REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CORAL BAY NICKEL CORPORATION, *Petitioner,*	**CTA CASE NO. 8252**
	Members:
-*versus*-	DEL ROSARIO, *PJ* UY, *and* MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 12 2013 ; 10:30 a.m.

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DECISION

DEL ROSARIO, *P.J.*:

THE CASE

The instant petition is a claim for refund or issuance of tax credit certificate (TCC) in the amount of Sixteen Million Six Hundred Sixty-Nine Thousand Seven Hundred Eighty-Six Pesos and Fourteen Centavos (P16,669,786.14), allegedly representing unutilized input value-added tax (VAT) of petitioner attributable to its zero-rated sales for taxable year 2009.

STATEMENT OF FACTS

Petitioner Coral Bay Nickel Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal office address at Barangay Rio Tuba, Bataraza, Palawan.[1] It is a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019300 VAT and Taxpayer's Identification Number (TIN) 005-961-540-000.[2] Petitioner is also registered

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI); pp. 79 & 80, Docket.
[2] Par. 3, Summary of Admitted Facts, JSFI; p. 80, Docket; Exhibit "D".

with the Philippine Economic Zone Authority (PEZA) pursuant to its PEZA Registration Certificate No. 02-072 dated December 27, 2002.[3]

Respondent is the Commissioner of the Bureau of Internal Revenue, duly appointed and empowered to perform the duties of her office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City.

Pursuant to petitioner's registration agreement with PEZA, it is engaged in the manufacture of nickel/cobalt mixed sulfide at Rio Tuba Export Processing Zone.[4] Petitioner claims that in accordance with PEZA Certification No. 2009-255, it is entitled to tax incentives such as Income Tax Holiday; tax and duty-free importation of merchandise which include raw materials, capital equipment, machineries and spare parts; exemption from wharfage dues and export tax; VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements; and exemption from payment of any and all local government imposts, fees, licenses or taxes except real estate tax.[5]

On September 1, 2004, petitioner entered into an Off-Take Agreement with Sumitomo Metal Mining Co., Ltd., a Japanese corporation, for the export of nickel cobalt mixed sulfide.[6]

Petitioner alleges that during the taxable year of 2009, it exported nickel cobalt mixed sulfide that are considered VAT zero-rated sales. As a result thereof, petitioner did not incur any output VAT with which to offset its accumulated input VAT from its domestic purchases of taxable goods and services rendered and used outside the Rio Tuba Export Processing Zone.

On November 26, 2010, petitioner filed its application for tax refund or issuance of TCC for the unutilized input VAT in the amount of P16,669,786.14 with the Large Taxpayers Excise Audit Division II of the BIR.[7]

Claiming that respondent failed to act on its administrative claim for refund, petitioner filed the instant Petition for Review on March 31, 2011.

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[3] Exhibit "B".
[4] Exhibit "Y^4".
[5] Exhibit "C".
[6] Exhibit "F".
[7] Exhibit "E".

On May 26, 2011, respondent filed her Answer[8] stating the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 5. Petitioner is not entitled to refund or tax credit in the amount of P16,669,786.14 representing alleged unutilized input tax because it failed to submit all necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales.
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> 6. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112 (D) of the National Internal Revenue Code (NIRC) of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition sine qua non prior to the filing of judicial claim.
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> 7. To support its claim, it is imperative for petitioner to prove and present the following, viz:
>
> > a. The registration requirements of a value-added taxpayer in compliance with Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a (a) of Revenue Regulations No. 7-95, and Section 236 of the National Internal Revenue Code of 1997 (NIRC of 1997);
> >
> > b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;
> >
> > c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112 (D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

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[8] pp. 44-49, Docket.

d. That the input taxes of P16,669,786.14 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the period of 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) year(s) after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) of the NIRC of 1997;

f. The judicial claim was filed within the period prescribed in Section 112 (D) of the NIRC of 1997;

h. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

i. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (RE: Persons who can avail of the Input Tax Credits).

8. The case of Ang Tibay vs. Court of Industrial Relations(,) GR No. L-46496, states the primary rights which must be respected even in an administrative proceeding:

> (1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Hughes, in *Morgan v. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil., 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is

conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra.*) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power *(sic).*

(4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia and Maryland Coach Co. v. national labor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) . . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent inn *(sic)* judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct. 185, 187, 57 Law. ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.** It should not, however,

> detract from their duty actively *(sic)* to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal. *(sic)* a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)
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> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations *(sic)* personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.
>
> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented.

9. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs**

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Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil 670)."

A Notice of Pre-Trial Conference[9] was issued by the Court on May 27, 2011, informing the parties that a pre-trial conference is set on July 7, 2011.

Respondent filed her Pre-Trial Brief on June 10, 2011[10]; while petitioner filed its Pre-Trial Brief[11] on August 1, 2011. Thereafter, the parties filed their Joint Stipulation of Facts and Issues[12] on August 22, 2011; which the Court approved via Resolution[13] dated August 25, 2011.

On August 22, 2011, respondent filed a Motion to Admit Attached Answer[14], claiming that due to heavy workload and inadvertence, respondent failed to include page 2 in her previous Answer. She prayed that the Memorandum attached to her Motion be admitted. Petitioner filed an Opposition (To Respondent's Motion To Admit Attached Answer)[15] on September 6, 2011, arguing that the pre-trial has already been terminated; that defenses not raised in the Answer are already deemed waived; that respondent did not file her Motion within the prescribed period as provided for by law; and that said Motion was not based on a valid and reasonable ground. In its September 8, 2011 Resolution, the Court declared petitioner's Opposition moot and reiterated the August 25, 2011 Resolution noting respondent's Motion to Admit Attached Answer.[16]

Petitioner filed a Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals[17] on September 19, 2011, praying for the Court to commission Mr. Henry Tan of SGV & Co. as an Independent Certified Public Accountant (CPA). During the hearing on October 3, 2011, the Court granted petitioner's motion and directed the Independent CPA to submit his report within thirty (30) days. On November 2, 2011, the Independent CPA submitted his report in compliance with the Court's Order.

On November 28, 2012, petitioner filed its Formal Offer of Evidence[18], offering Exhibits "A" to "QQ-11-A", inclusive of sub-markings. In response, respondent filed her Comment (To Petitioner's Formal Offer of

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[9] p. 52, Docket.
[10] pp. 53-56, Docket.
[11] pp. 64-70, Docket.
[12] pp. 79-85, Docket.
[13] p. 87, Docket.
[14] pp. 88-90, Docket.
[15] pp. 98-103, Docket.
[16] p. 105, Docket.
[17] pp. 126-129, Docket.
[18] pp. 394-408, Docket.

Evidence)[19] on December 4, 2012, stating that she has no objection to the admission of said exhibits, except Exhibits “A” and “V^4” for being mere photocopies. The Court issued a Resolution[20] on January 9, 2013, admitting most of the exhibits offered and denying Exhibits “A” and “V^4” for failure to present the original copies for comparison; Exhibits “WW-91” to “WW-92” for not being found in the records; and Exhibits “L-4-1” to “L-4-6” for not being identified during the trial.

Subsequently, petitioner filed a Motion for Partial Reconsideration (On Petitioner’s Formal Offer of Evidence)[21] of the denied exhibits, reasoning that Exhibit “V^4” has been proven as a secondary evidence through a witness’ judicial affidavit;[22] that Exhibits “L-4-1” to “L-4-6” are actually described as Exhibits “L^4-1” to “L^4-6”; and submitting the Certified True Copy of Exhibit “A”. Having no objection from respondent despite being given the opportunity to do so, the Court during its February 11, 2013 hearing granted petitioner’s Motion and admitted the previously denied exhibits. Furthermore, counsel for respondent manifested that she has no witness to present. Accordingly, the Court ordered both parties to submit within thirty (30) days their respective Memoranda.

The case was submitted for decision on May 7, 2013, after noting respondent’s Memorandum[23] filed on March 5, 2013 and petitioner’s Memorandum[24] filed on May 2, 2013.

STATEMENT OF ISSUE

The principal issue[25] submitted by the parties for this Court’s resolution is: “whether petitioner is entitled to refund or issuance of tax credit certificate in the amount of Sixteen Million Six Hundred Sixty Nine Thousand Seven Hundred Eighty Six Pesos and Fourteen Centavos (Php16,669,786.14) on its unutilized input VAT attributed to its zero rated sales, for the period January 1, 2009 up to December 31, 2009.”

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[19] pp. 410-412, Docket.
[20] pp. 414-415, Docket.
[21] pp. 417-421, Docket.
[22] Exhibit “C^5”.
[23] pp. 439-448, Docket.
[24] pp. 470-500, Docket.
[25] p. 83, Docket.

DISCUSSION/RULING

In claiming input VAT refund or tax credit for zero-rated or effectively zero-rated sales, Section 112(A) and (C) of the NIRC of 1997, as amended, provides that:

> "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.
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> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the above-mentioned provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. that there must be zero-rated sales or effectively zero-rated sales;

2. that input taxes were incurred or paid;

3. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. that the input taxes were not applied against any output VAT liability; and

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

The Court will determine first the timeliness of the filing of the instant claim, both in the administrative and judicial levels.

As explicitly stated under Section 112(A) of the NIRC of 1997, as amended, the application for tax credit certificate/refund of unutilized excess input VAT must be filed within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers the four taxable quarters of 2009 which closed on March 31, 2009; June 30, 2009; September 30, 2009; and December 31, 2009. Counting two years from the said dates, petitioner had until March 31, 2011; June 30, 2011; September 30, 2011; and December 31, 2011, respectively, within which to file its administrative claim for refund/tax credit. Evidently, the administrative claim for refund[26] filed on November 26, 2010 with the BIR Large Taxpayers Excise Audit Division II in the amount of P16,669,786.14 is well within the two-year prescriptive period prescribed under Section 112(A) of the NIRC of 1997, as amended.

In her Memorandum, respondent argues that petitioner's judicial claim for refund was prematurely filed since petitioner failed to submit complete documents to support its application for refund in accordance with Section 112 of the NIRC of 1997, as amended. As a consequence, the 120-day period did not start to run.

The Court is not convinced.

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[26] Exhibits "E" to "E-3".

When petitioner filed the administrative claim on November 26, 2010, petitioner simultaneously submitted the documents in support thereof. This is evident from its letter claim[27] which stated:

> "For your immediate reference, we attach the following documents:
>
> 1. Authorization letter issued by Coral Bay in favor of Du-Baladad and Associates *('Annex A')*;
> 2. Copy of the Articles of Incorporation and By-Laws of Coral Bay *('Annex B')*;
> 3. Copy of PEZA Certificate of Registration No. 02-072 *('Annex C')*;
> 4. Copy of BIR Certificate of Registration (BIR Form No. 2303) *('Annex D')*;
> 5. Copy of the letter of BIR Commissioner Jose Mario C. Bunag dated January 12, 2007 *('Annex E')*;
> 6. Copy of duly filed Quarterly VAT returns for the 1st to 4th quarters of 2009 *('Annexes F, G, H, and I')*."

Since the records do not show that a written notice was sent by the BIR informing petitioner that the aforesaid documents are incomplete or requiring petitioner to submit additional documents, the 120-day period started and continued to run from the date when petitioner filed its administrative claim together with the supporting documents. Revenue Memorandum Circular No. 029-09 states that:

> "III. *Period within which Refund or Tax Credit of Input Taxes shall be Made*
>
> Section 112 (C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides, among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining 'proper cases' in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:
>
> a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded/credited;
> b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;
> c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

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[27] Exhibit "E".

d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

In cases where taxpayer failed to comply with the above conditions/requirements, *i.e.*, failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer**. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request." *(Emphasis supplied)*

Applying Section 112(C) of the NIRC of 1997, as amended, the following are the pertinent dates to petitioner's claim for refund:

Year 2009	Date of Filing Administrative Claim	End of 120 days within which to decide the claim	End of 30 days from the expiration of the 120 days	Date of Judicial Claim
1st Quarter	November 26, 2010	March 26, 2011	April 25, 2011	March 31, 2011
2nd Quarter				
3rd Quarter				
4th Quarter				

Based on the above table, petitioner's judicial claim for refund for the four quarters of 2009 was timely filed within the "120-30" day period required under Section 112(C) of the NIRC of 1997, as amended.

The Court will now proceed to determine petitioner's compliance with the other requisites.

Petitioner's primary purpose pursuant to its Articles of Incorporation[28] is to "own, hold, sell, exchange, lease, mortgage or otherwise dispose of, deal in, and operate 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- om

[28] Exhibit "A".

products of any thereof". Petitioner alleges that during the year 2009, it had exported nickel cobalt mixed sulfide to Sumitomo Metal Mining Co., Ltd. (SMMC), a corporation organized and existing under the laws of Japan. It posits that the said exportations are subject to zero percent (0%) VAT in accordance with Section 106(A)(2)(a) of the NIRC of 1997, as amended, which reads as follows:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* -
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term *'export sales'* means:
>
> (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);
>
> (2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
>
> (4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP);
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and
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> (6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations."

From the allegations of petitioner and the afore-quoted provisions of the NIRC, it can be inferred that petitioner wants to impress upon this Court that its direct export sales will qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

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

1. That there was sale and actual shipment of goods from the Philippines to a foreign country by a VAT-registered person;

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

3. 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, 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 herein 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; and xxx" *(Emphasis supplied)*

xxx xxx xxx

"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;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided*, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;" *(Emphasis supplied)*

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 (P25.00) 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. xxx" *(Emphasis supplied)*
>
> xxx xxx xxx
>
> "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 provision of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Section 4.113-1(A)(1), B(1) and (2)(c) of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (a) the sales invoice as proof of sale of goods; (b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) 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 must contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

The fact that petitioner is VAT-registered is not disputed.[29] For the four quarters of 2009, petitioner actually shipped its products of nickel cobalt mixed sulfide to its foreign buyer, Sumitomo Metal Mining Co., Ltd. of Japan, and generated export sales as shown in its general ledger for sales[30], zero-rated VAT invoices[31], bills of lading[32], and audited financial statements[33]. Petitioner complied with all the requisites for VAT zero-rating of its export sales for the year 2009 but only to the extent of P9,203,579,216.42 out of the total reported zero-rated sales of P10,392,421,777.56.

To prove that the foreign currency proceeds of its reported zero-rated sales for 2009 in the amount of P10,392,421,777.56 were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, petitioner presented the advices of incoming foreign currency remittances[34] issued by the Bank of Tokyo-Mitsubishi UFJ, Manila Branch, which were summarized by the Court-commissioned Independent CPA as follows:[35]

Invoice No.	Amount per Invoice (in US$)	Equivalent Amount of Invoice in PhP (per General Ledger balances)	Amount per Advice of Incoming Foreign Remittance (in US$)	Equivalent Amount of Remittance in PhP (per General Ledger balances)
0082	21,671,562.32	1,008,442,809.44	19,504,406.09	907,598,528.50
				99,970,916.98
0080	2,829,898.44	132,974,097.79	2,829,898.44	132,974,097.79
0081	1,760,152.98	82,712,104.37	1,760,152.98	82,712,104.37
0079	22,568,844.89	1,063,714,797.36	20,311,960.40	957,343,317.63
				104,110,081.48
0078	7,484,552.61	355,942,868.47	7,484,552.61	355,942,868.47
0076	28,484,945.73	1,342,068,218.07	25,636,451.16	1,207,861,396.26
				131,443,782.08
0075	32,509,557.07	1,540,725,438.22	29,258,601.36	1,386,652,894.40
				151,527,045.51
0074	5,274,976.19	257,672,036.93	5,274,976.19	257,672,036.93
0073	8,068,604.48	394,135,191.64	8,068,604.48	394,135,191.64
0072	18,173,963.09	871,187,094.68	18,173,963.09	871,187,094.68
0071	3,148,765.10	151,364,287.12	3,148,765.10	151,364,287.12
0070	15,395,622.54	740,852,752.25	15,395,622.54	740,852,752.25
0069	1,264,473.49	60,923,597.22	1,264,473.49	60,923,597.22
0068	16,874,088.88	814,259,158.91	16,874,088.88	814,259,158.91

[29] Par. 3, Summary of Admitted Facts, JSFI; p. 80, Docket; Exhibit "D".
[30] Exhibits "KK-1" to "KK-2".
[31] Exhibits "KK-3" to "KK-26".
[32] Exhibits "OOO-3", "OOO-5", "OOO-7", "OOO-9", "OOO-11", "OOO-13", "OOO-15", "OOO-17", "OOO-19", "OOO-21", "OOO-23", "OOO-25", "PPP-3", "PPP-5", and "PPP-7".
[33] Exhibits "LLL-1" to "LLL-34".
[34] Exhibits "KK-27" to "KK-55".
[35] Exhibits "HH-15" to "HH-17".

0067	11,504,710.71	548,878,243.26	11,504,710.71	548,878,243.26
0066	589,200.25	28,517,881.30	589,200.25	28,517,881.30
0064	11,818,969.23	571,908,102.07	11,818,969.23	571,908,102.07
0063	8,881,225.08	(37,400,109.02)	8,881,225.08	430,046,680.91
0062	8,528,757.38	411,981,625.24	8,528,757.38	411,981,625.24
0061	7,265,360.17	(4,592,767.45)	7,265,360.17	350,263,013.81
0060	8,836,870.45	7,186,489.26	8,836,870.45	426,025,524.39
0059	11,308,520.80	5,105,454.82	11,308,520.80	545,183,787.76
0058	10,265,430.19	499,536,363.91	10,265,430.19	499,536,363.91
0057	6,075,922.27	285,519,739.31	6,075,922.27	285,519,739.31
	270,584,974.34[36]	**11,133,615,475.17**[37]	**260,061,483.34**[38]	**12,906,392,114.18**

However, only the following remittances, representing 88.56% of the amounts initially billed by petitioner upon shipment of its products to Sumitomo Metal Mining Co., Ltd., were traced to the corresponding invoices:

Invoice		Amount per Invoice (in US$)	Equivalent Amount of Invoice in PhP (per general ledger balances)	Amount per Advice of Incoming Foreign Remittance (in US$)	Equivalent Amount of Remittance in PhP (per General Ledger balances)
Exhibit	Number				
KK-3	0082	21,671,562.32	1,008,442,809.44	19,504,406.09	907,598,528.50
KK-6	0079	22,568,844.89	1,063,714,797.36	20,311,960.40	957,343,317.63
KK-8	0076	28,484,945.73	1,342,068,218.07	25,636,451.16	1,207,861,396.26
KK-9	0075	32,509,557.07	1,540,725,438.22	29,258,601.36	1,386,652,894.40
KK-12	0072	18,173,963.09	871,187,094.68	18,173,963.09	871,187,094.68
KK-14	0070	15,395,622.54	740,852,752.25	15,395,622.54	740,852,752.25
KK-16	0068	16,874,088.88	814,259,158.91	16,874,088.88	814,259,158.91
KK-17	0067	11,504,710.71	548,878,243.26	11,504,710.71	548,878,243.26
KK-19	0064	11,818,969.23	571,908,102.07	11,818,969.23	571,908,102.07
KK-21	0062	8,528,757.38	411,981,625.24	8,528,757.38	411,981,625.24
KK-25	0058	10,265,430.19	499,536,363.91	10,265,430.19	499,536,363.91
KK-26	0057	6,075,922.27	285,519,739.31	6,075,922.27	285,519,739.31
		203,872,374.30	**9,699,074,342.72**	**193,348,883.30**	**9,203,579,216.42**

Therefore, out of the P10,392,421,777.56 zero-rated sales reported by petitioner in its 2009 Quarterly VAT Returns, only the amount of P9,203,579,216.42 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. The rest of petitioner's declared zero-rated sales in the amount P1,188,842,561.14 must be denied VAT zero-rating for petitioner's failure to prove inward remittance of the

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[36] Sum total per summary is P248,913,412.02 due to error made by the Independent CPA in not including the first figure covered by invoice 0082, which is P21,671,562.32.

[37] Sum total per summary is P10,125,172,665.73 due to erroneous non-inclusion of the first figure, which is P1,008,442,809.44.

[38] Sum total per summary is P19,504,406.09 due to erroneous non-inclusion of the first figure, which is P19,504,406.09.

foreign currency proceeds thereof. Consequently, the input VAT claim pertaining to the export sales of P1,188,842,561.14 should be denied.

In his Report[39] dated November 2, 2011, the Independent CPA noted that petitioner's zero-rated sales for the year 2009 as reflected in its audited financial statements amounted to P11,158,926,128.31, an amount higher by P766,504,350.75 when compared with the P10,392,421,777.56 zero-rated sales declared per petitioner's Quarterly VAT Returns for the same year.

The Independent CPA found that the discrepancy of P766,504,350.75 pertains to additional audit sales adjustments for the second and fourth quarters of 2009 effected in the audited trial balance/audited financial statements but not considered in the VAT returns of petitioner.

Pursuant to Section 114(A) of the NIRC of 1997, as amended, petitioner should have declared the export sales of P766,504,350.75 in its Quarterly VAT Returns for the second and fourth quarters of 2009 in order that the input taxes attributable thereto can be refunded. Hence, petitioner's input VAT claim corresponding to the undeclared zero-rated sales of P766,504,350.75 shall be denied.

After resolving that petitioner had VAT zero-rated direct export sales for the four quarters of 2009 in the total amount of P9,203,579,216.42, the Court shall now proceed to determine whether petitioner incurred input taxes in connection therewith and if said input taxes were not applied against any output VAT liability of petitioner.

As stated earlier, petitioner reflected a total amount of P16,669,786.13 input VAT in its amended Quarterly VAT Returns for the year 2009, to wit:

Year 2009	Input VAT
1st Quarter	P 2,875,343.83
2nd Quarter	6,403,620.15
3rd Quarter	3,983,258.69
4th Quarter	3,407,563.46
Total	**P16,669,786.13**

In support of the P16,669,786.13 input taxes, petitioner submitted its Summary List of Purchases[40], general ledger for input taxes[41], and the

[39] Exhibits "HH-4" and "HH-5", No. 5 of the Findings and Observations.
[40] Exhibits "LL-1" to "LL-14".
[41] Exhibits "MMM-1" to "MMM-19".

related suppliers' invoices and official receipts[42]; which were examined by the Independent CPA.

A review of the Independent CPA's report together with petitioner's supporting documents shows that input taxes in the amount of P769,105.30 must be disallowed from petitioner's claim for not being properly substantiated by VAT invoices or receipts as prescribed under Sections 110(A), 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, in relation to Sections 4.110-1, 4.110-8, and 4.113-1 of Revenue Regulations No. 16-2005, as amended. Below is the breakdown of the input taxes of P769,105.30:

	FINDINGS	Exhibit	Disallowed Input VAT
_A._	_Input Taxes on Purchases of Goods_		
1.	Supported by VAT invoices dated outside the period of claim	HH-46	P 120,533.77
2.	Supported with VAT invoices with wrong TIN of petitioner	HH-47	5,990.66
3.	Supported by sales invoice which did not indicate whether the supplier is VAT-registered.	HH-48	2,558.36
_B._	_Input Taxes on Purchases of Services_		
1.	Supported by VAT official receipts issued not in the name of petitioner	HH-53 to HH-56	33,899.87
2.	Supported by VAT official receipt with VAT amount erroneously computed		
	Input VAT Claim P 2,409.00		
	Less: Input VAT per official receipt 2,405.00		
	Overstatement	HH-57	4.00
3.	Supported by VAT official receipt with VAT not separately indicated.	HH-58	7,667.41
4.	Supported by VAT official receipts dated outside the period claim.	HH-59	20,941.53
5.	Supported by VAT official receipts with no TIN and address of petitioner	HH-60	840.10
6.	Supported by VAT official receipts with no TIN of petitioner and VAT not separately indicated.	HH-61	19,175.25
7.	Supported by photocopied VAT official receipt	HH-62	3,637.50
8.	Supported by VAT official receipts dated outside the period of claim and with wrong TIN.	HH-63	1,392.85
9.	Supported by VAT official receipts not issued in the name of petitioner and with wrong TIN.	HH-64	3.00
10.	Supported by VAT official receipts not issued in the name of petitioner and with wrong TIN and address.	HH-65	2,508.43
11.	Supported by documents other than VAT official receipts	HH-66	9,591.83
12.	Supported by non-VAT Official receipts	HH-67	3,888.38
_C._	_Input Taxes claimed on local purchases of goods and services without supporting documents._	HH-68	536,472.36
	Total		**P769,105.30**

ON

[42] Exhibits "MM-1" to "MM-101", "NN-1" to "NN-2", "OO-1" to "OO-6", "PP-1" to "PP-482", "QQ-1" to "QQ-11", "RR-1" to "RR-8", "SS-1" to "SS-37", "TT-1" to "TT-2", "UU-1" to "UU-2", "VV-1" to "VV-200", "WW-1" to "WW-92", "XX-1" to "XX-2", "YY-1" to "YY-3", "ZZ-1"to"ZZ-43", "AAA-1" to "AAA-2", "BBB-1" to "BBB-4", "CCC-1" to "CCC-2", "DDD-1" to "DDD-2", "EEE-1" to "EEE-2", "FFF-1" to "FFF-4", "GGG-1" to "GGG-35", "HHH-1" to "HHH-4", "III-1" to "III-2", and "JJJ-1" to "JJJ-65".

In addition, petitioner's input VAT claim in the amount of P264,938.74 should likewise be disallowed for the following reasons:

	Supplier	**Exhibit**	**Disallowed Input VAT**
1.	Purchases of services supported by documents other than VAT official receipts		
	Smart Communications	PP-402	P 375.00
	Smart Communications	PP-403	375.00
	Judeline Dimalibot	VV-6	3,214.29
2.	Purchases of services supported by VAT official receipts issued not in the name of petitioner		
	Philippine Ports Authority	VV-13	3,384.40
	Philippine Ports Authority	VV-14	3,024.00
	Philippine Ports Authority	VV-19	4,860.00
	Philippine Ports Authority	VV-28	1,192.21
	Philippine Ports Authority	VV-36	59,215.11
	Philippine Ports Authority	VV-38	1,792.31
	Philippine Ports Authority	VV-40	2,025.86
	Philippine Ports Authority	VV-56	12,094.50
	Philippine Ports Authority	VV-57	3,780.00
	Philippine Ports Authority	VV-75	2,016.00
	Philippine Ports Authority	VV-80	199.60
	Philippine Ports Authority	VV-81	3,780.00
	Philippine Ports Authority	VV-83	3,780.00
	Philippine Ports Authority	VV-85	44.15
	Philippine Ports Authority	VV-91	3,780.00
	Philippine Ports Authority	VV-93	50,982.29
	Philippine Ports Authority	VV-97	4,401.32
	Philippine Ports Authority	VV-99	30,816.41
	Philippine Ports Authority	VV-110	59,189.66
	Philippine Ports Authority	VV-120	10,555.20
	Philippine Ports Authority	VV-141	61.43
	Total		**P 264,938.74**

In sum, out of the P16,669,786.13 input VAT reported by petitioner for the year 2009, only the amount of P15,635,742.09 represents petitioner's valid input VAT, computed below:

Input VAT Claim		P 16,669,786.13
Less:	Not Properly Substantiated Input VAT	1,034,044.04[43]
Valid Input VAT		**P15,635,742.09**

Since petitioner's sales for the four quarters of 2009 were all direct export sales, the substantiated input VAT of P15,635,742.09 is entirely

[43] The sum of P769,105.30 and P264,938.74.

attributable thereto. However, as earlier stated, the input VAT related to the export sales of P1,188,842,561.14, with no corresponding foreign currency remittances, and the input VAT related to the undeclared export sales of P766,504,350.75 shall likewise be disallowed. Consequently, petitioner's substantiated input VAT attributable to the declared valid zero-rated sales of P9,203,579,216.42 amounts only to P12,895,935.44, computed as follows:

Valid Input VAT			P 15,635,742.09
Less:	Disallowances		
	Input VAT attributable to the export sales without foreign currency remittances		
	Declared zero-rated sales the foreign currency remittances of which could not be traced to the bank credit advices issued by the Bank of Tokyo-Mitsubishi UFJ, Manila Branch	P1,188,842,561.14	
	Divided by total export sales per audited financial statements	11,158,926,128.31	
	Multiplied by valid input VAT	15,635,742.09	P 1,665,790.73
	Input VAT attributable to the export sales undeclared per VAT returns		
	Undeclared export sales	P 766,504,350.75	
	Divided by total export sales per audited financial statements	11,158,926,128.31	
	Multiplied by valid input VAT	15,635,742.09	1,074,015.92
	Total Disallowances		P 2,739,806.65
Input VAT attributable to the declared valid zero-rated sales			**P12,895,935.44**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns for the subject period of claim[44] showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Even though the claimed amount of P16,669,786.14 was carried over to the succeeding first quarter of 2010,[45] the same remained unutilized since petitioner still had no output tax liability for the said period. Moreover, the total claim of P16,669,786.14 was deducted as "VAT Refund/TCC claimed"[46] in petitioner's Quarterly VAT Return for the first quarter of 2010. Hence, petitioner could not have utilized the subject claim in the succeeding quarters.

In fine, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate in the amount of P12,895,935.44, representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of 2009.

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[44] Exhibits "T", "V", "Y", and "BB".
[45] Exhibit "EE".
[46] Exhibit "EE", line 23D.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P12,895,935.44, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales for taxable year 2009.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice