REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA CASE NO. 8802**
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA CASE NO. 8842** Members: ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
- *versus* -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 11 2017 4:25 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court are two (2) consolidated Petitions for Review[1] filed by petitioner Filminera Resources Corporation ("FRC") on April 14, 2014 and on May 26, 2014, pursuant to *Section 7(a)(2)*[2] *of Republic*

[1] *Records, CTA Case No. 8802, Vol. 1, Petition for Review ("PFR"),* pp. 14-563, with annexes; *Records, CTA Case No. 8842, Vol. 1, PFR,* pp. 6-810, with annexes.
[2] "Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
xxx xxx xxx

Act ("RA") No. 1125[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section 3(a)(1)*[6], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[7], both of which seek for the Court to render judgment ordering respondent Commissioner of Internal Revenue ("CIR") to refund or to issue a tax credit certificate ("TCC") in favor of petitioner in the amounts of FIFTY-EIGHT MILLION FIVE HUNDRED EIGHTEEN THOUSAND SIX HUNDRED FORTY-NINE AND 42/100 PESOS (PHP58,518,649.42), and SIXTY-SEVEN MILLION TWO HUNDRED EIGHTY-THREE THOUSAND ONE HUNDRED THIRTY-SEVEN AND 43/100 PESOS (PHP67,283,137.43) representing unutilized or unapplied creditable input Value-Added Tax ("VAT") for the periods October 1, 2011 to December 31, 2011[8] and January 1, 2012 to March 31, 2012[9], respectively, or the Second and Third Quarters of fiscal year ("FY") ending June 30, 2012[10].

The Parties

> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

[6] "Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following: xxx
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> xxx xxx xxx
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; xxx"

[7] *A.M. No. 05-11-07-CTA*, November 22, 2005.

[8] *Records, CTA Case No. 8802, Vol. 1, PFR, Prayer,* pp. 26-27.

[9] *Records, CTA Case No. 8842, Vol. 1, PFR, Prayer,* p. 21.

[10] *Records, CTA Case No. 8802, Vol. 3, Pre-Trial Order ("PTO"),* p. 1354.

Petitioner FRC, formerly "Base Metals Mineral Resources Corporation"[11], is a domestic corporation duly organized in accordance with Philippine laws,[12] with the primary purpose of carrying on the business of "operating coal mines; and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals[] and minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate, or otherwise acquire, own, exchange, sell, or otherwise dispose of pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral[] lands, coal[] lands, timber land, water and water rights, and other property both real and personal."[13]

It is registered with the Large Taxpayers Excise Audit Division 1 as a VAT-registered entity with Taxpayer's Identification No. ("TIN") 000-153-880-000 and OCN 8RC0000036160 since January 1, 1997.[14] It was also issued an Authority to Print ("ATP") VAT Official Receipts ("OR") with Serial Nos. 0001 to 1000, and with OCN 9AU0000290062.[15]

Respondent CIR is empowered to perform the duties of his office, including the duty to act upon claims for refund or issuance of TCC as provided by law, with office address at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[16]

The Facts

Philippine Gold Processing and Refining Corp. ("PGPRC"), formerly registered as LFT Processing Corporation,[17] is a domestic corporation duly organized in accordance with Philippine laws,[18] with the primary purpose of engaging in the "business of processing, milling, crushing, refining, smelting, concentrating, amalgamating

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[11] *Records, CTA Case No. 8802, Vol. 3, Exhibit "P-2," Amended Articles of Incorporation ("AOI"),* p. 1803.
[12] *Id., Exhibit "P-2," Certificate of Filing of Amended AOI,* p. 1801.
[13] *Id., Exhibit "P-2," Amended AOI,* p. 1803.
[14] *Id., Vol. 2, Exhibit "P-3," BIR LTS Certificate of Registration,* p. 668.
[15] *Id., Exhibit "P-29," Authority to Print ("ATP") Official Receipts ("OR"),* pp. 784-787.
[16] *Id., Vol. 3, Joint Stipulation of Facts and Issues ("JSFI"),* p. 1336.
[17] *Records, CTA Case No. 8802, Vol. 4, Exhibit "P-5," LFT Processing Corporation's SEC Certificate of Registration,* p. 1816.
[18] *Id., Exhibit "P-6," PGPRC's Certificate of Filing of Amended AOI,* p. 1844.

and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatsoever process, method, or mode in which such activities can be carried out; and in conjunction with the foregoing[,] to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment[] whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof[.]"[19]

PGPRC is registered with the Board of Investments ("BOI") on a non-pioneer status as a New Producer of Gold and Silver Doré.[20]

On July 5, 2007, petitioner and PGPRC entered into an Ore Sales and Purchase Agreement, whereby petitioner will exclusively sell to PGPRC Pre-production and ROM Ores mined from the former's facilities.[21]

Petitioner filed its Quarterly VAT Returns or BIR Form No. 2550-Q, detailed as follows:

EXHIBIT	QUARTER	PERIOD COVERED	DATED FILED	AMENDED	REFUND/TCC CLAIMED	VAT PAYABLE/ (OVERPAYMENT)
P-11[22]	Second	Oct-Dec-11	25-Jan-12	No	Php -	Php (475,635,781.01)
P-12[23]	Second	Oct-Dec-11	28-Aug-12	Yes	58,518,649.42	(56,377,725.08)
P-841[24]	Third	Jan-Mar-12	24-Apr-12	No	67,283,137.43	(56,455,688.13)
R-1[25]	Fourth	Apr-Jun-12	25-Jul-2012	Yes	76,333,107.78	(56,366,469.78)

Petitioner issued to PGPRC VAT Zero-Rated ORs for the "settlement of ore sales" for the period October 2011 to March 2012, as follows:

EXHIBIT	OR NO.	DATE	AMOUNT	PERIOD
P-14[26]	137	10-Nov-11	USD 4,175,003.67	Oct-11

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[19] *Records, CTA Case No. 8802, Vol. 4, Exhibit "P-6," PGPRC's Amended AOI,* p. 1847.
[20] *Id., Vol. 2, Exhibit "P-7," PGPRC's Board of Investments ("BOI") Certificate of Registration,* pp. 738-745, with annexes.
[21] *Id., Exhibit "P-4," Ore Sales and Purchase Agreement,* pp. 669-692.
[22] *Id., Vol. 4, Exhibit "P-11," BIR Form No. 2550-Q Second Quarter,* pp. 1861-1867, with annexes.
[23] *Id., Exhibit "P-12," BIR Form No. 2550-Q Second Quarter,* pp. 1868-1872, with annexes.
[24] *Id., Exhibit "P-841," BIR Form No. 2550-Q Third Quarter,* pp. 1890-1893, with annexes; for date of filing, see *BIR Records, CTA Case No. 8842,* p. 124.
[25] *BIR Records, CTA Case No. 8842, BIR Form No. 2550-Q Fourth Quarter,* pp. 114-119, with annexes.
[26] *Records, CTA Case No. 8802, Vol. 2, Exhibit "P-14," Official Receipt ("OR") No. 137,* p. 767.

P-16[27]	139	12-Dec-11	4,571,323.98	Nov-11
P-18[28]	141	9-Jan-12	4,116,365.70	Dec-11
P-843[29]	143	9-Feb-12	5,617,382.98	Jan-12
P-845[30]	145	9-Mar-12	5,953,139.62	Feb-12
P-847[31]	147	11-Apr-12	6,578,119.31	Mar-12

On November 14, 2013, petitioner filed its Application for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for a TCC, covering the period October 1, 2011 to December 31, 2011 (Second Quarter), in the amount of Php58,518,649.42.[32]

On January 30, 2014, the BIR received a Letter[33] from petitioner applying for a refund, along with supporting documents including its Application for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for a TCC, covering the period January 1, 2012 to March 31, 2012 (3rd Quarter), in the amount of Php67,283,137.43.[34]

Due to the inaction of respondent on its claims for refund, petitioner filed two (2) separate Petitions for Review with the Court of Tax Appeals ("CTA"), as follows: *(1) CTA Case No. 8802* filed on April 14, 2014 covering the Second Quarter of FY 2012,[35] and *(2) CTA Case No. 8842* filed on June 26, 2014 covering the Third Quarter of FY 2012,[36] both raffled to the Third Division.

CTA Case No. 8842

On July 3, 2014, the Court issued Summons[37] to the CIR, with an order to file an Answer to the Petition for Review within fifteen (15) days from service thereof. The BIR Litigation Division received the same on July 7, 2014.[38]

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[27] *Records, CTA Case No. 8802, Vol. 2, Exhibit "P-14," OR No. 139,* p. 769.
[28] *Id., Exhibit "P-14," OR No. 141,* p. 771.
[29] *Records, CTA Case No. 8842, Vol. 2, Exhibit "P-14," OR No. 143,* p. 993.
[30] *Id., Exhibit "P-14," OR No. 145,* p. 992.
[31] *Id., Exhibit "P-14," OR No. 147,* p. 991.
[32] *Records, CTA Case No. 8802, Vol. 2, Exhibit "P-8," BIR Form No. 1914 Second Quarter,* p. 746.
[33] *BIR Records, CTA Case No. 8842,* pp. 152-153.
[34] *Records, CTA Case No. 8842, Vol. 2, Exhibit "P-840," BIR Form No. 1914 Third Quarter,* p. 976; for clear receiving stamp, see *BIR Records, CTA Case No. 8842,* p. 154.
[35] *Records, CTA Case No. 8802, Vol. 1, PFR,* pp. 14-563, with annexes.
[36] *Records, CTA Case No. 8842, Vol. 1, PFR,* pp. 6-810, with annexes.
[37] *Id., Vol. 2, Summons,* p. 811.
[38] *Id.*

On July 22, 2014, the CIR filed a Motion for Extension of Time to File Answer[39] praying for an extension of thirty (30) days from July 22, 2014 or until August 21, 2014, within which to file an Answer. This was granted by the Court in its Resolution[40] dated July 23, 2014.

Thereafter, on August 22, 2014, the CIR filed a Second Motion for Extension of Time to File Answer[41] praying for an additional period of twenty (20) days from August 21, 2014 or until September 10, 2014. This was granted by the Court in its Resolution[42] dated August 26, 2014.

On September 10, 2014, respondent filed an Answer[43] raising Special and Affirmative Defenses[44], in sum: *(1)* that entitlement to a claimed refund must be set in a clear and unmistakable manner; and *(2)* that bare allegations, unsubstantiated by evidence, are not equivalent to proof.

On October 17, 2014 and October 20, 2014, petitioner and respondent filed their respective Pre-Trial Briefs.[45]

On October 29, 2014, petitioner filed its Motion for Consolidation[46] of *CTA Case No. 8842* with *CTA Case No. 8802*; which was granted by the Court in its Resolution[47] dated November 6, 2014, subject to the conformity of the *ponente* of *CTA Case No. 8802*, the case bearing the lower docket number.

CTA Case No. 8802

On May 12, 2014, the Court issued Summons[48] to the CIR, with an order to file an Answer to the Petition for Review within fifteen (15)

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[39] *Records, CTA Case No. 8842, Vol. 2*, pp. 813-817.
[40] *Id.* at 818.
[41] *Id.* at 819-823.
[42] *Id.* at 824.
[43] *Id., Answer*, pp. 825-840.
[44] *Id.* at 826-837.
[45] *Records, CTA Case No. 8842, Vol. 2, Pre Trial Brief [For Petitioner FILMINERA RESOURCES CORPORATION]*, pp. 842-849; *Records, CTA Case No. 8842, Vol. 2, Respondent's Pre-Trial Brief*, pp. 850-854.
[46] *Records, CTA Case No. 8842, Vol. 2, Motion for Consolidation*, pp. 858-863.
[47] *Id., Vol. 2*, p. 1164.
[48] *Records, CTA Case No. 8802, Vol. 1, Summons*, p. 564.

days from service thereof. The BIR Litigation Division received the same on May 14, 2014.[49]

On May 29, 2014, the CIR filed a Motion for Additional of Time[50], praying for an extension of thirty (30) days from May 29, 2014 or until June 28, 2014, within which to file an Answer. This was granted by the Court in its Resolution[51] dated June 3, 2014.

On June 30, 2014, respondent filed an Answer[52] by registered mail, raising Special and Affirmative Defenses[53], in sum: *(1)* that it is incumbent upon petitioner to prove that it is entitled to the refund sought; and *(2)* that bare allegations, unsubstantiated by evidence, are not equivalent to proof.

On August 20, 2014 and August 22, 2014, petitioner and respondent filed their respective Pre-Trial Briefs.[54]

On September 8, 2014, the parties filed their Joint Stipulation of Facts and Issues ("JSFI").[55]

On September 17, 2014, a Pre-trial Order[56] was issued by the Court terminating the Pre-Trial Conference.

On October 29, 2014, petitioner filed its Motion for Consolidation[57] of *CTA Case No. 8842* with *CTA Case No. 8802*; which was granted by the Court in its Resolution[58] dated November 24, 2014.

Consolidated CTA Case Nos. 8802 and 8842

On November 28, 2014, the Court ordered the parties to file their Consolidated Pre-Trial Briefs.[59] Hence, on January 13, 2015 and

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[49] *Records, CTA Case No. 8802, Vol. 1, Summons,* p. 564.
[50] *Id., Vol. 1,* pp. 566-569.
[51] *Id.* at 570.
[52] *Id., Answer,* pp. 596-617.
[53] *Id.* at 597-615.
[54] *Id., Vol. 2, Pre Trial Brief [For Petitioner FILMINERA RESOURCES CORPORATION],* pp. 621-628; *Respondent's Pre-Trial Brief,* pp. 629-633.
[55] *Records, CTA Case No. 8802, Vol. 2, Joint Stipulation of Facts and Issues ("JSFI"),* pp. 908-912.
[56] *Id., Pre-Trial Order ("PTO"),* pp. 916-921.
[57] *Id., Vol. 3, Motion for Consolidation,* pp. 1253-1258.
[58] *Id., Vol. 3,* p. 1297.
[59] *Id.* at 1298.

January 26, 2015, respondent (by registered mail) and petitioner filed their respective Consolidated Pre-Trial Briefs.[60]

On February 10, 2015, the parties filed their (Consolidated) JSFI.[61]

On February 23, 2015, a new Pre-trial Order[62] was issued by the Court terminating the Pre-Trial Conference.

In the course of the proceedings, petitioner presented the following witnesses: *(1)* Ms. Joy P. Dompor,[63] Treasurer of petitioner; and *(2)* Atty. Clifford E. Chua[64], the Court-appointed[65] Independent Certified Public Accountant ("ICPA").

On July 6, 2015, petitioner filed its Formal Offer of Evidence ("FOE")[66], offering *Exhibits* "P-1" to "P-36," "P-36-1" to "P-36-39," "P-37" to "P-2013," "P-2014" to "P-2014-A," and "P-2015" to "P-2015-A." On August 18, 2015, the Court resolved[67] to admit all of petitioner's exhibits except for *Exhibits* "P-9" and P-10," "P-129," "P-161" to "P-163," "P-190" to "P-192," "P-221" to "P-227," "P-247," "P-299," "P-655," "P-804," "P-861" to "P-1164," "P-1165" to "P-1199," and "P-1200" to "P-2012."

After petitioner filed a Manifestation with Motion for Partial Reconsideration of the Resolution dated 18 August 2015[68], the Court admitted[69] *Exhibits* "P-9," "P-129," "P-161" to "P-163," "P-190" to "P-192," "P-221" to "P-227," "P-247," "P-299," "P-655," "P-804," "P-861" to "P-1164," "P-1165" to "P-1199," and "P-1200" to "P-2012," leaving

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[60] *Records, CTA Case No. 8802, Vol. 3, Consolidated Pre-Trial Brief for the Respondent,* pp. 1324-1328; *Consolidated Pre-Trial Brief [For Petitioner FILMINERA RESOURCES CORPORATION],* pp. 1314-1323.
[61] *Id., Consolidated Joint Stipulation of Facts and Issues ("CJSFI"),* pp. 1335-1340.
[62] *Id., New PTO,* pp. 1354-1360.
[63] *Id., Exhibit "P-2015," Consolidated Judicial Affidavit ("JA") of Ms. Joy P. Dompor,* pp. 1378-1694, with annexes; *Records, CTA Case No. 8802, Vol. 3, April 20, 2015 Minutes of Hearing,* p. 1697; *Transcript of Stenographic Notes ("TSN"), April 20, 2015 Hearing,* pp. 4-14.
[64] *Records, CTA Case No. 8802, Vol. 3, Exhibit "P-2014," JA of Atty. Clifford E. Chua,* pp. 1745-1760, with annexes; *Records, CTA Case No. 8802, Vol. 3, Independent Certified Public Accountant ("ICPA") Report,* pp. 1698-1742; *Records, CTA Case No. 8802, Vol. 3, May 18, 2015 Minutes of Hearing,* p. 1761; *TSN, May 18, 2015 Hearing,* pp. 6-18.
[65] *Records, CTA Case No. 8802, Vol. 3, Oath of Commission,* p. 1371.
[66] *Id., Petitioner's Formal Offer of Evidence ("FOE"),* pp. 1770-1800.
[67] *Id., Vol. 3,* pp. 1923-1924.
[68] *Id.* at 1925-1931.
[69] *Id.* at 1936-1938.

only *Exhibit* "P-10" denied[70] for failure to present the original for comparison.

During the hearing held last January 25, 2016, counsel for respondent manifested that she will no longer present any evidence and in *lieu* thereof, will just file a memorandum; hence, the parties were granted thirty (30) days or until February 24, 2016 within which to file their respective memoranda.[71]

Petitioner filed its Memorandum [For The Petitioner][72] on February 10, 2016; and on March 3, 2016, the CIR filed a Memorandum[73].

Thereafter, the Court resolved to submit the case for decision through its Resolution[74] dated March 15, 2016; hence, this Decision.

The Issues[75]

WHETHER FRC IS ENTITLED TO RECOVER, BY WAY OF REFUND OR ISSUANCE OF A TCC, ITS ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR THE SECOND QUARTER OF FY ENDING JUNE 30, 2012 IN THE AMOUNT OF PHP58,518,649.42 REPRESENTING DOMESTIC PURCHASES;

WHETHER FRC IS ENTITLED TO RECOVER, BY WAY OF REFUND OR ISSUANCE OF A TCC, ITS ALLEGED UNUTILIZED CREDITABLE INPUT TAXES FOR THE THIRD QUARTER OF FY ENDING JUNE 30, 2012 IN THE AMOUNT OF PHP67,283,137.43 REPRESENTING DOMESTIC PURCHASES; AND

WHETHER FRC COMPLIED WITH THE SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND AND THE SUBSTANTIATION REQUIREMENT FOR ZERO-RATED TRANSACTIONS.

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[70] *Records, CTA Case No. 8802, Vol. 3,* p. 1924.
[71] *Id., Vol. 4, Minutes of Hearing dated January 25, 2016,* p. 1939; as confirmed in a Resolution dated February 4, 2016, see *Records, CTA Case Nos. 8802, Vol. 4,* p. 1941.
[72] *Id., Memorandum [For The Petitioner],* pp. 1942-1960.
[73] *Id., Memorandum,* pp. 1967-1977.
[74] *Id., Vol. 4,* p. 1982.
[75] *Id., Vol. 3, new PTO,* p. 1355.

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Petitioner's Arguments[76]

Petitioner alleges that it has sufficiently established its entitlement to recover unutilized creditable input taxes; that its domestic purchases of goods and services are subject to VAT at zero percent rate, being export sales pursuant to *Section 4.106-5, Revenue Regulations ("RR") No. 16-2005;* and that it exclusively sells its ores to PGPRC, which exports the same and receives as payment therefor foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"); hence, the revenue obtained by petitioner is subject to VAT at zero percent pursuant to *Section 106 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC").*

It went on to claim that PGPRC was approved as a *bona fide* BOI-registered enterprise with a non-pioneer status with pioneer incentives; that it was issued a Certificate of Registration by the BOI; that, therefore, the revenues derived by PGPRC from its export sales of the ores are subject to VAT zero-rating; and that certainly, PGPRC's suppliers for goods and services, like petitioner, are entitled to VAT zero-rating on its sales to PGPRC.

In fact, petitioner explains that PGPRC sought confirmation that the input VAT on PGPRC's local purchases and importations of goods and services, among others, attributable to zero-rated sales can be claimed as tax credit or refund, pursuant to *Section 112 of the 1997 NIRC* and *4.112-1 of RR No. 16-05;* and that *BIR Ruling No. DA (VAT–073)435-2009* was issued confirming the foregoing.

Moreover, petitioner insists that the Second Division of the CTA issued a decision involving petitioner in *CTA Case Nos. 8528 and 8576,* ruling that the domestic purchases of petitioner are attributable to zero-rated sales; hence, the Second Division ordered the refund and/or the issuance of a TCC in its favor; that just like in the said case, petitioner has fully established the specific requirements for claiming a refund and or issuance of a TCC; and that it has sufficiently complied with the requirements set out in the case of *San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, November 25, 2009.*

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[76] *Records, CTA Case No. 8802, Vol. 4, Memorandum [For The Petitioner],* pp. 1950-1959.

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Respondent's Counter-Arguments[77]

On the other hand, the CIR counters that petitioner failed to prove that its sales are zero-rated; that no proof was shown that PGPRC exports one hundred percent (100%) of its processed gold and silver ores and that the Articles of Incorporation of PGPRC is not enough proof of this claim; that petitioner's reliance on *BIR Ruling No. DA (VAT – 073)435-2009* is misplaced since it was issued based on the assumption that the given averments are true; and that it is imperative for petitioner to prove compliance with the registration requirements of a VAT taxpayer, pursuant to *Section 6(a)(b) of RR No. 6-97* in relation to *Section 4.107-1(a) of RR No. 7-95,* and *Section 236 of the 1997 NIRC.*

Respondent alleges that petitioner failed to show that its purchases of non-capital goods and services were made in the course of its trade or business; that the said purchases were properly supported by VAT invoices and/or ORs, and other documents such as entries made in its subsidiary purchase journal showing that it actually paid VAT in accordance with *Sections 110(A)(2) and 113 of the 1997 NIRC,* and pursuant to *Section 4.104-5(a)(b) of RR No. 7-95*; and that the input taxes for the subject periods are attributable to its zero-rated sales and were not applied against any output VAT or carried over in the succeeding taxable quarter/s.

Moreover, respondent claims that it is the responsibility of the taxpayer to comply with *Section 2(c)(1)(2)(4) of RR No. 3-88*; and that there was no proof of compliance with the prescribed checklist of requirements to be submitted pursuant to *Revenue Memorandum Order ("RMO") No. 53-98,* hence, there was insufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior to the filing of a judicial claim.

Lastly, respondent argues that claims for refund are strictly construed against the claimant and liberally in favor of the taxing authority.

The Ruling of the Court

The Court has jurisdiction over the instant case.

[77] *Records, CTA Case Nos. 8802, Vol. 4, Memorandum,* pp. 1968-1976.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative claim for refund, *Section 112(A) of the 1997 NIRC* provides 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> xxx xxx xxx[78]

As to the timeliness of the judicial claim for refund, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*[79], is instructive, to wit:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> *(C) Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of

[78] Underscoring ours.
[79] *Consolidated Value-Added Tax Regulations of 2005*, effective November 1, 2005.

> submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.
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> 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.
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> xxx xxx xxx[80]

Corollary, *Section 4.112-1(d) of RR No. 16-2005* states the following:

> Sec. 4.112-1. *Claims for Refund/Tax Credit Certificate of Input Tax.*
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> xxx xxx xxx
>
> *(d) Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.[81]

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[80] Italics retained, underscoring ours.
[81] *Id.*

Based on *Section 112(A) of the 1997 NIRC*, petitioner has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide on the claim. In case of inaction by the CIR after one hundred twenty (120) days from the date of submission of the application with complete documents, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*, grants petitioner thirty (30) days to file its judicial claim with the CTA.

The Court finds it important to clarify that while petitioner filed only its Application for Tax Credits/Refunds or BIR Form No. 1914, covering the period October 1, 2011 to December 31, 2011 (Second Quarter),[82] there is no need to submit complete documents required under *RMO No. 53-98* in relation to *Section 112(C) of the 1997 NIRC*. In the Supreme Court case of *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*[83], it was held that:

> The CIR's reliance on *RMO 53-98* is misplaced. There is nothing in *Section 112 of the [1997] NIRC, RR [No.] 3-88* or *RMO [No.] 53-98* itself that requires submission of the complete documents enumerated in *RMO [No.] 53-98* for a grant of a refund or credit of input VAT. The subject of *RMO [No.] 53-98* states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that *RMO [No.] 53-98* applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with *[RMC No.] 42-03*. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA *EB*'s finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.

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[82] *Records, CTA Case Nos. 8802, Vol. 2, Exhibit "P-8," BIR Form No. 1914 Second Quarter*, p. 746.
[83] G.R. No. 205055, July 18, 2014, 730 SCRA 242.

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> Under *Section 112(C) of the 1997 NIRC*, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. In *Commissioner of Internal Revenue v. San Roque Power Corporation*, we emphasized that compliance with the 120-day waiting period is mandatory and jurisdictional. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC's claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Accordingly, we do not find merit in the CIR's argument that the judicial claim was prematurely filed.[84]

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim.[85] The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it.[86] Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the *Rules of Court*.[87] The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[88]

Records disclose that the subject periods cover October 1, 2011 to December 31, 2011 for *CTA Case No. 8802*; and January 1, 2012 to March 31, 2012 for *CTA Case No. 8842*; hence, the taxable quarters close on December 31, 2011 and March 31, 2012, respectively. Therefrom, petitioner had two (2) years or until December 31, 2013 and March 31, 2014, respectively, to file its administrative claims for refund.

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[84] Underscoring and italics ours.

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

[86] *Id.*

[87] *Id.*

[88] *Id.*

On November 14, 2013 and January 30, 2014, petitioner filed is administrative claims for refund covering the period October 1, 2011 to December 31, 2011[89] and January 1, 2012 to March 31, 2012[90], respectively; well within the due dates. Thereafter, petitioner had one hundred and twenty (120) days or until March 14, 2014 and May 30, 2014, respectively, to await the CIR's decision.

Finding that no decisions have been made on its claims, petitioner had thirty (30) days from March 14, 2014 and May 30, 2014 or until April 14, 2014 and June 30, 2014, respectively, to file its judicial claims with the CTA.

On April 14, 2014 and June 26, 2014, petitioner timely filed the present Petitions for Review, for reference:

CLOSE OF QUARTER	ADMINISTRATIVE CLAIM DUE DATE	ADMINISTRATIVE CLAIM FILED	LAST DAY FOR CIR'S DECISION	JUDICIAL CLAIM DUE DATE	JUDICIAL CLAIM FILED
December 31, 2011	December 31, 2013	November 14, 2013	March 14, 2014	April 14, 2014[91]	April 14, 2014
March 31, 2012	March 31, 2014	January 30, 2014	May 30, 2014	June 30, 2014[92]	June 26, 2014

Considering that both the administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the cases at bar.

Petitioner is entitled to the issuance of a TCC, albeit at a reduced amount.

The Court will now proceed to address the issue of whether petitioner is entitled to the issuance of a TCC representing its alleged unutilized input VAT attributable to its zero-rated sales.

Under *Section 112(A) of the 1997 NIRC,* in order to be entitled to a refund/issuance of a TCC of unutilized input VAT, the following requisites must be satisfied:

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[89] *Records, CTA Case Nos. 8802, Vol. 2, Exhibit "P-8," BIR Form No. 1914 Second Quarter,* p. 746.
[90] *BIR Records, CTA Case No. 8842,* pp. 152-153; *Records, CTA Case Nos. 8842, Vol. 2, Exhibit "P-840," BIR Form No. 1914 Third Quarter,* p. 976; for clear receiving stamp, see *BIR Records, CTA Case No. 8842,* p. 154.
[91] The last day, April 13, 2014, fell on a Sunday, hence, the next working day is April 14, 2014.
[92] The last day, June 29, 2014, fell on a Sunday, hence, the next working day is June 30, 2014.

1. the taxpayer must be VAT-registered;

2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;

3. the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and

4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Having determined compliance with the third requirement, the Court will move on to the others.

Petitioner is a VAT-registered entity, as shown by its Certificate of Registration No. OCN8RC0000036160 dated January 1, 1997, with TIN 000-153-880-000.[93]

PGPRC, a BOI-registered entity, exports one hundred percent (100%) of its processed gold and silver ores. Its exports are paid for in foreign currency duly accounted for based on the rules and regulations of the BSP. Thus, as the exclusive supplier of Pre-production Ore and ROM Ore of PGPRC, petitioner argues that all its sales thereto are entitled to VAT zero-rating pursuant to *Section 106(A)(2)(a)(5) of the 1997 NIRC,* and *Section 4.106-5(a)(5) of RR No. 16-2005,* which provide:

1997 NIRC

SEC. 106. *Value-added Tax on Sale of Goods or Properties. –*

(A) *Rate and Base of Tax.*- xxx

xxx xxx xxx

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

[93] *Records, CTA Case Nos. 8802, Vol. 2, Exhibit "P-3," BIR LTS Certificate of Registration,* p. 668.

(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.

RR No. 16-2005

SECTION 4.106-5. *Zero-rated Sales of Goods or Properties* – xxx

The following sales by VAT -registered persons shall be subject to zero-percent (0%) rate:

(a) *Export sales.*- 'Export Sales' shall mean:

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 BOI-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.

Based on the afore-quoted provisions, petitioner must comply with the following requisites in order for its sales to be considered zero-rated:

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 one hundred percent (100%) exported, as shown by a certification issued by the BOI.

Petitioner submitted a BOI Certification[94] issued on July 17, 2012, which certified that based on the information given, PGPRC exported one hundred percent (100%) of its total sales volume for the period July 1, 2011 to June 30, 2012, and the same has been issued pursuant to the Guidelines on the issuance of BOI Certification *per RMO No. 9-2000* entitled *"Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales."* With the submission of the said document, the Court finds petitioner's sales as zero-rated.

In its Quarterly VAT Returns for the Second (amended) and Third (original) Quarters of FY ending June 30 2012, petitioner's declared zero-rated sales/receipts amounted to Php1,338,053,276.08, broken down as follows:

EXHIBIT	PERIOD COVERED	ZERO-RATED SALES	
P-12	Oct. 1, 2011 to Dec. 31, 2011	Php	558,989,521.04
P-841	Jan. 1, 2012 to Mar. 31, 2012		779,063,755.04
TOTAL		**PHP**	**1,338,053,276.08**

However, scrutiny of petitioner's supporting invoices and summaries of sales transactions discloses that the above amount of Php1,338,053,276.08 is comprised of petitioner's ore sales to PGPRC in the amount of Php1,337,183,276.08 and revenues from lease of land to PGPRC in the amount of Php870,000.00, to wit:

PERIOD	CUSTOMER	AMOUNT				EXHIBIT
		ORE SALES		LAND LEASE		
Oct. 2011	Phil. Gold Processing Refining Corp.	Php	177,817,581.31	Php	145,000.00	P-25, P-20, P-19
Nov. 2011	Phil. Gold Processing Refining Corp.		199,748,572.63		145,000.00	P-26, P-22, P-21
Dec. 2011	Phil. Gold Processing Refining Corp.		180,988,367.10		145,000.00	P-27, P-24, P-23
	Sub-total - 2nd Qtr.	Php	558,554,521.04	Php	435,000.00	
Jan. 2012	Phil. Gold Processing Refining Corp.		240,811,590.97[95]		145,000.00	P-852, P-853

[94] *Exhibit "P-36."*

[95] *Records, CTA Case No. 8802, Vol. 3, Exhibit "P-2013," Annex J,* p. 1726.

Feb. 2012	Phil. Gold Processing Refining Corp.		255,365,877.14[96]		145,000.00	P-850, P-851
Mar. 2012	Phil. Gold Processing Refining Corp.		282,451,286.93[97]		145,000.00	P-848, P-849
	Sub-total - 3rd Qtr.	Php	778,628,755.04	Php	435,000.00	
	TOTAL	**PHP**	**1,337,183,276.08**	**PHP**	**870,000.00**	

The amount of Php870,000.00 derived by petitioner from its lease of land to PGPRC cannot be considered as zero-rated export sales under *Section 106(A)(2)(a) of the 1997 NIRC*, and *Section 4.106-5(a) of RR No. 16-05*. Thus, the same is disallowed.

Therefore, out of the total amount of Php1,338,053,276.08 zero-rated sales/receipts declared by petitioner in its Quarterly VAT Returns for the Second and Third Quarters of FY ending June 30, 2012, only the amount of Php1,337,183,276.08 representing petitioner's ore sales to PGPRC for the same period is subject to zero percent (0%) VAT, or in the percentage forms of 99.92%[98] for the Second Quarter and 99.94%[99] for the Third Quarter.

The Court shall now determine whether petitioner incurred input taxes in connection with its zero-rated sales of Php1,337,183,276.08, and if such input taxes were not applied against any output VAT liability of petitioner.

As reflected in its Quarterly VAT Returns for the Second and Third Quarters of FY ending June 30, 2012, petitioner incurred input VAT in the amounts of Php58,518,649.42 and Php67,283,137.43, respectively, totaling Php125,801,786.85, broken down as follows:

PERIOD	PARTICULARS	INPUT VAT		EXHIBIT
2nd Quarter	Domestics Purchases of Goods	Php	973,263.46	"P-12," line 21F
2nd Quarter	Domestics Purchases of Services		57,545,385.96	"P-12," line 21J
	Sub-Total	Php	58,518,649.42	
3rd Quarter	Domestics Purchases of Goods	Php	723,556.43	"P-841," line 21F
3rd Quarter	Domestics Purchases of Services		66,559,581.00	"P-841," line 21J
	Sub-Total	Php	67,283,137.43	
	TOTAL	**PHP**	**125,801,786.85**	

In support of the aforesaid input VAT, petitioner submitted various suppliers' invoices and ORs, which were all examined by the

[96] *Records, CTA Case No. 8802, Vol. 3, Exhibit "P-2013," Annex J*, p. 1726.
[97] *Id.*
[98] Php558,554,521.04/(Php558,554,521.04+Php435,000.00).
[99] Php778,628,755.04/(Php778,628,755.04+Php435,000.00).

ICPA, Atty. Clifford E. Chua. In his ICPA Report[100] dated April 22, 2015, Atty. Chua accounted for petitioner's input VAT claim but in the higher amount of Php125,801,884.98; and consequently, the difference of Php98.13 (Php125,801,884.98 less Php125,801,786.85) should be denied outright, to wit:

ICPA FINDINGS		AMOUNT			EXHIBITS
2nd Quarter					
Purchases with supporting documents (No Exceptions noted)			Php	47,054,798.19	"P-38" to "P-247"
Summary of input VAT from local purchases not in the name of the company	Php	6,224.70			"P-248" to "P-292"
Summary of input VAT from local purchases with noted alterations in the supporting documents		9,835,666.73			"P-293" to "P-302"
Summary of input VAT where the amount in words is not indicated		928,614.68			"P-303" to "P-809"
Summary of input VAT where the address of the company is not indicated		693,348.43	Php	11,463,854.54	"P-810" to "P-838"
Sub-total 2nd Quarter			Php	58,518,652.73	
3rd Quarter					
Purchases with supporting documents (No Exceptions noted)			Php	59,938,966.74	"P-861" to "P-1164"
Summary of input VAT from local purchases without proper supporting documents	Php	4,189,528.94			"P-1165" to "P-1199"
Summary of input VAT from local purchases with noted alterations in the supporting documents		986,305.82			"P-1200" to "P-1327"
Summary of input VAT where the amount in words is not indicated		720,937.79			"P-1328" to "P-1851"
Summary of input VAT where the address of the company is not indicated		1,447,492.96		7,344,265.51	"P-1852" to "P-2012"
Sub-total 3rd Quarter			Php	67,283,232.25	
TOTAL			PHP	125,801,884.98	

Upon scrutiny of the ICPA Report, together with petitioner's supporting documents, the Court finds that aside from the input VAT of Php11,463,854.54 and Php7,344,265.51 denied by the ICPA for the Second and Third Quarters of FY 2012, the following input taxes in the amounts of Php2,778,114.93 and Php38,711,743.58 for the same taxable quarters, respectively, shall be disallowed for not being properly substantiated by VAT invoices or ORs, in accordance with *Sections*

[100]*Records, CTA Case No. 8802, Vol. 3, Exhibit "P-2013,"* p. 1706-1707.

110(A) and 113(A)(B) of the 1997 NIRC, as implemented by *Sections 4.110-8 and 4.113-1 of RR No. 16-2005,* detailed as follows:

SUPPLIER'S NAME		INPUT VAT	EXHIBIT
2nd Quarter			
Nature of the Service Was Not Indicated			
Aden Remote Site (Philippines) Inc.	Php	233,251.01	P-38
St. Francis Square Realty Corp		2,835.52	P-96
Aden Remote Site (Philippines), Inc		229,808.55	P-99
St. Francis Square Realty Corp		457.52	P-186
St. Francis Square Realty Corp		262.00	P-187
St. Francis Square Realty Corp		247.82	P-188
Teleglobal Of Philippine (Toph)		6,000.00	P-191
Teleglobal Of Philippine (Toph)		6,000.00	P-192
Aden Remote Site (Philippines), Inc		235,770.80	P-193
Quantum Hotels And Resorts		323.11	P-233
Sycip Salazar Hernandez & Gatmaitan		88,242.70	P-247
Sub-total	Php	803,199.02	
With Noted Alterations or Additions in the Supporting OR Without Countersignature of the Authorized Representative of the Supplier			
Sunvar, Incorporated	Php	9,737.40	P-97
Agatep Associates, Inc.		47.44	P-100
Agatep Associates, Inc.		6,428.57	P-101
Agatep Associates, Inc.		9,000.00	P-102
Agatep Associates, Inc.		9,000.00	P-103
Agatep Associates, Inc.		9,000.00	P-104
Encarline Driver & Car Services		4,800.00	P-130
Encarline Driver & Car Services		5,400.00	P-131
Encarline Driver & Car Services		4,800.00	P-132
Encarline Driver & Car Services		1,065.00	P-133
Encarline Driver & Car Services		3,261.85	P-134
Encarline Driver & Car Services		2,983.86	P-135
Sub-total	Php	65,524.12	
OR Not Readable			
Bradley Drilling Incorporated	Php	380,743.06	P-106
Bradley Drilling Incorporated		464,177.88	P-107
Sub-total	Php	844,920.93	
OR Without Authorized Signature			
Drillcorp Philippines Inc	Php	416,642.09	P-109
Drillcorp Philippines Inc		155,735.58	P-110
Drillcorp Philippines Inc		163,873.28	P-111
Drillcorp Philippines Inc		322,487.76	P-112
Sub-total	Php	1,058,738.71	
Supported with TIN-V OR			
Astron Communication System	Php	5,732.14	P-197
Sub-total 2nd Quarter	**Php**	**2,778,114.93**	
3rd Quarter			
Nature of the Service Was Not Indicated			
Leighton Contractors (Phils), Inc.	Php	10,316,640.40	P-907
New World International Development		278.57	P-912

Philippine Gold Limited		164,210.38	P-915
St Francis Square Realty Corp		228.76	P-929
Encarline Driver & Car Services		4,800.00	P-957
Encarline Driver & Car Services		4,800.00	P-958
Leighton Contractors (Phils.), Inc.		14,371,842.21	P-1004
Santiago & Sons Metal And Services, Inc		3,750.00	P-1008
Teleglobal Of Philippine (Toph, Inc.)		6,000.00	P-1033
Leighton Contractors (Phils.), Inc.		13,457,638.70	P-1114
St Francis Square Realty Corp		244.40	P-1151
St Francis Square Realty Corp		303.06	P-1152
St Francis Square Realty Corp		215.07	P-1153
St Francis Square Realty Corp		361.71	P-1154
St Francis Square Realty Corp		361.71	P-1155
St Francis Square Realty Corp		303.06	P-1156
St Francis Square Realty Corp		244.40	P-1157
St Francis Square Realty Corp		1,085.13	P-1158
Sub-total	Php	38,333,307.56	
With Noted Alterations or Additions in the Supporting OR Without Countersignature of the Authorized Representative of the Supplier			
SGS Philippines, Inc.	Php	354,916.73	P-925
St. Francis Square Realty Corp.		439.92	P-1020
St. Francis Square Realty Corp.		457.52	P-1021
St. Francis Square Realty Corp.		723.42	P-1022
St. Francis Square Realty Corp.		1,085.13	P-1023
St. Francis Square Realty Corp.		1,212.22	P-1024
Agatep Associates, Inc.		9,000.00	P-1037
Agatep Associates, Inc.		9,000.00	P-1038
Agatep Associates, Inc.		47.44	P-1039
Agatep Associates, Inc.		63.53	P-1040
Agatep Associates, Inc.		650.11	P-1041
First United Travel, Inc.		24.00	P-1069
First United Travel, Inc.		24.00	P-1070
First United Travel, Inc.		24.00	P-1071
First United Travel, Inc.		24.00	P-1072
First United Travel, Inc.		144.00	P-1073
First United Travel, Inc.		24.00	P-1074
Sub-total	Php	377,860.02	
Supported by OR with pre-printed TIN only			
Astron Communication Systems	Php	576.00	P-940
Sub-total 3rd Quarter	**Php**	**38,711,743.58**	
TOTAL	**PHP**	**41,489,858.51**	

Therefore, out of petitioner's input VAT claim for the Second and Third Quarters of FY 2012 in the amounts of Php58,518,649.42 and Php67,283,137.43, respectively, only the amounts of Php44,276,676.64 and Php21,227,033.50 represent petitioner's valid input tax.

However, as discussed earlier, these input taxes cannot be claimed in full by petitioner since only 99.92% (for the Second Quarter) and 99.94% (for the Third Quarter), of the actual zero-rated sales declared *per* VAT Returns were found to be valid. Thus, such input tax credits shall be allocated accordingly:

DETAILS	2ND QUARTER		3RD QUARTER	
Input VAT Claimed	Php	58,518,649.42	Php	67,283,137.43
Less: Disallowances				
Unaccounted Difference		3.31[101]		94.84[102]
Per ICPA Report		11,463,854.54		7,344,265.51
Per Court Findings		2,778,114.93		38,711,743.58
Valid Input VAT	Php	44,276,676.64	Php	21,227,033.50
Multiplied by: Percentage of Zero-rated Sales		99.92%		99.94%
Input VAT Attributable to Zero-rated Sales	Php	44,241,255.30	Php	21,214,297.28
TOTAL - 2ND & 3RD QUARTERS			**PHP**	**65,455,522.58**

As to whether or not the said input VAT were applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's Quarterly VAT Returns for the subject period of claim showed that petitioner had no output tax liabilities against which the claimed input VAT may be applied or credited. In addition, the claimed input VAT were not carried-over by petitioner in the succeeding quarters since they were deducted as "VAT Refund/TCC claimed" from the total available input taxes in its Second[103] and Third[104] Quarterly VAT Returns for FY 2012.

Therefore, petitioner is entitled only to the properly substantiated amounts of Php44,241,255.30 and Php21,214,297.28, as claims for refund arising from its unutilized input VAT from zero-rated transactions.

In view of the foregoing, petitioner was able to sufficiently prove its entitlement to a TCC of its unutilized excess input VAT attributable to its zero-rated sales for the Second and Third Quarters of FY ending June 30, 2012, albeit in the reduced amount of Php65,455,522.58.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Filminera Resources Corporation in the reduced amount of **SIXTY FIVE MILLION FOUR HUNDRED FIFTY-FIVE THOUSAND FIVE**

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[101] *Records, CTA Case No. 8802. Vol. 3, Exhibit "P-2013," par. e,* p. 1706.
[102] *Id.*
[103] *Id., Vol. 4, Exhibit "P-12," BIR Form No. 2550-Q Second Quarter, line 23D.*
[104] *Id., Exhibit "P-841," BIR Form No. 2550-Q Third Quarter, line 23D.*

HUNDRED TWENTY-TWO AND 58/100 PESOS (PHP65,455,522.58).

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice