REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA CASE NO. 8938** Members:
- *versus* -	***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 31 2017 1:25 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Filminera Resources Corporation ("FRC") on November 27, 2014, pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as

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[1] *Records, CTA Case No. 8938, Vols. 1 to 3, Petition for Review ("PFR"),* pp. 6-1518, with annexes.

[2] "Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial; xxx"

[3] An Act Creating the Court of Tax Appeals, as amended.

amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section 3(a)(1)*[6], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[7], which seeks for the Court to render judgment ordering respondent Commissioner of Internal Revenue ("CIR") to refund or to issue a tax credit certificate ("TCC") in favor of petitioner in the amount of Seventy Six Million Three Hundred Thirty Three Thousand One Hundred Seven and 78/100 Pesos (Php76,333,107.78) representing unutilized or unapplied creditable input Value-Added Tax ("VAT") for the 4th quarter of fiscal year ("FY") ended June 30, 2012.[8]

The Parties

Petitioner FRC, formerly "Base Metals Mineral Resources Corporation"[9], is a domestic corporation duly organized in accordance with Philippine laws,[10] with the primary purpose of carrying on 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[] and minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to

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[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] "Sec. 3. *Cases within the jurisdiction of the Court in Division*. - The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following: xxx
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> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; xxx"

[7] A.M. No. 05-11-07-CTA, November 22, 2005.

[8] *Records, Vol. 1, PFR,* p. 19.

[9] *Id., Vol. 4, Exhibit "P-2," Certificate of Filing Amended AOI with Amended AOI,* pp. 2097-2111.

[10] *Id.*

purchase, lease, option, locate, or otherwise acquire, own, exchange, sell, or otherwise dispose of pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral[] lands, coal[] lands, timber land, water and water rights, and other property both real and personal."[11]

It is registered with the Large Taxpayers Excise Audit Division 1, as a VAT-registered entity with Taxpayer's Identification No. ("TIN") 000-153-880-000 and OCN 8RC0000036160 since January 1, 1997.[12] It was also issued an Authority to Print ("ATP") VAT Official Receipts with Serial Nos. 0001 to 1000, with OCN 9AU000029006[13] and Serial Nos. 0001 to 2500, with OCN 8AU0000118161[14].

Respondent CIR is empowered to perform the duties of his office, including among others, the duty to act on and to approve claims for refund or issuance of certificate of tax credit as provided by law; with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[15]

The Facts

Philippine Gold Processing and Refining Corp. ("PGPRC"), formerly registered as LFT Processing Corporation,[16] is a domestic corporation duly organized in accordance with Philippine laws,[17] with the primary purpose of engaging in the "business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatsoever process, method, or mode in which such activities can be carried out; and in conjunction with the foregoing[,] to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment[] whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof[.]"[18]

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[11] *Records, Vol. 4, Exhibit "P-2," Certificate of Filing Amended AOI with Amended AOI,* pp. 2097-2111.
[12] *Id., Vol. 3, Exhibit "P-3," BIR LTS Certificate of Registration,* p. 1628.
[13] *Id., Exhibit "P-28," Authority to Print Official Receipts,* pp. 1739-1742.
[14] *Id., Exhibit "P-29," Authority to Print Official Receipts,* pp. 1743-1745.
[15] *Id., Joint Stipulation of Facts and Issues ("JSFI"),* p. 1879.
[16] *Id., Vol. 4, Exhibit "P-5," LFT Processing Corporation's SEC Certificate of Registration,* pp. 2112-2139.
[17] *Records, Vol. 4, Exhibit "P-6," PGPRC's Certificate of Filing of Amended AOI,* pp. 2140-2152.
[18] *Id.* at 2142-2143.

PGPRC is registered with the Board of Investments ("BOI") with Registration No. 2008-042[19], issued on February 7, 2008 on a non-pioneer status as a New Producer of Gold and Silver Doré.[20]

On July 5, 2007, petitioner and PGPRC entered into an Ore Sales and Purchase Agreement[21] whereby petitioner will exclusively sell to PGPRC pre-production ore and ROM ores mined from the former's facilities.[22]

On August 3, 2009, Assistant Commissioner - Legal Service James H. Roldan, wrote[23] to Sycip Gorres Velayo & Co., informing the latter that the input VAT on PGPRC's purchases of goods and services, including input VAT on importation of capital equipment, attributable to zero-rated sales are available as tax credit or refund pursuant to *Section 112* of the *1997 NIRC*.

For the period starting April to June 2012, petitioner issued to PGPRC VAT Zero-Rated Official Receipts ("OR") for the "settlement of ore sales," as follows:

EXHIBIT	OR NO.	DATE	AMOUNT	PERIOD
P-14[24]	149	5/18/2012	USD 6,276,104.31	Apr-12
P-16[25]	151	6/15/2012	5,574,040.11	May-12
P-18[26]	153	7/16/2012	5,977,729.06	Jun-12

Petitioner filed its Amended Quarterly VAT Return or BIR Form No. 2550-Q[27] for the 4th Quarter of FY ended June 30, 2012 on July 25, 2012.

On June 30, 2014, petitioner filed its Application for Tax Credits/Refunds[28] (BIR Form No. 1914) for the period April 1, 2012 to June 30, 2012 , claiming for a TCC in the amount of Seventy Six Million

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[19] *Records, Vol. 3, Exhibit "P-7," PGPRC's Board of Investments ("BOI") Certificate of Registration* pp. 1693-1701, with annexes.
[20] *Id.*
[21] *Id., Vol. 3, Exhibit "P-4," Ore Sales and Purchase Agreement,* p. 1637.
[22] *Id.* at 1629-1651.
[23] *Id., Exhibit "P-10,"* pp. 1709-1712.
[24] *Id., Exhibit "P-14," Official Receipt No. 149,* p. 1725.
[25] *Records, Vol. 3, Exhibit "P-16," Official Receipt No. 151,* p. 1727.
[26] *Id., Exhibit "P-18," Official Receipt No. 153,* p. 1729.
[27] *Id., Vol. 4, Exhibit "P-12,"* pp. 2064-2069, with annexes.
[28] *Id., Vol. 3, Exhibit "P-9," BIR Form No. 1914 Application for Tax Credits/Refunds,* p. 1708.

Three Hundred Thirty Three Thousand One Hundred Seven and 78/100 Pesos (Php76,333,107.78), representing unutilized or unapplied creditable input VAT.

On November 27, 2014 and claiming no action from respondent on its application for VAT refund, petitioner filed the instant Petition for Review.[29]

On December 17, 2014, the Court issued Summons[30] to respondent, with an order to file an Answer to the Petition for Review within fifteen (15) days from receipt thereof.

On January 14, 2015, respondent filed a Motion for Extension of Time to File Answer[31] praying for an extension of thirty (30) days or until February 19, 2015, within which to file an Answer; which was granted by the Court in its Order[32] dated January 20, 2015.

On February 18, 2015, respondent filed an Urgent Motion for Additional Time to File Answer[33] praying for an additional period of ten (10) days, or until March 1, 2015 within which to file an Answer. This was granted by the Court in a February 25, 2015 Resolution[34].

On March 2, 2015, respondent filed an Answer[35], alleging that taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law; that petitioner's claim for refund is subject to administrative routinary investigation/examination; that it is incumbent upon petitioner to prove that it is entitled to the refund; that bare allegations unsubstantiated by evidence is not equivalent to proof; and that petitioner failed to discharge the burden of proving that its sales are VAT zero-rated as contemplated under *Section 112 (A) of the 1997 National Internal Revenue Code*, as amended (*"1997 NIRC"*).[36]

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[29] *Records, Vols. 1 to 3, Petition for Review ("PFR"),* pp. 6-1518, with annexes.
[30] *Id., Vol. 3,* p. 1519.
[31] *Id.* at 1520-1523.
[32] *Id.* at 1524.
[33] *Id.* at 1526-1529.
[34] *Id.* at 1531-1532.
[35] *Records, Vol. 3, Answer,* pp. 1554-1572.
[36] *Id., Special and Affirmative Defenses,* pp. 1555-1569.

On April 29, 2015, respondent filed Respondent's Pre-Trial Brief[37]; while petitioner filed its Pre-Trial Brief[38] on April 30, 2015.

During the May 5, 2015 hearing, the Court granted the parties ten (10) days within which to submit their Joint Stipulation of Facts and Issues ("JSFI").[39]

On May 13, 2015, the parties, through their respective counsels, filed their JSFI.[40] Thereafter, the Court issued a Pre-trial Order[41] ("PTO") on June 15, 2015.

During the hearing on June 26, 2015, petitioner presented and qualified Atty. Clifford E. Chua ("Atty. Chua") as an Independent Certified Public Accountant ("ICPA"),[42] who then took his oath and obliged to submit his ICPA report within a period of thirty (30) days from June 26, 2015, or until July 26, 2015.[43] Consequently, on July 20, 2015, Atty. Chua submitted his ICPA Report.[44]

During trial, petitioner presented the following witnesses: *(1)* Ms. Joy P. Dompor ("Ms. Dompor"),[45] treasurer of petitioner, who testified that petitioner's transactions are subject to VAT at zero percent (0%) rate because it exclusively supplies and/or sells its pre-production ore and ROM ore to PGPRC, a BOI-registered producer of gold and silver ore, hence, considered as export sales;[46] and *(2)* Atty. Chua[47], court-commissioned ICPA, who testified that he conducted an examination of the documents supporting petitioner's claim, and thereafter prepared an ICPA Report.[48]

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[37] *Records, Vol. 3,* pp. 1576-1581.
[38] *Id.* at 1582-1589.
[39] *Id., Minutes of Hearing dated May 5, 2015,* p. 1871; as confirmed in a Resolution dated May 19, 2015, see pp. 1885-1886.
[40] *Id., JSFI,* pp. 1879-1883.
[41] *Id., PTO,* pp. 1913-1918.
[42] *Id., Minutes of Hearing dated June 26, 2015,* p. 1919.
[43] *Records, Vol. 3, Minutes of Hearing dated June 26, 2015,* pp. 1919-1920; as confirmed in a Resolution dated July 8, 2015, see pp. 1927-1928.
[44] *Id., Report on the Results of Procedures Performed,* pp. 1929-1959.
[45] *Id., Minutes of Hearing dated August 11, 2015,* p. 1962.
[46] *Id., Exhibit "P-1253," Judicial Affidavit of Joy P. Dompor,* pp. 1594-1867, with annexes.
[47] *Id., Vol. 4, Minutes of Hearing dated November 23, 2015,* p. 2030.
[48] *Id., Vol. 3, Exhibit* "P-1255," *Judicial Affidavit of Atty. Clifford E. Chua,* pp. 1966-1979.

During the hearing on November 23, 2015, counsel for petitioner was granted twenty (20) days to file its Formal Offer of Evidence ("FOE").[49]

On December 9, 2015, petitioner filed a Motion for Additional Time [To File Formal Offer of Evidence][50], praying for additional period of twenty (20) days within which to file its FOE; which was granted by the Court in Resolution[51] dated December 18, 2015.

On December 20, 2015, petitioner filed its FOE[52], offering *Exhibits* "P-1" to "P-8," "P-8-A," "P-8-A-1" to "P-8-A-39," "P-8-B," "P-9" to "P-35," "P-36" to "P-431," "P-432" to "P-488," "P-489," "P-490" to "P-553," "P-554" to "P-1205," "P-1206" to "P-1252," "P-1253" to "P-1253-A," "P-1254" to "P-1254-A," and "P-1255" to "P-1255-A." On January 27, 2016, the Court resolved[53] to admit all of petitioner's exhibits.

During the hearing on February 16, 2016,[54] counsel for respondent manifested that they have no witnesses to present since no report of investigation was submitted by the BIR examiners. Thus, both parties were granted thirty (30) days, or until March 17, 2016, within which to simultaneously file their respective memoranda.[55]

On March 14, 2016, petitioner filed its Memorandum (For the Petitioner).[56] On the other hand, respondent filed a Manifestation[57] on March 17, 2016, adopting the arguments raised in the Answer filed on February 27, 2015 as her (now "his") Memorandum.

On March 29, 2016, the Court resolved[58] to submit the case for decision; hence, this Decision.

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[49] *Records, Vol. 4, Minutes of Hearing dated November 23, 2015,* p. 2030; as confirmed in a Resolution dated December 9, 2015, see pp. 2032-2033.
[50] *Id.* at 2034-2037.
[51] *Id.* at 2039.
[52] *Id., Petitioner's Formal Offer of Evidence ("FOE"),* pp. 2040-2063.
[53] *Id.* at 2169-2170.
[54] *Id., Minutes of Hearing dated February 16, 2016,* p. 2171; as confirmed in a Resolution dated February 29, 2016, see p. 2174.
[55] *Records, Vol. 4, Minutes of Hearing dated February 16, 2016,* p. 2171; as confirmed in a Resolution dated February 29, 2016, see p. 2174.
[56] *Id., Memorandum [For the Petitioner],* pp. 2180-2197.
[57] *Id.* at 2198-2200.
[58] *Id.* at 2202.

The Issues[59]

WHETHER PETITIONER IS ENTITLED TO RECOVER BY WAY OF REFUND AND/OR ISSUANCE OF TCC ITS ALLEGED UNUTILIZED CREDITABLE INPUT VAT FOR THE PERIOD APRIL 1, 2012 TO JUNE 30, 2012 IN THE AMOUNT OF PHP76,333,107.78 ALLEGEDLY REPRESENTING ITS DOMESTIC PURCHASES; AND

WHETHER PETITIONER HAS COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND AND THE SUBSTANTIATION REQUIREMENT FOR ZERO-RATED TRANSACTIONS.

Petitioner's Arguments[60]

Petitioner alleges that it has sufficiently proven its entitlement to a refund and/or issuance of a TCC of its unutilized creditable input taxes for the 4th Quarter of FY ending June 30, 2012; and that its domestic purchases of goods and services, which are considered as export sales, are subject to VAT at zero percent (0%).

Petitioner also contends that PGPRC is a *bona fide* BOI-registered enterprise on a non-pioneer status with incentive, being located in a less developed area, as a new producer of gold and silver ore; that in view of the Ore Sales and Purchase Agreement with PGPRC, the revenues derived by PGPRC, from its export sales of the processed gold and silver ore, are subject to VAT at zero percent (0%) rate; that suppliers of PGPRC for goods and services are entitled to VAT-zero rating of all its sales made to it; and that this was confirmed by respondent, in *BIR Ruling dated August 3, 2009*, which states that all the domestic purchases of various goods and services by PGPRC for the 4th Quarter of FY year ending June 30, 2012 shall be considered zero-rated transactions.

Lastly, it maintains that is has fully complied with all the requirements under *Section 112(A)* of the *1997 NIRC;* that it filed its claim within the two (2)-year period prescribed by law, which commenced to run after the close of the taxable quarter when the sales

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[59] *Records, Vol. 3, PTO*, p. 1914.
[60] *Id., Memorandum [For the Petitioner]*, pp. 2180-2197.

were made; and that its claim is substantiated by documentary evidence.

Respondent's Counter-Arguments[61]

On the other hand, respondent counter-argues that taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law; that petitioner's claim for refund is subject to administrative routinary investigation/examination; that it is incumbent upon petitioner to prove that it is entitled to the refund; that bare allegations unsubstantiated by evidence is not equivalent to proof; and that petitioner failed to discharge the burden of proving that its sales are VAT zero-rated as contemplated under *Section 112 (A) of the 1997 NIRC.*[62]

The Ruling of the Court

The Court has jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative and judicial claims for refund, *Section 112(A) of the 1997 NIRC,* provides as follows:[63]

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.-* <u>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</u>, 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

[61] *Records, Vol. 3, Answer,* pp. 1554-1571.
[62] *Id., Special and Affirmative Defenses,* pp. 1555-1569.
[63] Underscoring ours.

Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

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 <u>within one hundred twenty (120) days from the date of submission of complete documents</u> 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, <u>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.</u>

xxx xxx xxx[64]

Corollary, *Section 4.112-1(d) of Revenue Regulations ("RR") No. 16-2005*[65] states the following:

Sec. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.

xxx xxx xxx

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input

[64] Underscoring ours.
[65] Consolidated Value-Added Tax Regulations of 2005, effective November 1, 2005.

taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.[66]

Based on *Section 112(A) of the 1997 NIRC,* petitioner has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim. Further, *Section 112(C) of the 1997 NIRC,* in relation to *RR No. 16-2005,* states that if no action was taken by the CIR after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within thirty (30) days therefrom.

The period involved in the case at bar is April 1, 2012 to June 30, 2012. Therefore, the administrative claim is due two (2) years from June 30, 2012 or on June 30, 2014. Records disclose that petitioner timely filed its Application for Tax Credits/Refunds[67] on June 30, 2014.

Thereafter, petitioner had one hundred and twenty (120) days or until October 28, 2014 to await the CIR's decision. However, the CIR did nothing after petitioner filed its administrative claim. According to the testimony of Ms. Dompor, "there was no specific action taken by the BIR on the administrative claims for refund of petitioner."[68] This testimony of Ms. Dompor remains uncontroverted by respondent.

Consequently, petitioner had thirty (30) days from October 28, 2014 or until November 27, 2014 to file its judicial claim with the CTA.

[66] Underscoring ours.
[67] *Records, Vol. 3, Exhibit "P-9,"* p. 1708.
[68] *Id.* at 1608.

Therefore, on November 27, 2014, petitioner timely filed the instant Petition for Review,[69] for reference:

QUARTER	ADMIN DUE DATE (2 YRS. FROM CLOSE OF QTR)	ADMIN CLAIM FILED	END OF 120 DAYS	+ 30 DAYS FROM THE EXPIRATION OF 120 DAYS	JUDICIAL CLAIM FILED
Close of 4th Qtr.: June 30, 2012	June 30, 2014	June 30, 2014	October 28, 2014	November 27, 2014	November 27, 2014

To elaborate as to the running of the periods, in the recent case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[70], the Supreme Court ruled that:[71]

> Upon the filing of an administrative claim, respondent is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of respondent to act on the application within the 120-day period shall be deemed a denial.
>
> Note that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[72]

Applying this to the instant case, the one hundred twenty (120)-day period began to run from June 30, 2014, the date when petitioner filed its administrative claim. Thus, respondent had until October 28, 2014 within which to decide the administrative claim.

In *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*[73], the Supreme Court reminded taxpayers that when the one hundred twenty (120)-day period lapses and there is inaction on the part of the CIR, they must no longer await for a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within

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[69] *Records, CTA Case No. 8938, Vols. 1 to 3, Petition for Review ("PFR")*, pp. 6-1518, with annexes.
[70] G.R. No. 182737, March 2, 2016.
[71] Underscoring ours.
[72] Underscoring ours.
[73] G.R. No. 168950, January 14, 2015.

thirty (30) days from the lapse of the one hundred twenty (120)-day waiting period, this period is mandatory and jurisdictional.

As enunciated by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*[74], strict compliance with the mandatory 120+30-day period is necessary for a claim for tax refund or credit.

Having found that both administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the case at bar.

Petitioner is entitled to the issuance of a TCC, albeit at a reduced amount.

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

Under *Section 112(A) of the 1997 NIRC*, 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 (2) 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.

Having determined compliance with the third requirement, the Court will proceed to discuss the other requisites.

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[74] G.R. Nos. 187485, 196113, and 197156, October 8, 2013, 690 SCRA 336.

As to the first requisite, petitioner is indeed a VAT-registered entity, as shown in its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000.[75]

PGPRC, a BOI-registered entity, exports one hundred percent (100%) of its processed gold and silver ores. Its exports are paid for in foreign currency duly accounted for based on the rules and regulations of the BSP. Thus, as the exclusive supplier of Pre-production Ore and ROM Ore of PGPRC, petitioner argues that all its sales thereto are entitled to VAT zero-rating pursuant to *Section 106(A)(2)(a)(5) of the 1997 NIRC,* and *Section 4.106-5(a)(5) of RR No. 16-2005,* which provide:

1997 NIRC

> 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.

RR No. 16-2005

> 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:

[75] *Records, Vol. 3, Exhibit "P-3,"* p. 1628.

(a) *Export sales.*- 'Export Sales' shall mean:

xxx xxx xxx

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

xxx xxx xxx

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

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 one hundred percent (100%) exported, as shown by a certification issued by the BOI.

Petitioner submitted a BOI Certification[76] issued on July 17, 2012, which certified that based on the information given, PGPRC exported one hundred percent (100%) of its total sales volume for the period July 1, 2011 to June 30, 2012, and the same has been issued pursuant to the Guidelines on the issuance of BOI Certification *per Revenue*

[76] *Records, Vol. 4, Exhibit "P-8-a,"* p. 2157.

Memorandum Order ("RMO") No. 9-2000 entitled *"Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales."* With the submission of the said document, the Court finds petitioner's sales as zero-rated.

In its Quarterly VAT Return for the Fourth[77] (amended) Quarter of FY ending June 30, 2012, petitioner's declared total sales/receipts, broken down as follows:

EXHIBIT	SALES	AMOUNT	
"P-12," line 15A	Vatable Sales	Php	1,393,178.57
"P-12," line 17	Zero-rated Sales		898,414,147.45
TOTAL		**PHP**	**899,807,326.02**

For the Fourth Quarter of FY 2012, petitioner generated total sales in the amount of Php899,807,326.02. From this amount, the receipts of Php898,414,147.45 were derived from ore sales to PGPRC and declared by petitioner in its Amended Quarterly VAT Returns as zero-rated sales.

However, scrutiny of petitioner's supporting invoices and schedule of output tax[78] reveals that the total zero-rated sales is only Php898,269,147.45. The difference of Php144,933.70 (Php898,414,147.45 less Php898,269,213.75) should be denied instantly:

PERIOD	**CUSTOMER**	**ORE SALES**		
		IN USD	FOREX	IN PHP
April 2012	Phil. Gold Processing Refining Corp.	7,293,009.42[79]	42.443[80]	309,537,198.81
May 2012	Phil. Gold Processing Refining Corp.	6,914,080.88[81]	43.438[82]	300,333,845.27
June 2012	Phil. Gold Processing Refining Corp.	6,810,356.57[83]	42.347[84]	288,398,169.67
Total *Per* Invoices		21,017,446.87		898,269,213.75
Difference				144,933.70
TOTAL *PER* VAT RETURN				**898,414,147.45[85]**

Petitioner's zero-rated sales were evidenced by sales invoices stamped with the words "zero-rated." As such, its receipts/collections

[77] *Records, Vol. 4, Exhibit "P-12,"* p. 2064.
[78] *Id., Vol. 3, Exhibit "P-12," part of attachments.*
[79] *Id., Exhibit "P-20."*
[80] *Id., Exhibit "P-12," Schedule of Output Tax.*
[81] *Id., Exhibit "P-22,"* p. 1733.
[82] *Id., Exhibit "P-12," Schedule of Output Tax.*
[83] *Records, Vol. 3, Exhibit "P-24,"* p. 1735.
[84] *Id., Exhibit "P-12," Schedule of Output Tax.*
[85] *Id., line 17.*

from its zero-rated ore sales to PGPRC are substantiated but only up to 99.83% of the total sales, broken down as follows:

DETAILS		AMOUNT	PERCENTAGE
Vatable Sales	Php	1,393,178.57	0.15%
Zero-rated Sales		898,269,213.75	99.83%
Difference		144,933.70	0.02%
TOTAL	**Php**	**899,807,326.02**	

The Court shall now determine whether petitioner incurred input taxes in connection with its zero-rated sales of Php898,269,213.75 and if such input taxes were not applied against any output VAT liability of petitioner.

As reflected in its Quarterly VAT Return for the 4th quarter of FY ending June 30, 2012, petitioner incurred input VAT in the amount of Php76,333,107.78, broken down as follows:

PERIOD	PARTICULARS		INPUT VAT
4th Quarter	Domestic Purchases of Goods	Php	1,220,520.42 [86]
4th Quarter	Domestic Purchases of Services		75,112,587.36[87]
TOTAL		**PHP**	**76,333,107.78**

In support of the aforesaid input VAT, petitioner submitted various suppliers' invoices and ORs, which were all examined by the Court-commissioned ICPA, Atty. Chua. In the ICPA Report[88] dated July 15, 2015, Atty. Chua was unable to account for the input tax amounting to Php1,124,523.97 (Php76,333,107.78 less Php75,208,583.81). The Court agrees with this finding, thus the said amount should be deducted outright from the total claim, detailed as follows:

ICPA FINDING	AMOUNT				EXHIBIT
Purchases with supporting documents (No exceptions noted)			Php	68,790,630.63	"P-36" to "P-431"
Summary of input VAT with no proper supporting documents	Php	1,711,580.57			"P-432" to "P-488"
Summary of input VAT from local purchases where the TIN of the company is not indicated		7,800.00			"P-489"
Summary of input VAT where there are noted alterations in the supporting documents		2,591,819.46			"P-490" to "P-553"
Summary of input VAT where the amount in words is not indicated		1,272,083.21			"P-554" to "P-1205"

[86] *Records, Vol. 3, Exhibit P-12," line 21F.*
[87] *Id., line 21J.*
[88] *Id.* at 1936-1937.

Summary of input VAT where the address of the company is not indicated	834,669.94	6,417,953.18	"P-1206" to "P-1252"
TOTAL		**PHP 75,208,583.81**	

Upon scrutiny of the ICPA Report, together with petitioner's supporting documents, the Court finds that aside from the input VAT of Php6,417,953.18 omitted by the ICPA for the Fourth Quarter of FY 2012, the following input taxes in the amount of Php877,255.38 shall be disallowed for not being properly substantiated by VAT invoices or ORs in accordance with *Sections 110(A) and 113(A) and (B) of the 1997 NIRC*, and as implemented by *Sections 4.110-8 and 4.113-1 of RR No. 16-2005*, as amended, detailed as follows:

SUPPLIER'S NAME	**INPUT VAT**		**EXHIBIT**
With Noted Alterations or Additions in the Supporting OR Without Counter Signature of the Authorized Representative of the Supplier			
Agatep Associates, Inc.	Php	18,000.00	P-41
Agatep Associates, Inc.		18,000.00	P-42
Astron Communication System		1,410.00	P-44
Astron Communication System		6,567.86	P-45
Astron Communication System		16,016.79	P-46
Imagenet		25,000.00	P-83
New World		3,960.00	P-90
New World		3,300.00	P-96
New World		1,500.00	P-100
St. Francis Square		8,983.11	P-111
St. Francis Square		3,333.61	P-124
St. Francis Square		2,434.22	P-125
Toph, Inc.		6,000.00	P-131
Encarline		9,600.00	P-155
Encarline		9,600.00	P-157
First United Travel		1,728.00	P-159
First United Travel		144.00	P-199
First United Travel		306.50	P-205
Leonardo Vicente		2,400.00	P-224
Makati Shangrila		7,602.81	P-225
Quartz Construction		11,967.90	P-240
St. Francis Square		7,185.33	P-263
St. Francis Square		2,207.13	P-270
St. Francis Square		361.71	P-273
Sunvar Incorporated		9,737.43	P-274
Toph, Inc.		6,000.00	P-275
Towers Watson		7,800.00	P-276
Advance Automotive Center		2,560.71	P-280
Encarline		3,308.71	P-307
Encarline		360.00	P-308
First United Travel		360.00	P-309
First United Travel		1,248.00	P-317
Toph, Inc.		6,000.00	P-430
Sub-total	Php	204,983.82	
Without Authorized Signature			
Aden Remote Site		433,548.51	P-278
Aden Remote Site		238,723.05	P-279
Sub-total	Php	672,271.56	
TOTAL	**PHP**	**877,255.38**	

Therefore, out of petitioner's input VAT claim for the Fourth Quarter of FY 2012 in the amount of Php76,333,107.78, only the amount of Php67,913,375.25 represents valid input tax.

However, as discussed earlier, these input taxes cannot be claimed in full since only 99.83% of the actual zero-rated sales declared *per* VAT Return were found to be valid. Thus, such input tax credits shall be allocated accordingly:

DETAILS		AMOUNT		
Input VAT Claim			Php	76,333,107.78
Less: Exceptions				
Per ICPA Report	Php	6,417,953.18		
Per Court Findings		877,255.38		
Unaccounted Difference		1,124,523.97	Php	8,419,732.53
Substantiated Input VAT			Php	67,913,375.25
Percentage of Zero-rated Sales				99.83%
INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES			**PHP**	**67,797,922.51**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's Quarterly VAT Return for the subject period of claim showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. In addition, the claimed input VAT was not carried-over by petitioner in its succeeding quarter since it was deducted as "VAT Refund/TCC claimed" from the total available input tax in its Fourth[89] Quarterly VAT Return for the FY 2012.

Therefore, petitioner is entitled only to the properly substantiated amount of Php67,797,922.51, as claim for refund arising from its unutilized input VAT from zero-rated transactions.

In view of the foregoing, petitioner was able to sufficiently prove its entitlement to a TCC of its unutilized excess input VAT attributable to its zero-rated sales for the Fourth Quarter of FY ending June 30, 2012, albeit in the reduced amount of Php67,797,922.51.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A**

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[89] *Records, Vol. 3, Exhibit "P-12," line 23D,* pp. 1718-1723.

TAX CREDIT CERTIFICATE in favor of petitioner Filminera Resources Corporation in the reduced amount of **SIXTY SEVEN MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED TWENTY-TWO AND 51/100 PESOS (PHP67,797,922.51).**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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