REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FILMINERA RESOURCES CORPORATION,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8666

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

AUG 03 2015
8:20 a.m.

x- x

DECISION

COTANGCO-MANALASTAS, *J.:*

This Petition for Review[1] filed by Filminera Resources Corporation seeks the refund or issuance of tax credit certificate in the amount of ₱51,966,544.20 allegedly representing unutilized or unapplied creditable input tax for the period January 1, 2011 to March 31, 2011 for fiscal year (FY) ending June 30, 2011.

FACTS

Petitioner Filminera Resources Corporation is a domestic corporation incorporated under the laws of the Republic of the Philippines engaged in the business of operating coal mines and prospecting explorations and mining in all other kinds of ores, metals, and mineral resources.[2] It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-153-880-000.[3]

[1] Docket, pp. 7-20.
[2] Par. 1, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 646; Exhibit "P-1".
[3] Exhibit "P-2".

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue empowered to perform the duties of her office, including, among others, the duty to act upon claims for refund or issuance of certificate of credit as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 5, 2007, petitioner entered into an Ore Sales and Purchase Agreement[4] with Phil. Gold Processing and Refining Corp. (PGPRC), a duly registered corporation with the Board of Investment (BOI).[5] Under the agreement, petitioner exclusively sells Pre-production Ore and ROM Ore to PGPRC.[6] Petitioner alleges that PGPRC exports 100% of its processed gold and silver ores.

On April 25, 2011, petitioner, through the Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Return for the third quarter of fiscal year ending June 30, 2011.[7]

On January 29, 2013, petitioner filed an application for input tax credit for the third quarter of fiscal year ending June 30, 2011 with Revenue District Office No. 121 (Large Taxpayers Service Excise) in the total amount of ₱51,966,544.20, allegedly representing its unutilized or unapplied creditable input tax for the period January 1, 2011 to March 31, 2011.[8]

Respondent, however, failed to act on the administrative claim for refund or issuance of tax credit certificate of petitioner, prompting petitioner to file the instant Petition for Review[9] on June 28, 2013.

Respondent filed her Answer on July 19, 2013, interposing the following Special and Affirmative Defenses:

[4] Exhibit "P-3".
[5] Exhibit "P-4".
[6] Exhibit "P-3".
[7] Exhibit "P-17".
[8] Exhibits "P-714" and "P-715", docket, pp. 710-712.
[9] Petition for Review, docket, pp. 7-20.

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

5. The amount of ₱51,966,544.20 allegedly representing unutilized or unapplied creditable input tax for the period of 1 January 2011 to 31 March 2011 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. 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 of**

> **the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.**' (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 mentioned 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 first time filers
10) Sales Contract/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 alleged in the petition for review that it submitted complete 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 the 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 exemption, 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*)."

The case was set for Pre-Trial Conference on August 29, 2013.[10] Respondent's Pre-Trial Brief[11] was filed on August 7, 2013, while petitioner's Pre-Trial Brief[12] was filed on August 22, 2013.

[10] Docket, p. 613.
[11] Docket, pp. 614-617.
[12] Docket, pp. 619-625.

On September 12, 2013, upon motion of petitioner, the Court commissioned Atty. Clifford E. Chua as Independent Certified Public Accountant (Independent CPA).

The parties filed their Joint Stipulation of Facts and Issues[13] on September 27, 2013, and this was adopted by the Court in the Pre-Trial Order[14] promulgated on October 17, 2013.

During trial, petitioner presented its witnesses, namely: Atty. Clifford E. Chua, the Court-commissioned Independent CPA and Ms. Joy P. Dompor, the treasurer of petitioner.

Within the extended time granted by the Court,[15] petitioner filed its Formal Offer of Evidence[16] on January 22, 2014. Respondent filed its Comment on petitioner's Formal Offer of Evidence on January 23, 2014.

In a Resolution[17] dated February 21, 2014, this Court admitted petitioner's exhibits except Exhibit "P-18" for not being found in the records of this case, Exhibits "P-556", "P-550", "P-532", and "P-661" for having descriptions corresponding to documents bearing different markings, and Exhibits "P-17", "P-19", "P-124", "P-295", "P-296", and "P-656" for failure of the exhibit mentioned in petitioner's formal offer of evidence to correspond to the exhibit found in the records of this case.

On March 12, 2014, petitioner filed a Manifestation with Motion for Partial Reconsideration of the Resolution[18] dated February 21, 2014, praying that the Court would recall Atty. Clifford Chua to the witness stand and reconsider admitting the denied evidence.

After the completion of the testimony of petitioner's recalled witness and considering respondent's manifestation, the Court in a Resolution[19] dated June 18, 2014, admitted

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[13] Docket, pp. 646-648.
[14] Docket, pp. 659-662.
[15] Docket, p. 760.
[16] Docket, pp. 761-914.
[17] Docket, pp. 921-925.
[18] Docket, pp. 926-930.
[19] Docket, p. 1028.

Exhibits "P-17", "P-18" and "P-19". However, the Court still denied the admission of Exhibits "P-124", "P-295", "P-296", "P-532", "P-550", "P-556", "P-656", and "P-661".

Respondent submitted her Memorandum[20] on March 13, 2014; while petitioner filed its Memorandum[21] on July 18, 2014. Accordingly, the instant case was submitted for decision in a Resolution[22] dated August 6, 2014.

ISSUE

The parties submitted the following issue[23] for this Court's resolution:

> "Whether or not petitioner Filminera is entitled to a refund or tax credit in the amount of PHP51,966,544.20 representing alleged unutilized Input VAT for the Third Quarter of Fiscal Year ending June 2011."

RULING OF THE COURT

Pertinent to petitioner's claim for refund is Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which reads:

> "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

[20] Docket, pp. 934-946.
[21] Docket, pp. 1029-1046.
[22] Docket, p. 1049.
[23] Par. 1, Statement of the Issue, Joint Stipulation of Facts and Issues, docket, p. 647.

> 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."

Based on the above-quoted provision, in order to be entitled to a refund or tax credit of input VAT payments attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

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

The Court finds it prudent to first determine the timeliness of petitioner's administrative and judicial claims for refund.

Section 112(A) of the NIRC of 1997, as amended, provides that a VAT-registered taxpayer 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 refund or tax credit of its creditable input tax due or paid attributable to such sales.

The present claim covers the third taxable quarter of fiscal year ending June 30, 2011, which closed on March 31, 2011. Petitioner, therefore, had until March 31, 2013 within which to file its administrative claim for refund. Petitioner filed its claim for refund with the Revenue District Office No.

121 (Large Taxpayers Service Excise) on January 29, 2013[24]. Thus, the administrative claim for refund was filed well within two years after the close of the taxable quarter when the zero-rated sales were made.

Anent petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, provides:

> "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."

Based on the foregoing, respondent had 120 days from January 29, 2013, the date when petitioner filed its administrative claim and presumably submitted its complete documents in support of its application for refund, or until May 29, 2013 to act upon the claim. Respondent, however, failed to render a decision on petitioner's administrative claim.

Consequently, petitioner had 30 days from the lapse of the 120-day period or until June 28, 2013 within which to appeal the unacted claim to the Court of Tax Appeals. The instant Petition for Review was filed on June 28, 2013. Thus, both the administrative and judicial claims were timely filed.

Respondent argues that petitioner failed to submit complete documents as required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, in relation to

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[24] Exhibits "P-714" and "P-715", docket, pp. 710-712.

Section 112(C) of the NIRC of 1997, as amended. She contends that such failure makes its administrative claim for refund pro-forma; thus, the Court is without jurisdiction to entertain the instant petition.

The Court finds no merit in her argument. There is no need for petitioner to submit the complete documents required under RMO No. 53-98 in relation to Section 112(C) of the NIRC of 1997, as amended. In the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[25], the Supreme Court held:

> 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 xxx." 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)*

Furthermore, 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, relevance, 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.[26]

This Court will now proceed to determine whether or not petitioner complied with the other requisites for entitlement to refund or tax credit.

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

[26] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company,* CTA EB No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.

Anent the first requisite, petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with Tax Identification Number 000-153-880-000.[27]

As to the third requisite, petitioner alleges that Philippine Gold Processing and Refining Corporation, a BOl-registered entity, exports one hundred percent (100%) of its processed gold and silver ore. Its exports are paid in foreign currency duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas*. Thus, petitioner argues that as the exclusive supplier of Pre-production Ore and ROM Ore of PGPRC[28], all of its sales thereto are entitled to VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005, which provide:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.*
>
> xxx xxx 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws. xxx"
>
> "SECTION 4.106-5. *Zero-rated Sales of Goods or Properties.* –
>
> xxx xxx xxx
>
> The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:
>
> (a) *Export sales.* – *'Export Sales'* shall mean:

[27] Exhibit "P-2".
[28] Exhibit "P-3".

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee: and *Provided, finally,* **that sales of goods, properties or services made by a VAT-registered supplier to a BOl-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently reissued by the BOI.**" *(Emphasis supplied)*

Corollary to the requisite that the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated, Sections 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(2), (B)(1) and (2)(c) of RR No. 16-05, provide that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services issue a VAT official receipt, 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:

xxx xxx xxx

(2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**

xxx xxx 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 xxx 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 xxx 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:** –

xxx xxx xxx

(2) A **VAT official receipt** for every lease of goods or properties, and **for every sale, barter or exchange of services.**

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; *Provided*, That:

xxx 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)*

The Court, in the case of *Filminera Resources Corporation vs. Commissioner of Internal Revenue*[29], held that in order for sales to be considered zero-rated pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations No. 16-2005, the following requisites must be satisfied:

1. the taxpayer seller must be VAT-registered;
2. the buyer must be a BOI-registered manufacturer/ producer; and
3. the buyer's products must be 100% exported as shown by a certification issued by the Board of Investment.

To prove that its sales qualify for zero-rating, petitioner formally offered the following pieces of evidence:

1. BOI registration issued to PGPRC by the Board of Investments on February 7, 2008 with Registration No. 2008-042[30];

2. Export sales invoices[31] and official receipts[32] that petitioner issued to its sole customer, PGPRC;

3. Judicial Affidavit of petitioner's witness, Ms. Joy P. Dompor[33];

4. Legal opinion by BIR Assistant Commissioner James H. Roldan dated August 3, 2009, confirming that input VAT on PGPRC's purchases of goods and

[29] CTA Case Nos. 8528 and 8576, September 25, 2014.
[30] Exhibit "P-4".
[31] Exhibits "P-5" to "P-10".
[32] Exhibits "P-11" to "P-16".
[33] Exhibit "P-729" and "P-729-a", docket, pp. 694-708.

services attributable to zero-rated sales are available as tax credit[34];

5. BOI-ID certificate No. 2010-094 valid for the period July 1, 2010 to June 30, 2011, confirming that PGPRC exported 100% of its products[35]; and

6. Ore Sales and Purchase Agreement dated July 5, 2007 executed by and between petitioner and PGPRC.

Petitioner was able to sufficiently prove that it is engaged in zero-rated sales, being a VAT-registered supplier to PGPRC, a BOI-registered purchaser whose products are 100% exported.

However, an examination of the sales invoices and official receipts submitted by petitioner shows that out of the reported zero-rated sales of ₱695,704,567.61, the amount of ₱435,000.00, as shown below, pertains to petitioner's lease of land to PGPRC which cannot be considered as export sales contemplated under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and as implemented by Section 4.106-5 of RR No. 16-2005, thus the same cannot be regarded as sales subject to zero-rating:

Exhibit	Inv No.	Exhibit	OR No.	Particulars	Amount
P-5	00085	P-11	0066	Land Lease for the month of January 2011	₱ 145,000.00
P-7	00087	P-13	0068	Land Lease for the month of February 2011	145,000.00
P-9	00089	P-15	0070	Land Lease for the month of March 2011	145,000.00
TOTAL					**₱435,000.00**

Verily, only the sales in the amount of ₱695,269,567.61 (₱695,704,567.61 less ₱435,000.00) qualify for VAT zero-rating.

After having resolved that petitioner's export sales for the third quarter of FY 2011 in the amount of ₱695,269,567.61 are subject to zero rating, the Court proceeds to determine

[34] Exhibit "P-716", docket, pp. 713-716.
[35] Exhibit "P-4-A".

whether or not petitioner incurred or paid input taxes in connection thereto and if said input taxes were not applied against any output tax liability of petitioner.

Based on its Third Quarterly VAT Return for FY 2011, petitioner's input VAT from various purchases of goods and services amounts to ₱51,966,544.20, which is the subject of the present claim, broken down as follows:

Input taxes on Current Purchases (Exhibit P-17)	
Domestic Purchases of Goods Other than Capital Goods (Line 21F)	₱ 1,270,652.07
Domestic Purchase of Services *(Line 21J)*	50,695,892.13
Total Current Input VAT	**₱51,966,544.20**

To substantiate the foregoing input VAT, petitioner proffered in evidence various invoices and official receipts issued by its suppliers. Upon scrutiny, the Court finds that of the total claim of ₱51,966,544.20, only the amount of ₱49,489,584.45 is duly substantiated by the required evidence under Sections 110(A) and 113(A) and (B) of the NIRC of 1997 as amended, and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-05. The remaining amount of ₱2,476,959.75 should be disallowed from its claim due to the following reasons:

SUPPLIER NAME	Exhibit No.	O.R. / INV. NO.	VAT INPUT
1. *Input VAT on purchase of goods supported by invoice which was denied admission by this Court*			
CANON MARKETING (PHILIPPINES) INC.	P-124	023694	₱ 15,931.39
INNOVE COMMUNICATIONS, INC.	P-295	GPT1200000 0000007203	163.09
INNOVE COMMUNICATIONS, INC.	P-296	GPT1200000 0000007151	163.09
SMART COMMUNICATIONS INC.	P-532	SEKOR000063722	510.89
SMART COMMUNICATIONS INC.	P-550	SEKOR000063732	186.31
SMART COMMUNICATIONS INC.	P-556	SEKOR000064659	91.65
SMART COMMUNICATIONS INC.	P-656	SEKOR000095740	189.41
SMART COMMUNICATIONS INC.	P-661	SEKOR000095743	198.89
sub-total			***17,434.73***
2. *Input VAT on purchases of goods and services wherein the input VAT amounts were not separately indicated in the corresponding supporting documents*			
PROTECTION TECHNOLOGY, INC.	P-182	32502	8,571.43
PROTON PLASTIC PACKAGING CORP.	P-247	28012	1,607.14
TEXTRON CORPORATION	P-269	2654	7,800.00
sub-total			***17,978.57***

3. *Input VAT on purchases of goods supported by invoices dated outside the period of claim*			
JP ELITE PRODUCTS & SERVICES, INC.	P-72	0514	2,764.29
JP ELITE PRODUCTS & SERVICES, INC.	P-73	0520	4,827.86
sub-total			***7,592.14***
4. *Input VAT on purchases of goods supported by invoices not duly registered with the BIR*			
KEN-TOOL HARDWARE CORPORATION	P-76	24609	129.60
APEX PLASTIC PIPING SUPPLY AND SERVICES	P-111	2390	1,090.50
sub-total			***1,220.10***
5. *Over claimed input VAT*			
PHILIPPINE DAILY INQUIRER (₱8,232.00-₱8,068.93)	P-87	00514900	***163.07***
6. *Input VAT on purchases of services supported by documents other than VAT ORs*			
QA CAUSEWAY PRINTERS, INC.	P-43	3970	1,285.70
QA CAUSEWAY PRINTERS, INC.	P-44	3971	514.29
QA CAUSEWAY PRINTERS, INC.	P-45	3968	171.43
QA CAUSEWAY PRINTERS, INC.	P-206	4158	1,285.70
QUANTUM HOTELS & RESORTS, INC.	P-266	SOA # S11-0001	863.11
QUANTUM HOTELS & RESORTS, INC.	P-267	SOA # T11-0008	12,334.43
QUANTUM HOTELS & RESORTS, INC.	P-268	SOA # T11-0015	718.03
U-BIX CORPORATION	P-102	891510	972.00
U-BIX CORPORATION	P-192	895902	972.00
U-BIX CORPORATION	P-261	905022	972.00
ULTRA-SEER INCORPORATED	P-103	5045	2,162.14
sub-total			***22,250.84***
7. *Input VAT on purchases of goods and services with alterations on the supporting documents but without countersignature of the issuer*			
ADEN REMOTE SITE (PHILIPPINES), INC.	P-276	0048	501,942.49
AL-NEIL GENERAL MERCHANDISE	P-285	000653	1,947.86
ASTRAL DATA SYSTEM, INC.	P-286	14869	624.00
DRILLCORP PHILIPPINES, INC.	P-277	0389	911,194.48
ERED INDUSTRIAL SALES	P-271	9099	5,196.43
ERED INDUSTRIAL SALES	P-54	8927	5,196.43
FULL SUPPORT ENTERPRISES, INC.	P-287	12840	39,555.64
IBEX INDUSTRIAL SALES	P-272	2103	2,400.00
ISLAND TRANSVOYAGER, INC.	P-278	71418	38,682.00
MAPECON PHILIPPINES, INC.	P-288	5159	2,757.86
MCPHAR GEOSERVICES (PHILIPPINES), INC.	P-280	35937	448,161.69
NC LANTING SECURITY SPECIALIST AGENCY	P-281	3237	125,397.92
NC LANTING SECURITY SPECIALIST AGENCY	P-289	3247	147,719.16
QUANTUM HOTELS & RESORTS, INC.	P-274	97621	2,016.39
QUANTUM HOTELS & RESORTS, INC.	P-282	98302	1,298.36
QUARTZ CONSTRUCTION & SUPPLY	P-283	000009	106,224.49
QUARTZ CONSTRUCTION & SUPPLY	P-284	000015	42,023.58
SOMERSET SALCEDO MAKATI SERVICE RESIDENCES	P-290	39597	14,307.77
STRAIGHTFORWARD ENTERPRISES	P-291	3484	4,905.00
TRANSMASTER ENTERPRISES	P-275	004613	2,434.82
U-FREIGHT PHILIPPINES, INC.	P-292	383022	345.47
sub-total			***2,404,331.84***

8. *Input VAT on purchases of goods and services without supporting documents*			
INNOVE COMMUNICATIONS, INC.		GPT1200000 0000008876	163.09
LEONITO L. SUAVILLO - CONSULTANCY SERVICES		015	5,822.40
SMART COMMUNICATIONS INC.		SEKOR000059939	2.97
sub-total			***5,988.46***
GRAND TOTAL			**₱2,476,959.75**

Consequently, of the substantiated input VAT of ₱49,489,584.45, only the input VAT of ₱49,458,640.32 can be attributed to the substantiated zero-rated sales of ₱695,269,567.61, computed as follows:

Substantiated Zero-rated sales	₱695,269,567.61
Divided by Total Reported Zero-rated Sales	₱695,704,567.61
Multiplied by Substantiated Input VAT	₱ 49,489,584.45
Input VAT attributable to Substantiated Zero-rated Sales	₱ 49,458,640.32

Nonetheless, before petitioner can validly claim a refund/tax credit, it must prove that the claimed input taxes were not applied against any output liability during and in the succeeding period of claim.

It is petitioner's submission that the BIR Form 2550Q for the first quarter of 2012 (July 2011 to September 2011) it presented proves that petitioner had properly deducted therein the input VAT being claimed from the allowable input tax and was classified as "VAT refund/TCC claimed". However, contrary to its contention, the Court finds no iota of evidence that the subject claim was, indeed, deducted from the total allowable input VAT, as no amount was indicated in that portion "VAT refund/TCC claimed" of the said BIR Form 2550Q for the first quarter of 2012. This creates an impression that petitioner still had the input VAT in its books of accounts and is available as a credit against its future output VAT liability.

The Court reiterates the ruling in the case of *M+W Philippines, Inc. vs. Commissioner of Internal Revenue*[36], citing

[36] CTA Case No. 8159, August 12, 2013.

the case of *Sagara Metro Plastics Industrial Corp. vs. Commissioner of Internal Revenue*[37], to wit:

> "The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.
>
> xxx xxx xxx
>
> **Without convincing evidence that the subject input taxes were not utilized or carried over as credit to the subsequent quarters, this Court cannot grant petitioner's prayer.** To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government." *(Emphasis supplied)*

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[38] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.

Petitioner in this case failed to prove that its claimed input taxes were not applied against any output liability during and in the succeeding period of claim. It failed to comply with all the requisites for it to be entitled to a refund or tax credit of input VAT payments attributable to zero-rated or effectively zero-rated sales. Thus, petitioner's claim for refund or issuance of tax credit certificate in the amount of ₱51,966,544.20 representing its excess/unutilized input VAT must be denied.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[37] CTA Case Nos. 6295, 6320, and 6333, October 10, 2003.
[38] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No 127105, June 25, 1999.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.	**CAESAR A. CASANOVA**
Associate Justice	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.
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.

ROMAN G. DEL ROSARIO
Presiding Justice