REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

TAGANITO MINING CORPORATION, *Petitioner,*	**CTA EB NO. 1711** *(CTA Case No. 8680)*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x--x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1719** *(CTA Case No. 8680)*
	Present:
	DEL ROSARIO, *PJ,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN , *and*** **MANAHAN, *JJ.***
- versus -	
TAGANITO MINING CORPORATION, *Respondent.*	**Promulgated:** MAY 20 2019 4:?? pm

x--x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court En Banc are consolidated[1] Petitions for Review separately filed by Taganito Mining Corporation (TMC), petitioner in CTA EB

[1] CTA EB No. 1719 was consolidated with CTA EB No. 1711, the case bearing the lowest docket number per Minute Resolution issued on October 23, 2017.

No. 1711 *(Taganito Mining Corporation v. Commissioner of Internal Revenue)*, and by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1719 *(Commissioner of Internal Revenue v. Taganito Mining Corporation)*.

In CTA EB No. 1711, petitioner TMC is seeking the partial reversal of the Amended Decision (the September 2017 Amended Decision) promulgated on September 14, 2017 on the basis of errors of fact and law contained in the said September 2017 Amended Decision which warrant the reversal thereof and declaring petitioner TMC entitled to a refund in the amount of 21,818,041.36, representing its excess/unutilized VAT input taxes on the amortized portion of its capital goods in excess of P1 Million for the years 2011 and 2012 and ordering respondent to issue to petitioner the corresponding Tax Credit Certificate for the refund/tax credit thereof.

In CTA EB No. 1719, petitioner CIR is seeking the reversal of both the Amended Decision promulgated on April 24, 2017 (the April 2017 Amended Decision) and the September 2017 Amended Decision. Petitioner CIR also prays that, instead, another decision be rendered denying TMC's entire claim for refund.

The Parties

TMC, petitioner in CTA EB No. 1711, is a corporation duly organized and existing under and by virtue of the laws of the Philippines with former principal office at 29th Floor, NAC Tower, 32nd Street, Bonifacio Global City, Taguig/ Makati City.[2]

The CIR, petitioner in CTA EB No. 1719, is the duly appointed Commissioner of Internal Revenue, vested with authority to decide disputed assessments of internal revenue taxes and penalties imposed against taxpayers pursuant to the provisions of the National Internal Revenue Code ("Tax Code"). He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

The Facts[4]

[2] *Rollo,* CTA EB No. 1711, p. 7.
[3] *Rollo,* CTA EB No. 1719, p. 7.
[4] As found by the Special Second Division and as culled from the records of the case.

The relevant antecedents, as stipulated[5] by the parties and as borne by the records of the case, are as follows:

On December 21, 2012, TMC filed, through the CIR's Excise Taxpayer's Assistance Division under the Large Taxpayers Division, its claim for refund[6] of the alleged amortized portion, in the years 2011 and 2012, of the input VAT arising from purchases of capital goods exceeding P1Million in the years 2008, 2010 and 2011, which are directly attributable to zero-rated sales.

Due to the CIR's inaction on TMC's administrative claim, TMC filed the its Petition for Review before the Court in Division on July 30, 2013.

The then CIR[7] filed her Answer[8] on August 23, 2013 interposing the special and affirmative defenses: a) that TMC's claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR); b) that TMC's alleged excess/unutilized VAT input taxes were not properly documented; c) that the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to its claim for refund; d) that TMC must show that it complied with the provisions of Section 112 of the Tax Code on the prescriptive period for claiming tax refund/credit; and, e) that TMC did not submit complete documents to substantiate its administrative claim for refund.

On August 28, 2013, the Court in Division issued a Notice of Pre-Trial Conference[9], set the case for hearing and required the parties to file their Pre-Trial briefs. The CIR filed her Pre-trial Brief[10] on September 17, 2013, while TMC filed its Pre-trial Brief[11] on October 7, 2013.

On October 25, 2013, the parties filed their Joint Stipulation of Facts and Issues[12] . Subsequently, the Court in Division issued a Pre-Trial Order[13] dated November 4, 2013.

Trial ensued and after TMC presented its testimonial and documentary

---

[5] Docket, CTA Case No. 8680, pp. 394-401.
[6] Exhibit "P-1".
[7] Atty. Kim Jacinto-Henares held the post of Commissioner of Internal Revenue at the time.
[8] *Id.* at Note 5, pp. 40-49.
[9] *Id.*, p. 51.
[10] *Id.*
[11] *Id.*, pp. 57-64.
[12] *Id.*, pp. 80-83.
[13] *Id.*, pp. 86-88.

evidence, it filed its Formal Offer of Evidence (With Manifestation)[14] on June 20, 2014, praying for the admission of Exhibits "P-1" to "P-30-A". Likewise, TMC moved for the Court in Division to take judicial notice of the Resolution[15] of the Court *en banc* in CTA EB Nos. 936 & 936, which granted its Motion for Partial Withdrawal of its appeal to the extent of ₱13,028,119.39, representing its claim for refund on VAT on capital goods which were amortized in the years 2011 and 2012.

In the Resolution[16] dated July 23, 2014, the Court in Division granted TMC's motion, took judicial notice of the aforesaid Resolution, and denied majority of TMC's exhibits on account of its failure to identify the same during trial.

TMC then filed a Motion for Reconsideration (Re: Formal Offer of Evidence)[17] on August 18, 2014, and prayed that it be allowed to recall its witnesses to identify their respective new judicial affidavits.

The Court in Division allowed the submission of TMC's compliant replacement affidavits and the recall of its witnesses to identify the compliant affidavits in its Resolution[18] dated October 22, 2014.

In the hearing[19] held on November 17, 2014, the Court in Division resolved to grant TMC's Motion for Reconsideration. In the same hearing, the CIR's counsel manifested that there was no report of investigation and that she had no evidence to present in this case. Both parties were given thirty (30) days from November 17, 2014, or until December 17, 2014, to file their respective Memorandum.

On March 30, 2015, the case was submitted[20] for decision, taking into consideration the CIR's Memorandum[21] filed on December 15, 2014 and TMC's Memorandum[22] filed on February 25, 2015.

---

[14] *Id.*, pp. 201-220.
[15] *Id.*, pp. 322-325.
[16] *Id.*, pp. 331-333.
[17] *Id.*, pp. 335-340.
[18] *Id.*, pp. 347-349.
[19] *Id.*, p. 371, Minute Resolution dated November 17, 2014.
[20] *Id.*, pp. 415-416, Resolution dated March 30, 2015.
[21] *Id.*, pp. 374-386.
[22] *Id.*, pp. 394-413.

On March 28, 2016, the Court in Division rendered a Decision[23], the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of ONE MILLION NINE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED EIGHTY ONE AND 93/100 (₱1,997,381.93), representing its excess input VAT amortization on capital goods purchases exceeding P1Million in the year 2011.
>
> **SO ORDERED."**

The CIR filed her Motion for Partial Reconsideration (Re: Decision promulgated 28 March 2016)[24] on April 7, 2016. TMC, on the other hand, filed its Motion for Partial Reconsideration and/or New Trial[25] on April 21, 2016, to which the CIR filed her Comment/Opposition thereto on May 6, 2016.

In its motion, TMC claimed that it committed honest mistake or oversight and excusable negligence in failing to introduce and offer certain documents in support of its claims for refund. TMC then moved for a new trial to allow the admission of the following: (i) Supplemental Audit Report by the Independent Certified Public Accountant (ICPA); (ii) documents in support of its 2012 sales; (iii) the reconciliation of its accumulated input taxes from the years 2008 to 2012, and (iv) Affidavits of Merit of Ms. Lennie A. Terre, TMC's Vice President for Finance and Ms. Maria Gracia L. Morfe, the Court commissioned ICPA, as well as other documents.

On May 24, 2016, the Court in Division issued a Resolution[26] granting TMC's motion and allowing the presentation of TMC's additional evidence. In the meantime, the resolution of the CIR's Motion for Partial Reconsideration was held in abeyance.

After completion of the testimony of TMC's recalled witnesses, Ms. Lennie A. Terre and Ms. Maria Gracia L. Morfe[27], TMC's Supplemental

[23] *Id.*, pp. 441-446.
[24] *Id.*, pp. 447-462.
[25] *Id.*, pp. 465-472.
[26] *Id.*, pp. 820-825.
[27] *Id.*, p. 864, Minutes of the Hearing dated July 27, 2016.

Formal Offer of Evidence (with Motion to Modify the Marking of Exhibit P-31 to P-3 1.B)[28] was filed on August 8, 2016, with the CIR's Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)[29] filed on August 9, 2016.

In a Resolution[30] promulgated on September 13, 2016, the Court in Division, except for Exhibit "P-32.2", admitted Exhibit "P-31", "P-31-A", "P-31.B", "P-31.1" to "P-31.402", "P-31.403" to "P-31.41 6", "P-31.417" to "P-31.420","P-32", "P-32-A", "P-32.1", "P-32.3" to "P-32.10", "P-33" and "P-33-A". The Court in Division, likewise, granted TMC's Motion to Modify the Marking of Exhibit "P-31" to "P-31.B".

On October 3, 2016, TMC filed a Motion for Reconsideration (Re: Supplemental Formal Offer of Evidence) and Extension of Time to File Memorandum[31], with the CIR's Comment/opposition (Re: Motion for Re consideration)[32] filed on October 5, 2016. However, TMC's Motion for Reconsideration (Re: Supplemental Formal Offer of Evidence) was denied by the Court in Division in its Resolution[33] dated November 28, 2016. In the same Resolution, TMC's Motion for Extension of Time to File Memorandum was granted and the Court in Division gave both parties a period of thirty (30) days to file their memoranda.

However, per Records Verification dated January 24, 2017, both parties failed to file their respective memoranda.

<u>April 24, 2017 Amended Decision</u>[34]

On April 24, 2017, after considering the arguments of both parties in their respective Motions for Partial Reconsideration, the Court rendered an Amended Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the increased amount

[28] *Id.*, pp. 866-871.
[29] *Id.*, pp. 903-908.
[30] *Id.*, pp. 910-911.
[31] *Id.*, pp. 912-916.
[32] *Id.*, pp. 919-924.
[33] *Id.*, pp. 926-930.
[34] *Id.*, pp. 934-949.

> of **FIFTEEN MILLION NINE HUNDRED NINETY SEVEN THOUSAND THREE HUNDRED EIGHTY FOUR AND 46/100 (₱15,997,384.46),** representing the sum of its excess input VAT amortization on capital goods purchases exceeding P1Million attributable to its zero-rated sales for the years 2011 and 2012."
>
> **SO ORDERED."**

In the April 24, 2017 Amended Decision, the Court in Division further denied the CIR's Motion for Partial Reconsideration.

Both parties filed their respective Motions for Partial Reconsideration of the April 24, 2017 Amended Decision.

The CIR[35] filed his Motion for Partial Reconsideration (Re: Amended Decision promulgated 24 April 2017)[36] on May 5, 2017, to which TMC filed its Comment to Respondent's Motion for Partial Reconsideration[37] on May 22, 2017.

TMC, on the other hand, filed its Motion for Partial Reconsideration (of the 24 April 2017 Amended Decision)[38] on May 10, 2017. The CIR, in turn, filed his Motion to Admit Attached Opposition (Re: Motion for Partial Reconsideration)[39] on June 14, 2017 which the Court in Division granted, admitting the attached Opposition[40] as part of the records.

September 14, 2017 Amended Decision[41]

On September 14, 2017, the Court in Division rendered another Amended Decision, the dispositive portion of which reads, as follows:

> **"WHEREFORE,** in view thereof, respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated 24

---

[35] BIR Commissioner Cesar R. Dulay had already been appointed as the new BIR Commissioner by President Rodrigo R. Duterte, replacing former BIR Commissioner Kim Jacinto-Henares.
[36] *Id.*, pp. 950-965.
[37] *Id.*, pp. 982-985.
[38] *Id.*, pp. 968-980.
[39] *Id.*, pp. 989-992.
[40] *Id.*, pp. 993-998.
[41] *Id.*, pp. 1000-1015.

April 2017) is **DENIED,** while petitioner's Motion for Partial Reconsideration (of the 24 April 2017 Amended Decision) is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the Amended Decision promulgated on April 24, 2017 is **AMENDED,** as follows:

> '**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the increased amount of **EIGHTEEN MILLION TWO HUNDRED THREE THOUSAND FOUR HUNDRED FOUR AND 63/100 (₱18,203,404.63),** representing the sum of its excess input VAT amortization on capital goods purchases exceeding P1Million attributable to its zero-rated sales for the years 2011 and 2012 in the amounts ₱8,926,352.16 and ₱9,277,052.47, respectively.'
>
> **SO ORDERED."**

Within the extended period granted by the Court *en banc,* both parties timely filed their respective Petitions for Review.[42] TMC filed its Petition for Review[43] on October 18, 2017, docketed as CTA EB No. 1711, *Taganito Mining Corporation vs. Commissioner of Internal Revenue,* while the CIR filed his Petition for Review[44] on October 19, 2017, docketed as CTA EB No. 1719, *Commissioner of Internal Revenue vs. Taganito Mining Corporation.*

On October 23, 2017, the Court *en banc* resolved to consolidate CTA EB No. 1719 with CTA EB No. 1711, the case bearing the lower docket number.[45]

On November 29, 2017, respondents in both Petitions were ordered to

---

[42] TMC filed its Motion for Extension of Time (to File Petition for Review) on September 20, 2017 which the Court granted via Minute Resolution on September 22, 2017 giving TMC until October 18, 2017 to file its Petition for Review. The CIR, on the other hand, filed its Motion for Extension of Time to File Petition for Review on October 4, 2017 which the Court also granted via Minute Resolution on October 9, 2017 giving the CIR until October 19, 2017 within which to file his Petition for Review.
[43] *Rollo*, CTA EB No. 1711, pp. 6-29.
[44] *Rollo*, CTA EB No. 1719, pp. 6-18.
[45] *Id.* at Note 40, p. 119.

file their respective Comments within ten (10) days from notice.[46]

On December 27, 2017, the CIR filed his Motion for Extension of Time to File Opposition[47] which the Court granted via Minute Resolution dated January 4, 2018[48], giving the CIR an extended period until January 11, 2018 within which to file his Comment.

The CIR filed his Comment[49] on January 11, 2018 while the TMC failed to file its Comment within the period given, as verified by the Judicial Records Division in a Records Verification Report dated February 8, 2018.[50]

On March 6, 2018, the Court *en banc* resolved to give due course to the petitions and both parties were directed to submit their respective memoranda within thirty (30) days.[51]

On March 27, 2018, the CIR filed a Manifestation[52] stating that he is adopting the arguments raised in his Petition for Review in CTA EB No. 1719 and his Comment to the Petition in CTA EB No. 1711 as his Memorandum. This was noted by the Court *en banc* in a Minute Resolution dated April 4, 2018.[53]

On May 3, 2018, the Court *en banc* received the Memorandum of TMC posted via registe0red mail on April 25, 2018.[54]

On May 21, 2018, the consolidated cases were submitted for decision.[55]

The Assignments of Errors

TMC assigns the following errors to both the September 2017 and the April 2017 Amended Decisions of the Court in Division:

---

[46] *Id.*, pp. 121-123.
[47] *Id.*, pp. 124-128.
[48] *Id.*, p. 129.
[49] *Id.*, pp. 130-134.
[50] *Id.*, p. 135.
[51] *Id.*, pp. 137-138.
[52] *Id.*, pp. 139-142.
[53] *Id.*, p. 143.
[54] *Id.*, pp. 144-170.
[55] *Id.*, pp. 173-174.

a) The Court in Division erred in applying the *Coral Bay Case*[56] in disallowing its excess VAT input taxes in the amount of ₱1,125,380.81[57];

b) The Court in Division erred in ruling that failure to exact full payment for sold goods renders it unqualified as a zero-rated export sale to the extent of the uncollected portion so as to justify the pro-rating or partial disallowance of such sale as the ruling has no legal basis;

c) The Court in Division erred in pro-rating input tax that arise from purchases which are all directly attributable to zero-rated sales to non zero-rated sales as the ruling has no legal basis and is contrary to law; and

d) The Court in Division erred in deducting output VAT twice when it failed to consider the input taxes carried over by TMC from previous quarters which it did not claim for refund but, instead, used for its output tax liability.

On the other hand, the CIR's Petition for Review assigns one main error to the assailed Amended Decisions and claims that the Court in Division erred in ruling that the amounts of ₱8,926,352.16 and ₱9,277,052.47 are attributable to valid zero-rated sales.

The Arguments of the Parties

TMC argues that in applying the *Coral Bay case* erroneously, the Court in Division effectively negated its right to refund its excess input taxes and its right to have its creditable input taxes from domestic purchases applied against its output taxes. While the *Coral Bay case* decreed that input taxes passed on by suppliers within the customs territory cannot be refunded by the BIR to the PEZA located taxpayer claiming for refund, TMC, as a BOI-registered export entity, is located within the customs territory of the Philippines. It is therefore bound to incur expenses with a VAT component, especially from its irregular suppliers and it is not always the case that it is able to show documents to the sellers of goods and services in order to refuse having the VAT passed onto it.

Even if the *Coral Bay case* were applicable, TMC argues that input taxes which cannot be refunded can be applied against a VAT taxpayer's output taxes.

[56] G.R. No. 190506, June 13, 2016.
[57] *Id.* at Note 2, pp. 58-59.

TMC's incidental sales are treated as subject to 12% VAT for which it generates output VAT which should be applied against its input VAT.

TMC further argues that the Court in Division ought to have made a pro-rating of its input taxes only to its zero-rated sales as well as to its VAT sales which are incidental to its zero-rated business since it has fully substantiated through testimonial and documentary evidence that the goods it purchased were equipment used in the hauling of mined ores. TMC claims that there is no justifiable basis for the attribution or pro-rating to its exempt sales.

Finally, as regards the deduction of output taxes from the input VAT allowed for refund after deducting the allowances, TMC argues that this has resulted in the double deduction of its output VAT. This is because this failed to consider the input taxes carried over by TMC from previous quarters which it chose not to claim for refund but, instead, was to be used for its output tax liability. As such, TMC's input VAT being claimed for refund is an amount that is already net of any output VAT and a further deduction of its output VAT effectively causes the said output VAT to be deducted twice from its creditable input tax.

On the other hand, the CIR argues that TMC's Petition for Review should be dismissed outright for being filed out of time. The CIR observed that while TMC filed a motion for extension of time to file the Petition for Review, the motion is defective as it was not signed by counsel representing TMC, but only signed "for" on behalf of the handling counsel.

The CIR further argues that the Court in Division's ruling that the input VAT of ₱8,926,352.16 and ₱9,277,052.47 are attributable to the valid zero-rated sales of ₱2,538,211,995.90 and ₱3,035,811,767.16 in 2011 and 2012, respectively, is erroneous because Section 112 of the Tax Code uses the phrase "directly attributable" and not the phrase "entirely attributable". The input tax must come from purchases of goods and services that form part of the finished product of the taxpayer. As the law uses the word "directly", this means that the connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". The Court in Division failed to explain the evidence showing the direct connection of the purchases or input tax to the finished product which sale is zero-rated and should have denied the entire claim for refund because it was not proved during trial that the unutilized input taxes are directly attributable to zero-rated sales.

The Ruling of the Court

We deny the petitions.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and extensively discussed by the Second Division in the assailed Resolutions. Nevertheless, for emphasis, we will discuss at length, once again, the demerits of the parties' arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Coral Bay Case Properly Applied

The Bureau of Internal Revenue enumerated the requirements for the zero-rating of sales by a VAT taxpayer to a BOI registered exporter in Section 3 of Revenue Memorandum Order No. 9-00[58] (RMO No. 9-00) dated February 2, 2000, thus:

> **"SECTION. 3.** *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter* ***shall be accorded automatic zero-rating****, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95,* ***subject to the following conditions****:*
>
> (1) The supplier must be VAT-registered;
> (2) The BOI-registered buyer must likewise be VAT- registered;
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
> (4) **The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers**; and

[58] Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOT-registered Manufacturers-Exporters With 100% Export Sales

> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer." *(Emphasis supplied)*

During trial, TMC was able to present Certifications[59] issued by the BOI dated January 21, 2011 and January 20, 2012. These Certifications attested to two important facts, namely: 1) TMC is a BOI registered entity; and, 2) TMC exported 100% of its total sales volume/value in the calendar years 2008 and 2009. The said Certifications also post a validity period from January 1 to December 31, 2011 and January 1 to December 31, 2012, respectively.

By virtue of these Certifications, the local suppliers of TMC could then have availed of the benefits of zero-rating under Section 3(4) of RMO No. 9-00 on their sales to TMC covering the years 2011 and 2012. Had they done so under the auspices of RMO No. 9-00, no output tax would have been shifted by the local suppliers to TMC.

However, in its Petition, TMC states, "x x x Petitioner, as a BOI-registered export entity, is located within the customs territory of the Philippines. Invariably, Petitioner is bound to incur expenses with a VAT component, especially from its irregular suppliers. This is precisely because it operates within the customs territory where the norm is that goods and services are subjected to VAT. **To be able to refuse having the VAT passed on to it, Petitioner must show several documents to the seller of goods and services and it is not always the case that there is an opportunity to do this especially if the seller is not amongst Petitioner's regular supplier.**"

In effect, TMC is asking this Court to turn a blind eye to its lack of diligence in claiming a benefit that the law and the rules accord a BOI-registered export entity. This the Court cannot do. It is not within the ambit of this Court to drum up the enthusiasm of an entity so that it can claim the benefits accorded to it and to protect its self-interests, when in itself, it has little to none. At most, this Court shall consider its apathy a waiver of the said benefit.

As several of TMC's suppliers were not furnished with the requisite BOI Certification, it comes as no surprise that those particular suppliers shifted the

---

[59] Exhibits "P-9" to "P-10".

output tax to TMC. Following the ruling of this Court in *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[60], TMC may seek reimbursement of the input VAT paid from its seller (who shifted the output VAT), and not from the government, to wit:

> **"To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government.** Under the law, no one shall unjustly enriched *(sic)* himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.
>
>> **In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT.** *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:
>>
>>> 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'
>>
>> Pursuant to *Revenue Memorandum Circular No. 42-03,* petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services."

The Supreme Court upheld this ruling in the case of *Coral*

---

[60] CTA EB Case No. 403 (CTA Case No. 7022), May 29, 2009.

> *Bay Nickel Corp. vs. Commissioner of Internal Revenue,*[61] where it ruled that the proper party to seek the tax refund or credit should be the suppliers not the petitioner (Coral Bay).

We find no error, therefore, in the Court in Division's ruling that only the amortized input VAT from importations in the amount of ₱9,295,167.30 and ₱10,123,097.32 in 2011 and 2012, respectively, represent TMC's valid input VAT.[62]

Disallowance of Zero-Rated Sales Due to Failure to Exact Full Payment

TMC surmises that the Court in Division erred in ruling that failure to exact full payment for sold goods renders it unqualified as a zero-rated export sale to the extent of the uncollected portion so as to justify the pro-rating or partial disallowance of such sale as the ruling has no legal basis.

On this issue, *We* find no reason to deviate from the findings of the Court in Division, as well. The assailed Amended Decision resolved this issue, in this wise:

> "Section 106(A)(2)(a)(l) of the 1997 National Internal Revenue Code, as amended, and implemented by Sec. 4.106-S(a)(1) of Revenue Regulations No. 16-05[63], expressly provides that the sale and actual shipment of goods from the Philippines to a foreign country is 'paid for' in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). The term 'paid for' connotes 'collection'. Thus, there is a necessity to go through the supporting Bank Credit Advice/Inward Remittance Certificates of the alleged export sales to ascertain foreign currency remittances from foreign customers.
>
> Further, contrary to [TMC's] argument, the Court did not disallow the 'entire transaction' with DH Kingstone as a zero-rated sale. The amount disallowed in DH Kingstone transaction was only

---

[61] G.R No. 190506, June 13, 2016.
[62] 2008 Amortized Input VAT from Importations plus the allowable Amortized Input VAT Amortization from Importations as laid down in the Decision p. 23.
[63] Consolidated Value-Added Tax Regulations of 2005.

> to the extent which was not properly substantiated with inward remittances.
>
> Nevertheless, even granting that insufficient inward remittances from the DH Kingstone transaction 'can already constitute full payment', [TMC] should still provide evidence that could convince the Court that the unpaid balance pertains to alleged charges made against such payment, or that the same was already waived, or that efforts made to collect the same was indeed unfruitful."

We find the discourse of the Court in Division sound. Therefore, the disallowance of the zero-rated sales from the exportation to DH Kingstone in 2011 amounting to ₱14,611.333.48 ($336,899.55) was in order. This likewise applies to the disallowance of zero-rated sales in 2012 amounting to ₱16,738,230.28 ($396,628.73).

Pro-rating Input Tax Between Zero-Rated and Non-Zero-Rated Sales

TMC also decries the ruling of the Court in Division which pro-rated input tax that arose from purchases which were all directly attributable to zero-rated sales to non-zero-rated sales and claims that the ruling has no legal basis and is contrary to law.

We find no merit in TMC's argument.

Revenue Regulations (RR) No. 16-2005, otherwise known as the "Consolidated Value-Added Tax Regulations of 2005" mandates apportionment of input tax on mixed transactions in Section 4-110-4 thereof. The pertinent portions of the said section is quoted below:

> "**SEC. 4-110-4.** ***Apportionment of Input Tax on Mixed Transactions.*** -- A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> x x x x x x x x x

2. **If any input tax cannot be directly attributed to either a VAT taxable or VAT-exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.**

x x x x x x x x x

The input tax attributable to VAT-exempt sales shall not be allowed as credit against the output tax should be treated as part of cost or expense.

Notwithstanding the foregoing provisions, for persons engaged in both zero-rated sales under Sec. 108(B)(6) of the Tax Code and non-zero rated sales, the aggregate input taxes shall be allocated ratably between the zero-rated sale and non-zero-rated-sale." *(Emphasis supplied)*

In arriving at its computation, the Court in Division used the formula mandated by RR No. 16-2005 which computed for the input tax attributable to VAT-exempt sales by dividing the VAT-exempt sales by the total sales and multiplying the quotient with the amount of input tax not directly attributable. *We* find this in accordance with the aforementioned rules.

However, the Court in Division also ruled that:

"Since [TMC] did not submit VAT invoices/receipts proving the existence of its reported input VAT from Domestic Purchases of Goods not Exceeding Pl Million, Purchases of Goods (other than Capital Goods), Importation of Goods (other than Capital Goods) and Domestic Purchases of Services for the first to fourth quarters of 2011, its output VAT liability for the same period in the amount of ₱185,272.24 shall be offset against the valid input VAT amortization of ₱2,458,459.49 resulting to an excess input VAT amortization of ₱2,273,187.25, computed as follows, as follows:

Valid Input VAT Amortization	₱ 2,458,459.49
Less: Output Tax Due	185,272.24

Excess Input VAT Amortization	**₱ 2,273,187.25**

However, other than [TMC's] mere allegation that the subject input VAT are all directly attributable to its zero-rated sales, [TMC] failed to present any documentary evidence that could aid the Court in ascertaining that no part of the claimed input VAT can be attributed to [TMC's] reported VATable and exempt sales in 2011. Thus, the input VAT of ₱2,458,459.49 shall be proportionately allocated among its reported zero-rated, VATable and exempt sales in the aggregate amount of ₱2,888,696,985.55[64]:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
VATable	₱ 28,571.42	₱ 29,285.71	₱ 782,149.66	₱ 703,928.58	₱ 1,543,935.37
Zero-rated	535,757,978.45	604,186,364.87	1,255,721,066.18	381,442,752.68	2,777,108,162.18
Exempt	14,886,220.00	30,571,796.61	32,605,821.22	31,981,050.17	110,044,888.00
TOTAL	₱ 550,672,769.87	₱ 634,787,447.19	₱ 1,289,109,037.06	₱ 414,127,731.43	₱ 2,888,696,985.55

Consequently, only the input VAT of ₱2,185,375.24 can be attributed to the entire zero-rated sales declared by [TMC] in the amount of ₱2,777,108,162.18 and only the input VAT of ₱1,997,381.93 is attributable to the valid zero-rated sales of ₱2,538,211,995.90, as computed below:

Excess Input VAT Amortization		₱ 2,273,187.25
Multiplied by% of Declared Zero-Rated Sales to Total Sales per Returns		
Zero-Rated Sales	₱ 2,777,108,162.18	96.1370534%
Total Declared Sales	÷₱ 2,888,696,985.55	
Excess Input VAT Amortization which is attributable to Total Declared Zero-Rated Sales		₱ 2,185,375.24
Multiplied by% of Valid Zero-Rated Sales to Total Declared Zero-Rated Sales		
Valid Zero-Rated Sales	₱ 2,538,211,995.90	91.3976643%
Total Declared Zero-Rated Sales	÷ ₱ 2,777,108,162.18	
Excess Input VAT Amortization which is attributable to Valid Zero-Rated Sales		**P 1,997,381.93**

In light of the foregoing, TMC is entitled to its claim for

[64] Exhibit "P-20-C", "P-20-C-3", "P-20-C-6", "P-20-C-9" and "P-20-C-12".

> refund/credit in the amount of ₱1,997,381.93, representing its excess input VAT amortization on capital goods purchases exceeding P1 Million in the year 2011."

In its Petition, TMC avers that it has duly substantiated the goods it purchased consisting of its capital expenditures or capital goods in excess of P1 Million and that these were testified to by its witness, Ms. Lene Terre, who certified that the imported and locally purchased capital goods and capital equipment were all directly attributable and used by the company in exploring and producing the beneficiated nickel silicate ores and chromite ores which are the mineral products exported by the company.

Once again, it bears stressing that this argument has been previously considered by the Court in Division upon rendering the assailed Amended Decision (September 14, 2017)

Section 3, Rule 13 of the 2005 Revised Rules of the CTA, as amended, provides:

> "SEC. 3. *Findings of independent CPA.* - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification."** *(Emphasis supplied)*

The various evidence presented by TMC were considered, including the ICPA Report and the documentary and testimonial evidence. However, as noted in the assailed Amended Decisions, the Court in Division found, upon its own verification, that while the ICPA considered the exhibits at issue as attributed to its zero-rated sales, this was on the basis of Ms. Terre's certification alone. Hence, the fact that the ICPA did not even have first-hand determination as to which purchases were, indeed, attributable to TMC's zero-rated sales were taken into account by the Court in Division in determining the weight of the evidence presented by the ICPA. The testimony of TMC's witness, as well as the other documentary evidence presented were likewise subject to subsequent verification by the Court in Division, and *We* find no reason to disturb their findings thereon.

Double Deduction of Output VAT

TMC's claims that its output VAT has been deducted twice from its creditable input tax must likewise fail.

TMC argues that its evidence shows that the input taxes they are claiming for refund consist of excess input taxes which are undiminished by any VAT output tax, except as to the findings made by the ICPA with respect to the amount of ₱559,786.39. Since the input VAT it is claiming for refund is an amount that is already net of any output VAT, further deductions of its output VAT results in the said output VAT to be deducted twice from its creditable input tax.

The appreciation of TMC of the Court in Division's computation is erroneous. The assailed Amended Decision explains this in this wise:

> "It is to be noted that [TMC] presented several supporting documents for the **total amount of input VAT** (from local purchases and importations), **as declared in the Quarterly VAT Returns** in 2011 and 2012. And, it is from this total amount of input VAT, as declared in the returns, where the Court found disallowances.
>
> Otherwise stated, the Court's examination of documents submitted by [TMC] comprise the total input VAT declared in the Quarterly VAT Returns, without any deduction yet for the output tax.
>
> The amount of input VAT found to be allowable for refund, after deducting the disallowances, is not yet applied to the output tax. Thus, there is still a need to deduct the output tax from input VAT. Even the ICPA made the same manner of computation as shown in Tables V and VI of her Report[65] and Supplemental Report[66], respectively.
>
> Thus, contrary to the claim of [TMC], there was no double deduction of output tax committed by the Court."

---

[65] Docket (Vol I), p. 161.
[66] Docket (Vol. II), p. 878.

On this score, *We* find no reason to disturb the Court in Division's findings.

"Directly Attributable" in Mixed Transactions

As regards the Petition for Review of the CIR, the CIR's claim that the Court in Division erred in ruling that the amounts of ₱8,926,352.16 and ₱9,277,052.47 are attributable to valid zero-rated sales deserves scant consideration.

The CIR propounds the argument that TMC has not duly proven a crucial element in its claim for refund of unutilized input tax as there has been no showing that the unutilized input taxes were directly attributable to zero-rated sales.

However, the law itself provides for how certain scenarios involving mixed transactions should be treated. Section 112 of the Tax Code provides, as follows:

> "SEC. 112. **Refunds or Tax Credits of Input Tax. -**
>
> (A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.** Provided, finally, That for a person making sales that are zero-rated under Section 108()(6), the input taxes shall be allocated

ratably between his zero-rated and non-zero-rated sales. x x x" *(Emphasis supplied)*

We find no error in the manner the Court in Division executed the above-quoted provision in its computation and find the same to be in conformity with law.

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the assailed Amended Decisions dated April 24, 2017 and September 14, 2017, the same are **AFFIRMED**. Accordingly, the Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - see Dissenting Opinion
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

With due respect, I join PJ's Dissenting Opinion.
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION,
Petitioner,

CTA EB NO. 1711
(CTA Case No. 8680)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1719
(CTA Case No. 8680)

Present:

- versus -

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS- LIBAN, and
MANAHAN, JJ.

TAGANITO MINING CORPORATION,
Respondent.

Promulgated:
MAY 20 2019 4:10 pm

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, for the reasons discussed hereunder, I submit that the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1719 must be granted while the Petition for Review filed by Taganito Mining Corporation (TMC) in CTA EB No. 1711 must be denied.

Both Petitions for Review assail the Amended Decision of the Court in Division dated September 14, 2017, which **partially granted** TMC's Petition for Review docketed as CTA Case No. 8680, and ordered the CIR to refund or to issue a tax credit certificate in TMC's favor in the amount of P18,203,404.63, representing the sum of its excess input VAT amortization on capital goods purchases exceeding P1 Million attributable to zero-rated sales for the years 2011 and 2012.

In my view, TMC's Petition for Review, docketed as CTA Case No. 8680, should have been dismissed by the Court in Division for having been filed out of time. A careful perusal of the records discloses the following relevant information:

- December 21, 2012 – TMC filed its administrative claim for refund with supporting documents. [1]
- March 2, 2013 – TMC submitted additional supporting documents,[2] ***sans* indication that the Bureau of Internal Revenue made a prior request to TMC to submit additional documents**.
- July 30, 2013 – TMC filed its Petition for Review (docketed as CTA Case No. 8680) before the Court in Division.

It is my humble opinion that the 30-day period to submit complete supporting documents should have been reckoned from December 31, 2012 instead of March 2, 2013.

Section 112 (C) of the NIRC of 1997, as amended, provides the 120-day period for the CIR to act on the claim for refund of input tax attributable to zero-rated sales reckoned from the date of submission of complete documents, as well as the 30-day appeal period to the CTA from receipt of the decision of the CIR or after the expiration of the 120-day period, *viz.:*

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (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

---

[1] Decision dated March 28, 2016, Court in Division Docket, page 433.
[2] Decision dated March 28, 2016, Court in Division Docket, page 437.

> twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

The reckoning of the 120-day period has been clarified in ***Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue***[3] *(Pilipinas Total case)*, where the Supreme Court made the following pronouncements:

> To summarize, for the just disposition of the subject controversy, the rule is that **from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR**. Then, **upon filing by the taxpayer of his complete documents to support his application**, or **expiration of the period given**, **the CIR has 120 days within which to decide the claim for tax credit or refund**. **Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing**.
>
> In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.
>
> It bears mentioning at this point that the foregoing summation of the rules <u>*should only be made applicable to those claims for tax credit or refund filed prior to June 11,*</u>

---

[3] G.R. No. 207112, December 8, 2015.

> 2014, such as the claim at bench. xxx *(Boldfacing supplied)*

Pursuant to the summary laid down in *Pilipinas Total,* the **120-day period** may be reckoned from any of the following dates, whichever may be applicable:

> 1. **Date of filing of the administrative claim** in cases where submission of complete documents was made upon such filing, or when the taxpayer plainly manifests that he no longer wishes to submit any other additional documents to complete his administrative claim; or
>
> 2. **Date of submission of documents**, *which may be made within 30 days from the date of filing of the taxpayer's administrative claim*, unless given further extension by the CIR; or
>
> 3. **Date of expiration of 30 days** from filing of the administrative claim, when complete documents did not accompany the administrative claim.

Following the doctrine of *stare decisis,*[4] the Court should be guided by the summation of procedure for VAT refund claims laid down in *Pilipinas Total* in resolving the present controversy. Strict adherence to said procedure is therefore necessary and unavoidable in determining whether or not the judicial claim for VAT refund was timely filed.

I am not unaware that the factual milieu of the present case is similar to that obtaining in *Pilipinas Total,* that is, the additional supporting documents were submitted by the taxpayer beyond the thirty (30)-day period from the filing of the administrative claim, *sans* any indication that the BIR made a prior request to the taxpayer to submit additional supporting documents or that such submission was made within the extended time allowed by the SIR. **Notwithstanding said similarity, I submit that what is significant in resolving the present controversy is the procedure that was laid down by the Supreme Court in *Pilipinas Total.* To disregard such procedure would render the "summary" or guidelines declared therein meaningless and futile.**

---

[4] *Stare decisis et non quieta movere* which means to adhere to precedents, and not to unsettle things which are established *(Lazatin vs. Desierto, G.R. No. 147097, June 5, 2009).*

The final disposition in *Pilipinas Total* (which departed from its own doctrinal pronouncement anent the procedure for VAT refund claims) is, at most, governed by the doctrine of *res judicata*[5] and, thus, should exclusively govern the parties therein.

Applying the doctrinal pronouncement in *Pilipinas Total* anent the procedure for VAT refund claims, TMC should have filed the additional supporting documents within thirty (30) days from **December 21, 2012** (date of filing of the administrative claim) or until **January 20, 2013.** CIR had one hundred twenty (120) days or until **May 20, 2013** to act on the application for refund of TMC, and the latter, in turn, had thirty (30) days, or until **June 19, 2013** to elevate the inaction or "deemed denial decision" of the CIR with the Court in Division. The filing of its Petition for Review only on **July 30, 2013** with the Court in Division is clearly out of time, thereby resulting in the finality of the "deemed denial decision" of CIR on TMC's claim for refund.[6]

All told, I **VOTE** to: (i) **GRANT** the Petition for Review in CTA EB No. 1719 filed by the Commissioner of Internal Revenue; (ii) **DENY** the Petition for Review in CTA EB No. 1711 filed by Taganito Mining Corporation; (iii) **DISMISS** the Petition for Review in CTA Case No. 8680 filed by Taganito Mining Corporation; (iv) **SET ASIDE** the March 28, 2016 Decision, the April 24, 2017 Amended Decision, and the September 14, 2017 Amended Decision issued by the Court in Division; and ultimately, (v) **DENY** in full the judicial claim for refund or issuance of tax credit certificate of Taganito Mining Corporation representing its alleged excess input VAT amortization on capital goods purchases exceeding P1 Million attributable to zero-rated sales for the years 2011 and 2012, for being filed out of time.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[5] *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit *(Gutierrez vs. Court of Appeals, G.R. No. 82475, January 28, 1991)*.

[6] CIR vs. Dash Engineering Philippines, Inc., G.R. No. 184145, December 11, 2013.