REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION, Petitioner,	**C.T.A. CASE NO. 8090**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAY 25 2012 9:40 a.m.

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DECISION

CASANOVA, *J.*:

Before Us is a Petition for Review[1] filed by petitioner, Taganito Mining Corporation, seeking the review of the denial by the respondent, Commissioner of Internal Revenue, of petitioner's claim for refund of its excess VAT input taxes on its purchases and importation of capital goods and services for the period January 1, 2008 to December 31, 2008, in the total amount of P34,131,592.29.

The facts of the case, as culled from the records, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 4th Floor, NAC Center (formerly Solid Mills/BMMC Building), Dela Rosa Street, Legaspi Village, Makati City.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to exercise the functions of said office, including inter alia, the power to decide refunds of internal revenue taxes, fees or other

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[1] Docket, pp. 5-11
[2] Joint Stipulation of Facts and Issues (JSFI), Stipulated Facts, par. 1, Docket, p. 69

charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (Tax Code) or other laws administered by the Bureau of Internal Revenue under Section 4 of the Tax Code, and holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where he may be served with summons and other legal processes of this Honorable Court.[3]

Petitioner is duly registered with the SEC with Certificate of Registration No. 138682 issued on March 4, 1987, is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494; and, is a Board of Investment (BOI) registered entity with BOI Certificate of Registration No. EP-88-306 dated April 14, 1988.[4]

Petitioner is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores and as such, was registered as a VAT-entity and was duly issued Certificate of Registration No. 94-470-000373 (*sic*).[5]

On December 1, 2009, petitioner filed its administrative claim for tax refund of excess VAT input taxes on its domestic purchases of goods and services and importation of goods in the amount of P42,038,669.54 covering the period January 1, 2008 to December 31, 2008.[6]

Due to respondent's inaction on its administrative claim, petitioner filed the instant Petition for Review on April 21, 2010, to forestall being barred by the two (2) year prescriptive period. In the said Petition for Review, petitioner is claiming refund only of the amount of P34,131,592.29 pertaining to the alleged input VAT incurred/paid on its local purchases and importation of capital goods for the period January 1 to December 31, 2008. Petitioner is praying for the lower amount of P34,131,592.29 because of the alleged representation made by respondent that the portion of its claim pertaining to purchases of non-capital goods and capital goods below P1Million was already about to be released.[7]

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[3] Petition for Review, par. 2, Docket, p. 6
[4] JSFI, Stipulated Facts, pars. 2, 3 and 4, Docket, pp. 69-70
[5] Petition for Review, par. 5, Docket, p. 7
[6] Exhibits "H" and "I"
[7] Petitioner's Memorandum, pars. 19 and 20, Docket, pp. 325-326

On June 15, 2010, respondent filed her Answer[8] interposing the following Special and Affirmative Defenses,[9] to wit:

> "4. 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.
>
> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 6. Petitioner must prove it is entitled to a claim for refund under the strictest terms.
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> 7. Petitioner must prove that it paid the alleged VAT input taxes for the period in question.
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> 8. Petitioner must prove that the same alleged VAT input taxes were not utilized against any output tax liability.
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> 9. Petitioner must prove that the alleged VAT input taxes for the period in question are attributable to its alleged VAT zero-rated export sales.
>
> 10. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.
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> 11. Petitioner's assertion that its zero-rated export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP) cannot be accorded weight. Plain allegations without any evidentiary document to support its claim will not justify petitioner's application for tax refund.
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> 12. Petitioner must prove that its sales are VAT zero-rated as contemplated under Section 112(A) of the Tax Code of 1997.
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> 13. The claim for refund in the amount of Thirty Four Million One Hundred Thirty One Thousand Five Hundred Ninety Two Pesos and 29/100 (P34,131,592.29) allegedly representing accumulated and unutilized VAT input taxes paid by it for the taxable year 2008 is not properly documented. To support its claim, it is indispensable for petitioner to prove the following:
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> a) Registration requirements of a value-added taxpayer in compliance with Section 9.236.1 (a) of

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[8] Docket, pp. 39-50

[9] Answer, par. 4-20, Docket, pp. 40-47

Revenue Regulations No. 16-2005 and Section 236 of the Tax Code of 1997, as amended;

b) Invoicing and accounting requirements for VAT-registered persons as well as the filing and payment of VAT pursuant to the provisions of Section 113 and 114 of the Tax Code of 1997, as amended. Failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of claim for input tax of the taxpayer claimant. (Revenue Memorandum Circular No. 42-2003);

c) Petitioner must prove that it has fully complied with the requirements of Section 9.236.1.a of RR No. 16-2005 and Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with regard to the filing of administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim;

d) In relation thereto, Section 112 (C) of the Tax Code of 1997, as amended, requires submission of complete documents in support of the application for tax refund filed with respondent before the one hundred twenty (120) day period shall apply and before petitioner could avail of the judicial remedies provided by law. Ergo, petitioner's failure to submit proof of compliance with the aforesaid requirements warrants the dismissal of the instant Petition for Review;

14. In the case entitled *San Roque Corp. vs. Commissioner of Internal Revenue*, the Supreme Court had the occasion to say:

'In order to claim a refund or tax credit under Section 112 (A), petitioner must comply with the following criteria:

1. The taxpayer is VAT-registered;

2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

3. The input taxes are due or paid;

4. The input taxes are not transitional input taxes;

5. The input taxes have not applied against output taxes during and in the succeeding quarters;

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

7. For zero-rated sales under Section 106 (A)(2)(1) and (2); 106 (B), and 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

8. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and that the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. The claim is filed within 2 years after the close of the taxable quarter when such sales were made.'

15. For a judicial claim for refund of input VAT to prosper, the petitioner must prove that there must be (a) zero-rated or effectively zero-rated sales; (b) that input taxes were incurred or paid; (c) that the input taxes are attributable to zero-rated or effectively zero-rated sales; (d) that the input taxes were not applied against any output VAT liability; and (e) the claim for refund/tax credit must be filed within the two year prescriptive period. (*EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004*)

16. Corollary thereto, Sec. 4.110.8 of RR 16-2005 explicitly provides:

'Input Taxes for the importation of goods or the domestic purchases of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sales, or subjected to the 5% Final Withholding VAT must be substantiated and supported by the following documents and must be reported in the information returns required to be submitted to the Bureau: (1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on imported goods; (2) For domestic purchases of goods and properties – invoice showing the information required under Sections 113 and 237 of the Tax Code.'

17. The provision of law regarding prescriptive periods are jurisdictional, compliance with which is essential for this Honorable Court to exercise authority over the instant case. Such statutes or rules are construed as mandatory as they have been absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharger of business and are necessary incident to the proper, efficient and orderly discharge of official functions.

18. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation and are therefore held against the claimant. Petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual basis of its claim for refund.

19. Likewise, for a judicial claim to prosper, the party must not only prove that it is a VAT-registered entity, it must substantiate the input VAT paid by purchase invoices or official receipts *(Commissioner of Internal Revenue vs. Manila Mining Corporation, 468 SCRA 571)*. Such that failure to comply with the requirements for a valid request for refund including the requirement for a valid sales invoice is fatal to the claim for refund. *(EG & G Omni, Inc. v. CIR, CTA Case No. 5987, March 26, 2004)*

20. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)*. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law and he cannot be permitted to rely upon vague implications. *(BPI Leasing Corporation v. the Honorable Court of Appeals, et al., G.R. No. 127624, November 18, 2003)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service Vs. Court of Appeals, 357 SCRA 444)*."

On August 13, 2010, the parties filed their Joint Stipulation of Facts and Issues[10] which was subsequently approved by the Court per Resolution[11] dated August 16, 2010.

After presentation of its evidence, petitioner filed its Formal Offer of Evidence[12] on April 27, 2011, which was admitted by the Court per Resolution[13] promulgated on June 14, 2011, except for Exhibits "N-II-28-1" and "N-II-28-2" which were denied admission for failure of petitioner to submit said exhibits to this Court.

Petitioner filed its Memorandum[14] on October 21, 2011, while respondent filed her Memorandum[15] on October 24, 2011.

In a Resolution[16] promulgated on October 25, 2011, the case was deemed submitted for decision.

In their Joint Stipulation of Facts and Issues, the parties stipulated on the following issues for this Court's resolution:

> "1. Whether or not Petitioner has complied with the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997, as amended.
>
> 2. Whether the Petitioner has complied with the submission of complete documents in support of its administrative claim for refund pursuant to Section 112 (D) of the NIRC of 1997 as amended and of Sections 9.236.1 of Revenue Regulations No. 16-2005 and Revenue Memorandum Order No. 53-98.
>
> 3. Whether the amount of **Thirty Four Million One Hundred Thirty One Thousand Five Hundred Ninety Two and 29/100 Pesos (P34,131,592.29)** allegedly representing Petitioner's excess and unutilized VAT input taxes paid from January 1, 2008 to December 31, 2008 were:
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> a. Paid by Petitioner.

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[10] Docket, pp. 69-72
[11] Ibid, p. 74
[12] Ibid, pp. 191-207
[13] Ibid, pp. 302-303
[14] Ibid, pp. 319-345
[15] Ibid, pp. 346-361
[16] Ibid, p. 363

b. Is attributable to Petitioner's zero-rated sales; and

c. Has not been applied against any output tax.

4. Whether Petitioner's claim for tax credit or refund was filed within the period prescribed by law.

5. Whether or not Petitioner is entitled to the refund of Thirty Four Million One Hundred Thirty One Thousand Five Hundred Ninety Two and 29/100 Pesos (P34,131,592.29) allegedly representing Petitioner's excess and unutilized VAT input taxes paid from January 1, 2008 to December 31, 2008."

Petitioner anchors its claim on Section 112(A) of the National Internal Revenue Code of 1997, as amended, which allows the tax refund/credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales. Section 112(A) reads as follows:

"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 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 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-rted sale and also in taxable or exempt sale of goods or properties or services, and the amount 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."

Pursuant to the above-quoted provision and, as laid down by the Supreme Court in a number of cases,[17] a taxpayer engaged in zero-rated or effectively

[17] Intel Technology Philippines, vs. CIR, G.R. No. 166732, April 27, 2007; San Roque Power Corporation vs. CIR, G.R. No. 180345, November 25, 2009; AT & T Communication Services Phil, Inc. vs. CIR, G.R. No. 182364, August 3, 2010; Southern Phil. Power Corp. vs. CIR, G.R. No.179632, October 19, 2011

zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites: (1) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (2) the taxpayer is VAT-registered; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales and were not applied against output VAT liability; (5) the foreign currency exchange proceeds thereof had been duly accounted for in accordance with BSP rules and regulations.

Petitioner is primarily engaged in the mining and exporting of nickel saprolite and limonite ore and exploration activities.[18] Petitioner avers that these ores are 100% exported and/or shipped to foreign countries, specifically to Japan and Australia, as certified to by the DOI in accordance with Revenue Memorandum Order No. 9-00. It is further averred that since these export sales were paid for in acceptable foreign currency, specifically in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), the same are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides thus:

> "**Sec. 106. Value Added Tax on Sale of Goods or Properties. –**
>
> (A) Rate and Base of Tax. – x x x
>
> (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

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[18] Item 1, Corporate Information, Notes to Financial Statements, Exhibit "A-1-A"

> 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; x x x"

Thus, pursuant to the afore-quoted legal provisions, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) 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, to wit: (a) the sales invoice as proof of sale of goods; (b) the export declarations and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) 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 addition, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

For the period January 1 to December 31, 2008, petitioner actually shipped its products abroad to foreign buyers and generated export sales in the amount of US$48,552,647.32, with peso equivalent to P2,134,904,145.91, as shown in petitioner's Schedule of Export Sales[19] and export documents[20] such as VAT compliant sales invoices, bills of lading, export declarations, ore transport permits, outward foreign manifests and related documents. Also, the foreign currency proceeds of US$48,552,647.32, derived from said export sales, were inwardly remitted and accounted for in accordance with the rules and regulations of the BSP, as shown by the Security Bank Client Advices.

In fine, petitioner's export sales for the period January 1 to December 31, 2008, in the amount of US$48,552,647.32 with peso equivalent to P2,134,904,145.91, qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

We shall now proceed to determine the amount of unutilized input VAT attributable to petitioner's zero-rated export sales.

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[19] Exhibit "N-III" attached to Exhibit N
[20] Exhibits "N-III-1-A" to "N-III-12-B" inclusive of submarkings

As earlier stated, of the P42,038,669.54 input VAT reflected in petitioner's 2008 Quarterly VAT Returns, only the amount of P34,131,591.93, representing input VAT on its local purchases and importation of capital goods, is the subject of the present claim, detailed as follows:

Exhibit	Invoice / IERD/Bank OR Date	Name of Supplier	Nature	Net Purchases	Input VAT being claimed
JANUARY					
N-11-18	-	Toyota Shaw, Inc.	Local Purchase	₱ 1,750,000.00	₱ 210,000.00
FEBRUARY					
N-11-19, N-11-19-2	2/20/2008	Honda Cars Kalookan, Inc.	Local Purchase	2,241,071.50	268,928.58
N-11-32-A	2/12/2008	Union Motor Corporation	Local Purchase	1,145,178.57	137,421.43
MARCH					
N-11-172, N-1-172-A	4/18/2008	Marubeni Corporation	Importation	18,873,328.63	2,264,799.44
Total Input VAT for the 1st Quarter					₱ 2,881,149.44
MAY					
N-11-173	5/12/2008	Volvo Truck Corporation	Importation	54,413,695.00	₱ 6,529,643.40
JUNE					
N-11-93-1	06/11/2008	Alpha Philmotor Sales Corp.	Local Purchase	1,339,285.71	160,714.29
N-11-93-2		Alpha Philmotor Sales Corp.	Local Purchase	732,142.86	87,857.14
N-11-93-2		Alpha Philmotor Sales Corp.	Local Purchase	732,142.86	87,857.14
Total Input VAT for the 2nd Quarter					₱ 6,866,071.97
JULY					
N-11-175	8/20/2008	Marubeni Corporation	Importation	89,641,766.66	₱10,757,012.00
N-11-176	8/20/2008	Volvo Truck Corporation	Importation	56,436,650.00	6,772,398.00
SEPTEMBER					
N-11-133	8/11/2008	Isuzu Philippines Corporation	Local Purchase	2,017,857.14	242,142.86
Total Input VAT for the 3rd Quarter					₱17,771,552.86
DECEMBER					
N-11-177	6/30/2008	Volvo Truck Corporation	Importation	24,300,291.67	₱ 2,916,035.00
N-11-174	6/11/2008	Volvo Truck Corporation	Importation	30,806,522.14	3,696,782.66
Total Input VAT for the 4th Quarter					₱ 6,612,817.66
TOTAL INPUT VAT CLAIM					₱34,131,591.93

This Court finds that the following input taxes should be denied for the reason/s stated opposite the specific input tax denied/disallowed, to wit:

INPUT TAX	TRANSACTION COVERED	AMOUNT	REASON FOR DENIAL/DISALLOWANCE
(1) P210,000.00	Purchase of vehicle from Toyota Shaw, Inc.	P1,750,000.00	Merely supported by official receipt.[21]
(2) P137,421.43	Purchase of vehicle from Union Motor Corporation	P1,145,178.57	The covering sales invoices[22] are in the name of Municipality of Claver instead of petitioner.
(3) P175,714.28 (P87,857.14 plus P87,857.14)	Purchase of 2 units of vehicles from Alpha Phil Motor Sales Corp.	P1,464,285.72	The supporting invoices are undated in violation of Sec. 113(B)(3) of the NIRC of 1997, as amended.*

[21] Exhibit "A-11-18-A"
[22] Exhibits "N-11-32-A"

*Pursuant to Section 113(A) of the NIRC of 1997, as amended, sale of goods or properties must be supported by an invoice which must be supported by an invoice which shall contain all the necessary information as provided in Section 113(B) of the same Code.

Sec. 113. x x x

"(B) Information Contained in 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:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(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;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.'

x x x."

Petitioner, thus, complied with the invoicing requirements under Sections 110(A) and 113(A) and (B) of the NIRC of 1997 and Sections 4.110-8(a)[23], 4.113-1(A)[24] and (B)[25] of Revenue Regulations (RR) No. 16-05 only to the extent of P33,608,456.58 out of the total claim of P34,131,592.29, computed as follows:

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[23] Section 4.110-8. Substantiation of Input Tax Credits. –

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

(1) For the importation of goods – import entry or other equivalent document showing actual payment of VAT on the imported goods.

(2) For the domestic purchase of goods properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.

(3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

x x x.

[24] Section 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 AHEDal;

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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.

[25] (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 obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(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 receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

x x x.

Amount of Input VAT Claim			₱34,131,592.29
Less:	Disallowances		
	Input VAT on petitioner's purchase of vehicle from Toyota Shaw, Inc. supported by a VAT official receipt instead of an invoice	₱ 210,000.00	
	Input VAT on petitioner's purchase of vehicle from Union Motor Corp. supported by invoices not in the name of petitioner	137,421.43	
	Input VAT on petitioner's purchase of 2 vehicles from Alpha Phil Motor Sales Corp	175,714.28	523,135.71
Input VAT Claim Properly Substantiated			**₱33,608,456.58**

Not all of the substantiated input VAT claim of P33,608,456.58 is, however, refundable.

Pursuant to Section 110(A)[26] of the NIRC of 1997, as amended, input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed

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[26] Sec. 110. ***Tax Credits***. –

(A) ***Creditable Input Tax***. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has been actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for the use in trade or business for which deduction or depreciation is allowed under this Code, 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 One million pesos (P1,000,000): Provided, however, That if the estimated useful life of the capital good is less then input VAT shall be spread over such a shorter period: Provided, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

(a) Total input tax which can be directly attributed to transactions subject to value-added tax; and

(b) A ratable portion of any input tax which cannot be directly attributed to either activity.

either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds P1Million, the claim for input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. On the other hand, if aggregate acquisition cost does not exceed P1Million, the total input taxes shall be allowed as credit/refund in the month of acquisition.

Records show that the substantiated input tax of P33,608,456.58 pertains to petitioner's purchases of capital goods, the aggregate acquisition cost of which exceed P1Million in the calendar month (regardless of the acquisition cost of each capital good).

Thus, the input VAT of P33,608,456.58 shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. Consequently, out of the P33,608,456.58 input VAT incurred by petitioner on capital goods, only the amount of P3,981,970.05 is creditable or refundable as of December 31, 2008, computed as follows:

The term "**input tax**" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business or importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term "**output tax**" means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

(B) ***Excess Output or Input Tax***. – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output VAT: Provided, however, That any input tax attributable zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

(C) ***Determination of Creditable Input Tax***. – The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

The claim for tax credit referred to in the foregoing paragraph shall include not only those filed with the Bureau of Internal Revenue but also those filed with other government agencies, such as the Board of Investments and the Bureau of Customs.

Exhibit	Capital Goods Purchases exceeding P1M	Input VAT	Useful Life[27] (in months)	Allowable Input VAT		
				Month of Acquisition	Remaining Months of 2008	Total
	FEBRUARY					
N-11-19, N-11-19-2	2,241,071.50	268,928.58	60	4,482.14	44,821.43	49,303.57
	MARCH					
N-11-172, N-1-172-A	18,873,328.63	2,264,799.44	48	47,183.32	424,649.90	471,833.22
	MAY					
N-11-173	54,413,695.00	6,529,643.40	48	136,034.24	952,239.66	1,088,273.90
	JUNE					
N-11-93-1	1,339,285.71	160,714.29	48	3,348.21	20,089.29	23,437.50
	JULY					
N-11-175	89,641,766.66	10,757,012.00	48	224,104.42	1,120,522.08	1,344,626.50
N-11-176	56,436,650.00	6,772,398.00	48	141,091.63	705,458.13	846,549.75
	SEPTEMBER					
N-11-133	2,017,857.14	242,142.86	48	5,044.64	15,133.93	20,178.57
	DECEMBER					
N-11-177	24,300,291.67	2,916,035.00	48	60,750.73		60,750.73
N-11-174	30,806,522.14	3,696,782.66	48	77,016.31		77,016.31
INPUT VAT ALLOWABLE FOR REFUND						**3,981,970.05**

Since only zero-rated sales were reported in petitioner's Quarterly VAT Returns for the year 2008, all of petitioner's purchases and the input VAT it incurred for the same period (including the input VAT of P3,981,970.05) are attributable to its zero-rated sales.

Also, the claimed input taxes were not applied against any output VAT liability during the period of claim since all of petitioner's sales were zero-rated and there was no output VAT due thereon. While the claimed input taxes were carried over to the succeeding quarters, the same remained unutilized until they

[27] Exhibit "II".

were deducted as "Any VAT Refund/TCC Claimed" from petitioner's total available input taxes as of December 31, 2009.[28]

Finally, We shall now determine the timeliness of the filing of petitioner's administrative and judicial claims.

In the case of *Commissioner of Internal Revenue vs. Aichi Forging Company, Asia, Inc.*,[29] the Supreme Court clarified that Section 112(A) of the NIRC of 1997, as amended, which provides that the filing of the administrative claim for refund/credit of creditable input VAT should be made within two (2) years from the close of the taxable quarter when the sales were made is the pertinent provision for the refund/credit of input VAT.

In the same Supreme Court decision, the High Tribunal further clarified that the filing of the judicial claim for refund/credit, however, should comply with the provisions of Sec. 112(D) (now C) of the same Code.

Section 112(D) (now C) of the NIRC of 1997, provides thus:

> "Refunds of Tax Credits of Input Tax.
>
> x x x.
>
> (D) *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 Subsections (A) and (B) 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."

The present claim covers the four (4) taxable quarters of 2008 which closed on March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008. Counting two (2) years from the said dates, petitioner had until March

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[28] Exhibit "JJ" line 23D

[29] G.R. No. 184823, October 6, 2010

31, 2010, June 30, 2010, September 30, 2010 and December 31, 2010, respectively, within which to file its administrative claim for refund. Clearly, the administrative claim for refund filed on December 1, 2009,[30] is within the 2-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as shown below:

Year 2008	End of the Quarter	End of 2-year Period	Administrative Claim filed on
1st Quarter	March 31, 2008	March 31, 2010	
2nd Quarter	June 30, 2008	June 30, 2010	December 1,
3rd Quarter	September 30, 2008	September 30, 2010	2009
4th Quarter	December 31, 2008	December 31, 2010	

As regards the timeliness of its judicial appeal, petitioner, upon filing of its administrative claim on December 1, 2009, simultaneously submitted the document in support thereof. This is evident from petitioner's letter-claim[31] dated November 27, 2009, which stated:

> "Also attached in support of this letter application for refund are the following documents:
>
> 1) Duly accomplished BIR Form No. 1914;
>
> 2) Original and latest amended quarterly VAT Returns for the four (4) quarters of 2008 with supporting schedules on Summary Lists of Sales and Purchases for the year 2008;
>
> 3) Original and latest amended Monthly VAT Declarations for 2008 with supporting schedules or Summary Lists of Sales and Purchases for the year 2008;
>
> 4) Photocopy of the Certification issued by Security Bank Corporation dated February 17, 2009 as to the export remittance proceeds received by the said bank in favor of TMC for the year 2008;

[30] Exhibit "H"
[31] Exhibit "H", supra note 26

5) Photocopy of Certificate of Registration No. OCN 8RC0000017494 and corresponding BIR Form 1905 filed on December 9, 2004;

6) Annual Income Tax Return For CY 2008 duly filed with the BIR;

7) Audited Financial Statements for CY 2008 with attached Report of Independent Auditors;

8) Certification issued by the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center to effect that TMC has not filed any similar, previous and/or outstanding application for tax credit and duty drawback with the said agency for the period January 1, 2008 to December 31, 2008."

Since no written notice was sent by the respondent informing petitioner that the aforesaid documents are incomplete nor did she require petitioner to submit additional documents, the 120-day period started and continued to run from December 1, 2009, the date when petitioner filed its administrative claim together with the supporting documents. This is in accordance with Revenue Memorandum Circular No. 029-99.[32]

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[32] Revenue Memorandum Circular No. 029-09 provides, thus:

III. *Period within which Refund a 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;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (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

Since petitioner filed its Petition for Review on April 21, 2010, which is well within the 30-day period after the lapse of the 120-day period provided in Section 112(D)(now C) of the NIRC of 1997, as amended, its judicial appeal was, therefore, timely filed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P3,981,970.05 representing its unutilized input VAT on capital goods purchases attributable to its zero-rated sales for the period January 1 to December 31, 2008.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
CIELITO N. MINDARO-GRULLA
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, Second Division

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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.

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.

ERNESTO D. ACOSTA
Presiding Justice