REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CORAL BAY NICKEL CORPORATION, Petitioner,	CTA CASE NO. 8905
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	JUN 02 2017 2:10 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review filed on October 9, 2014, petitioner Coral Bay Nickel Corporation prays for the refund of ₱1,575,051.81, allegedly representing its unutilized input value-added tax (VAT) related to its VAT zero-rated sales for the first (1st) quarter of 2013.

THE FACTS

Petitioner is a domestic corporation with principal office at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is registered with the Securities and Exchange Commission (SEC) to do business in the Philippines and was issued Company Registration No. A200205418[1].

[1] Pars. 1.4 and 1.5, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 340; Exhibits "P-7" and "P-8".

Petitioner is principally engaged in the business of owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in, and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products, and by-products of any thereof.[2]

Petitioner is also registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number (TIN) 005-961-540-000[3] and with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise engaged in the manufacture of nickel/cobalt mixed sulfide at the Rio Tuba Export Processing Zone, with Certificate of Registration No. 02-072 issued on December 27, 2002.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to approve or deny claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 1, 2004, petitioner entered into an Off-Take Agreement[5] with Sumitomo Metal Mining Co., Ltd. (SMM), a Japanese corporation, for the export of its nickel cobalt mixed sulfide, which transaction qualified for VAT zero-rating under Section 106(A)(2)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended.

During its operation, petitioner continued to accumulate input VAT from its domestic purchases of taxable goods and services rendered and used outside the Rio Tuba Export Processing Zone, it however did not incur output VAT from its exportation of nickel cobalt mixed sulfide, against which to offset its accumulated input VAT.

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[2] Exhibits "P-7" and "P-8".
[3] Par. 1.6, Admitted Facts, JSFI, docket, p. 340; Exhibit "P-6".
[4] Par. 1.7, *Ibid.*; Exhibit "P-1".
[5] Exhibit "P-28".

On May 13, 2014, petitioner filed with the BIR's Large Taxpayer Excise Audit Division I (LTEAD I), Revenue District Office No. 121 an administrative claim for refund of its alleged unutilized input VAT for the 1st quarter of taxable year (TY) 2013 in the amount of ₱1,575,051.81.[6]

On October 9, 2014, petitioner filed the instant Petition for Review on the ground of inaction on the part of respondent.

On December 9, 2014, respondent posted his Answer[7], alleging that petitioner's claim for refund/TCC of alleged unutilized input taxes lacks factual and legal bases on the following grounds specified under his special and affirmative defenses, i.e., tax collected are presumed to be in accordance with law, rules and regulations; petitioner must first prove its entitlement to the refund/TCC sought; that there is a need to ascertain the veracity of petitioner's claim for refund/TCC; petitioner has the burden of proof but failed to discharge the same; and petitioner's claim for refund/TCC is construed strictly against it.

In addition, respondent claims that under Section 3(3) of Revenue Memorandum Circular (RMC) No. 74-99, all sales of goods or services to PEZA-registered enterprise by a VAT-registered supplier from the customs territory shall be subject to VAT at zero percent (0%) rate. Hence, no output VAT shall be shifted to or passed on the PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from the said purchases. There being no input VAT paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate from their purchases of goods and services. Precisely under paragraph A-5(1) of RMC No. 42-2003, a claim for input VAT by a PEZA-registered claimant based on invoices/receipts issued upon the effectivity of earlier cited RMC No. 74-99, should be denied.

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6 Exhibits "P-9" and "P-10".
7 Docket, pp. 59-67.

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Further, RMC No. 42-2003 clarifies that only PEZA-registered entities availing of income tax holidays are allowed to claim for tax refund/credit to the extent of the input tax shifted to the PEZA-registered buyer prior to the implementation of RMC No. 74-99.

In instances where the taxpayer-claimant paid input VAT, notwithstanding that under the law it is subject to VAT at 0% rate, the recourse of the taxpayer-claimant is not against the government, but against the seller who shifted to it the output VAT.

In its Reply, petitioner argues that: 1) disputable presumptions are satisfactory only if uncontradicted; 2) administrative claims for refund are not subject to indefinite examination/investigation; and 3) it is applying for a refund pursuant to Section 112(A) of the NIRC of 1997, as amended, and Section 4.112-1 of Revenue Regulations (RR) No. 16-2005.

On June 8, 2015, a Pre-Trial Order[8] was issued, but it was amended at the instance of petitioner on August 11, 2015[9].

To establish its case, petitioner presented as witnesses (1) Allen Roy T. Catacutan; (2) John S. Barrientos; (3) Engineer Zosimo Oliver P. Villa and (4) Joseph Cedric V. Calica.

ALLEN ROY T. CATACUTAN declared[10], that he is petitioner's Tax and Audit Officer since December 2009. As part of his responsibilities, he reviews the computation and remittance of petitioner, coordinates the payment of petitioner's tax liabilities with the BIR as well as the submission of reportorial requirements to other government agencies like PEZA, oversees petitioner's refund claims and the consequential BIR audit, and he has in his custody all of petitioner's tax returns and documents filed with the BIR, PEZA and other government agencies.

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[8] Docket, pp. 358-364.
[9] Motion to Amend (Re: Pre-Trial Order dated 8 June 2015) filed on June 15, 2015, docket, pp. 365-369.
[10] Exhibits "P-57" to P-57-a".

Petitioner's principal office is located at Barangay Rio Tuba, Municipality of Bataraza, Palawan, inside the Rio Tuba Export Processing Zone. It is a PEZA-registered entity with PEZA Registration Certificate No. 02-072[11]. It is likewise registered with the BIR with Certificate of Registration OCN 8RC0000035523 and TIN 005-961-540-000[12].

Petitioner is principally engaged in the business of owning, holding, selling, exchanging, leasing, mortgaging, or otherwise disposing of, dealing in, and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products, and by-products of any thereof.[13]

As an export-oriented enterprise, petitioner is entitled to a refund of its excess and unutilized input VAT attributable to its zero-rated sales for 2013. The same was incurred from the VAT passed on by petitioner's suppliers on its domestic purchases of taxable goods and services which were consumed and rendered outside Rio Tuba Export Processing Zone.

The witness believes that petitioner's exportations of nickel cobalt mixed sulfide to Sumitomo Metal Mining Co.[14] Ltd. qualify for VAT zero-rated sales under Section 106(A)(2)(a) of the NIRC of 1997, as amended. Petitioner accumulated input VAT from its domestic purchases of taxable goods and services outside Rio Tuba Export Processing Zone, but did not incur output VAT from its exportations of nickel cobalt mixed sulfide, against which to offset the input VAT, as shown in petitioner's Monthly and Quarterly VAT Returns for TYs 2013 and 2014[15].

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[11] Exhibit "P-1".
[12] Exhibit "P-6".
[13] Exhibits "P-7" and "P-8".
[14] Exhibit "P-28".
[15] Exhibits "P-12" to "P-26".

On May 13, 2014, petitioner filed with the BIR LTEAD I an administrative claim for refund[16] of its excess and unutilized input VAT for the 1st quarter of TY 2013 in the total amount of ₱1,575,051.81. However, it was not acted upon prompting it to file the instant Petition for Review.

Witness **JOHN S. BARRIENTOS** testified[17] that he is the QS/CSR Manager of SMCC Philippines, Inc. (SMCC), a company engaged in general construction business. Petitioner engaged its services for the construction of additional foreman's duplex and for the cleaning of its water tank at JTA dormitory as evidenced by the several sales invoices and receipts issued by SMCC for the 1st quarter of 2013[18]. Contracts for such services were executed but he has no copy of them.[19]

SMCC imputed VAT on its billings to petitioner since the construction of laborers row house, bus terminal, JTA dormitory, RTN runway and foreman's duplex were outside the PEZA zone and within the jurisdiction of the Municipality of Bataraza from which it applied for building permits and secured certificates of occupancy[20]. The locations of the construction sites are shown in the map of the Presidential Proclamation (PP) Nos. 304 and 1352 which indicates the boundaries of the PEZA Zone Control, and as plotted by a Geodetic Engineer.

Witness **ENGINEER ZOSIMO OLIVER P. VILLA** testified[21] that his services as Geodetic Engineer was engaged by petitioner for purposes of ocular inspection and preparation of a plan showing that the construction sites were outside the Rio Tuba Economic Processing Zone per PP Nos. 304 and 1352.

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[16] Exhibits "P-9" and "P-10".
[17] See Amended Judicial Affidavit of John S. Barrientos, Exhibits "P-58" and "P-58-a".
[18] Exhibits "P-29" to "P-30-a", inclusive of sub markings.
[19] See Transcript of Stenographic Notes (TSN) for the hearing dated August 11, 2015.
[20] Exhibits "P-54-a" to "P-56-b" and Exhibits "P-61" to "P-61-a".
[21] Exhibits "P-60" and "P-60-a".

He plotted the coordinates stated in the maps[22] included in PP Nos. 304 and 1352[23], which were the boundaries set out for the PEZA zone.

In connection with his engagement, he inspected the plant site, airport, pier and the town site for three (3) days and had ocular inspection of the coordinates specified in PP Nos. 304[24] and 1352[25]. In the process, he found that JTA dormitory including its water tank and the Foreman's duplex[26] were located at the town site outside the PEZA Zone[27].

Engr. Villa confirmed[28] that some of the constructions sites were located several kilometers away from the PEZA zone. He was able to determine the location of PEZA zone and its relative positions to certain properties. He was also able to determine the PEZA boundaries by plotting them out on the ground through the use of the technical descriptions as indicated in PP Nos. 304 and 1352 and through the global positioning system instrument and by personally going to the buildings in question.

Court-commissioned Independent Certified Public Accountant (ICPA) **JOSEPH CEDRIC V. CALICA** declared[29] that as directed by the Court, he examined and verified the documents supporting petitioner's claim for refund of its unutilized input VAT for the 1st quarter of 2003. In his ICPA Report dated October 8, 2015[30], he indicated that petitioner is entitled to the prayed for tax refund in the total amount of ₱1,009,194.14.

ICPA Calica affirmed[31] that he recommended a refund of only One Million (₱1,000,000.00) since the remaining Five Hundred Thousand (₱500,000.00) were not duly supported

[22] Exhibits "P-44" to "P-51".
[23] Exhibits "P-42" and "P-43", respectively.
[24] Exhibit "P-52-a".
[25] Exhibit "P-52-b".
[26] Exhibit "P-53-d".
[27] Exhibit "P-53-a".
[28] See TSN for the hearing dated September 8, 2015.
[29] Exhibits "P-59" to "P-59-a".
[30] Exhibits "P-62" to "P-62-a".
[31] See TSN for the hearing dated December 7, 2015.

by documents. The said recommendation is under the assumption that the transactions involved were zero rated.

After formal offer of exhibits, petitioner rested its case per Resolutions dated March 1, 2016[32] and April 8, 2016[33].

For his part, respondent presented his lone witness, Revenue Officer (RO) III **Alexander Atienza.** He testified[34] that he is with the Excise Large Taxpayers Audit Division I (ELTAD1). He investigated petitioner's administrative claim for refund of its alleged unutilized input VAT related to its zero-rated sales transaction.

On November 10, 2014, ELTAD1 received a memorandum from the Chief of BIR's Litigation Division requesting for petitioner's docket as it filed the present case. In view of the said request, he prepared a Memorandum Report dated November 18, 2014[35] addressed to the Assistant Commissioner of the Large Taxpayers Service recommending that the case be forwarded to the BIR's Litigation Division, as requested. He specified in the said Memorandum that under RMC No. 74-99, petitioner's claim for refund has no legal basis since sales of goods and services by VAT-registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. Accordingly, no output VAT shall be shifted or passed on to PEZA-registered enterprises. There being no output VAT paid by the PEZA-registered enterprises, it necessarily follows that petitioner is not entitled to tax refund/credit from its purchases of goods and services.

RO Atienza clarified that he did not conduct an ocular inspection on the construction sites, thus, he was not aware that some were inside the PEZA and some were outside the PEZA zone.

Per Resolution dated April 8, 2016[36] respondent rested his case.

[32] Docket, pp. 1820-1821.
[33] Docket, pp. 1845-1846.
[34] Exhibits "R-2" and "R-2-a".
[35] Exhibit "R-1".
[36] Docket, pp. 1845-1846.

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On June 3, 2016[37], the instant case was deemed submitted for decision with petitioner's Memorandum filed on June 1, 2016[38] and respondent's Manifestation filed on May 12, 2016[39] stating that he is adopting the arguments raised in the Answer as his Memorandum.

THE ISSUES

The main issue[40] for the determination of the Court is:

> Whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of One Million Five Hundred Seventy Five Thousand Fifty One and 81/100 Pesos (₱1,575,051.81) on its unutilized input VAT attributable to its zero-rated sales, for taxable year 2013.

However, the parties subdivided it into the following sub-issues, to wit:[41]

A. Whether petitioner is a VAT-registered entity;

B. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;

C. Whether the input taxes being claimed are due or paid;

D. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

[37] Docket, p. 1890.
[38] Docket, pp. 1861-1887.
[39] Docket, pp. 1847-1849.
[40] Statement of the Issues, JSFI, docket, p. 340.
[41] Statement of the Issues, JSFI, docket, pp. 340-341.

E. Whether the input taxes are attributable to zero-rated or effectively zero-rated sales/receipts;

F. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made;

G. Whether petitioner has complied with the provisions of Section 112 of the NIRC of 1997, as amended, in the prescriptive period for filing administrative and judicial claims for refund and/or issuance of tax credit;

H. Whether petitioner has exhausted all administrative remedies before filing the judicial claim.

Petitioner's argument:

Petitioner maintains that it is entitled to a refund of its unutilized input VAT on its purchases of goods and services attributable to its zero-rated sales pursuant to Section 112(A) in relation to Section 106(A)(2)(a) of the NIRC, as amended.

Respondent's arguments:

Respondent argues that the sale of goods and services by VAT-registered enterprises to PEZA-registered enterprises like herein petitioner, as provided by the NIRC of 1997, as amended, and by Republic Act (RA) No. 7916 (Special Economic Zone Act of 1995), as amended by RA No. 8748, shall be subject to zero percent VAT, hence, no output VAT shall be passed on the PEZA-registered enterprises. There being no input VAT paid by the PEZA-registered enterprise, it follows that they are not entitled to tax refund/credit from their purchases of goods and services.

However, under paragraph Q-3 of RMC No. 42-2003, in cases where suppliers of PEZA-registered enterprises still issued VAT invoices which are the sources of the tax refund/credit claim, such claim for input tax credit/refund by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, from its supplier. Thus, it is incumbent upon the exporter-claimant to be aware that the invoices and receipts from its suppliers should not carry any VAT component because having an approved zero-rating from the BIR, the supplier will report its sales as zero-rated.

THE COURT'S RULING

Under Sections 112(A) and (C) of the NIRC of 1997[42], as amended, a VAT-registered taxpayer whose sales are zero-rated or effectively zero-rated may, within two (2)

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[42] "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: 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.

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."

years after the close of taxable quarter when the relevant sales were made, apply for refund or tax credit of its creditable input tax due or paid attributable to such sales.

Under Section 112 of the NIRC of 1997, as amended, petitioner must satisfy the following requisites to be entitled to the tax refund/credit of its alleged unutilized input VAT, *viz.*:

1) that the taxpayer-claimant must be VAT-registered;

2) that there must be zero-rated or effectively zero-rated sales;

3) that input taxes were incurred or paid;

4) that such input taxes are attributable to zero-rated or effectively zero-rated sales;

5) that the input taxes were not applied against any output VAT liability; and

6) that the claim for refund was filed within the two-year prescriptive period.

Petitioner's administrative and judicial claims for tax refund/credit were timely filed

Anent petitioner's administrative claim for tax refund/credit with respondent, Section 112 (A) of the NIRC of 1997, as amended, provides that a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply with respondent for tax refund/credit of creditable input tax due or paid attributable to such sales within two (2) years from the close of the taxable quarter when the relevant sales were made.

The present claim covers the 1st quarter of taxable year 2013, which closed on March 31, 2013. Counting two years from March 31, 2013, petitioner had until March 31, 2015, within which to file an administrative claim for refund for the 1st quarter of 2013. Evidently, petitioner's administrative claim, together with the supporting documents filed on May 13, 2014 with the ELTAD1 of the BIR was filed within the prescribed two-year period under Section 112 (A) of the NIRC of 1997, as amended.

As to the judicial claim for tax refund/credit, Section 112 (C) of the NIRC of 1997, as amended, provides that respondent has one hundred twenty (120) days from the date of submission of complete supporting documents by petitioner to act on the claim for tax refund/credit. In case of an adverse ruling, the aggrieved taxpayer may, within thirty (30) days from receipt of the decision or after the lapse of the 120-day period without any action thereon, seek judicial intervention via a Petition for Review to be filed with this Court.

The consolidated cases of Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, Philex Mining Corporation v. Commissioner of Internal Revenue,[43] best illustrate the application of Section 112 (A) and (C) of the NIRC, as amended, thus:

> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

Further, a summary of rules on prescriptive periods involving claims for the refund of input VAT was provided in Mindanao II Geothermal Partnership v. Commissioner of

[43] G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

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Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue[44], as follows:

> Summary of Rules on Prescriptive Periods Involving VAT We summarize the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the 1997 Tax Code, as follows:
>
> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA- 489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

Applying Section 112 (C) of the same Code for petitioner's action for judicial intervention, respondent had 120 days from May 13, 2014, the time petitioner filed its administrative claim for refund together with its supporting documents, to grant or deny petitioner's administrative claim. Since the 120-day period lapsed on September 10, 2014 without any action on the part of respondent, petitioner had 30 days or until October 10, 2014 to file its judicial claim before the Court. Thus, the instant Petition was timely filed on October 9, 2014.

[44] G.R. Nos. 193301 and 194637, March 11, 2013, 693 SCRA 49.

Petitioner is a VAT-registered entity

Unarguably, petitioner is VAT-registered taxpayer to which BIR Certificate of Registration OCN 8RC0000035523 and TIN 005-961-540-000[45] were issued.

Petitioner is engaged in zero-rated or effectively zero-rated sales

On the second requisite, records show that petitioner is registered with PEZA as an Ecozone Export Enterprise engaged in the manufacture of nickel/cobalt mixed sulfide at the Rio Tuba Export Processing Zone as evidenced by its Certificate of Registration No. 02-072 issued by PEZA on December 27, 2002[46].

Petitioner claims that its exportations of nickel/cobalt mixed sulfide to Sumitomo Metal Mining Co. Ltd., in Japan, during the 1st quarter of 2013, and which were allegedly paid in foreign currency, are subject to 0% VAT rate in accordance with Section 106(A)(2)(a) of the NIRC of 1997[47].

Based on Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, for an export sale to qualify as zero-rated, the following conditions must be present:

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[45] Exhibit "P-6".
[46] Exhibits "P-1" to "P-5".
[47] "SEC. 106. Value-added Tax on Sale of Goods or Properties. –

(A) Rate and Base of Tax. –

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

(a) Export Sales. – The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)"

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1. that there was sale and actual shipment of goods from the Philippines to a foreign country;

2. that the sale was made by a VAT-registered person;

3. that the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and

4. that the payment was accounted for in accordance with the rules and regulations of the BSP

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and as implemented by Sections 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, as amended, provide that a VAT taxpayer, like petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice 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:
>
> (1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and
>
> 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;" *(Emphases supplied)*

"SEC. 4.113-1. ***Invoicing Requirements***. -

(A) **A VAT-registered person shall issue:** -

(1) A **VAT invoice** for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

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;

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> (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;" *(Emphases supplied)*

In addition to the above requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, to wit:

> SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered** receipts or **sale** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service." *(Emphasis supplied)*
>
> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* - All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

Pursuant to the foregoing provisions and RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, *i.e.*: (1) sales invoice as proof of sale of goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Evidence show that petitioner actually generated zero-rated direct export sales for the 1st quarter of 2013 in accordance with the afore-quoted law and regulations by presenting its provisional invoices[48], sales invoices[49], bills of lading[50], official receipts[51], credit memos[52], General Ledger (GL) for sales[53], Schedule of Debits/Credits to Revenue Account per GL Transaction Listing With Cross-Reference to Sales Invoices and Official Receipts on Gross Sales (Zero-Rated Sales)[54], Schedule of Incoming Foreign Remittance Advice[55] and the related foreign remittance advices from Bank of Tokyo-Mitsubishi UFJ[56], as evidence. In addition, petitioner presented its Audited Financial Statements and Annual Income Tax Return for the year 2013[57], Off-Take Agreement with Sumitomo Metal Mining Co., Ltd[58], Permit to Use Computerized Accounting System, Computerized Books of Accounts and Use/Print System-Generated Accounting Records[59].

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[48] Exhibits "P-102-4", "P-102-5", and "P-102-6".
[49] Exhibits "P-102-7", "P-102-9", "P-102-11", "P-102-18" and "P-102-20".
[50] Exhibits "P-102-1" to "P-102-3".
[51] Exhibits "P-102-13", "P-102-14", "P-102-15" and "P-102-16".
[52] Exhibits "P-102-8", "P-102-10", "P-102-12", "P-102-17", "P-102-19" and "P-102-21".
[53] Exhibits "P-106" and "P-107".
[54] Exhibit "P-107".
[55] Exhibit "P-108".
[56] Exhibits "P-108-1" to "P-108-4".
[57] Exhibit "P-138".
[58] Exhibit "P-139".
[59] Exhibit "P-141".

As indicated in the Schedule of Gross Sales (Zero-Rated Sales)[60], petitioner's reported zero-rated sales in the amount of ₱3,441,636,425.89[61] have foreign currency value of US$84,395,672.41. While the foreign currency remittances received by petitioner amounted to only US$77,377,493.74, petitioner was able to show that the discrepancy of US$7,018,178.67 represents adjustments pertaining to credit memos for the 1st quarter of 2013 in the amount of US$7,545,788.25 and adjustments pertaining to 2012 booked in 2013 in the amount of US$(527,609.58), detailed as follows:

Per Official Receipts/Inward Remittances Advices	**$77,377,493.74**
Add/(Deduct):	
Adjustments pertaining Credit memo for the first quarter of 2013	
Credit Memo (Invoice No. 00120000), dated June 15, 2013, *Exhibit P-102-8*	1,454,560.72
Credit Memo (Invoice No. 00120002), dated July 4, 2013, *Exhibit P-102-10*	3,618,928.28
Credit Memo (Invoice No. 00120005), dated March 19, 2013, *Exhibit P-102-12*	4,594,069.03
Credit Memo (Invoice No. 00120001), dated June 15, 2013, *Exhibit P-102-17*	29,190.64
Final Calculation, dated July 4, 2013, *Exhibit P-102-18*	(711,444.19)
Credit Memo (Invoice No. 00120003), dated July 4, 2013, *Exhibit P-102-19*	32,765.63
Final Calculation, August 6, 2013, *Exhibit P-102-20*	(1,523,742.67)
Credit Memo (Invoice No. 00120006), dated August 6, 2013, *Exhibit P-102-21*	51,460.81
Subtotal	***7,545,788.25***
Adjustments pertaining to 2012 booked in 2013	
SALESFI_88thShp-FNL-SI147&CM64-SalesAdj-Sept'12-L1	959,983.44
SALESFI_88thShp-FNL-SI147&CM64-SalesAdj-Sept'12-L2	468,823.91
SALESFI_89thShp-FNL-CM65&66-SalesAdj-Oct'12-L1	(497,672.77)
SALESFI_89thShp-FNL-CM65&66-SalesAdj-Oct'12-L2	(267,321.83)
ReverseCAJE#1_Increase Sept.2012 Line 1 MS Sales	(975,369.17)
ReverseCAJE#2_Increase Sept.2012 Line 2 MS Sales	(980,579.35)
ReverseCAJE#3_Decrease Oct.2012 Line 1 MS Sales	402,853.07
ReverseCAJE#4_Decrease Oct.2012 Line 2 MS Sales	422,337.95
SALESFI_88thShp-FNL-SI147&CM64-Penalty-Sept'12-L1	(10,612.40)
SALESFI_88thShp-FNL-SI147&CM64-Penalty-Sept'12-L2	(10,127.10)
SALESFI_89thShp-FNL-CM65&66-Penalty-Oct'12-L1	(19,060.35)
SALESFI_89thShp-FNL-CM65&66-Penalty-Oct'12-L2	(20,864.98)
Subtotal	***(527,609.58)***
Total	**$84,395,672.41**

[60] Exhibit "P-102".
[61] Exhibit "P-112".

Petitioner is entitled to a refund only of the excess/unutilized input VAT related to its domestic purchases of goods and services which were consumed and rendered outside the Ecozone and were attributable to its zero-rated sales for the first quarter of 2013

Petitioner's Quarterly VAT Return[62] for the 1st quarter of 2013 shows that the claimed input VAT in the amount of ₱1,575,051.81 arose from its domestic purchases of goods other than capital goods, domestic purchase of services, and amortization of input VAT on purchase of capital goods exceeding ₱1 million, broken down as follows:

Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱ 550,964.60
Less: Input Tax on Purchase of Capital Goods exceeding ₱1 Million deferred for the succeeding period	469,645.82
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	81,318.78
Add: Input Tax on:	
Domestic Purchase of Goods Other than Capital Goods	50,948.33
Domestic Purchase of Services	1,442,784.70
Total Allowable Input Tax	1,575,051.81
Less: Output Tax Due	-
Excess Input Tax	**₱1,575,051.81**

Petitioner maintains that the input VAT on its purchases of goods and services from VAT-registered suppliers were attributable to its exportation of nickel/cobalt mixed sulfides and that these purchases of goods and services were consumed and rendered outside the PEZA zone and within the customs territory, hence, the same shall be subject to 12% VAT.

The Court finds petitioner's claim partially meritorious.

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[62] Exhibit "P-112".

In the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*[63] *(Toshiba case),* the Supreme Court held that the Philippine VAT system adheres to the Cross-Border Doctrine where no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%)[64] VAT.

Section 8 of RA No. 7916, as amended, mandates that the PEZA shall manage and operate the Ecozones as a separate customs territory[65], thus, creating the legal fiction that the Ecozone is a foreign territory. As a result, sales made by a supplier from the Customs Territory to a purchaser in the Ecozone shall be treated as exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.[66]

Since an Ecozone is regarded as a foreign territory, the sales of goods, properties and services to PEZA-registered enterprises made by VAT-registered suppliers from the customs territory are subject to VAT at zero percent rate. This is the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*[67], to wit:

> Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as

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[63] G.R. No. 150154, August 9, 2005.
[64] VAT rate is now twelve percent (12%).
[65] SEC. 8. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The ECOZONES shall be managed and operated by the PEZA as separate customs territory.
The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin, and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.
[66] *Supra,* Note 66.
[67] G.R. No. 149671, July 21, 2006.

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export sales. These sales are zero-rated or subject to a tax rate of zero percent.

Applying the Cross-Border Doctrine to the sale of goods, properties, and services to and from the Ecozones, the BIR issued RMC No. 74-99 on October 15, 1999. Pertinent to the present petition is Section 3 thereof, which reads as follows:

> SECTION 3. *Tax Treatment of Sales Made by a VAT Registered Supplier from The Customs Territory, To a PEZA Registered Enterprise.* –
>
> (1) If the Buyer is a PEZA registered enterprise which is subject to the 5% special tax regime, in lieu of all taxes, except real property tax, pursuant to R.A. No. 7916, as amended:
>
> (a) *Sale of goods (i.e., merchandise).* – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916, in relation to ART. 77(2) of the Omnibus Investments Code.
>
> (b) *Sale of service.* – This shall be treated subject to zero percent (0%) VAT under the "*cross border doctrine*" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.
>
> (2) If Buyer is a PEZA registered enterprise which is not embraced by the 5% special tax regime, hence, subject to taxes under the NIRC, e.g., Service Establishments which are subject to taxes under the NIRC rather than the 5% special tax regime:
>
> (a) *Sale of goods (i.e., merchandise).* – This shall be treated as indirect export hence, considered subject to zero percent (0%) VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC and Sec. 23 of R.A. No. 7916 in relation to ART. 77(2) of the Omnibus Investments Code.

(b) *Sale of Service.* - This shall be treated subject to zero percent (0%) VAT under the "*cross border doctrine*" of the VAT System, pursuant to VAT Ruling No. 032-98 dated Nov. 5, 1998.

(3) In the final analysis, any sale of goods, property or services made by a VAT registered supplier from the Customs Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to ART. 77(2) of the Omnibus Investments Code, while all sales of services to the said enterprises, made by VAT registered suppliers from the Customs Territory, shall be treated effectively subject to the 0% VAT, pursuant to Section 108(B)(3), NIRC, in relation to the provisions of R.A. No. 7916 and the Cross Border Doctrine of the VAT system.

This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of the issuance of this Circular."

By virtue of the foregoing, the sale of goods, properties, and services by VAT-registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate, no output VAT shall be shifted to or passed on to PEZA-registered enterprises; conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. Since no input VAT is paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to a refund or issuance of tax credit certificate from their domestic purchases of goods, properties and services.[68]

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[68] Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB No. 403, May 29, 2009, affirmed by the Supreme Court in the case of Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, G.R. No. 190506, June 13, 2016.

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Further, the Supreme Court in the cited Toshiba case[69] held that no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity, *viz*:

> Indubitably, **no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity.** The VAT treatment of sales to it, however, varies depending on whether the supplier from the Customs Territory is VAT-registered or not.
>
> **Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0°/o). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales.** Zero-rating of export sales primarily intends to benefit the exporter (*i.e.*, the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales. *(Emphases supplied)*

It must however be noted that the VAT zero-rating on the sales of goods, properties or services by a VAT-registered entity to a PEZA-registered entity applies when such goods, properties or services are consumed, used or rendered within the ECOZONE and in connection with the registered activities of the PEZA entity. Conversely, if the sales of goods, properties or services are consumed, used or rendered within the Customs Territory, *i.e.*, outside the Ecozone, such sales by a VAT-registered entity to a PEZA-registered entity shall be subject to twelve percent (12%) VAT.

While it is true that petitioner is a PEZA-registered entity located at the Rio Tuba Export Processing Zone, petitioner's Tax and Audit Officer, Allen Roy T. Catacutan, testified that petitioner's excess and unutilized input VAT was incurred from the VAT passed on by petitioner's suppliers on its purchases of goods and services which were

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[69] *Supra,* Note 66.

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consumed and rendered outside the Rio Tuba Export Processing Zone, to wit:

> 34. Q. What is the nature and source of this excess and unutilized input VAT, if any?
>
> A: The excess and unutilized input VAT was incurred from the VAT passed on by Petitioner's suppliers on Petitioner's domestic purchases of taxable goods and services which were consumed and rendered outside the Rio Tuba Export Processing Zone.
>
> 35. Q. Why are you saying that the excess and unutilized input VAT was incurred from Petitioner's domestic purchases of taxable goods and services and were later consumed and rendered outside the Rio Tuba Export Processing Zone?
>
> A: The domestic purchases of taxable goods and services by Petitioner were consumed by it outside the Rio Tuba Export Processing Zone. For example, the goods and services used to construct housing facilities that are located outside the PEZA zone provide shelter to employees of Petitioner whose plant is located in a far-flung area, where public transport is scarce. These constructions and facilities are necessary in the production of export products under its PEZA registered activities.
>
> 36. Q. You said earlier that Petitioner is registered with PEZA. You also said that its suppliers passed on VAT to it. Why did the supplier pass on VAT to the Petitioner despite its registration as a PEZA entity?
>
> A: The supplier of these goods and services subjected their sale to Petitioner to VAT because the goods and services will be consumed outside PEZA. [70]

In fact, petitioner submitted the following pieces of evidence:

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[70] Exhibit "P-57".

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Exhibit	Description
"P-29"	Official Receipt (O.R.) No. 0850 issued by SMCC Philippines, Inc. (SMCC) to petitioner on March 15, 2013
"P-29-a"	Sales Invoice No. 1415 issued by SMCC to petitioner on February 12, 2013
"P-30"	O.R. No. 0836 issued by SMCC to petitioner on January 18, 2013
"P-30-a"	Sales Invoice No. 1404 issued by SMCC to petitioner on November 26, 2012
"P-42"	Presidential Proclamation No. 304
"P-43"	Presidential Proclamation No. 1352
"P-44" to "P-51"	Survey Plans
"P-52"	Plan of Land showing the position of the Palawan Special Economic Zone under Proclamation Nos. 304 and 1352
"P-52-a"	Coordinates specified in Presidential Proclamation No. 304
"P-52-b"	Coordinates specified in Presidential Proclamation No. 1352
"P-53"	Townsite map of Coral Bay Nickel Corporation
"P-53-c"	JTA dormitory including its water tank
"P-53-d"	Foreman's Duplex
"P-57"	Supplemental Judicial Affidavit of Allen Roy T. Catacutan
"P-58"	Amended Judicial Affidavit of Mr. John S. Barrientos
"P-61"	Judicial Affidavit of Joseph Cedric V. Calica
"P-60"	Judicial Affidavit of Zosimo Oliver P. Villa
"P-62"	ICPA Report dated October 8, 2015
"P-101-1" to "P-101-381"	Official Receipts and Sales Invoices on Purchases of Goods and Services

A scrutiny of the above documents shows that out of the ₱1,575,051.81 input VAT claim, only the amount of ₱122,250.00 related to petitioner's purchases of services from SMCC Philippines, Inc. was established to have been used in petitioner's construction sites located outside the Rio Tuba Export Processing Zone, as broken down below:

Exhibit	Description	Input VAT
"P-29" to "P-29-a"	Cleaning of Water Tank at JTA Dormitory	₱ 6,000.00
"P-30" to "P-30-a"	2nd & Final Progress Billing Additional 4-units Foreman's Duplex	116,250.00
Total		**₱122,250.00**

Petitioner's witness John S. Barrientos, QS/CSR Manager of SMCC, testified that the services rendered by SMCC to petitioner in connection with the construction of the latter's laborers row house, bus terminal, JTA dormitory, RTN runway and foreman's duplex, were performed outside the Rio Tuba Export Processing Zone, to wit:

6. Q. Why do you know Petitioner?

A: Petitioner is one of the clients of SMCC. Petitioner engaged the services of SMCC for the construction of additional Foreman's duplex and cleaning of water tank at JTA dormitory.

As the QS/CSR Manager of SMCC, I am aware of the status of the applications of the ***building*** permits and ***certificates*** of the projects from the Local Government of Bataraza, Palawan.

I am also aware of the preparation and collection of billings by SMCC to Petitioner.

7. Q. What proof, if any, do you have to prove that Petitioner engaged the services of SMCC for the construction of Laborers Row house, Bus Terminal, JTA dormitory, RTN Runway and Foreman's duplex?

A: I have with me the sales invoices as well as the receipts issued by SMCC to the Petitioner.

xxx xxx xxx

10. Q. What did Petitioner do, if any, when SMCC imposed VAT on its services performed outside the PEZA zone?

A: Petitioner paid the invoices inclusive of VAT.

xxx xxx xxx

13. Q. Likewise, you said that SMCC imputed VAT on its billings to Petitioner because part of the sales of goods that were sold by SMCC in the constructions of Laborers Row House, Bus Terminal, JTA dormitory, RTN Runway and Foreman's duplex are outside the PEZA Zone, what proof, if any, do you have to show that indeed the goods and services you mentioned earlier were performed outside the PEZA Zone?

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A. Based on Presidential Proclamation Nos. 304 and 1352 to be marked as Exhibits "**P-42**" and "**P-43**", respectively, Petitioner operates within the Rio Tuba Export Processing Zone which has approved and defined boundaries.

The land outside the Rio Tuba Export Processing Zone is not considered as inside the PEZA Zone. The JTA dormitory and Foreman's duplex for the Petitioner are located in the townsite of Municipality of Bataraza outside the PEZA Zone.[71]

Even Engineer Zosimo Oliver P. Villa, who personally examined and surveyed the land where the Rio Tuba Export Processing Zone and Coral Bay Nickel Corporation were located, confirmed that petitioner's purchases of services from SMCC were rendered outside of the PEZA Zone, thus:

8. Q. What do you know, if any, of the case at hand?

A: Petitioner is claiming for a refund of its unapplied and unutilized input value added taxes (VAT) for the 1st quarter of taxable year 2013. In this regard, Petitioner requested me to conduct an ocular inspection and to prepare a plan in order to determine if the following constructions are outside the Rio Tuba Economic Processing Zone (as specified in Presidential Proclamation Nos. 304 and 1352):

a. Laborer's row house;
b. Bus Terminal;
c. JTA Dormitory;
d. RTN Runway;
e. Foreman's Duplex.

9. Q. How do you know the particular constructions or buildings involved in this case?

A: In order to know the particular constructions involved in this case, I visited the location of the laborer's row house, bus terminal, JTA dormitory, RTN runway, and foreman's duplex.

xxx xxx xxx

[71] Exhibit "P-58".

19. Q. What are your findings, if any?

A: I found that the following constructions are outside the PEZA Zone as may be seen in the blueprints.

The area that has a yellow boundary and is marked as Exhibit "**P-52-a**" pertains to the coordinates specified in Presidential Proclamation No. 304 while the area that has orange boundary pertains to the coordinates specified in Presidential Proclamation No. 1352 and is marked as Exhibit "**P-52-b**". This is where the plant site of CNBC is located (Exhibit "**P-52**")

a. JTA Dormitory including its water tank - is located in the town site which is outside the PEZA Zone, marked as Exhibit "**P-53-c**".
b. Foreman's Duplex - is located in the town site which is outside the PEZA Zone, marked as Exhibit "**P-53-d**".[72]

The foregoing declarations clearly established that petitioner's purchases of services from SMCC were rendered outside the Rio Tuba Export Processing Zone, thus, it is entitled to a refund of the 12% VAT it paid thereon.

Since petitioner's sales for the 1st quarter of 2013 were purely zero-rated sales, the input VAT paid by petitioner to SMCC in the amount of ₱122,250.00 is entirely attributable thereto. Moreover, petitioner had no output tax liability against which the said input VAT may be applied or credited.

While petitioner carried over the subject claim to the succeeding quarters[73], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in the 1st quarter of 2014[74]. In other words, the subject claim no longer formed part of the ₱3,703,208.99 excess input VAT as of the end of the 1st quarter of 2014, which was carried over to the succeeding 2nd quarter of 2014[75].

[72] Exhibit "P-60".
[73] Exhibits "P-21", "P-22" and "P-23".
[74] Exhibit "P-26", Line 23D.
[75] Exhibit "P-134".

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All said, petitioner is entitled to a refund corresponding to its unutilized excess input VAT paid for the 1st quarter of 2013 in relation to its purchases of services from SMCC, which were rendered outside the Rio Tuba Export Processing Zone and were attributable to its zero-rated sales for the same period, but in the reduced amount of ₱122,250.00.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** in favor of petitioner Coral Bay Nickel Corporation the reduced amount of ₱122,250.00, representing its unutilized input value-added tax related to its VAT zero-rated sales for the 1st quarter of 2013.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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

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