REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PHIL. GOLD PROCESSING & REFINING CORP.,
Petitioner,

CTA Case Nos. 8327 & 8328

- versus-

Members:

Bautista, *Chairperson*
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 22 2013 10:03 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This case is a consolidation of two Petitions for Review separately filed by petitioner to seek the refund or the issuance of tax credit certificate in the aggregate amount of P417,437,165.27, allegedly representing unutilized input value-added tax (VAT) arising from petitioner's importations of goods and domestic purchases of goods and services attributable to its zero-rated sales for the fourth quarter of fiscal year (FY) ending June 30, 2009 to the second quarter of FY ending June 30, 2010, broken down as follows:

CTA Case No.	Period Covered		Amount
8327	4th Quarter – FY 2009	April to June 2009	P 82,007,340.43
8328	1st Quarter – FY 2010	July to Sept. 2009	166,571,571.04
	2nd Quarter – FY 2010	Oct. to Dec. 2009	167,858,253.80
		TOTAL	**P417,437,165.27**

FACTS

Petitioner Phil. Gold Processing and Refining Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with registered address at

3/F Corinthian Plaza, Paseo de Roxas, Makati City.[1] Petitioner is a VAT-registered taxpayer, with Tax Identification No. 004-498-686-000.[2] It is registered as a "non-pioneer with pioneer incentives" enterprise with the Board of Investments (BOI) as evidenced by BOI Certificate of Registration No. 2008-042.[3]

Petitioner's primary purpose is to "engage in the business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatever process, method or mode in which such activities can be carried out; and in conjunction with the foregoing to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment whatsoever which are necessary and incidental in carrying out the foregoing purposes, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof."[4]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed with the BIR its Quarterly VAT Returns for the 4th quarter of FY ending June 30, 2009 to the 2nd quarter of FY ending June 30, 2010 on the following dates:

PERIOD COVERED	ORIGINAL RETURN	AMENDED RETURN
4th Qtr – FY June 2009 (April – June 2009)	July 27, 2009	April 13, 2011
1st Qtr – FY June 2010 (July – Sept. 2009)	September 30, 2009	April 13, 2011
2nd Qtr – FY June 2010 (Oct. – Dec. 2009)	January 25, 2010	April 13, 2011

Subsequently, petitioner filed with the BIR an administrative claim for refund of its alleged unutilized input VAT attributable to its zero-rated sales for the 4th quarter of FY ending June 30, 2009 to the 2nd quarter of FY ending June 30, 2010, detailed as follows:

[1] Exhibits "B", "B-1", and "B-2".
[2] Exhibit "C".
[3] Exhibit "D".
[4] Exhibit "B-1".

PERIOD COVERED	DATE FILED	AMOUNT
4th Qtr – FY June 2009 (April – June 2009)	March 25, 2011	P 82,007,340.43
1st Qtr – FY June 2010 (July – Sept. 2009)	April 1, 2011	P 166,571,571.04
2nd Qtr – FY June 2010 (Oct. – Dec. 2009)	April 1, 2011	P 168,858,253.80

On August 25, 2011, petitioner filed before this Court a judicial claim for refund of its purported unutilized input VAT attributable to its zero-rated sales for the 4th quarter of FY ending June 30, 2009. It was docketed as CTA Case No. 8327.

On August 26, 2011, petitioner filed before this Court a judicial claim for refund of its alleged unutilized input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of FY ending June 30, 2010. It was docketed as CTA Case No. 8328.

Respondent filed her Answers to CTA Case Nos. 8327 and 8328 on October 7, 2011, and October 12, 2011, respectively.

In CTA Case No. 8327, respondent, raised, among others, the following defenses: that the amount allegedly representing unutilized or unapplied creditable input tax was not properly documented; that petitioner has not complied with Section 112 with respect to the periods for claiming tax refund/credit; and, that petitioner has not submitted complete documents for its administrative claim.

In CTA Case No. 8328, respondent argued: that petitioner failed to file a timely and appropriate written claim for refund; that petitioner failed to exhaust all administrative remedies thus the judicial claim is premature; and, that petitioner failed to submit complete supporting documents.

On November 25, 2011, petitioner filed a Motion for Consolidation[5] of CTA Case No. 8327 and CTA Case No. 8328, arguing that the two cases involved the same parties and common questions of law and facts. The motion was granted by this Court in its Resolution[6] dated December 14, 2011.

During trial, petitioner presented and formally offered its pieces of testimonial and documentary evidence. On the other hand, respondent, through counsel, manifested that there is no Report of Investigation with regard to petitioner's administrative claim and that she is submitting the case for

[5] Docket, pp. 372-374.
[6] Docket, p. 401.

decision.[7] As a consequence, counsels for the parties were given thirty (30) days within which to file their respective Memorandum.

The case was submitted for decision on March 26, 2013, considering petitioner's Memorandum filed on March 25, 2013 and respondent' Memorandum filed on March 5, 2013.[8]

ISSUES[9]

The following issues are submitted by the parties for this Court's resolution:

1. Whether petitioner is entitled to a refund and/or issuance of a tax credit certificate in the amount of Php82,007,340.43, Php166,571,571.04, and Php168,858,253.80 representing unutilized input VAT for the 4th Quarter of fiscal year ending June 30, 2009 and the 1st and 2nd Quarters of fiscal year ending June 30, 2010, respectively.

2. Whether this Honorable Court has jurisdiction to act on this petition."

The enumerated issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P82,007,340.43, P166,571,571.04, and P168,858,253.80 representing its alleged unutilized input VAT for the 4th quarter of FY ending June 30, 2009 and the 1st and 2nd quarters of FY ending June 30, 2010, respectively.

DISCUSSION/RULING

Section 112 of the NIRC of 1997, as amended, specifies the requirements for the refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, *to wit:*

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[7] Docket, p. 1064.
[8] Docket, p. 1097.
[9] Stipulated Issues, Consolidated Joint Stipulation of Facts and Issues, docket, pp. 376-377.

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

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

xxx

(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."

Based on the foregoing provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. That there must be zero-rated sales or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability; and
5. That the claim for refund was filed within the two-year prescriptive period.

The Court will now determine the timeliness of the filing of the instant claim, both in the administrative and judicial levels.

Section 112(A) of the NIRC of 1997, as amended, categorically provides that the application for tax credit certificate or refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the 4th quarter of FY ending June 30, 2009 as well as the 1st and 2nd quarters of FY ending June 30, 2010 which closed on June 30, 2009, September 30, 2009, and December 31, 2009. Counting two years from said dates, petitioner had until June 30, 2011, September 30, 2011, and December 31, 2011, respectively, within which to file its administrative claim for refund or issuance of tax credit certificate. Thus, petitioner's administrative claims for refund were seasonably filed on March 25, 2011 and April 1, 2011, as shown below:

CTA Case No.	Period Covered	Close of the Taxable Quarter	Last Day to File Administrative Claim	Date of Filing of Administrative Claim	Exhibit
8327	4th Qtr. - FY June 30, 2009	June 30, 2009	June 30, 2011	March 25, 2011	E
8328	1st Qtr. - FY June 30, 2010	Sept. 30, 2009	Sept. 30, 2011	April 1, 2011	F-1
	2nd Qtr. - FY June 30, 2010	Dec. 31, 2009	Dec. 31, 2011		F-2

Anent the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides that the BIR Commissioner has 120 days from the date of submission of complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the BIR Commissioner, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the BIR Commissioner. However, if after the 120-day period, the BIR Commissioner fails to act on the application for refund or tax credit, the remedy of the taxpayer is to appeal the inaction of the BIR Commissioner to this Court within 30 days.

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates of petitioner's claims for refund:

CTA Case No.	Period Covered	Date of Filing of Administrative Claim	End of 120-day period	End of 30-day period to appeal	Date of Filing of Judicial Claim
8327	4th Qtr. – FY 2009	Mar. 25, 2011	July 23, 2011	Aug. 22, 2011	Aug. 25, 2011
8328	1st Qtr. – FY 2010 2nd Qtr – FY 2010	Apr. 1, 2011	July 30, 2011	Aug. 29, 2011	Aug. 26, 2011

Clearly from the foregoing table, petitioner's judicial claim for the 4th quarter of FY ending June 30, 2009 had already prescribed having been filed beyond August 22, 2011, the end of the 30-day period to appeal before this Court. Thus, petitioner is barred from claiming refund of the input taxes for the 4th quarter of FY ending June 30, 2009 in the amount of P82,007,340.43. CTA Case No. 8327 is therefore dismissed on the ground of prescription.

However, petitioner's judicial claims for the 1st and 2nd quarters of FY ending June 30, 2010 in the respective amounts of P166,571,571.04 and P168,858,253.80 totaling P335,429,824.84 were timely filed before this Court.

The Court will now proceed to discuss the remaining requisites of petitioner's claim for the 1st and 2nd quarters of FY ending June 30, 2010 in the total amount of P335,429,824.84.

Petitioner is a VAT taxpayer[10] engaged in the business of processing, milling, crushing, refining, smelting,

[10] Exhibit "C".

concentrating, amalgamating and beneficiating mineral resources[11] and is registered with the Board of Investments as a "New Producer of Gold and Silver Doré".[12]

For the 1st and 2nd quarters of FY ending June 30, 2010, petitioner allegedly exported 100% of its mineral products to Metalor Technologies S.A. Refining Corp. in Switzerland and generated sales therefrom in the respective amounts of P1,402,634,124.57 and P1,850,249,674.87 or in the sum of P3,252,883,799.44. These sales were allegedly paid in U.S. Dollars through inward remittance, in accordance with the rules of the *Bangko Sentral ng Pilipinas*. Petitioner posits that such export sales are subject to zero percent (0%) VAT under 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 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 (BSP);"

Based on the above quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present:

1. That there was sale and actual shipment of goods from the Philippines to a foreign country;

[11] Exhibits "B", "B-1", and "B-2".
[12] Exhibit "D".

2. That the sale was made by a VAT-registered person;
3. That the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. That the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –
>
> (A) Invoicing Requirements. – A VAT-registered person shall issue:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> xxx
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt. – The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> xxx
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt; /

xxx

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

"SEC. 4.113-1. Invoicing Requirements. –

(A) A VAT-registered person shall issue: -

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx

Only VAT-registered persons are required to print their **TIN followed by the word 'VAT' in their invoice** or official receipts. Said documents shall be considered as a 'VAT invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) **Information contained in VAT invoice or VAT official receipt**. – The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; xxx

xxx

(c) If the sale is subject to zero percent (0%) VAT, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;" (*Emphasis supplied*)

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1) and (2)(c) of 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: (1) the sales invoice as proof of sale of goods; (2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) 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 other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Moreover, the sales invoices supporting the export sales must be registered with the BIR as mandated under Sections 237 and 238 of the NIRC of 1997, as amended, and must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In the instant case, to substantiate its export sales covering the 1st and 2nd quarters of FY ending June 30, 2010, and the foreign currency proceeds thereof, petitioner proffered before this Court documents such as:

1. Summary of Sales for July to December 2009[13];
2. Export documents[14] such as provisional invoices, bills of lading, bar list, packing list, export declarations and airway bills;
3. Official receipts[15];
4. HSBC Certification[16]; and
5. BNP Paribas Consolidated Cash Statement[17].

While these documents show that petitioner's products were actually sold and shipped abroad and in consideration thereof, petitioner received foreign currency payments inwardly remitted in accordance with the BSP rules and regulations; the Court noted that petitioner failed to meet the invoicing requirements for zero-rated export sales.

The invoices submitted by petitioner were mere provisional invoices which do not bear petitioner's TIN-VAT

[13] Exhibits "MM-1" to "MM-3".
[14] Exhibits "P-169" to "P-325".
[15] Exhibits "O-1" to "O-19".
[16] Exhibit "Q".
[17] Exhibit "R".

number and the word "zero-rated" was not written or imprinted thereon in violation of Sections 113(A)(1) and (B)(1) and (2)(c) of the NIRC of 1997, as amended. It is well-settled that petitioner's failure to comply with the invoicing requirements such as the imprinting of the word "zero-rated" on its invoices is fatal to its claim for refund of input VAT on zero-rated sales.[18]

Petitioner also failed to show that the provisional invoices it submitted were duly registered with the BIR as mandated under Sections 237 and 238 of the NIRC of 1997, as amended. Without duly registered VAT sales invoices containing the required information, particularly, petitioner's TIN-VAT number and the imprinted word "zero-rated", petitioner's reported export sales for the 1st and 2nd quarters of FY ending June 30, 2010 in the amount of P3,252,883,799.44 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Consequently, petitioner's claimed input VAT allegedly attributable thereto in the amount of P335,429,824.84 cannot be granted.

Accordingly, petitioner's compliance with the other requisites for refund of unutilized input VAT will no longer be discussed.

WHEREFORE, premises considered, the instant Petitions for Review are hereby **DENIED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CONCURS:

LOVELL R. BAUTISTA
Associate Justice

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[18] *Panasonic Communications Imaging Corporation of the Philippines* (formerly *Matsushita Business Machine Corporation of the Philippines*) *v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010; *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010; *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2010; and *Eastern Telecommunications Philippines, Inc. v. The Commissioner of Internal Revenue*, G.R. 168856, August 29, 2012.

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice