REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1039
(CTA CASE NO. 7884)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUN 10 2014 Apolinario 9:05 a.m.

x- -x

DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by Taganito Mining Corporation on July 22, 2013 appealing the Decision dated November 13, 2012 and the Resolution dated June 5, 2013 respectively, rendered by the then First Division[1] and the Special First Division[2] of this Court in CTA Case No. 7884 entitled "*Taganito Mining Corporation vs. Commissioner of Internal Revenue*," which denied Taganito Mining Corporation's claim for refund or issuance of a tax credit certificate representing the un-refunded portion of excess input value-added tax (VAT) on its importation of capital goods from January 1, 2007 to December 31, 2007 in the total amount of **SEVEN**

[1] Composed of Presiding Justice Ernesto D. Acosta as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Esperanza R. Fabon-Victorino.
[2] Composed of Associate Justice Erlinda P. Uy as Acting Chairperson and Associate Justice Esperanza R. Fabon-Victorino.

MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED FIFTY PESOS AND 29/100 (Php7,572,550.29).

THE FACTS

Petitioner is a duly organized and existing domestic corporation, with address at 4th Floor, Solid Mills (now BMMC) Building, Dela Rosa Street, Legaspi Village, Makati City.[3] It is primarily engaged in the business of exploring, extracting, mining, selling, and exporting precious metals and all kinds of ores, metals, and their by-products. It is registered with the Securities and Exchange Commission (SEC), as indicated in the Certificate of Registration No. 138682 issued on March 4, 1987.[4] As a VAT-registered entity, it was issued a Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494.[5]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with power and authority, among others, to grant claims for refund of internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

Petitioner claims that from January 1, 2007 to December 31, 2007, it generated zero-rated export sales amounting to Php4,248,232,289.08. During the same period, it incurred and paid input VAT on its domestic purchases of taxable goods and services and importation of capital and non-capital goods amounting to Php22,795,033.33, detailed as follows:[7]

Period Covered	Input VAT on Domestic Purchases and Importation of Capital Goods	Input VAT on Domestic Purchases and Importation of Non-Capital Taxable Goods and Services	Total VAT Input Taxes
01/01/07-03/31/07	P 3,792,191.71	P 555,858.08	P 4,348,049.79
04/01/07-06/30/07	4,452,819.01	5,113,794.52	9,566,613.53
07/01/07-09/30/07	573,214.28	4,728,821.20	5,302,035.48
10/01/07-12/31/07	342,877.93	2,202,783.93	3,578,334.53
TOTAL	**P 9,161,102.93**	**P 13,633,930.40**	**P 22,795,033.33**

on

[3] Par. 1, Joint Stipulation of Facts and Simplification of Issues, *Division Docket*, p. 49.
[4] Par. 2, *Id*, pp. 49 to 50.
[5] Par. 3, *Id*, p. 50.
[6] Decision promulgated on November 13, 2012, *Rollo*, p. 35.
[7] *Id.*, Rollo, pp. 35 to 36.

On February 11, 2009, petitioner filed with respondent an application for refund/tax credit of its excess input VAT for calendar year 2007, invoking Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Section 106 (A) (2) (a) (1) of the same Code.[8]

On March 17, 2009, petitioner filed a petition for review before the Court in Division alleging inaction on the part of respondent on its application for refund/tax credit.[9]

On April 22, 2009, respondent filed her Answer[10] and interposed the following special and affirmative defenses, *viz.*: (a) petitioner's claim for refund is subject to administrative investigation; (b) petitioner has to prove its compliance with the requirements to be entitled to the refund sought; (c) taxes paid and collected by the Bureau of Internal Revenue (BIR) are presumed to have been legally made and petitioner has the burden to prove otherwise; (d) the petition for review was filed prematurely, that is, less than two (2) months from the filing of the administrative claim, hence, it should be dismissed for lack of cause of action; and, (e) claims for refund are construed strictly against the claimant and liberally in favor of the BIR.

On October 13, 2009, the BIR's Large Taxpayers Service issued a Letter pertaining to petitioner's claim for refund in the amount of Php22,795,033.34. However, only the amount of Php15,023,736.12 was recommended for issuance of tax credit certificate while the amount of Php198,746.93 was disallowed for lack of substantiation. The BIR ruled that the balance amounting to Php7,572,550.29, consisting of deferred input VAT on capital goods, would be amortized over a period of sixty (60) months and petitioner had to file a new claim periodically until full refund of the said amount.[11]

On November 9, 2009, petitioner filed a Motion for Partial Withdrawal of Petition and to Reset the Hearing in Open Court[12] alleging that respondent partially granted its claim for refund. The withdrawal was only to the extent of the approved amount of Php15,023,736.12 plus the disallowed amount of Php198,746.93. Petitioner pursued the petition with

---

[8] *Id., Rollo*, p. 36.
[9] *Id.*
[10] *Division Docket*, pp. 26 to 31.
[11] *Id, Rollo*, p. 43.
[12] Division Docket, pp. 88 to 90.

respect to the remaining balance of Php7,572,550.29 relating to the disallowed deferred input VAT on capital goods.[13]

On February 12, 2010, the Court granted petitioner's Motion for Partial Withdrawal of Petition to the extent of the approved claim of Php15,023,736.12 and the disallowed input tax of Php198,746.93.[14]

On April 20, 2010, petitioner filed a Motion to Clarify the Issues.[15] In a Resolution[16] dated June 18, 2010, the Court in Division clarified that the remaining issue for its resolution was *"whether or not petitioner is entitled to the refund of the amount of Php7,572,550.29"*.

Meanwhile, on May 13, 2010, petitioner re-submitted its application for issuance of tax credit certificate with the BIR and requested for the refund of the deferred portion which is due as of May 13, 2010.[17]

Trial ensued during which both parties presented their respective testimonial and documentary evidence. On December 12, 2011, the case was submitted for decision after respondent filed her Memorandum on October 25, 2011 and petitioner filed its Memorandum on December 2, 2011.[18]

On November 13, 2012, the Court in Division issued the assailed Decision[19] dismissing the petition for review.

Aggrieved, petitioner filed a Motion for Reconsideration[20] on December 10, 2012 which was, however, denied by the Court in Division in the assailed Resolution[21] dated June 5, 2013.

On July 22, 2013, petitioner filed the present Petition for Review with the Court *En Banc* praying that the Court *En Banc* reverse the assailed Decision and Resolution of the Court in Division. Petitioner likewise prays that the Court *En Banc* render judgment declaring petitioner to be entitled to the refund/tax credit in the amount of **SEVEN MILLION FIVE**

---

[13] *Id*, *Rollo*, pp. 40 to 41.
[14] *Id*, *Rollo*, p. 42.
[15] *Division Docket*, pp. 118 to 120.
[16] *Division Docket*, pp. 125 to 127.
[17] Exhibit KK, *Division Docket*, pp. 428 to 429.
[18] *Id*.
[19] *Rollo*, pp. 34 to 53.
[20] *Division Docket*, pp. 663 to 691.
[21] *Division Docket*, pp. 699 to 721.

HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED FIFTY AND 29/100 PESOS (PHP7,572,550.29), representing the un-refunded portion of excess input VAT paid by the petitioner on its importation of capital goods from January 1, 2007 to December 31, 2007; and order respondent to issue to petitioner the corresponding tax credit certificate or to refund the aforesaid amount; or in the alternative, to rule that the amount of un-amortized and un-refunded excess input VAT of petitioner can be reverted as part of its accumulated input VAT.

On August 22, 2013, the Court *En Banc* issued a Resolution[22] ordering respondent to file her comment on the Petition for Review within ten (10) days from the receipt of the resolution. On September 26, 2013, respondent filed her Comment/Opposition (Re: Petition for Review).

In a Resolution[23] dated October 14, 2013, the Court *En Banc* gave due course to the Petition for Review and ordered the parties to file their respective memoranda within thirty (30) days from notice.

With the filing of respondent's Manifestation[24] on November 5, 2013 stating that the respondent is adopting her comment/opposition to the petition for review filed on September 26, 2013 as her memorandum in the above-titled case; and considering petitioner's failure to file its memorandum,[25] the Court *En Banc* submitted the present petition for decision through its Resolution[26] issued on February 12, 2014.

ASSIGNMENT OF ERRORS

Petitioner submits the following assignment of errors (I and II) and raises the following issue (III):

I. The Honorable Court in Division committed reversible error in ruling that input VAT being claimed for refund by a 100% zero-rated taxpayer on depreciable goods amounting to more than P1 Million is subject to amortization.

---

[22] *Rollo,* pp. 82 to 83.
[23] *Rollo,* pp. 90 to 91.
[24] *Rollo*, p. 92.
[25] Records Verification dated January 23, 2014, *Rollo*, unpaginated.
[26] *Rollo*, pp. 171 to 172.

II. The Honorable Court in Division committed a reversible error in not granting the refund of excess input VAT which has been amortized in 2009 when the claim for refund was filed with respondent.

III. Whether or not petitioner is entitled to revert the un-refunded and unamortized input VAT in its accumulated input VAT.[27]

PARTIES' ARGUMENTS

Petitioner argues that the amortization of input VAT applies only when such input VAT is *credited* against the output tax. Petitioner insists that there is nothing in Sections 110 and 112 of the 1997 NIRC, as amended, which states that the right to *refund* input VAT on capital goods of a taxpayer engaged in zero-rated sales is subject to the rule on amortization of input VAT.

Petitioner also points out that since it has already deducted from its accumulated input VAT the full amount of input VAT derived from its purchases of capital goods in 2007, should the Court *En Banc* finds that petitioner is not entitled to the refund of the unamortized portion of its input VAT on capital goods, then the Court *En Banc* should rule on the propriety of its reversion in petitioner's accumulated input VAT.

On the other hand, respondent contends that it is incumbent upon petitioner to prove that it is entitled to the refund sought and failure to prove the same is fatal to its claim. Respondent invokes the principle that claims for refund are construed strictly against the claimant as they partake the nature of an exemption from tax.

THE COURT *EN BANC'S* RULING

The core issue is whether or not the rule on amortization of input VAT on capital goods with aggregate acquisition cost that exceeds One Million Pesos (Php1,000,000.00), excluding the VAT component thereof, applies to a claim for refund of a taxpayer whose entire sales are subject to VAT at 0%.

Prior to the amendment of the 1997 NIRC by Republic Act (RA) No. 9337, the rule was that input VAT on capital goods was not subject to

[27] Petition for Review, *Rollo*, p. 20

amortization. A VAT-registered person can apply the input VAT on capital goods, regardless of the cost of acquisition of the capital goods, as credit against its output VAT. It may also apply for the issuance of a tax credit certificate or refund of the entire amount of input VAT paid on capital goods to the extent that such input taxes have not been applied against output VAT. The application for issuance of a tax credit certificate or refund may be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.[28]

The foregoing rule, however, was modified when the 1997 NIRC was amended by RA No. 9337 which took effect on November 1, 2005. Under Section 110 of the 1997 NIRC, as amended by RA No. 9337, a VAT-registered taxpayer is required to amortize its input VAT paid on capital goods if the aggregate acquisition cost, excluding the VAT component thereof, exceeds Php1,000,000.00. It does not provide that a VAT-registered taxpayer may apply for the issuance of a tax credit certificate or refund of the input VAT paid on capital goods.

Section 110 of the 1997 NIRC, as amended by Section 8 of RA No. 9337 (RA) states:

> "SECTION 8. Section 110 of the same Code, as amended, is hereby further amended to read as follows:
>
> SEC. 110. Tax Credits. —
>
> (A) *Creditable input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
>
> (1) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or

cm

---
[28] Section 112 of the 1997 NIRC, prior to its amendment by RA No. 9337.

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

***Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of *acquisition* and the *fifty-nine* (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000.00): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period:** *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

Xxx xxx xxx."

(Emphasis supplied)

On the other hand, Section 112 (A) of the 1997 NIRC, as amended by Section 10 of RA No. 9337, states:

"SECTION 10. Section 112 of the same Code, as amended, is hereby further amended to read as follows:

SEC. 112. **Refunds or Tax Credits of Input Tax**. —

(A) *Zero-Rated or Effectively Zero-Rated Sales*. — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the

> case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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.
>
> (B) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.
>
> (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.
>
> (D) *Manner of Giving Refund.* — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, That refunds under this paragraph shall be subject to post audit by the Commission on Audit." (Emphasis supplied)

There is nothing in the above-quoted provisions of law which states that the amortization of VAT paid on capital goods with acquisition cost exceeding One Million Pesos (Php1,000,000.00), excluding the VAT component, applies only when the input VAT is *creditable* against the output VAT. The above-quoted provisions of law do not state that the same do not apply to claims for refund or applications for issuance of a tax credit certificate.

A perusal of Sections 4.110-3 and 4.110-4 of Revenue Regulations (RR) No. 16-05, implementing the VAT provisions of the 1997 NIRC, as amended by RA No. 9337, reveals that, insofar as the amortization of input VAT paid on capital goods is concerned, **there is no distinction between the input VAT creditable against output VAT and input VAT subject of a claim for refund or application for issuance of a tax credit certificate**.

"*Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, we ought not to distinguish."[29] Thus, the law being silent, the same rule on amortization of input VAT necessarily applies to claims for refund.

Petitioner cites *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[30] in enumerating the requirements for claiming a tax refund. Petitioner argues that amortization of input VAT on capital goods is not included as one of the requirements in a claim for refund of input VAT attributable to zero-rated sales.

While it is true that amortization of input VAT paid on capital goods is not among the requirements for claiming a tax refund, it is nevertheless a ***rule*** that must be complied with by a VAT-registered taxpayer engaged in zero-rated sales when claiming input VAT arising from its purchases of capital goods where its acquisition cost, excluding the VAT component thereof, exceeds Php1,000,000.00.

Thus, the Court *En Banc* agrees with the Court in Division that petitioner's input VAT of Php8,850,141.45 paid on its capital goods with acquisition cost that exceeds Php1,000,000.00 shall be spread over sixty (60) months; and only the amortized input VAT in the amount of Php1,277,591.16 is creditable or refundable as of December 31, 2007. The Court *En Banc* quotes with approval the exhaustive discussion by the Court in Division on this matter in the assailed Resolution:

> "Note that Section 112 (A) of the NIRC of 1997, as amended, speaks of creditable input tax due or paid, *i.e.*, the input tax allowable as tax credit in a taxable quarter pursuant to Section 110 (A) of the same

---

[29] Commissioner of Internal Revenue vs. Central Drug Luzon Corporation, G.R. No. 159647, April 15, 2005.
[30] CTA Case No. 7550, September 20, 2011.

Code including the amortized input tax on capital goods purchases with an aggregate cost in excess of Php1 million. This is also recognized under Section 4.110-3 of RR No. 16-05, as amended by RR Nos. 2-07 and 4-07, which provides:

> SEC. 4.110-3. **Claim for Input Tax on Depreciable Goods.** — X x x
>
> (a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.
>
> (b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of a capital good. The claim for input tax credit shall commence in the month that the capital goods were acquired.
>
> Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.
>
> **Capital goods or properties** refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.
>
> The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, excluding the VAT, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, excluding the VAT, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.
>
> xxx xxx xxx
>
> **Construction in progress (CIP)** is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the payment was made; Provided, that an official receipt of payment has been issued based on the progress billings.

In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.

Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated.

As regards the apportionment of input tax on mixed transactions, Section 4.110-4 of RR 16-05, as amended, illustrates as an example, input tax on depreciable capital goods not attributable to any specific activity, as follows:

"SEC. 4.110-4. Apportionment of Input Tax on Mixed Transactions. — x x x.

1. All the input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; Provided, that input taxes that can be directly attributable to VAT taxable sales of goods and services to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall not be credited against output taxes arising from sales to non-Government entities.

Claims for VAT refund/Tax Credit Certificate (TCC) with the Bureau of Internal Revenue, Board of Investment, and One-Stop-Shop and Duty Drawback Center of the Dept. of Finance should be deducted from the allowable input tax that are attributable to zero-rated sales.

2. xxx xxx xxx

Illustration: ERA Corporation has the following sales during the month:

Sale to private entities subject to 12%	-	P100,000.00
Sale to private entities subject to 0%	-	100,000.00
Sale of exempt goods	-	100,000.00

cm

Sale to govt. subjected to 5% final VAT Withholding	-	100,000.00
Total Sales for the month		P400,000.00

The following input taxes were passed on by its VAT suppliers:

Input tax on taxable goods 12%	-	P5,000.00
Input tax on zero-rated sales	-	3,000.00
Input tax on sale of exempt goods	-	2,000.00
Input tax on sale to government	-	4,000.00
Input tax on depreciable capital good not attributable to any specific activity (monthly amortization for 60 months)	-	P20,000.00

A. The input tax attributable to sales to private entities subject to 12%, for the month, shall be computed as follows:

Input tax directly attributable to sale subject to 12% — P5,000.00

Ratable portion of the input tax not directly attributable to any activity:

$$\frac{\text{Taxable sales (12\%)}}{\text{Total Sales}} \quad x \quad \text{Amount of input tax not directly attributable to any activity}$$

$$\frac{\text{P100,000.00}}{\text{400,000.00}} \quad X \quad \text{P20,000.00} \quad - \quad \underline{\text{P5,000.00}}$$

Total input tax attributable to sales to private entities for the month P10,000.00

B. The input tax attributable to zero-rated sales for the month shall be computed as follows:

Input tax directly attributable to zero-rated sale — P3,000.00
Ratable portion of the input tax not directly attributable to any activity:

$$\frac{\text{Taxable sales (0\%)}}{\text{Total Sales}} \quad x \quad \text{Amount of input tax not directly attributable to}$$

ᴍ

any activity

P100,000.00 X P20,000.00 - P5,000.00
———————
400,000.00

Total input tax attributable to zero-rated sales for
the month - P8,000.00

C. The input tax attributable to VAT-exempt sales for the month shall be computed as follows:

Input tax directly attributable to VAT-exempt sales – P2,000.00

Ratable portion of the input tax not directly attributable to any activity:

VAT-exempt sales x Amount of input tax
——————— not directly
Total Sales attributable to any activity

P100,000.00 X P20,000.00 - P5,000.00
———————
400,000.00

Total input tax attributable to VAT-exempt sales – P7,000.00

D. The input tax attributable to sales to government for the month shall be computed as follows:

Input tax directly attributable to sale to govt. - P4,000.00

Ratable portion of the input tax not directly attributable to any activity:

Taxable sales to government x Amount of input tax
——————————— not directly
Total Sales attributable to any activity

P100,000.00 X P20,000.00 - P5,000.00
———————
400,000.00

Total input tax attributable to sale to gov't. - P9,000.00

cm

The table below shows a summary of the foregoing transactions of ERA Corporation:

	Output VAT	Input VAT directly Attributable	Input VAT not directly Attributable to any Activity	Total Input VAT	Creditable Input VAT	Non-VAT Payable	Excess Input VAT for carry-over	Input VAT for refund	Unrecoverable Input VAT
Sales Subject to 12% VAT	12,000	5,000	5,000	10,000	10,000	2,000	0	0	0
Sales Subject to 0% VAT	0	3,000	5,000	8,000	8,000	0	0	8,000	0
Sales of Exempt Goods	0	2,000	5,000	7,000	0	0	0	0	7,000*
Sales to Government subject to 5% Final Withholding Tax	12,000	4,000	5,000	9,000	7,000	5,000	0	0	2,000*

* These amounts are not available for input tax credit but may be recognized as cost or expense.
** Standard input VAT of 7% on sales to Government as provided in SEC. 4.114-2(a).
*** Withheld by Government entity as Final Withholding VAT.

xxx xxx xxx

As shown in the above example, the Php20,000.00 input tax on depreciable capital goods not attributable to any specific activity which was allocated among ERA Corporation's sales subject to 12% VAT, sales subject to 0% VAT, exempt sale of goods and sale to government pertains to the monthly input VAT amortization.

Clearly from the foregoing, petitioner's input VAT of Php8,850,141.45 related to its capital goods purchases exceeding Php1Million shall be spread over 60 months, the estimated useful life employed by petitioner as shown in its Quarterly VAT Returns. Consequently, out of the Php8,850,141.45 input VAT incurred by petitioner on capital goods, only the amount of Php1,277,591.16 is creditable or refundable as of December 31, 2007, computed as follows:

Month Purchased	Name of Supplier	Amount	Input Tax	Estimated Life (in mos.)	Allowable Input VAT		
					Month of Acquisition	Remaining Months of 2007	Total
March	Bureau of Customs	31,528,381.18	3,783,405.74	60	63,056.76	567,510.86	630,567.62
April	Bureau of Customs	1,446,795.89	1,373,615.51	60			
	Kubota Agro-Industrial Machinery Phils. Inc.	1,247,991.07	149,758.93				
		12,694,786.96	1,523,374.44	60	25,389.57	203,116.59	228,506.17
May	Bureau of Customs	16,550,752.37	1,986,090.28				
	Mantrade Development Corporation	1,472,321.43	176,678.57				
	Toyota Pasong Tamo, Inc.	1,258,535.71	149,464.29				
	Toyota Pasong Tamo, Inc.	1,207,535.71	143,464.29				
		20,489,145.22	2,455,697.43	60	40,928.29	286,498.03	327,426.32
June	Bureau of Customs	1,662,129.60	199,455.55	60	3,324.26	19,945.56	23,269.81
July	Isuzu Philippines Corporation	2,812,500.00	337,500.00				
	Isuzu Philippines Corporation	1,964,285.71	235,714.29				
		4,776,785.71	573,214.29	60	9,553.57	47,767.86	57,321.43
November	Bureau of Customs	2,624,950.00	314,994.00	60	5,249.90	5,249.90	10,449.80
Total		**73,776,178.67**	**8,850,141.45**		**147,502.36**	**1,130,088.80**	**1,277,591.16**

Thus, respondent correctly granted only the amount of Php1,277,591.16 pertaining to the monthly amortization of input VAT on petitioner's capital goods purchases exceeding Php1Million for the year 2007. The remaining amount of Php7,572,550.29 (Php8,850,141.45 less Php1,277,591.16) representing unamortized input VAT may be claimed by petitioner as input tax credit or as refund (provided it has zero-rated sales to which the said input VAT can be attributed) in the subsequent quarter(s)."

Petitioner argues that any ruling from this Court subjecting the claim for refund of input VAT on capital goods by a VAT-registered taxpayer engaged in zero-rated sales to the rule on amortization would amount to a violation of the express provision of Section 112(A) of the 1997 NIRC, as amended, pertaining to prescription. According to petitioner, when a claim for input VAT on capital goods with an aggregate acquisition cost in excess of Php1,000,000.00 is being subjected to the rule on amortization, then the Court is requiring the filing of a claim beyond the two-year prescriptive period under Section 112(A) of the 1997 NIRC, as amended.

Petitioner misunderstands the import of Section 112 (A) of the 1997 NIRC. Under Section 112 (A) of the 1997 NIRC, as amended, "[A]ny 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 sale . . ." In *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*,[31] the Supreme Court emphasized that the filing of the administrative claim for refund or issuance of tax credit certificate should be **reckoned from the close of the taxable quarter when the sales were made and not when the input VAT was incurred or paid**, *viz.*:

> "The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due **the taxpayer must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT** regardless of whether said tax was paid or not. As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), "[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued". Thus, **when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid**. Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had already prescribed." (Emphases supplied)

Thus, the Court in Division correctly ruled that petitioner is incorrect in interpreting that the amortization of input taxes on the aggregate

[31] G.R. No. 172129, September 12, 2008.

acquisition cost of capital goods would, in effect, require the taxpayer to file beyond the two-year prescriptive period. The filing of the administrative claim for refund or application for issuance of tax credit certificate for the amortized input VAT shall not be reckoned solely in 2007, the year when the capital goods were acquired and when the input VAT was paid by petitioner. It shall be reckoned at the end of the quarter when the pertinent zero-rated sales (to which the amortized input VAT is attributable) were made.

Petitioner posits that in view of the filing of its claim for refund with respondent on February 11, 2009, the corresponding input VAT which has accrued during the four (4) quarters of 2008 and which has been amortized prior to the filing of the administrative claim for refund with respondent should have been granted.

The Court *En Banc* disagrees with petitioner.

Notably, in the petition for review filed before the Court in Division, petitioner prays for the refund of its input VAT which is attributable to its zero-rated sales **for the period January 1, 2007 to December 31, 2007**. As correctly found by the Court in Division, only the amortized input VAT in the amount of Php1,277,591.16 is attributable to petitioner's zero-rated sales for the period January 1, 2007 to December 31, 2007. The Court in Division could not have granted the refund of the amortized input VAT attributable to zero-rated sales for the period January 1, 2008 to December 31, 2008 as it was not prayed for by petitioner. Moreover, even assuming that it is included among the reliefs sought for by petitioner, the Court in Division could not grant the same as there is no evidence presented by petitioner to prove the existence of petitioner's zero-rated sales for the period January 1, 2008 to December 31, 2008 to which the amortized input VAT for the same period could be attributed.

As an alternative, should the Court *En Banc* rule that petitioner is not entitled to the refund of its unamortized input VAT, petitioner prays that a corresponding ruling on the propriety of its reversion in petitioner's input VAT be made by the Court *En Banc*.

The relief petitioner seeks is in the nature of an advisory opinion. Advisory opinions are not part of the Court's judicial function. The duty of the Court in exercising judicial power is only limited in settling *actual controversies* involving rights which are legally demandable and enforceable.[32] Therefore, the Court cannot resolve petitioner's request for issuance of a ruling on the propriety of the reversion of petitioner's input VAT.

WHEREFORE, in light of the foregoing, the *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Decision dated November 13, 2012 and the Resolution dated June 5, 2013 rendered by the then First Division of this Court and this Court's Special First Division, respectively, in CTA Case No. 7884 entitled "*Taganito Mining Corporation vs. Commissioner of Internal Revenue*" which denied Taganito Mining Corporation's claim for refund or issuance of a tax credit certificate representing the un-refunded portion of excess input VAT on its importation of capital goods from January 1, 2007 to December 31, 2007 in the total amount of **SEVEN MILLION FIVE HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED FIFTY PESOS AND 29/100 (Php7,572,550.29)** are hereby **AFFIRMED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

---

[32] Section 1, Article VIII of the 1987 Philippine Constitution.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice