-ICPA".
[43] Exhibits "P-12.2-A-ICPA" to "P-12.2-BL-ICPA".
[44] Exhibit "P-26" (Annexes B.1-ICPA, B.4-ICPA, and B.5-ICP).
[45] Exhibits "P-12.3-A-ICPA" to "P12.3-E-ICPA".

But then, it is equally important that the foreign currency inward remittance pertains to payments for the zero-rated sales during the period of claim or for the 2nd to 4th quarters of TY 2015.

Upon examination of the evidence presented, however, petitioner did not provide a reconciliation of its reported zero-rated sales *vis-à-vis* schedule of inward remittances. Accordingly, the Court was unable to trace the sales invoice amounts to the certification of inward remittances. Petitioner, therefore, failed to establish whether the remittances actually correspond to the zero-rated sales for the period covered by the present claim. Consequently, the Court cannot determine with certainty whether the payment for the zero-rated sales amounting to ₱8,727,182,982.80 were indeed *"accounted for in accordance with the rules and regulations of the BSP".*

It must be emphasized that in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[46]

In sum, petitioner failed to fulfill an *essential* requisite under the law for the successful prosecution of the present refund claim. Thus, the same must already be denied.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[47] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[48]

It must be stressed that in a claim for tax refund or credit, the claimant has the burden of proof to establish the factual basis of its claim.[49] *ja*

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[46] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

[47] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

[48] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[49] *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 212699, March 13, 2019.

The Court agrees with the respondent that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[50] This is the reason why a taxpayer must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue its claim.[51]

In this case, petitioner failed to meet the requirements for entitlement to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[50] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, January 20, 2016.

[51] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

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

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.

ROMAN G. DEL ROSARIO
Presiding Justice