REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6384

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 12 2004

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DECISION

This case involves a claim for refund of the alleged excess VAT input taxes paid by petitioner on its domestic purchases of taxable goods and services and importation of goods in the amount of SIXTEEN MILLION ONE HUNDRED FORTY ONE THOUSAND SIX HUNDRED FORTY TWO AND 89/100 PESOS (P 16,141,642.89) covering the period from January 1, 2000 to December 31, 2000.

The antecedent facts are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 4th Floor, Solid Mills Building, Dela Rosa Street, Legaspi Village, Makati City. It is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores and as such, it was registered as a VAT-entity and was duly

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issued by herein respondent a Certificate of Registration bearing RDO Control No. 94-470-000373.

From January 1, 2000 to December 31, 2000, petitioner alleged that it had generated the amount of Seven Hundred Eighty Two Million Five Hundred Twenty Thousand Six Hundred Thirty Four and 05/100 Pesos (P 782,520,634.05) as its zero-rated export sales which were paid for in acceptable foreign currency and accounted for in accordance with the rules of the Bangko Sentral ng Pilipinas (BSP), pursuant to Section 106(a)(2)(a)(1) of the Tax Code. Likewise, for the same period, petitioner claimed that it had paid the amount of Thirteen Million Four Hundred Thirty Nine Thousand Three Hundred Ninety Three and 89/100 Pesos (P 13,439,393.89) as VAT input taxes on its domestic purchases of taxable goods and services, and the amount of Two Million Seven Hundred Two Thousand Two Hundred Forty Nine Pesos (P 2,702,249,00) on its importation of capital goods, totaling Sixteen Million One Hundred Forty One Thousand Six Hundred Forty Two and 89/100 Pesos (P 16,141,642.89), details of which are as follows:

			INPUT VAT		
EXHIBIT	YEAR 2000	ZERO-RATED SALES	DOMESTIC PURCHASES	IMPORTATION	TOTAL
K	1st quarter	P 189,025,432.59	P 1,388,639.83		P 1,388,639.83
Q	2nd quarter	200,659,633.26	2,153,225.06	P2,702,249.00	4,855,474.06
W	3rd quarter	238,823,900.69	3,676,046.62		3,676,046.62
CC	4th quarter	154,011,667.51	6,221,482.38	-	6,221,482.38
		P 782,520,634.05	P 13,439,393.89	P2,702,249.00	P16,141,642.89

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On December 21, 2001, petitioner filed with the respondent, through its Excise Taxpayer's Assistance Division, an application for tax credit/refund of VAT input taxes paid on its domestic purchases of taxable goods and services and importation of goods amounting to Sixteen Million One Hundred Forty One Thousand Six Hundred Forty Two and 89/100 Pesos (P 16,141,642.89), in accordance with Section 112 in relation to Section 106 (A)(2)(a)(1) of the Tax Code (*Exhibit II*).

Petitioner, without any response from respondent, filed this present Petition for Review on February 1, 2002, before it could be barred by prescription.

On March 6, 2002, respondent filed his Answer and averred the following as his Special and Affirmative Defenses:

(6) Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau;

(7) The petition was filed without compliance with the conditions precedent for claiming input tax refund because there is no showing that petitioner has submitted complete documents in support of its claim, in contravention with the requirements of Section 112(D) of the Tax Code. Said provision reads:

> "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 Subsections (A) and (B) hereof;"

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(8) Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been made in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;

(9) Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204(c) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;

(10) 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 as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).

To prove its case, petitioner presented testimonial and documentary evidence. Respondent, on his part, submitted the case for decision based on the pleadings (*page 103, CTA Records*). He likewise failed to submit his Memorandum. On November 12, 2003, this case was submitted for decision.

Petitioner and respondent stipulated the following as the issues of the case:

(1) Whether or not petitioner's sales qualify as zero-rated sales;

(2) Whether or not petitioner substantiated its claim with supporting documents required by law;

(3) Whether or not the excess input taxes claimed for refund by petitioner have not been applied against any output taxes and have not been carried-over to the succeeding quarter or quarters.

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We now rule on the first issue.

Petitioner argues that since it is a VAT- registered entity whose export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, it follows that its sales are subject to zero percent (0%) rate pursuant to Section 106 (A)(2)(a)(1) of the Tax Code which provides:

> **Section 106. Value-Added Tax on Sale of Goods or Properties. –**
>
> (A) x x x
>
> (1) x x x
>
> (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);

Petitioner further contends that since its VAT input taxes of P16,141,642.89 for the period January 1, 2000 to December 31, 2000 were paid

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on domestic purchases of taxable goods and services and on importation of capital goods and made in the course of trade and business, undiminished by any VAT output tax, not carried forward to the succeeding quarter or quarters subsequent to the filing of the claim and are duly supported by VAT-registered sales invoices and/or official receipts, it follows that it is entitled to refund of said VAT input taxes pursuant to Section 112 (A) and (B) of the Tax Code, to state:

> **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.
>
> (B) Capital goods. - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased to the extent that such input taxes have not been applied against output taxes. The

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> application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

We do not agree.

A close scrutiny of the documentary evidence presented by herein petitioner, particularly export sales invoices (***Exhibits D, D-5, D-8, D-18, D-23, D-28, D-46, D-51, D-56, D-61, D-66, D-71, D-77, D-82, D-87, D-92 and D-97***), showed that the same failed to comply with the invoicing requirements provided for under Section 4.108-1 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code, pertinent provisions of which are quoted hereunder for easy reference:

> "**Section 4.108-1. Invoicing Requirements.** – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
>
> 1. the name, TIN, and address of seller;
> 2. date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
> 5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales;** and
> 6. the invoice value or consideration.
>
> (Emphasis supplied)
>
> **Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –**

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(A) Invoicing Requirements. - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt;

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

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

Section 237. Issuance of Receipts or Sales or Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (P 100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover

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> payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser. x x x"

The court noted that all the export sales invoices do not show the imprinted word "zero-rated". Moreover, some of the invoices do not have the "TIN-V" or "TIN-VAT" (***Exhibits D-56, D-61, D-66, D-71, D-77, D-82, D-87, D-92 and D-97***). Clearly, these invoices lack the necessary information required by law and regulations. In the case of ***Intel Philippines Manufacturing, Inc. vs Commissioner of Internal Revenue, CTA Case No. 6040, October 24, 2003***, this court had denied petitioner Intel's claim for refund, emphasizing that failure to present the required valid VAT export invoice is fatal to its claim for refund.

Additionally, although petitioner was able to present other documents, such as the Bills of Lading, Export Declarations/ Permits, bank credit/debit advices and ore transport permits to prove actual exportation of its products (***Exhibits D-1 to D-4, D-6, D-7, D-9 to D-12, D-14 to D-17, D-19 to D-22, D-24 to D-27, D-29 to D-32, D-34 to D-37, D-39 to D-42, D-44, D-45, D-47 to D-50, D-52 to D-55, D-57 to D-60, D-62 to D-65, D-67 to D-70, D-72 to D-76, D-78 to D-81, D-83 to D-86, D-88 to D-91, D93 to D-96, D-98 to D-100***), the court finds these documents insufficient. In the case of ***Commissioner of Internal Revenue vs.***

Philippine Bobbin Corporation, CA-G.R. SP No. 59452, February 19, 2001, the Court of Appeals ruled that these documents are not enough to be entitled to a claim of refund. Rather, these documents, together with the valid sales invoices, should be taken collectively as the best means to prove the exportation of goods, thus:

> *"By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100 (a)(2) of the* ***National Internal Revenue Code*** *(then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.*
>
> *"Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods." (Underscoring supplied)*

Thus, this court holds that petitioner's export sales of P782,520,634.05 for taxable year 2000 cannot qualify for zero-rating and

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petitioner is not entitled to a refund of the input VAT attributable thereto. However, as regards petitioner's claim for refund of input VAT on capital goods purchased for the taxable year 2000, we rule that petitioner is entitled to a refund. Section 112(B) of the Tax Code, in relation to Section 4.106-1 of Revenue Regulations No. 7-95, provides:

> **Section 112. Refunds or Tax Credits of Input Tax. –**
>
> Xxx xxx xxx
>
> (B) Capital Goods. – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.
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> **Section 4.106-1. Refunds or tax credits of input tax (a) Zero-rated sales of goods or properties or services – x x x**
>
> (b) Capital goods. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

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> *"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services."*

Based on the above-mentioned provisions, petitioner must show compliance with the following requirements:

(1) that it is a VAT-registered person or entity

(2) the input taxes claimed by petitioner were paid on capital goods

(3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts

(4) the input taxes have not been applied against its output tax liability;

(5) the administrative claim for refund was seasonably filed ***(Telecommunications Technologies Philippines vs Commissioner of Internal Revenue, CTA Case No. 6018, November 24, 2003; Air Liquide Philippines, Inc. vs Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000)***

The fact that petitioner is a VAT registered entity is not disputed (***par. a, Stipulated Facts***). Also, for taxable year 2000, petitioner actually paid input VAT amounting to P2,926,199.55 on purchases of computers, air conditioning units, hydraulic excavators, wheel loader and track type tractor. These purchases fall within the meaning of capital goods under Section 4.106-1(b) of Revenue Regulations No. 7–95 which defines the same as goods or properties

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with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services. Moreover, these were duly covered by valid VAT invoices and/or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95. Below is the breakdown of the input taxes of P2,926,199.55:

Supplier	Exhibit	Reference No.	Input VAT
Marubeni Corporation	B-490-A	SN22942701	P 1,010,715.00
Nisho Iwai Corp.	B-490-C	SN22942577	717,293.00
Nisho Iwai Corp.	B-490-E	SN22942586	974,211.00
Total Input VAT from importation			**P 2,702,219.00**

Supplier	Exhibit	Reference No.	Input VAT
Western Marketing Corp.	B-197	CSI 310793	P 2,460.00
Computers Et Cie Phils, Inc.	B-218	SI06463	2,702.36
Micro Dynamix Computer System	B-278	SI1503	7,454.55
Civic Merchandising, Inc.	B-388	SI17652	205,909.09
First Datacorp	B-632	SI22500	5,454.55
Total Input VAT from domestic purchase			**P 223,980.55**
Total Input VAT on capital goods			**P 2,926,199.55**

Records show that the above input taxes of P2,926,199.55 were not applied against any output VAT liability (***Exhibits SS-1 to SS-3, inclusive of submarkings***). Finally, petitioner's claim for refund was timely filed within the two-year prescriptive period both in the administrative and judicial levels counted from the respective filing of the quarterly VAT returns for taxable year 2000 (***Atlas Consolidated Mining and Development Corporation vs.***

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Commissioner of Internal Revenue, Resolution dated July 20, 1998).

WHEREFORE, the Petition for Review is hereby *PARTIALLY GRANTED.* Accordingly, respondent is **ORDERED** to **REFUND** to petitioner the amount of **TWO MILLION NINE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED NINETY NINE AND 55/100 PESOS (P2,926,199.55)** representing input VAT paid on capital goods purchased for the taxable year 2000.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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