REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIO TUBA NICKEL MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6227

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 0 4 2004

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DECISION

This case involves a claim for refund or tax credit in the total amount of P2,807,934.82 allegedly representing unutilized input value-added taxes for the fourth quarter of 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 2nd Floor, Solid Mills Building, De la Rosa Street, Legaspi Village, Makati City.[1]

Petitioner is registered as an export producer on a preferred non-pioneer basis with the Board of Investments ("BOI") under Republic Act No. 6135, as amended, to engage, among others, in the production, manufacture and export of beneficial nickel silicate ore, as shown by its BOI Certificate of Registration, dated March 1, 1974, bearing Registration No. 74-446.[2] It is likewise registered with the Bureau of Internal Revenue ("BIR") as value-added tax (VAT) taxpayer in accordance with the requirements of law and with Taxpayer Identification No. 470-000-142-665-V.[3]

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[1] Stipulation of Facts, par. 1.
[2] *Ibid.*, par. 3.
[3] *Id.*, par. 4.

On January 25, 1999, petitioner filed its Quarterly VAT Return for the fourth quarter of 1998 covering the period October 1, 1998 to December 31, 1999 (sic). Subsequently, on October 1, 1999, petitioner filed its Amended Quarterly VAT Return for the fourth quarter of 1998.[4]

As a VAT-registered taxpayer and exporter of goods, petitioner is subject to VAT at the rate of 0% on its export sales.[5] Being zero-rated, petitioner claims that its sales of goods do not result in any output VAT liability. And under Section 112 of the Tax Code, as amended by R.A. 8424 and Section 4.106-1(a) of Revenue Regulations No. 7-95, as amended, a VAT-registered person whose sales are zero-rated is entitled to apply for the issuance of a tax credit certificate or refund of its unutilized input tax attributable to such sales as well as on its importation or local purchase of capital goods within two (2) years after the close of the taxable quarter when the sales/purchases were made.

Accordingly and pursuant to BIR Revenue Audit Memorandum Order No 2-93, on November 4, 1999, petitioner filed with the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance an application for refund/tax credit certificate of VAT input tax paid for the fourth quarter of 1998.[6]

Due to the inaction of the respondent on petitioner's claim, the instant petition was filed on January 23, 2001.

The parties agreed that the issues to be resolved in this case are:

1. Whether or not Petitioner generated export sales for the 4th quarter of 1998;

2. Whether or not the proceeds of the export sales were paid for in acceptable foreign currency inwardly remitted to the Philippines;

3. Whether or not the input taxes are attributable to its zero-rated sales or pertain to the importation or purchase of capital goods; and

[4] *Id.*, par. 6.
[5] *Id.*, par. 5.
[6] *Id.*, par. 7.

4. Whether or not the input VAT are duly supported by documents.

Anent the first issue, petitioner presented its VAT return for the fourth quarter of 1998 filed on January 25, 1999, showing the following information:[7]

	Amount	VAT Output Tax
Taxable Sales	P 1,214,571.70	P 121,457.17
Zero-Rated Sales	58,635,325.09	
Total Sales	P59,849,896.79	
	Amount	**VAT Input Tax**
Input Tax Carried Over from Previous Quarter		P 42,680,773.82
Domestic Purchases	P17,004,750.80	1,700,475.08
Importation of Goods	1,489,160.00	148,916.00
Total Purchases	P18,493,910.80	
Total Available Input Tax		P 44,530,164.90
VAT Payable (Excess Input Tax)		P (44,408,707.73)

On October 01, 1999, petitioner filed its amended 1998 4th Quarterly VAT Return[8] in order to reflect the following corrected entries:

	Amount	VAT Output Tax
Taxable Sales	P 1,578,597.00	P 157,859.70
Zero-Rated Sales	57,492,755.73	
Total Sales	P 59,071,352.73	
	Amount	**VAT Input Tax**
Input Tax Carried Over from Previous Quarter		P 34,567,383.43
Domestic Purchases	P 28,168,785.20	2,816,878.52
Importation of Goods	1,489,160.00	148,916.00
Total Purchases	P 29,657,945.20	
Total Available Input Tax		P 37,533,177.95
VAT Payable (Excess Input Tax)		P(37,375,318.25)

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[7] Exhibits A & A-2.
[8] Exhibits B & B-2.

Evidence forwarded to this court such as export sales invoices, bills of lading/export declarations (*Exhs. F1 to F-8*) and inward remittances (*Exhs. G-1 to G-3*) proved that petitioner actually generated export sales for the fourth quarter of 1998 in the amount of P57,492,755.73.

As to the second issue of whether or not the proceeds of the export sales were paid for in acceptable foreign currency inwardly remitted to the Philippines, petitioner submitted the report of the independent certified public accountant[9] who also testified before this court.[10] His report contains, among others, the following finding as regards the inward remittances:

> "Upon examination of the documents, we noted no exceptions. The amounts of inward remittances as evidenced by computer-generated BCA correspond to the amounts indicated in the export sales invoices. The BCA indicates to which shipment the remittance is to be applied."

This particular finding was not disputed by the respondent. Therefore, we resolve the second issue in favor of the petitioner.

The third and the last issues are to be discussed jointly as they are interrelated.

To be entitled to the refund of input VAT on purchases of goods and services attributable to zero-rated sales, petitioner must prove that:

1. Both the administrative and judicial claims for refund were filed within two (2) years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4.106-2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

2. The claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding period;

3. The claimed input VAT payments are directly attributable to zero-rated sales; and

4. The claimed input VAT payments are duly supported by VAT invoice or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code (*Intel Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902, February 05, 2002).*

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[9] Exhibit C.
[10] See TSN, October 9, 2001.

The first requirement was complied with by the petitioner. Both the administrative and judicial claims for refund filed on November 4, 1999 *(Annex E, Petition for Review, page 10, CTA records)* and January 23, 2001, respectively, were within the two-year prescriptive period reckoned from January 25, 1999, the date when the 4th Quarterly VAT Return for taxable year 1998 *(par. 6, Stipulation of Facts; Exhibit A)* was filed.

Petitioner was also able to establish that the amount sought to be refunded was not applied against any output tax. As shown in its 4th Amended Quarterly VAT Return for taxable year 2000 *(Exhibit S)*, the amount claimed of P2,807,934.82 was included in the amount deducted of P14,853,248.68 from its total available input tax of P54,193,078.73 *(TSN, February 6, 2002, pp. 19-21)*.

However, petitioner failed to meet the third and fourth requirements.

Section 2(c)(1)(i) and (ii) of Revenue Regulations No. 3-88 and Section 4.108-1 of Revenue Regulations No. 7-95 provide:

> "**Section 2.** Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:
>
> Section 16. Refunds or Tax Credit of Input Tax. –
>
> *(a) Claims for Tax Credits/Refunds.* - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the City or Municipality where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.
>
> A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or Refund. In addition, the following documents shall be attached whenever applicable:
>
> **1. Export sales**

i) photo copy of the export documents showing the amount of export, and the date and destination of the goods exported. With respect to the foreign currency denominated sale, the photo copy of the invoice or receipt evidencing the sale of the goods, as well as the name of person to whom the goods were delivered.

ii) Statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in accordance with applicable banking regulations." (Underscoring supplied.)

"**SEC. 4.108-1. Invoicing Requirements.**- All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. **the name, TIN, and address of seller;**
2. date of transaction;
3. quantity, unit cost, and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
6. the invoice value or consideration."

After a careful scrutiny of the pertinent documents on record, this court found that the export sales invoices *(Exhibits F-1 & F-5)* do not bear petitioner's TIN and the imprinted word "zero-rated" as required by Section 113(A) of the Tax Code and its implementing regulations. And even if these invoices were printed in 1984 the Taxpayer's Identification Number (TIN) and VAT registration number must be imprinted thereon pursuant to Section 3 of Revenue Regulations 13-93 and Section 26(d) of Revenue Regulations No. 5-87 which provide:

"**SECTION 3.** *Use of the TIN.* — The new TIN shall replace the Taxpayer Account Number (TAN), VAT registration number, non-VAT registration number and withholding tax agent identification number. Therefore, only one TIN shall be issued to and used by each taxpayer which shall be indicated on all documents, papers and/or records that require the indication of any of the aforementioned numbers.

> The new TIN shall be reflected/superimposed on all unexpended/unissued VAT or non-VAT receipts/invoices. All receipts/invoices to be printed subsequently shall contain the TIN, with the letter(s) "V" (for VAT registered) or "NV" (for non-VAT registered) placed after the last digit of the TIN. This shall facilitate the determination of whether the taxpayer is VAT registered or not."
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> **"SECTION 26.** x x x
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> (a) x x x
> (b) x x x
> (c) x x x
> (d) *Unused invoices or receipts.* — All VAT-registered persons who have in their possession invoices or receipts printed prior to January 1, 1988, should submit an inventory of such invoices or receipts indicating the number of unused booklets and the corresponding serial number. The VAT-registered person shall be required to stamp the unused invoices which he shall use in connection with his VAT taxable transactions with the taxpayer's VAT registration number. Thereafter, any subsequent printing of receipts or invoices should include the taxpayer's VAT registration number."

In the cases of *Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue, (CTA Case No. 6293, February 3, 2004)* and *Intel Philippines Manufacturing vs. Commissioner of Internal Revenue (CTA Case No. 6040, October 24, 2003)*, the court denied petitioner's claim for refund on the ground that the export sales invoices presented failed to comply with the requirements of a valid VAT invoice.

Indeed, petitioner was able to present the other export documents such as Bills of Lading and Export Declarations *(Exhibits F-3, F-4, F-7 & F-8)*. However, these documents are not sufficient to support its claim. These documents together with the valid sales invoices should be taken collectively as ruled in the case of *Commissioner of Internal Revenue vs. Philippine Bobbin Corporation, (CA-G.R. SP No. 59452, February 19, 2001)*, to wit:

> "Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills and export declarations and permits. These documents, taken collectively, are the best means to prove the exportation of goods."(Underlining ours.)

In view of the foregoing, petitioner's claim for refund of unutilized input VAT on its importation and domestic purchases of goods and services attributable to zero-rated sales should be denied.

Relative to petitioner's claim for refund of input VAT on capital goods, it must prove compliance with the requisites under Section 112(B) of the Tax Code, as amended, in relation to Section 4.106-1 of Revenue Regulations No. 7-95 quoted, *viz*:

> **"Section 112. *Refunds or Tax Credits of Input Tax.* –**
>
> x x x x x x x x x
>
> *"(B) Capital Goods.* - A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made."
>
> "SEC. 4.106-1. Refunds or tax credits of input tax.-(a) Zero-rated sales of goods or properties or services – x x x
>
> (b) Capital Goods - Only a VAT registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within the two(2) years after the close of the taxable quarter when the importation or purchase was made.
>
> Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.
>
> *"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f) [now 34(f)], used directly or indirectly in the production or sale of taxable goods or services."*

Based on the afore-quoted law, petitioner must show compliance with the following requisites: (1) that it is a VAT registered person; (2) the input taxes claimed by petitioner were paid on capital goods; (3) the input taxes have not been applied against its output tax liability;

and (4) the administrative claim for refund was seasonably filed *(Air Liquide Philippines, Inc. vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000)*.

It is noteworthy that petitioner already complied with requisites No. (1) as jointly stipulated by both parties and Nos. (3) and (4) as earlier tackled. Hence, only requirement No. (2) needs to be proven by petitioner.

A verification of the invoices, official receipts and BOC Import Entry & Internal Revenue Declarations submitted by the petitioner *(Exhibits D-1 to D-1225 and E-1 to E-13)*, this court observed that petitioner's purchases consisted mostly of office supplies, medical supplies, chemicals and spare parts for diesel engines. The same are not capital goods as defined under Section 4.106-1(b) of Revenue Regulations No. 7-95, hereinbefore quoted.

This goes without saying then that petitioner's claim for refund on capital goods should likewise be denied.

WHEREFORE, petitioner's claim for refund or tax credit of unutilized input value-added taxes for the fourth quarter of 1998 in the total amount of P2,807,934.82 is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

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

CERTIFICATION

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

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