Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION
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FILMINERA RESOURCES CORPORATION, Petitioner, — **CTA CASE No. 8528**

-versus-

COMMISSIONER OF INTERNAL REVENUE, Respondent.

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FILMINERA RESOURCES CORPORATION, Petitioner, — **CTA CASE No. 8576**

Members:

-versus-

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Promulgated:

SEP 25 2014

2:45 p.m.

X===X

DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review filed by Filminera Resources Corporation to seek the refund or the issuance of tax credit certificate in the amount of One Hundred Fifteen Million Two Hundred Fifty-Five Thousand Ninety-Six Pesos and 40/100 (₱115,255,096.40), allegedly representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales during the third (3rd) and fourth (4th) quarters of fiscal year ended June 30, 2010.

THE FACTS

Petitioner Filminera Resources Corporation is a domestic corporation incorporated under the laws of the Republic of the Philippines, engaged in the business of operating coal mines; and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals, minerals, hydrocarbons, acids and chemicals.[1] It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-153-880-000.[2]

Respondent is the duly appointed Commissioner of the BIR empowered to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman Quezon City.

On July 5, 2007, petitioner and Philippine Gold Processing and Refining Corporation (PGPRC), a duly registered corporation with the Securities and Exchange Commission (SEC) and Board of Investment (BOI),[3] entered into an Ore Sales and Purchase Agreement.[4]

Petitioner, through the Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Returns for the 3rd quarter[5] and 4th quarter[6] of fiscal year ending June 30, 2010 with Revenue District Office No. 121 on April 22, 2010 and July 26, 2010, respectively.

On March 30, 2012, petitioner filed its Amended Quarterly VAT Return for the 3rd quarter of fiscal year 2010.[7] On June 29, 2012, petitioner filed its Amended Quarterly VAT Return for the 4th quarter of fiscal year 2010.[8]

On March 30, 2012 and June 29, 2012, petitioner filed its administrative claims for refund or issuance of tax credit certificate with BIR Revenue District Office No. 121 (Large Taxpayers Service-Excise) for its alleged unutilized input VAT for the 3rd and 4th quarters of fiscal year ended June 30, 2010.[9]

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[1] Exhibits "A" to "A-4".
[2] Exhibit "B".
[3] Exhibits "L" to "L-1" and "D".
[4] Exhibit "C".
[5] Exhibit "Q".
[6] Exhibit "R".
[7] Exhibit "F".
[8] Exhibit "G".
[9] Exhibits "M" and "N".

On August 16, 2012 and November 23, 2012, petitioner filed Petitions for Review before this Court, which were docketed as CTA Case No. 8528 and CTA Case No. 8576, respectively.

On December 12, 2012, respondent in her Answer[10] in CTA Case No. 8576 alleged by way of Special and Affirmative Defenses that:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P56,764,417.06 allegedly representing unutilized or unapplied creditable input tax for the period 1 April 2010 to 30 June 2010 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.

8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. 145526, 16 March 2007:*

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to**

[10] Docket, pp. 687-698.

> **<u>the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u>** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **<u>Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must be necessarily include what is required for the successful prosecution of an administrative claim</u>.**' (emphasis and underscoring supplied)

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

VALUE-ADDED TAX
(For audit involving Claim for Refund/TCC)

A.) Requirements from Taxpayer
  I. Requirements mention in Annex B
  II. Additional General Requirements
    1) 3 copies of 'Application for VAT Credit/Refund'
    2) Summary List of Local Purchases specifying the following:

xxx xxx xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

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

xxx xxx xxx

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

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

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

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

9) Articles of Incorporation – for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

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

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

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

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

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

Additional Specific Requirements

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

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.
b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.
c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

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

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits
2) Proof of Tax Compliance Certificates applied
3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4) Proof of payment of deficiency tax, if any
a) current year/period
b) previous year/per
5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives. if applicable
6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
7) Proof of exemption under special law, if applicable
8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice/s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

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

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

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

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).**

Partaking of the nature of exemption, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

Respondent likewise filed an Answer[11] on October 23, 2012 for CTA Case No. 8528, and interposed the following Special and Affirmative Defenses:

"4. At the outset it must be pointed out that taxes remitted to the Bureau are presumed to have been made in the regular course of business and in accordance with provisions of law.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau. A claim for refund is not *ipso facto* granted because respondent still has to investigate and ascertain the validity of the claim.

6. Petitioner must prove that its sales are zero-rated sales as defined under Section 106 of the NIRC of 1997.

7. To support its claim, it is imperative for petitioner to prove and present the following:

a. The registration requirements of value-added taxpayer in compliance with section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;
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, as amended;
c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for 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, as amended. This

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[11] Docket, pp. 684-706.

requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petitioner for review;

d. That the input taxes of Php58,490,679.34 allegedly incurred by petitioner for the 3rd Quarter of fiscal year ended 30 June 2010 was attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;
e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended;
f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);
g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

8. With all due respect, respondent humbly manifests that petitioner failed to substantiate its claim that it is entitled to the refund being prayed for. Petitioner failed to comply with the invoicing and accounting requirements laid down in Section 113, 114 and 236 of the NIRC of 1997, as amended, and its implementing regulations under RR 16-2005. In addition, petitioner was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

9. The aforementioned provisions of the NIRC as well as the existing rules and regulations are necessary to establish its claim that indeed there is the presence of valid zero-rated sales that would

warrant the grant of administrative application for refund on its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

10. Further, Section 4.108-1 of Revenue Regulations No. 7-95 specifically enumerates the information that must appear on the face of the receipt or invoice issued by all VAT-registered persons.

> Section 4.108-1 of Revenue Regulations No. 7-95. – Invoicing requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN and address of seller
> 2. the date of transaction
> 3. quantity, unit cost and description of merchandise or nature of service.
> 4. The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client
> 5. The word **'zero-rated' imprinted** on the invoice covering zero-rated sales
> 6. The invoice value or consideration

11. The requirement of imprinting the word 'zero-rated' is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit to non-existent input VAT.

12. In the case entitled *'JRA Philippines, Inc. vs. Commissioner of Internal Revenue',* the Second Division of the Honorable Court of Tax Appeals explained the **rationale behind the requirement of imprinting the word 'zero-rated'** on sales invoices/official receipts, as follows:

> Section 110 of the NIRC of 1997, as amended provides that:
>
> '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: xxx.' If the invoice or official receipt was **not** imprinted with 'zero-rated', <u>there is a danger that the</u> *gr*

purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.

The zero-rated taxpayer should be entitled to a tax credit/refund paid on its purchases of goods or services subject to the mandatory compliance with the invoicing requirements under the regulations. **Otherwise, there may result the absurd situation where the government would be crediting/refunding non-existent input tax to purchasers of goods or services of such zero-rated taxpayer.**

13. In the case entitled '*Taganito Mining Corporation vs. Commissioner of Internal Revenue'*, the Honorable CTA En Banc had the occasion to say:

'xxx In the same vein, the First Division of this Court rules in this wise:

After a careful perusal of the documents presented by petitioner to prove that the amount P1,727,504.38 represents export sales, We have noted that **the commercial invoices of petitioner failed to comply with invoicing requirements under Section 4.108-1 of Revenue Regulations No. 7-95** in relation to Sections 108 and 238 of the National Internal Revenue Code of 1993.

Section 4.108-1. - *Invoicing Requirements.* - All VAT-registered persons shall, for every sale or lease of goods or properties or service, issue duly registered receipts or sales or commercial invoice which must show:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client; ja

5. the word 'zero-rated' imprinted on the invoice covering zero-rated sales; and
6. the invoice value or consideration.

xxx xxx xxx

SEC. 108. *Invoicing and accounting requirements for VAT-registered persons.* – (a) Invoicing Requirements. – A VAT-registered person, shall for every sale, issue an invoice or receipt. In addition to the information required under Section 238, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
(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.

SEC. 238. *Issuance of receipts or commercial invoices.* – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at P25.00 or more, issue 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: *Provided,* That in the case of sales, receipts or transfers in the amount of P100.00 or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address or the purchaser, customer or client. xxx

The **commercial invoices issued by petitioner to support its export sales failed to meet the above standard**. Petitioner failed to indicate that it is a VAT-registered person, followed by his taxpayer's identification number. **The word 'zero-rated' is also not imprinted in the invoices.** In addition, there was no indication that the commercial invoices were authorized to be printed by the Bureau of Internal Revenue as required in Section 239 of the National Internal Revenue Code of 1993 which provides:

SEC. 239. *Printing of receipts or sales or commercial invoices.* – All persons who print receipts or sales or commercial invoices shall for every job order, secure from the Bureau of Internal Revenue an authority to print said receipts or invoices before printing 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 account number and business address of the person or entity use the same.

xxx xxx xxx

Corollarily (sic), for failure of petitioner to comply with the requisites under the law, the export sales in the amount of P1,727,504.38 cannot be qualified as zero-rated for VAT purposes. Moreover, the commissioned Independent CPA noted the said export sales have either no export declaration/permits or supported by photocopied export declarations/permits. Hence, respondent's assessment for 10% value-added tax is sustained. xxx' (Emphasis and underscoring supplied)

14. In relation thereto, Revenue Memorandum Order No. 53-98 dated June 1, 1998 explicitly provides:

A. Requirements from Taxpayers (Annex B)
   1. Proof of claimed tax credits
   2. Proof of Tax Compliance Certificate applied
   3. Xerox Copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
   4. Proof of payment of deficiency tax, if any
      - current year/period
      - previous year/period
   5. Certification of the appropriate government agency as to the taxpayer's entitlement to tax incentives, if applicable

6. Xerox copies of the Official Receipts evidencing VAT payments on imported purchases, if applicable
7. Proof of exemption under special law, if applicable
8. Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9. Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
10. Proof of 'Approval of Effective Zero-Rating of Sales, if applicable
11. Sample invoice/s for Export/Exempt Sales, if applicable
12. Proof that the acceptable foreign currency proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, if applicable

Annex B-1
VALUE ADDED TAX (For audit involving claim for Refund/TCC)
a. Requirements from Taxpayer
   I. Requirements mentioned in Annex B
   II. Additional General Requirements
      (1) 3 copies of 'Application for VAT Credit/Refund
      (2) Summary List of Local Purchases specifying the following:
         a. Registered Name of Supplier
         b. VAT Number of Supplier
         c. Invoice Number
         d. Date of Invoice
         e. OR No.
         f. Date of OR
         g. Amount of Purchase
         h. Input Tax
         i. Total Invoice Amount
      (3) Photocopies of VAT purchase invoices for purchases of goods and official receipts for purchase of services. (The invoice/official receipts must be arranged according to summary list)
      (4) Summary of importation made during the period with the following details:
         a. Date of Invoice
         b. Supplier
         c. Item
         d. AWB/BL No,
         e. Date of Arrival
         f. Total Value
         g. Date of Payment

h. O.R. No.
i. VAT

(5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payments of VAT (Segregate documents paid by cash from those paid by tax debit memo)
(6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT return for the succeeding quarter.
(7) Certification of taxpayer showing the amount of Zero-rated sales, Taxable Sales and Exempt Sales
(8) A statement showing the amount and description of the sale of goods and services, the name of persons or entities (except in case of export sales) to whom the goods or services were sold and date of the transactions, where the applicant's zero-rated transactions are regulated by certain government agency
(9) Article of Incorporation – for first time filers
(10) Sales Contract/Agreement
(11) BOI Certificate of Registration
(12) BIR Certificate of Registration
(13) Certification from BOI, DOF, BOC, PEZA, etc. that subject taxpayer has not filed similar claim for refund covering the same period
(14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter
(15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter
(16) Copy of ITR and Certified Financial Statements, if applicable
(17) Beginning and ending inventory or raw materials, work-in-process. xxx' (Emphasis and underscoring supplied)

15. Revenue Audit Memorandum Order dated January 11, 1991 which governs the audit of claims arising from refund or tax credit of VAT arising from zero-rated transactions, as well as purchase or importation of capital goods defines the administrative policies governing the audit of VAT claims. Paragraph II (7) of said RAMO explicitly provides: ju

'Paragraph II

xxx xxx xxx

(7) That the sixty (60) day period for the processing of claims shall start on the day of submission of the last of the documents specified in the checklist of requirements (Annex B). xxx'

16. On the other hand, Revenue Memorandum Order (RMO) No. 40-94 dated May 6, 1991 which prescribes the modified procedures on the processing of claims for VAT Credit/Refund with the end purpose of facilitating and expediting the processing of VAT claims states:

'Paragraph II *(Guidelines)*

xxx xxx xxx

C. The Revenue District Office shall accept only applications with complete supporting documents as prescribed in the Checklist of Requirements under Annex 'A' hereof. VAT credit/refund shall be issued to the taxpayer/claimant within sixty (60) working days from the date of the application was received. **Applications are considered duly received only on the day of the submission of the last of the documents specified** in the aforementioned checklist of requirements.

D. Claims for VAT credits/refunds **shall be acted upon only after confirmation that no similar claims** covering transactions for the same period have been filed by claimants/taxpayers with the **BOI, BOC, Center-DOF** and other agencies concerned.

E. **All processing and audit of investigation of claims for refund** or tax credit of VAT arising from zero-rated transactions, as well as purchase or importation of capital goods **must strictly adhere to the guidelines set forth under RAMO No. 1-91.'**

17. In **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, GR No. 145526 promulgated on March 26, 2007** the Honorable Supreme Court held:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim. **<u>In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.</u>** xxx' (Emphasis and Underscoring supplied)

18. Moreover, in the case entitled *San Roque Power 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 tax-payer 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. <u>The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;</u>
> 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; *gr*

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.'

19. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. Pending the closure of this investigation, no grant of refund or issuance of a tax credit certificate may be given to petitioner based on the filed claim. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

20. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimants for they partake of the nature of tax exemptions, petitioner's judicial claim deserves no merit and should therefore fall for failure on their part to establish clearly and convincingly that it is entitled to the claim being sought for.

21. Accordingly, the burden of proof of compliance to substantiate its claim for refund or issuance of tax credit certificate is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

xxx xxx xxx

22. Petitioner alleged that it is engaged in sales which are VAT zero-rated or effectively zero-rated and that the alleged creditable input tax due or paid by it has not been applied against any output tax. However, other than its own bare allegations, petitioner offers no proof of such effect.

23. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court. it is a basic rule of evidence that the party making an allegation has the burden of proving it by preponderance of evidence.

24. Again without sounding repetitious, petitioner should comply with the submission of the required documents enumerated in RMO No. 53-98, particularly the specific requirements for zero-rated and effectively zero-rated sales, to wit:

III. <u>Additional Specific Requirements</u>

x x x

2) <u>For Zero-Rated Sale of Services</u>

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

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

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

   a) Monthly BSP report on income of agency received.

   b) Breakdown of gross foreign receipts specifying the nature of foreign currency received (e.g. Commission, allotment, manning fee, agency fee, advances, etc.) showing the total foreign currency value with its peso equivalent, bank credit memo number, name of bank and date of remittance.

3) <u>Effectively zero-rated sale of goods</u>

a) Summary of Sales invoices/receipts showing the name of the person/entity to whom the sale of goods or services were delivered, order of delivery, amount of consideration and description of goods or services delivered (RR 6-89 and RMC 2-9U)

b) Reconciliation of billings against payment.
c) Evidence of actual receipt of goods and services.

x x x

25. Petitioner undoubtedly failed to discharge the burden of proving that its sales are VAT zero-rated or effectively zero-rated as contemplated under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

26. In addition, petitioner alleged that in the course of its business, it incurred various expenses which includes domestic purchases of goods and services used for its operation for the period 1 January 2010 to 31 March 2010 which are subject to input VAT. However, just like in its previous allegations and averments, petitioner should substantiate by clear and convincing evidence that the alleged input VAT paid for its domestic purchases of goods and services for the period in question was attributable to its alleged VAT zero-rated sales and that the alleged input VAT was not utilized against any output VAT liability.

27. As can be gleaned from Section 4.112-1 of Revenue Regulations No. 16-2005, the substantiation of input tax credit is as follows:

SEC. 4.110-8. Substantiation of Input Tax credits.

a) **<u>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:</u>**

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

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

A cash register machine tape issued to a registered buyer shall constitute valid-proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

b) Transitional input tax shall be supported by an inventory of goods as shown in a detailed list to be submitted to the BIR.
c) Input tax on 'deemed sale' transactions shall be substantiated with the invoice required under Sec. 4.113-2 of these Regulations.
d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.
e) Advance VAT on sugar shall be supported by the Payment Order showing payment of the advance VAT. (Emphasis and Underscoring supplied)

28. As mentioned, petitioner must prove compliance with Sections 113, 114 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended. The said sections pertain to the invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT. Again it is worthy to stress that petitioner failed to substantiate compliance with the aforementioned sections when it filed its application for refund.

29. It cannot be emphasized enough that mere filing of an administrative claim for refund or issuance of tax credit certificate

without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim for a refund.

30. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

31. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of sovereign authority. **Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming exemption.**

32. In an action for refund, **the burden of proof is on the taxpayer who claims the exemption** and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

33. Following the premise above-mentioned, **petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.**"

Petitioner moved for the consolidation of CTA Case Nos. 8528 and 8576 on January 17, 2013, considering that both cases involved common questions of facts and law.[12] On January 17, 2013, this Court granted the consolidation of the said cases.[13]

During trial, petitioner presented and formally offered pieces of documentary and testimonial evidence. In a Resolution[14] dated September 4, 2013, this Court admitted petitioner's exhibits except Exhibits "L", "L-1", and "GG" for failure to present the original documents. In her Manifestation[15] filed on September 25, 2013,

[12] CTA Case No. 8576, docket, pp. 714-718.
[13] CTA Case No. 8528, docket, pp. 749-750 and CTA Case No. 8576, docket, p. 722.
[14] Docket, p. 1285.
[15] Docket, pp. 1286-1288.

respondent stated that considering that there is no audit report yet per advise of the revenue officers assigned to investigate/audit the claim for refund of petitioner, she will no longer present evidence in this case. Thus, in a Resolution[16] dated September 26, 2013, this Court granted the parties thirty (30) days from receipt of the said Resolution within which to file their respective Memorandum.

On September 26, 2013, petitioner filed its Omnibus Motion (Motion for Partial Reconsideration of the Resolution dated 4 September 2013 and Motion to Admit Supplemental Formal Offer of Evidence). In the said Motion, petitioner prays that this Court reconsiders its Resolution dated September 4, 2013, admits the denied Exhibits "L", "L-1", and "HH", and admits its Supplemental Formal Offer of Evidence offering into evidence the Judicial Affidavits of Atty. Clifford Chua and Ms. Joy Dompor marked as Exhibits "KK", "KK-1", "LL", and "LL-1", respectively. In a Resolution[17]dated October 1, 2013, this Court required respondent to comment on petitioner's Omnibus Motion and held in abeyance the submission of the parties' Memorandum. On November 22, 2013, this Court granted petitioner's Motion to Admit Supplemental Formal Offer of Evidence, required respondent to file a comment, and held in abeyance the resolution of petitioner's Motion for Partial Reconsideration of the Resolution dated September 4, 2013.

In a Resolution[18] dated January 15, 2014, this Court partly granted petitioner's Omnibus Motion. Consequently, Exhibits "L", "L-1", "KK", "KK-1", "LL", and "LL-1" were admitted into evidence. However, this Court rendered moot the admission into evidence of Exhibit "HH" considering that the said exhibit was already admitted in the Resolution dated September 4, 2013. The parties were also given a period of thirty (30) days within which to file their respective Memorandum.

The case was submitted for decision on March 26, 2014, after petitioner and respondent both filed their respective Memorandum on March 21, 2014.[19]

THE ISSUES

The following are the issues[20] submitted by the parties for resolution:

> "1. Whether petitioner Filminera is entitled to claim for refund or tax credit in the amount of Php58,490,679.64 representing alleged unutilized Input VAT for the 3rd Quarter of Fiscal Year ending June 2010.

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[16] Docket, p. 1292.
[17] Docket, p. 1346.
[18] Docket, pp. 1363-1364.
[19] Docket, p. 1422.
[20] Docket, p. 779.

2. Whether petitioner Filminera is entitled to claim for refund or tax credit in the amount of Php56,764,417.06 representing alleged unutilized Input VAT for the 4th Quarter of Fiscal Year ending June 2010."

THE COURT'S RULING

This Court will determine first if the claim was filed within two (2) years after the close of the taxable quarter when the sales were made.

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

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

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. gr

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

In the case of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[21], the Supreme Court ruled that in case of tax refunds under Section 112 of the NIRC of 1997, as amended, the phrase "within two years" applies only to the filing of the administrative claim for refund and not to the filing of the judicial claim. The pertinent portions of the said Decision provide:

> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.' **The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)' within which to decide on the claim.**
>
> In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR.** The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**" *(Emphasis supplied)*

Applying the foregoing to the present case, the two-year period to file an administrative claim for refund or issuance of tax credit certificate for the alleged

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

unutilized input VAT for the period covering January 1, 2010 to March 31, 2010 and April 1, 2010 to June 30, 2010 expired on March 31, 2012 and June 30, 2012, respectively. Petitioner filed its administrative claims for refund with BIR Revenue District Office No. 121 on March 30, 2012 and June 29, 2012.[22] It is clear that the administrative claims were filed within two years after the close of the taxable quarter when the zero-rated sales were made.

Moreover, respondent has 120 days from the date of submission of petitioner' supporting documents for the claim for refund or issuance of tax credit certificate or until July 28, 2012 and October 27, 2012 to act on the claim. Upon failure of respondent to act on the claim within the prescribed period, petitioner filed its Petitions for Review on August 16, 2012 and November 23, 2012 which fell within thirty (30) days from the lapse of the 120-day period. Clearly, both the administrative and the judicial claims were timely filed.

The Court will now proceed to address the issue of whether petitioner is entitled to the refund or the issuance of tax credit certificate representing its alleged unutilized input VAT attributable to its zero-rated sales.

Under Section 112(A) of the NIRC of 1997, as amended, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Petitioner is a VAT-registered entity as shown by its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000.[23]

Petitioner states that Philippine Gold Processing and Refining Corporation, a BOI-registered entity, exports one hundred percent (100%) of its processed gold and silver ore. Its exports are paid in foreign currency duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas*. Thus, as the exclusive supplier of Pre-production Ore and ROM Ore of PGPRC, petitioner argues that all its

[22] Exhibits "M" and "N".
[23] Exhibit "B".

sales thereto are entitled to VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005, which provide:

> SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – xxx
>
> 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
>
> SECTION 4.106-5. *Zero-rated Sales of Goods or Properties* –
>
> xxx xxx xxx
>
> The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> (a) *Export sales. – 'Export Sales'* shall mean:
>
> xxx xxx xxx
>
> (5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of

ge

> goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and *Provided, finally,* **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently reissued by the BOI.** *(Emphasis supplied)*

Tax refunds are in the nature of tax exemptions. And the claimants of those refunds bear the burden of proving the factual basis of their claims.[24]

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

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

The Court finds that petitioner failed to comply with the said requisites. Even though petitioner is a VAT-registered entity and its buyer PGPRC is a BOI-registered enterprise engaged in the production of gold and silver dore', evidence failed to prove that PGPRC's products are 100% exported. What PGPRC's BOI Certification[25] merely established is that its products are geared for export not that all of its products are actually exported. Thus, the transaction entered into by petitioner and PGPRC cannot be considered as zero-rated. Consequently, petitioner is not entitled to a refund.

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

SO ORDERED.

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

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[24] *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* G.R. No. 153866, February 11, 2005.
[25] Exhibit "D".

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
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