Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

TAGANITO MINING CORPORATION,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case No. 8680

Members:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
COTANGCO-MANALASTAS, J.J.

Promulgated:

MAR 28 2016

4:30 p.m.

x---x

DECISION

CASANOVA, J.:

This resolves the Petition for Review,[1] filed by petitioner-Taganito Mining Corporation, on July 30, 2013, seeking the refund or the issuance of tax credit certificate (TCC) of its excess/unutilized input Value-Added Tax (VAT) payments in the amount of Twenty One Million Eight Hundred Eighteen Thousand Forty One & 36/100 (₱21,818,041.36) arising from its purchases of capital goods with aggregate acquisition cost of at least One Million Pesos (₱1,000,000.00) in the years 2008, 2010 and 2011, which were amortized in the years 2011 and 2012.

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

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with former principal office at 4th Floor, NAC Center (formerly Solid Mills/BMMC Building), Dela Rosa

[1] Docket (Vol. I), pp. 6-20.

Street, Legaspi Village, Makati City and current business address at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig/ Makati City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to exercise the functions of said office, including *inter alia,* the power to decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (Tax Code) or other laws administered by the Bureau of Internal Revenue under Section 4 of the Tax Code, and holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where she may be served with summons and other legal processes of this Honorable Court.[3]

Petitioner is duly registered with the Securities and Exchange Commission with Certificate of Registration No. 138682[4] issued on March 4, 1987, and is, likewise, a VAT-registered entity with updated Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000046046[5]. It is also a Board of Investment (BOI) registered entity with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.[6]

On December 21, 2012, petitioner filed, through respondent's Excise Taxpayer's Assistance Division under the Large Taxpayers Division, its claim for refund[7] 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 respondent's inaction on petitioner's administrative claim, petitioner filed the instant Petition for Review on July 30, 2013.

Respondent, for her part, filed her Answer[8] on August 23, 2013 and interposed the following special and affirmative defenses:

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

[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Ibid., p. 80.
[3] Par. 2, Parties, Petition for Review, Id., p. 7.
[4] Exhibit "P-13".
[5] Exhibit "P-13".
[6] Pars. 3 and 4, Stipulated Facts, JSFI, Id., p. 82
[7] Exhibit "P-1".
[8] Ibid., pp. 40-49.

5. The amount of ₱21,818,041.36 allegedly representing petitioner's excess/unutilized VAT input taxes was not properly documented.

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

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

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

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part**

> **<u>of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim</u>**.' (emphasis and underscoring supplied)

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

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

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

xxx xxx xxx

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

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

xxx xxx xxx

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

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

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

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

9) Articles of Incorporation - for the first time filers

10) Sales Contracts/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

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

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

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

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

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

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc.)
   a. Authenticated copy/ies of the contract/s showing the person/s for whom the services

were rendered, amount of consideration, description of the services and documents evidencing actual payments.

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

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

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

VALUE-ADDED TAX

A) Requirements from Taxpayers
   1) Proof of claimed tax credits
   2) Proof of Tax Compliance Certificates applied
   3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
   4) Proof of payment of deficiency tax, if any
      a) current year/period
      b) previous year/period
   5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives; if applicable
   6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable
   7) Proof of exemption under special law, if applicable
   8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
   9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
11) Sample invoice/s for 'Export/Exempt Sales', if applicable
12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely submitted seven (7) documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case because the law already acknowledges it is entitled to refund. Thus, it merely has to substantiate the export sales and the excess amount. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

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

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

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

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

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."*[9]

On August 28, 2013, the Court issued a Notice of Pre-Trial Conference[10] setting the hearing of the case on October 10, 2013 at 1:30 p.m. and requiring the parties to file their respective pre-trial brief. In compliance therewith, Respondent's Pre-trial Brief[11] was filed on September 17, 2013, while petitioner's Pre-trial Brief[12] was filed on October 7, 2013.

On October 25, 2013, the parties filed their Joint Stipulation of Facts and Issues[13], which resulted to the issuance of a Pre-Trial Order[14] dated November 4, 2013.

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[9] Id., pp. 41-47.
[10] Id., p. 51.
[11] Id., pp. 52-56.
[12] Id., pp. 57-64.
[13] Id., pp. 80-83.

After presentation of its testimonial and documentary evidence, petitioner filed its Formal Offer of Evidence (With Manifestation)[15] on June 20, 2014, praying for the admission of Exhibits "P-1" to "P-30-A". Likewise, petitioner moved for this Court to take judicial notice of the Resolution[16] of this Court sitting *En Banc* in CTA EB Nos. 936-036[17], granting 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[18] dated July 23, 2014, the Court granted petitioner's motion for the Court to take judicial notice of the aforesaid Resolution and denied majority of petitioner's exhibits on account of its failure to identify the same during trial.

By such reason, petitioner filed a Motion for Reconsideration (Re: Formal Offer of Evidence)[19] on August 18, 2014, praying, among others, that it be allowed to recall its witnesses to identify their respective new judicial affidavit.

Finding the justification in the foregoing Motion meritorious, the Court allowed the submission of petitioner's compliant replacement affidavits and the recall of its witnesses to identify the compliant affidavits in its Resolution[20] dated October 22, 2014.

In the hearing[21] held on November 17, 2014, the Court resolved to grant petitioner's Motion for Reconsideration. In the same hearing, respondent's counsel manifested that there was no report of investigation and that she has no evidence to present in this case. Thus, upon parties' motion, they 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[22] anew for decision, taking into consideration respondent's Memorandum[23] filed on December 15, 2014 and petitioner's Memorandum[24] filed on February 25, 2015.

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[14] Id., pp. 86-88.
[15] Id., pp. 201-220.
[16] Id., pp. 322-325.
[17] Should be CTA EB Nos. 935 and 936
[18] Id., pp. 331-333.
[19] Id., pp. 335-340.
[20] Id., pp. 347-349.
[21] Minute Resolution dated November 17, 2014, Id., p. 371.
[22] Resolution dated March 30, 2015, Id., pp. 415-416.
[23] Id., pp. 374-386.
[24] Id., pp. 394-413.

Hence, this Decision.

The following are the parties' jointly stipulated issues[25] submitted for this Court's resolution:

1. Whether or not the Honorable Court of Tax Appeals (CTA) has jurisdiction to act on the instant Petition for Review;

2) Whether or not the denial by inaction of the administrative application for refund was proper; and,

3) Whether or not petitioner is entitled to the refund of excess VAT input taxes paid on amortized input VAT on capital goods in the total amount of Twenty One Million Eight Hundred Eighteen Thousand Forty One and 36/100 Pesos (₱21,818,041.36).

In the case at bench, petitioner seeks to refund its excess input VAT arising from the portion of the input VAT from purchases of capital goods exceeding ₱1Million, which were amortized for the taxable years 2011 and 2012. The input VAT from these purchases of capital goods were allegedly paid in the taxable years 2008, 2010 and 2011. Below is a summary of petitioner's input VAT refund claim of ₱21,818,041.36[26]:

Year of Purchase	Input Tax on Capital Goods Exceeding P1M	Amortized as of CY2011	Amortized as of CY2012	Total Input Tax Available for Refund
2008	₱ 34,131,592.27	₱ 8,508,951.64	₱ 4,519,167.75	**₱ 13,028,119.39**
2010	4,628,363.58	925,672.72	536,474.56	**1,462,147.28**
2011	17,691,452.70	2,988,225.81	4,339,548.88	**7,327,774.69**
	₱ 56,451,408.55	**₱ 12,422,850.17**	**₱ 9,395,191.19**	**₱ 21,818,041.36**

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

"SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) *Zero-rated or Effectively Zero-rated Sales.* - Any VAT-registered person, whose sales are zero-rated or

[25] Issues, JSFI, Docket (Vol. I), p. 82.
[26] Attachment to Exhibit "P-6", Docket, p. 237.

> 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."

Pursuant to the above-quoted provision and, as laid down by the Supreme Court in a number of cases[27], a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales upon compliance with the following requisites:

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

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

I. 3rd Requisite – Timeliness of filing of claim

We shall determine the timeliness of the filing of petitioner's administrative claim for refund within the two-year prescriptive period reckoned from the close of the taxable quarters when the zero-rated sales or effectively zero-rated sales were made.

The present petition pertains to a refund of the alleged amortized portion, in the years 2011 and 2012, of the input VAT arising from purchases made for the years 2008, 2010 and 2011 of capital goods exceeding ₱1Million, which are allegedly directly attributable to zero-rated sales.

Hence, counting from the close of the taxable quarters of the years 2011 and 2012, when the alleged zero-rated sales were made, petitioner had until the following dates to file its administrative claim for refund pursuant to Section 112(A) of the NIRC of 1997:

Month	Close of Taxable Quarter	End of 2-year Period to File Claim for Refund
January 31, 2011 February 28, 2011 March 31, 2011	March 31, 2011	March 31, 2013
April 30, 2011 May 31, 2011 June 30, 2011	June 30, 2011	June 30, 2013
July 31, 2011 August 31, 2011 September 30, 2011	September 30, 2011	September 30, 2013
October 31, 2011 November 30, 2011 December 31, 2011	December 31, 2011	December 31, 2013
January 31, 2012 February 28, 2012 March 31, 2012	March 31, 2012	March 31, 2014
April 30, 2012 May 31, 2012 June 30, 2012	June 30, 2012	June 30, 2014
July 31, 2012 August 31, 2012 September 30, 2012	September 30, 2012	September 30, 2014
October 31, 2012 November 30, 2012 December 31, 2012	December 31, 2012	December 31, 2014

Thus, petitioner's administrative claim for refund filed on December 21, 2012[28], fell within the two-year prescriptive period.

As to the timeliness of petitioner's judicial appeal, Section 112 (C) of the 1997 NIRC, as amended, is instructive, to wit:

> "SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Petitioner, upon filing of its administrative claim[29] on December 21, 2012, also submitted the documents in support thereof. Pertinent portions of said letter-claim are herein quoted for ready reference:

> "x x x. In support of the present application are the following documents:
>
> 1) Duly accomplished BIR Form No. 1914;
>
> 2) Original and latest amended quarterly VAT Returns (BIR Form 2550Q) and Monthly VAT Declarations (BIR Form 2550M) for the calendar year 2011 with supporting schedules or Summary Lists of Sales and Purchases and their corresponding supporting documents such as official receipts, export documents, bills of lading, IERD, bank credit memos, import documents, Bureau of

[28] Exhibit "P-1".
[29] Ibid.

> Customs official receipts, official receipts or sales invoices from local suppliers, etc.;
>
> For minesite purchases, we are submitting a soft copy of the records for the months of February, March, April, May and August, while those for the months of January, June, July and September can no longer be submitted. This is because the said records were included among those which were totally destroyed when TMC's records were burned by the insurgents during an attack on the TMC Minesite on October 2011.
>
> 3) Photocopy of certification issued by Security Bank Corporation as to the export remittance proceeds received by said bank in favor of TMC for the year 2011;
>
> 4) Photocopy of Certificate of Registration No. OCN 8RC0000032012 dated February 14, 2012 and corresponding BIR Form 1905;
>
> 5) Photocopy of Annual Income Tax Return for CY 2011 duly filed with the BIR with attached audited Financial Statements for CY2011 and report of independent auditors;
>
> 6) Letter addressed to the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center requesting a certification that TMC has not filed any similar, previous and/or outstanding application for tax credit and duty drawback with the agency for the period January 1, 2011 to December 31, 2011.
>
> 7) Copies of TMC's PEZA Certificates of Registration.
>
> The documents submitted in support of the 2008 and 2010 claims may be re-submitted if required."

Petitioner also sent a follow-up letter[30] with respondent on July 3, 2013, stating therein that its application for refund was deemed completed with the submission on March 2, 2013, of the Certifications issued by the Department of Finance dated February 4, 2013,[31] confirming the fact that petitioner has not filed any similar claim for the years 2010, 2011 and 2012 as of the date of the said certifications.

[30] Exhibit "P-6".
[31] Exhibits "P-3" to "P-5".

The records do not show that a written notice was sent by the BIR informing petitioner that the documents it submitted were incomplete nor requiring petitioner to submit additional documents that could toll the running of the 120-day period. Thus, the 120-day period started and continued to run from March 2, 2013, the date when petitioner is deemed to have completely submitted the required supporting document. This is in accordance with Revenue Memorandum Circular No. 029-09 which states that:

> "III. *Period within which Refund a Tax Credit of Input Taxes shall be Made.*
>
> Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
>
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;
>
> c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and
>
> d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.
>
> **In cases where taxpayer failed to comply with the above conditions/requirements**, i.e., failure to present

accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request." *(Emphases supplied)*

Nonetheless, respondent claims that this Court has no jurisdiction over the instant case on the ground that no valid administrative claim was filed by petitioner for its failure to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98, in relation to Section 112(C) of the NIRC of 1997, as amended.

The Court is not persuaded.

The issue on respondent's reliance on Revenue Memorandum Order (RMO) No. 53-98, as regards the submission of complete documents, has already been settled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[32], in this wise:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 or **RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.** The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable'." (Emphasis supplied)

[32] G.R. No. 205055, July 18, 2014.

It should, likewise, be stressed that the term "complete documents" should pertain to those documents that are necessary to support the application for refund or tax credit certificate, as determined by the taxpayer. The BIR examiner can require the taxpayer to submit additional documents but the examiner cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. In addition, the BIR ought to know the tax records of all taxpayers.[33]

Moreover, it is well-settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[34]

Thus, applying Section 112(C) of the NIRC of 1997, as amended, to the instant petition, respondent should have acted on petitioner's application for refund/tax credit certificate until June 30, 2013, the end of the 120-day period reckoned from March 2, 2013, the date when petitioner is deemed to have completed the submission of its supporting documents to respondent. Now, counting from June 30, 2013, petitioner had 30 days or until July 30, 2013, within which to appeal its claim for refund before this Court. Thus, the instant Petition was timely filed on July 30, 2013.

The Court shall now proceed to determine petitioner's compliance with the other requisites.

[33] Commissioner of Internal Revenue vs. Dakudao & Sons, Incorporated, CTA EB No. 1150 (CTA Case No. 8501), May 12, 2015, citing the cases of Diageo Philippines v. Commissioner of Internal Revenue, CTA Case Nos. 7846 and 7865, January 16, 2012, citing BPI-Family Savings Bank, Inc. v. Court of Appeals, et al., G.R. No. 122480, April 12, 2000, and Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010.

[34] Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., CTA EB Case No. 474, September 1, 2009; Commissioner of Internal Revenue vs. Toledo Power Company, CTA EB Case No. 589 (CTA Case No. 7471), September 15, 2010; Commissioner of Internal Revenue vs. San Roque Power Corporation, CTA EB No. 657 (CTA Case Nos. 7424 and 7492), April 4, 2012.

II. 2nd Requisite – Petitioner is VAT-registered

It is undisputed that petitioner is a VAT-registered entity with updated Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000046046[35] duly issued by respondent and is also registered with the Bureau of Investments (BOI) with Certificate of Registration No. EP 88-306 dated April 14, 1988.[36]

III. 1st and 5th Requisites – Petitioner had zero-rated sales and the proceeds thereof were received in foreign currency duly accounted for in accordance with BSP rules and regulations.

Petitioner is primarily engaged in the production of nickel saprolite and limonite ore for shipment to customers in Japan, Australia[37] and China.[38] Petitioner avers that these ores are 100% exported and/or shipped to foreign countries, specifically to Japan, Australia and China, as certified to by the BOI in accordance with BOI Revenue Memorandum Order No. 9-00[39]. Petitioner also states that since its export sales were paid for in acceptable foreign currency, specifically, in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), the same are subject to zero percent (0%) VAT, pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value Added Tax on Sale of Goods or Properties.* —
>
> "(A) *Rate and Base of Tax.* — xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term **`export sales'** means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the

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[35] Exhibit "P-14".
[36] Pars. 3 to 4, Stipulated Facts, JSFI, Docket, p. 82.
[37] As indicated in the Audited Financial Statements, petitioner's shipments to Australia were only for the year 2008.
[38] Corporate Information and Status of Operation, Note 1, Audited Financial Statements, Exhibits "P-19-A" to "P-19-D".
[39] Exhibits "P-7" to "P-11".

> goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas;* xxx

Thus, pursuant to the afore-quoted legal provisions, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1 (A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (a) the sales invoice as proof of sale of goods; (b) the export declarations and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In addition, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

To prove its zero-rated sales for the years 2008, 2010 and 2011, petitioner submitted various documents such as sales invoices, bank credit advices, and export documents (i.e. bills of lading, Mines and Geosciences Bureau Transport Permits)[40].

Since the present petition pertains to a refund of the excess input VAT from purchases of capital goods exceeding ₱1Million in 2008, 2010 and 2011, which were amortized in 2011 and 2012, the Court focused on the verification of the zero-rated sales made in 2011 and 2012 where the amortization of the input VAT from capital goods exceeding ₱1Million can be attributed

Records show that petitioner's Quarterly VAT Returns[41] for the years 2011 and 2012 reflected total zero-rated sales amounting to ₱2,777,108,162.18[42] and ₱3,125,030,692.01[43], respectively. Of these reported zero-rated sales, petitioner was able to substantiate only the amount of ₱2,751,941,152.69[44] for the year 2011, while no document was submitted to substantiate the zero-rated sales for the year 2012.

[40] Exhibits "P-16-A-1" to "P-16-A-12-8", "P-16-B-1" to "P-16-B-13-25.8", and "P-16-C-1" to "P-16-C-34.38".
[41] Exhibits "P-20-C-3", "P-20-C-6", "P-20-C-9", "P-20-C-12", "P-20-D-3.1", "P-20-D-6.1", "P-20-D-9", "P-20-D-12.1", inclusive of sub-markings.
[42] Exhibit "P-20-C".
[43] Exhibit "P-20-D".
[44] Exhibit "P-16-C".

Based on the report of the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Maria Gracia L. Morfe, out of the 2011 zero-rated sales substantiated by petitioner, the amount of ₱159,366,320.31[45] does not have supporting bank credit advices, hence, shall be denied VAT zero-rating due to lack of proof of foreign currency payment.

In addition to the ICPA's findings, the zero-rated sales in 2011 amounting to ₱54,362,836.48 shall be disallowed for the following reasons:

Exhibit No.	Customer	Sales Disallowed in USD	Sales Disallowed in Peso
Sales with valid zero-rated VAT invoice and bill of lading but with INSUFFICIENT bank credit advice			
P-16-C-8	DH KINGSTONE HOLDING CO., LTD.	$ 336,899.55	₱ 14,611,333.48
Sales with valid zero-rated VAT invoice and bank credit advice but WITHOUT bill of lading			
P-16-C-22	DH KINGSTONE HOLDING CO., LTD.	935,880.00	39,751,503.00
	TOTAL	**$ 1,272,779.55**	**₱ 54,362,836.48**

In sum, out of the total reported sales in the 2011 VAT returns amounting to ₱2,777,108,162.18, only the amount of ₱2,538,211,995.90 represents petitioner's valid zero-rated sales which shall be considered for the claim for refund, broken down as follows:

2011 Zero-rated sales per VAT return			₱ 2,777,108,162.18
Less: Unsubstantiated sales			
Zero-rated sales per VAT return	₱2,777,108,162.18		
Zero-rated sales per Schedule	(2,751,941,152.69)	₱ 25,167,009.49	
Without bank credit advices per the ICPA report		159,366,320.31	
Additional Disallowances per this Court's verification		54,362,836.48	238,896,166.28
2011 Valid Zero-Rated Sales			**₱2,538,211,995.90**

For the year 2012, petitioner did not furnish this Court the required documents (i.e., sales invoices, bills of lading, airway bills and proof of receipt of foreign currency payments) to prove the zero-rated sales arising from such year. Consequently, the input VAT claim pertaining to 2012 cannot be granted since the refund/credit of input VAT under Section 112(A) of the 1997 NIRC, as amended, is premised on the existence of zero-rated or effectively zero-rated sales.

[45] Exhibits "P-16-33" to "P-16-34.2" as summarized in Exhibit "P-16-C".

4th Requisite – Petitioner had input VAT attributable to zero-rated sales

As to petitioner's compliance with the fourth requisite, the Court will have to ascertain the following: (1) if there is a valid input VAT incurred; and (2) if the input VAT is attributable to the zero-rated sales.

As pointed out earlier, the instant Petition covers the portion of input VAT amortized in the years 2011 and 2012 arising from purchases of capital goods exceeding ₱1Million in the years 2008, 2010 and 2011. Hence, the Court must determine the validity of the input tax on capital goods exceeding ₱1Million purchased in the said years and ascertain if such input VAT was amortized per books and VAT returns.

Scrutiny of the Quarterly VAT Return for the first quarter of 2011[46] reveals that the amount under "Input Tax VAT Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter" of ₱4,399,759.35[47] does not include the input VAT arising from purchases in the year 2008. It only consists of the unamortized input VAT from purchases/importation of capital goods in the years 2009 and 2010 as evidenced by Schedule 3 attached to the Monthly VAT Declaration for the month of January 2011[48] and to the Quarterly VAT Return for the second quarter of 2011[49]. The composition of the ₱4,399,759.35 input VAT is broken down as follows:

Description	Date of Purchase	Net of VAT	Balance of Input VAT
2 Toyota Hi-lux	12/3/2009	₱ 2,496,428.57	₱ 234,664.26
Mitsubishi Lancer	12/18/2009	1,026,785.71	96,517.87
Toyota Hi-lux	2/19/2010	1,230,357.17	120,575.04
Toyota Hi-lux	2/26/2010	1,245,982.17	122,106.29
5 Volvo Dump Truck	6/3/2010	34,150,500.00	3,619,953.00
2 Mitsubishi Strada	6/8/2010	1,942,857.14	205,942.89
Total			**₱ 4,399,759.35**

Hence, the documents supporting the 2008 capital goods purchases with the related input VAT of ₱34,131,592.27 and amortizations in the amounts of ₱8,508,951.64 and ₱4,519,167.75 for the years 2011 and 2012, respectively, shall be disregarded.

[46] Exhibit P-20-C-3.
[47] Line 20B, Exhibit P-20-C-3.
[48] Exhibit P-20-C-1.3.
[49] Exhibit P-20-C-6.2.

Further examination of the documents supporting the 2010 and 2011 purchases/importations of capital goods exceeding ₱1Million resulted to additional disallowances of ₱8,406,468.85 for the reasons stated below:

Exhibit No.	Supplier	Date / Period Claimed	Amount of Input VAT (in PhP)	Duplicated Exhibit	Date / Period Claimed	Amortized Input VAT Claim in 2011 (in PhP)	Amortized Input VAT Claim in 2012 (in PhP)
Importations wherein the total amount of customs duties, import processing fees and VAT indicated in the Import Entry & Internal Revenue Declaration (IERD) does not tally with that reflected in the supporting bank credit advice and/or bank passbook, hence shall be considered as without valid proof of input VAT payment as required under Section 4.110-8(a)(1) of RR No. 16-05							
P-17-G to P-17-G-4	Volvo Truck Corp.	06/03/10	4,098,060.00			819,612.00	819,612.00
P-17-J to P-17-J-3, P-17-J-5 to P-17-J-6	Volvo Truck Corp.	06/30/11	3,084,516.00			449,825.25	771,129.00
		Subtotal	**7,182,576.00**			**1,269,437.25**	**1,590,741.00**
Local purchases with valid VAT invoice but is DUPLICATED as evidence for other local purchases							
P-18-G	Toyota Otis, Inc.	1/28/10	147,642.86	P-18-P-4	10/27/2011	29,528.57	29,528.57
P-18-L	Toyota Pasong Tamo	7/28/11	147,642.86	P-18-R-3	10/27/2011	14,764.29	29,528.57
P-18-M	Toyota Pasong Tamo	7/28/11	147,642.86	P-18-R-4	10/27/2011	147,649.29	29,528.57
		Subtotal	**442,928.56**			**191,942.15**	**88,585.71**
Local purchases with VAT invoice but NOT dated in violation of Section 113(B)(3) of the NIRC of 1997, as amended							
P-18-N	Toyota Pasong Tamo	8/28/11	170,464.29			14,205.36	34,092.86
P-18-O	Toyota Pasong Tamo	8/28/11	170,464.29			14,205.36	34,092.86
P-18-P-4	Toyota Otis, Inc.	10/27/11	146,678.57			7,333.93	29,335.71
P-18-R-3	Toyota Pasong Tamo	10/27/11	146,678.57			7,333.93	29,335.71
P-18-R-4	Toyota Pasong Tamo	10/27/11	146,678.57			7,333.93	29,335.71
		Subtotal	**780,964.29**			**50,412.51**	**156,192.85**
TOTAL DISALLOWED INPUT VAT			**8,406,468.85**			**1,511,791.91**	**1,835,519.56**

As for the local purchases with valid VAT invoices, but are only duplicates of other pieces of evidence, the same shall only be allowed as to the period when the input VAT validly applies.

Therefore, only the net total of ₱13,913,347.43 shall be considered by this Court as valid input VAT incurred by petitioner:

Total input VAT claim from capital goods purchases exceeding ₱1Million		
Year 2008	₱34,131,592.27	
Year 2010	4,628,363.58	
Year 2011	17,691,452.70	₱ 56,451,408.55

Less: Disallowances		
Input VAT from 2008 purchases/importations	₱34,131,592.27	
Additional Disallowances	8,406,468.85	42,538,061.12
Input VAT properly substantiated		**₱13,913,347.43**

Proceeding therefrom, the duly substantiated input VAT of ₱13,913,347.43 is amortized as reflected below:

					2011		2012	
Supplier	**Date**	**Input VAT (in PhP)**	**Useful Life**	**Monthly Amortization (in PhP)**	**No. of Mos.**	**Amortization (in PhP)**	**No. of Mos.**	**Amortization (in PhP)**
2010 Purchases								
Diamond Motor Corp.	6/8/10	116,571.43	60	1,942.86	12	23,314.29	12	23,314.29
Diamond Motor Corp.		116,571.43	60	1,942.86	12	23,314.29	12	23,314.29
Toyota Cubao, Inc.	7/1/10	149,517.86	60	2,491.96	12	29,903.57		29,903.57
Subtotal		**382,660.72**				**76,532.15**		**76,532.15**
2011 Purchases/Importations								
Volvo Truck Corp.	4/19/11	12,021,962.00	48	250,457.54	9	2,254,117.88	12	3,005,490.50
Diamond Motor Corp.	4/1/11	131,250.00	60	2,187.50	9	19,687.50	12	26,250.00
Volvo do Brasi Veiculos Ltda.	5/10/11	918,689.00	48	19,139.35	8	153,114.83	12	229,672.25
Car & Recreational Vehicles Inc.	6/9/11	111,321.43	60	1,855.36	7	12,987.50	12	22,264.29
		17,678.57	60	294.64	7	2,062.50	12	3,535.71
Toyota Otis Inc.	10/13/11	146,678.57	60	2,444.64	3	7,333.93	12	29,335.71
Toyota Otis Inc.	10/17/11	183,107.14	60	3,051.79	3	9,155.36	12	36,621.43
Subtotal		**13,530,686.71**				**2,458,459.49**		**3,353,169.89**
Total		**13,913,347.43**				**2,534,991.65**		**3,429,702.04**

However, as discussed earlier, only the amortizations during 2011, amounting to ₱2,534,991.65, can be given merit by this Court. Hence, the amount being claimed by petitioner for the year 2012 must be denied in totality.

The Court further verified if the amounts claimed for refund were accordingly deducted from the subsequent VAT returns to ensure that the same will no longer have any possibility of application to future output tax.

As for the claimed input VAT amortization of ₱7,327,774.57 arising from 2011 capital goods purchases, the same remained unutilized until it was deducted as "Any VAT Refund/TCC Claimed" from petitioner's total available input taxes as of December 31, 2012[50].

However, with regard to the claimed input VAT amortization of ₱1,462,147.28 arising from 2010 capital goods purchase, the Court cannot find any deduction as "VAT Refund/TCC Claimed" in the petitioner's subsequent VAT returns. Consequently, the Court cannot ascertain if the same will no longer have the possibility of future application against output tax. Hence, this Court is constrained to further disallow all input tax amortization arising from 2010 purchases amounting to ₱76,532.15.

Accordingly, only the amortized input VAT of ₱2,458,459.49 arising from capital goods purchases exceeding ₱1Million in the year 2011 may be refunded.

Since petitioner did not submit VAT invoices/receipts proving the existence of its reported input VAT from Domestic Purchases of Goods not Exceeding ₱1Million, 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 petitioner's mere allegation that the subject input VAT are all directly attributable to its zero-rated sales, petitioner 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 petitioner'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[51]:

	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

[50] Line 23D, Exhibit "P-20-D-12.1"
[51] Exhibit "P-20-C", "P-20-C-3", "P-20-C-6", "P-20-C-9" and "P-20-C-12".

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 petitioner 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		**₱ 1,997,381.93**

In light of the foregoing, petitioner is entitled to its claim for refund/credit in the amount of ₱1,997,381.93, representing its excess input VAT amortization on capital goods purchases exceeding ₱1Million in the year 2011.

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 ₱1Million in the year 2011.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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