REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

TAGANITO MINING CORPORATION, Petitioner, **- versus -** **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1972** (CTA Case No. 9057)

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, **- versus -** **TAGANITO MINING CORPORATION,** Respondent.	**CTA EB NO. 1975** (CTA Case No. 9057) ***Present:*** **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.* ***Promulgated:*** SEP 03 2020 3:15pm

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DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for*

Review, assailing the Amended Decision dated July 27, 2018[1] and Resolution dated November 20, 2018[2], rendered by the Second Division and Special Second Division of this Court (Court in Division), respectively, in CTA Case No. 9057, entitled "*Taganito Mining Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

<u>Decision dated July 27, 2018</u>:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration,** is **PARTIALLY GRANTED**; while respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 April 2017),** is **DENIED** for lack of merit.
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> Accordingly, the Court's Decision dated April 5, 2017, is hereby amended to read as follows:
>
>> '**WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED** to refund to petitioner the amount of **₱2,946,937.07,** representing its excess/unutilized input VAT paid on its importation of capital goods with aggregate acquisition cost exceeding ₱1 million, which are attributable to its zero-rated sales for taxable year 2013.
>>
>> **SO ORDERED.'**
>
> **SO ORDERED.**"

<u>Resolution dated November 20, 2018</u>:

> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 27 July 2018)** and petitioner's **Motion for Partial Reconsideration (of the July 27, 2018 Amended Decision)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

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[1] EB Docket (CTA EB No. 1972), pp. 31 to 43; EB Docket (CTA EB No. 1975), pp. 24 to 36.
[2] EB Docket (CTA EB No. 1972), pp. 22 to 28; EB Docket (CTA EB No. 1975), pp. 37 to 43.

THE CONSOLIDATED PETITIONS FOR REVIEW

CTA EB No. 1972,[3] entitled "Taganito Mining Corporation (TMC)", Petitioner, v. Commissioner of Internal Revenue (CIR), Respondent":

In this case, TMC prays that the assailed Amended Decision and Resolution be overturned, and that this Court issue a judgment declaring TMC entitled to, and to order the CIR, to refund TMC the amount of ₱8,326,025.84, corresponding to the portion of its excess input taxes on capital goods purchases exceeding ₱1 million in the year 2013, which were amortized in 2013, and have not been utilized nor have been covered by a previous claim for refund/TCC.

CTA EB No. 1975,[4] entitled " Commissioner of Internal Revenue, Petitioner, v. Taganito Mining Corporation, Respondent".

In the instant case, the CIR prays that the assailed Amended Decision and Resolution be partially reconsidered and set aside, and another be rendered, denying the entire claim for refund.

THE FACTS

Taganito Mining Corporation (TMC) is a corporation duly organized and existing under and by virtue of the Philippine laws, with business address at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig/Makati City. It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000046046 dated June 15, 1994 issued by the Bureau of Internal Revenue (BIR). It is also registered with the Board of Investments (BOI) with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988. It is also registered with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 138682 issued on March 4, 1987.

The CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR.

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[3] EB Docket (CTA EB No. 1972), pp. 5 to 19.
[4] EB Docket (CTA EB No. 1975), pp. 7 to 23.

He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

TMC electronically filed its quarterly VAT returns for the taxable year 2013 on the following dates:

Quarterly VAT Returns	Filing Date
1st Quarter 2013	February 24, 2014
2nd Quarter 2012	February 24, 2014
3rd Quarter 2012	February 24, 2014
4th Quarter 2012	November 28, 2014

On December 29, 2014, TMC filed with the BIR, an application for tax credit/refund of excess input VAT, allegedly paid on its domestic purchases and importation of taxable goods and services and importation of goods, including capital goods, in accordance with Section 112 (A) and (B) in relation to Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended. On the same date, TMC submitted its supporting documents for its claim for refund.

Due to the CIR's inaction, TMC filed a *Petition for Review* before the Court in Division on May 27, 2015 docketed as CTA Case No. 9057, seeking the refund of the amount of ₱8,326,025.84, allegedly representing its excess/unutilized input VAT paid on its importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 Million, which are attributable to its zero-rated sales for taxable year 2013.

On June 15, 2015, the CIR filed his *Answer* in CTA Case No. 9057, and interposed the following Special and Affirmative Defenses:

1. TMC's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
2. The amount of ₱8,326,025.84, allegedly representing excess/unutilized VAT input taxes, which have not been allegedly utilized and allegedly amortized in the year 2013 was not properly documented;
3. 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 its claim;
4. TMC must show that it complied with the provisions of Section 229 of the NIRC of 1997, as amended, on the prescriptive period for claiming tax refund/credit;
5. There is no record of TMC ever submitting complete

documents to substantiate its administrative claim for refund;

6. RMO No. 53-98 provides for the list of complete documents required by law;
7. TMC's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Court in Division is without jurisdiction to entertain the Petition for Review; and
8. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

After the Pre-Trial Conference on July 23, 2015, the parties filed their *Joint Stipulation of Facts and Issues* on August 4, 2015. The same was approved by the Court in its Pre-Trial Order dated August 11, 2015.

During trial, TMC presented the following witnesses: (1) Lennie A. Terre – TMC's VP for Finance; and (2) Maria Gracia L. Morfe – Independent Certified Public Accountant (ICPA).

On January 4, 2016, TMC filed its *Formal Offer of Evidence*, without the CIR's comment, despite notice. In the Resolution dated February 15, 2016, the Court in Division admitted all of TMC's Exhibits, except Exhibit "P-489."

For his part, the CIR presented its lone witness, Revenue Officer Ma. Daisy M. Loyola. During the hearing held on February 24, 2016, the CIR's counsel made an oral Formal Offer of Evidence marked as Exhibits "R-1," "R-2," "R-3," "R-4," "R-5," and "R-5-1." All of the foregoing exhibits were admitted by the Court in Division, and the parties were given a period of thirty (30) days within which to file their respective memoranda.

The CIR filed his *Memorandum* on March 28, 2016, while TMC filed its *Memorandum* on May 26, 2016. Thereafter, CTA Case No. 9057 was submitted for decision.

In the Decision dated April 5, 2017, the Court in Division partially granted TMC's claim for refund, and ordered the CIR to refund TMC that reduced amount of ₱2,863,631.56, representing its excess/unutilized input VAT paid on its importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 Million, which are attributable to its zero-rated sales for taxable year 2013.

On April 21, 2017, TMC filed a *Motion for Partial Reconsideration and/or New Trial*, while the CIR filed a *Motion for Partial Reconsideration (Re: Decision promulgated 5 April 2017).* On May 15, 2017, TMC filed its *Comment To Respondent's Motion for Partial Reconsideration,* while the CIR filed his *Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial)* on May 24, 2017.

In the assailed *Amended Decision* dated July 27, 2018, TMC's Motion for Partial Reconsideration was partially granted, while the CIR's Motion for Partial Reconsideration was denied for lack of merit. Accordingly, the Decision of the Court in Division dated April 5, 2017, was amended, and the CIR was ordered to refund TMC the amount of ₱2,946,937.07.

Aggrieved, the CIR filed his *Motion for Partial Reconsideration (Re: Amended Decision promulgated 27 July 2018)* on August 14, 2018, without TMC's comment, as per Records Verification dated September 25, 2018. TMC, for its part, filed its *Motion for Partial Reconsideration (of the July 27, 2018 Amended Decision)* on August 16, 2018, with the CIR's *Opposition (Re: Motion for Reconsideration)* filed on September 21, 2018.

In the assailed *Resolution* dated November 20, 2018, the Court in Division denied both Motions for lack of merit, considering that the grounds relied upon by the parties were mere reiterations of the issues/arguments already passed upon by the Court.

Undaunted, on December 11, 2018, TMC filed before the Court *En Banc* a *Motion for Extension of Time (to file Petition for Review),*[5] praying for an extension of thirty (30) days from December 11, 2018, or until January 10, 2019, within which to file its *Petition for Review*. The Court *En Banc* granted TMC an extension of fifteen (15) days

[5] EB Docket (CTA EB No. 1972), pp. 1 to 3.

from December 11, 2018 or until December 26, 2018, within which to file its *Petition for Review*.[6]

Likewise, the CIR filed a *Motion for Extension of Time to File Petition for Review* on December 11, 2018,[7] praying for an additional period of fifteen (15) days from December 12, 2018, or until December 27, 2018, to file his *Petition for Review*. The Court *En Banc* also granted the CIR a final and non-extendible period of fifteen (15) days from December 12, 2018, or until December 27, 2018, within which to file his *Petition for Review*.[8]

On December 20, 2018, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1975;[9] while TMC filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1972[10] on December 27, 2018.[11]

Considering that the instant cases are appeals from the Amended Decision dated July 27, 2018 and Resolution dated November 20, 2018, rendered by the Court in Division in CTA Case No. 9057, CTA EB No. 1975 was consolidated with CTA EB No. 1972 on December 28, 2018.[12]

In the Resolution dated January 21, 2019,[13] the Court *En Banc* ordered TMC and the CIR to file their respective *Comments* to the *Petition for Review* of the other party, within ten (10) days from receipt thereof. On February 7, 2019, the CIR filed his *Comment (Re: Petition for Review)*.[14] TMC, however, failed to file its *Comment*, despite due notice.[15]

In the Resolution dated May 6, 2019,[16] the Court resolved to give due course to both Petitions for Review, and granted the parties a period of thirty (30) days from notice, within which to file their respective memoranda.

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[6] Minute Resolution dated December 14, 2018, EB Docket (CTA EB No. 1972), p. 4.
[7] EB Docket (CTA EB No. 1975), pp. 1 to 5.
[8] Minute Resolution dated December 14, 2018, EB Docket (CTA EB No. 1975), p. 6.
[9] EB Docket (CTA EB No. 1975), pp. 7 to 23.
[10] EB Docket (CTA EB No. 1972), pp. 5 to 19.
[11] The Supreme Court, through the Public Information Office (PIO), declared the suspension of work in all courts nationwide on December 26, 2018.
[12] Minute Resolution dated December 28, 2018, EB Docket (CTA EB No. 1972), p. 55.
[13] EB Docket (CTA EB No. 1972), pp. 57 to 58.
[14] EB Docket (CTA EB No. 1972), pp. 59 to 67.
[15] Records Verification dated March 4, 2019; EB Docket (CTA EB No. 1972), p. 68.
[16] EB Docket (CTA EB No. 1972), pp. 70 to 71.

On June 7, 2019, the CIR filed a *Manifestation,*[17] stating that he is adopting the arguments raised in his Petition for Review in CTA EB No. 1975, and the arguments raised in the Comment to the Petition for Review in CTA EB No. 1972, as his Memorandum, which was noted by this Court in the Minutes Resolution dated June 10, 2019.[18] Meanwhile, TMC failed to file its Memorandum, despite notice.[19]

Thereafter, the instant consolidated cases were deemed submitted for decision in the Resolution dated September 4, 2019.[20] Hence, this Decision.

THE ISSUES

In **CTA EB No. 1972**, TMC raises the following issue and assignment of errors, to wit:

"ISSUE

'Whether or not Petitioner is entitled to the refund of its alleged excess VAT input taxes of Eight Million Three Hundred Twenty Six Thousand Twenty Five and 84/100 Pesos (Php8,326,025.84).'

ASSIGNMENTS OF ERROR

A. 'The Questioned Resolution and the Amended Decision contain conclusions of fact which are clearly contrary to evidence presented, as follows:

   A.1 Computational errors showing a double deduction of Petitioner's Output Tax
   A.2 Properly Supported Rental Income Which Were Not Considered
   A.3 Proof of A Negative Fact (Non-Utilization)

B. The Questioned Resolution and the Amended Decision contain conclusions of law that are bereft of legal basis and are contrary to law, as follows:

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[17] EB Docket (CTA EB No. 1972), pp. 72 to 75.
[18] EB Docket (CTA EB No. 1972), p. 76.
[19] Records Verification dated June 25, 2019; EB Docket (CTA EB No. 1972), p. 77.
[20] EB Docket (CTA EB No. 1972), pp. 79 to 80.

B.1 Wrong Application of the Coral Bay Case
B.2 Creditable VAT vs. Refundable VAT
B.3 Presumption of Regularity.'"[21]

On the other hand, in **CTA EB No. 1975**, the CIR raises the following assignments of errors, to wit:

"I. THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND IN THE REDUCED AMOUNT OF P2,946,937.07 ALLEGEDLY REPRESENTING EXCESS/UNUTILIZED INPUT VAT PAID ON ITS IMPORTATION OF CAPITAL GOODS WITH AGGREGATE ACQUISITION COST EXCEEDING P1 MILLION, WHICH ARE ALLEGEDLY ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR TAXABLE YEAR 2013.

II. THE HONORABLE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE CLAIMED INPUT VAT SUBJECT OF THE INSTANT CASE REMAINED UNUTILIZED."[22]

TMC's arguments:

TMC contends that as a result of the Court in Division's refusal to consider evidence, its output VAT was effectively deducted twice from its creditable input tax.

Anent its supported rental income, TMC argues that it submitted a summary of its rental income and the corresponding Exhibit Number submitted in support thereof. However it was not considered by the Court in Division.

Allegedly, the Court in Division made a finding that TMC failed to prove that it did not use capital goods for its exempt activities, contrary to uncontroverted documentary evidence showing the nature of TMC's capital goods purchases, coupled with testimonial evidence corroborating the nature and utilization of such capital goods. The unreasonable requirement to prove a negative fact, despite the fact

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[21] EB Docket (CTA EB No. 1972), pp. 11 and 12.
[22] EB Docket (CTA EB No. 1975), p. 10.

that the evidence presented by TMC was uncontroverted, resulted to an improper pro-rating of its input taxes on capital goods with an aggregate amount in excess of P1 Million to TMC's zero-rated sales, VAT sales and exempt sales.

TMC avers that the application of the *Coral Bay* ruling has no legal basis, as there is a distinction between a zero-rated BOI-registered VAT entity and a VAT exempt PEZA registered entity. The law would not have painstakingly made a distinct classification of these types of entities if their treatment would in any situation be the same.

In addition, TMC states that the Court in Division's failure to properly make a distinction between non-refundable VAT and non-utilizable VAT effectively resulted in TMC's input taxes from local suppliers becoming non-creditable due to the fact that they are prevented from applying the same against its output tax liabilities.

Finally, TMC maintains that the Court in Division's failure to consider the admissibility of Import Entry and Internal Revenue Declarations (IEIRDs) that are not machine validated is against the rule on the presumption of regularity of the issuance of such documents and the non-admission thereof was without sufficient legal basis.

The CIR's arguments:

According to the CIR, the law requires that only creditable input taxes that are directly attributable may be refunded. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The connection between the purchases and the finished product must be concrete and not imaginary or remote. The direct connection of the purchases or input tax to the finished product whose sale is zero-rated must be established.

In this case, no evidence was presented by TMC to prove that the input tax on importation was directly attributable to export sales. A reading of the ICPA Report showed that the findings were based only on the statements made by Lennie A. Terre, the VP for Finance of the corporation. The subject statement is self-serving and deserves scant consideration.

The CIR avers that the Court in Division erred in ruling that the claimed input VAT subject of the instant case remained unutilized despite being carried over to the succeeding periods. The pertinent documents and records subjected to evaluation were those pertaining to the taxable year 2013 only. Hence, TMC failed to overcome the burden that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and succeeding quarters of the following taxable year 2014.

Moreover, the CIR maintains that the case of *Coral Bay Nickel Corporation vs. CIR* was correctly applied, and there is no merit to TMC's contention that there was a double deduction of output VAT.

Finally, the CIR stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

THE COURT *EN BANC*'S RULING

Both *Petitions for Review* lack merit.

There was no double deduction of output VAT.

TMC argues that its output VAT was deducted twice from its creditable input tax.

We are not convinced.

Contrary to TMC's contentions, there was no double deduction of output VAT from its creditable input tax.

It bears noting that in determining the amount refundable to petitioner, the Court in Division **initially considered** the total amount of TMC's input VAT, as declared in the Quarterly VAT Returns, **sans** any deduction for output VAT.

Hence, in computing for the **final** amount of excess input VAT attributable to zero-rated sales, the Court in Division properly deducted the output VAT for TY 2013.

Clearly, there was no double deduction of output VAT from petitioner's creditable input VAT.

TMC failed to submit official receipts to substantiate its alleged rental income.

Anent its alleged supported rental income, TMC argues that the Court in Division should have considered the summary of its rental income and the corresponding Exhibit Numbers submitted in support thereof.

We are not swayed.

Contrary to TMC's contentions, the alleged summary of its rental income and the corresponding Exhibit Numbers it provided,[23] merely referred to billing statements[24] in support of its alleged rental income. However, TMC failed to provide the zero-rated official receipts, as required by Section 113 (A) (2) of the NIRC of 1997,[25] as amended, to substantiate the rental income in the amount of ₱5,497,040.00. Thus, there is no merit to TMC's claim that the Court in Division erred in ruling that its rental income was not supported.

The substantiated input taxes cannot be entirely attributed to a specific type of sale, and must be allocated proportionately on the basis of the volume of sales, pursuant to Section 112 (A) of the NIRC of 1997, as amended.

According to TMC, the Court in Division erred in ruling that TMC failed to prove that it did not use capital goods for its exempt activities, contrary to documentary evidence showing the nature of TMC's capital goods purchases, coupled with testimonial evidence corroborating the nature and utilization of such capital goods.

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[23] EB Docket (CTA EB No. 1972), p. 52.
[24] Exhibits "P-766" to " P-770."
[25] **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** –
(A) *Invoicing Requirements.* – A VAT-registered person shall issue:
x x x x
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

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Allegedly, the unreasonable requirement to prove a negative fact, despite the fact that the evidence presented by TMC was uncontroverted, resulted to an improper pro-rating of its input taxes on capital goods with an aggregate amount in excess of P1 Million to TMC's zero-rated sales, VAT sales and exempt sales.

We disagree.

Section 112 (A) of the NIRC of 1997, as amended, provides:

> "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: x x x *Provided, further,* That **where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales:** x x x." *(Emphasis supplied.)*

Based on the foregoing provision, when the amount of creditable input tax due or paid cannot be directly and entirely attributed to zero-rated, taxable or exempt transactions, it shall be allocated proportionately on the basis of the volume of sales.

In this case, We agree with the findings of the Court in Division, which ruled that "even though TMC was able to prove that the capital goods purchased, from where the input taxes arose and claimed for refund, were used in generating its zero-rated sales of ores, it still failed to prove that the same were not used in generating its exempt sales. Consequently, the substantiated input taxes cannot be entirely attributed to any of its type of sales and were properly allocated proportionately on the basis of the volume of sales, pursuant to the foregoing Section 112(A) of the NIRC of 1997, as amended."

The* Coral Bay *ruling was correctly applied. TMC's input tax related to its local purchases are not allowable as input tax credit.

TMC avers that the application of the *Coral Bay* ruling has no legal basis, as there is a distinction between a zero-rated BOI-registered VAT entity and a VAT exempt PEZA registered entity.

In addition, TMC argues that there is a distinction between non-refundable VAT and non-utilizable VAT, as the failure to recognize the said distinction effectively resulted in TMC's input taxes from local suppliers becoming non-creditable, as they are prevented from applying the same against its output tax liabilities.

We are not convinced.

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[26] the Supreme Court held that in cases where no input VAT should have been paid, but the taxpayer still paid the same, its recourse should have been to seek reimbursement from its supplier/s. In the said case, there was no distinction or categorical statement, which would limit the application of the aforesaid doctrine only to a VAT exempt PEZA registered entity. When there is no such distinction, there is no valid reason to bar the application of the doctrine espoused in the subject case.

In this case, the Court in Division did not rule that TMC is not entitled to zero-rated VAT on its local purchases. On the contrary, the Court in Division recognized that TMC's purchases were zero-rated VAT and it should not have paid input taxes on its local purchases. Accordingly, the fact that no VAT should have been passed on to TMC by its suppliers, does not authorize the refund or credit of such input VAT in favor of TMC. As earlier mentioned, in paying for input VAT when none should have been paid, TMC can now seek reimbursement from its suppliers, and not from the government.

Thus, We quote with approval the Court in Division's ruling on the matter, to wit:

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[26] G.R. No. 190506, June 13, 2016.

"However, even if petitioner was able to substantiate its domestic purchases of capital goods exceeding ₱1 Million, the corresponding amortized input VAT of ₱33,607.15 is not allowable as input tax credit.

Pursuant to RMO No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of RMO No. 9-00:

xxx xxx xxx

In the present case, record shows that petitioner was issued a certification by the BOI attesting to the fact that it is a BOI registered entity with 100% exports.

Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2013 to December 31, 2013. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund of input VAT from the said domestic purchases.

As held by the CTA *En Banc*, in the case of ***Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue***, which affirmed the Decision of the Court in Division, petitioner's recourse is not against the government but against the seller who shifted to it the output VAT, to wit:

> 'To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr'*

> *(Ong Yong, et al. vs. David S. Tiu, et al., 375 SCRA 640).* Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.
>
> In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. Revenue Memorandum Circular No. 42-03 is clearly instructive on this matter:
>
>> 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'
>
> Pursuant to Revenue Memorandum Circular No. 42-03, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services.'

Clearly, petitioner's local purchases of goods and services are subject to VAT at zero percent (0%) rate, the latter being a BOI-registered entity. As such, no output shall be shifted to or passed on to it, and conversely, no input VAT shall be paid by it from said purchases. However, in this instance, where petitioner paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT but the latter's recourse is to seek reimbursement from the supplier who shifted to it the output VAT. On this point the ruling in Coral Bay Case is applicable.

Petitioner's submission of additional documents in its motion to support its local purchases is of no

> consequence. As already ruled, the input tax incurred related to its local purchases are not allowable as input tax credit."[27]

Thus, We find no error in the ruling of the Court in Division that only the amortized input VAT of ₱8,292,418.76 arising from importation of capital goods exceeding ₱1 Million represents TMC's valid input VAT.

A machine validated IEIRD is required to properly substantiate the payment of duties and taxes on imported goods.

Finally, TMC maintains that the Court in Division's failure to consider the admissibility of IEIRDs that are not machine validated is against the rule on the presumption of regularity of the issuance of such documents and the non-admission thereof was without sufficient legal basis.

We disagree.

In the case of *Taganito Mining Corporation vs. Commissioner of Internal Revenue,* the Supreme Court upheld the requirement of a machine validated IEIRD to properly substantiate the payment of duties and taxes on imported goods, to wit:

> "With regard to the importation of goods or properties, however, Section 4.110-8 of R.R. No. 16-05, as amended, further requires that an import entry or other equivalent document showing actual payment of VAT on the imported goods must also be submitted, to wit:
>
> *SECTION 4.110-8. Substantiation of Input Tax Credits.* — (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents and must be reported in the

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[27] EB Docket (CTA EB No. 1972), pp. 34 to 36.

> information returns required to be submitted to the Bureau:
>
> > (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> In relation to this requirement, Customs Administrative Order No. 2-95 provides:
>
> > 2.3 The Bureau of Customs Official Receipt (BCOR) will no longer be issued by the AABs (Authorized Agent Banks) for the duties and taxes collected. In lieu thereof, the amount of duty and tax collected including other required information must be machine validated directly on the following import documents and signed by the duly authorized bank official:
> >
> > 2.3.1 Import Entry and Internal Revenue Declaration (IEIRD) for final payment of duties and taxes.
> >
> > xxx xxx xxx
>
> From the foregoing, it is apparent that an IEIRD is required to properly substantiate the payment of the duties and taxes on imported goods. Considering that the petitioner failed to submit the import entries relevant to its claim, the CTA did not err in ruling that the petitioner's claim was not sufficiently proven."[28] *(Underscoring supplied.)*

From the foregoing, it is clear that a machine validated IEIRD is a requirement to properly substantiate the payment of duties and taxes on imported goods. Without the mandatory machine validated IEIRDs relevant to its claim, TMC failed to substantiate its claim. Thus, the Court in Division did not err when it ruled that TMC's claimed input taxes on importations of non-capital goods for the taxable year 2013 was not sufficiently proven.

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[28] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,* G.R. No. 201195, November 26, 2014.

TMC has established that the creditable input taxes are attributable to its zero-rated sales.

The CIR argues that the law requires that only creditable input taxes that are directly attributable may be refunded. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The connection between the purchases and the finished product must be concrete and not imaginary or remote. The direct connection of the purchases or input tax to the finished product whose sale is zero-rated must be established.

We are not swayed.

Section 110 of the NIRC of 1997, as amended by Republic Act No. 9337, provides, in part, as follows:

> "**SEC. 110.** ***Tax Credits.*** —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
>
> (a) Purchase or importation of goods:
> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (iv) For use as materials supplied in the sale of service; or
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> xxx xxx xxx

> The term 'input tax' means **the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person**. It shall also include the transitional input tax determined in accordance with Section 111 of this Code." (*Emphases and underscoring supplied)*

From the foregoing, an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods *"(f)or conversion into or intended to form part of a finished product for sale including packaging materials,"* but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC.

In statutory construction, every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[29]

To allege that *"to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production"* is not entirely consistent with the above-quoted Section 110 of the NIRC of 1997, as amended. This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed.

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[29] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

The term *"supplies"* means *"the quantity or amount (as of a commodity) needed or available."*[30] Thus, for the input VAT on the purchase or importation of supplies to be creditable against the output VAT, it need only that such supplies are for use in the course of business. As for the creditability of the input VAT on the purchase or importation of goods for which depreciation or amortization is allowed, otherwise known as *"capital goods," "which are depreciable assets for income tax purposes,"*[31] it is only required that the said purchase or importation is intended for use in trade or business.

As correctly found by the Court in Division, the input VAT on importations of capital goods, which are undeniably necessary for the production of TMC's exports, are attributable to its zero-rated sales.

TMC's witness, Lennie A. Terre, testified that the importation and domestic purchases of goods and services are essential to its export activities, to wit:

> "Q30: You mentioned a while ago that the input taxes of Taganito Mining Corporation came from domestic purchases of goods and services and from importation and local purchases of capital goods, can you tell us if there is any relationship between these purchases and petitioner's business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores?
>
> A: On importation and local purchases of capital goods, the capital goods consist of capital equipment and other capital goods used by the company in exploring and producing the mined ores which are the mineral products being exported by the company.
>
> The same is true for our domestic purchases of goods and services because these goods are purchased and the services secured for the purpose of being used for our mining operations and without which we cannot produce mineral ores. Therefore, the input VAT that we pay on our capital goods and other purchases of goods and services are all essential and attributable to our company's export

[30] The Merriam-Webster Dictionary © 2005, p. 494.
[31] Section 4.110-3, Revenue Regulations No. 16-2005.

activities, more particularly because this is the sole business purpose and activity of our company."[32]

Based on the foregoing testimony, both the capital goods purchased and the imported goods of TMC are for use in the course of business or in its trade or business. Thus, the input VAT on the said purchases and importation are creditable against the output VAT of TMC, since it fulfills the requirements of Section 110 of the NIRC of 1997, as amended.

There is also no merit to the CIR's averment that input VAT must be "attributable" to the zero-rated sales, in that "*the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'.*"

The word "*attribute*," the adjective form of which is "*attributable*," is defined as "*to explain as to cause or origin*," or simply, to "*ascribe*."[33] Thus, when Section 112 (A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales.

Correspondingly, since the subject purchased and imported goods, from which TMC's input VAT arose, are for use in the course of its business or in its trade or business, such input VAT is attributable to the said zero-rated sales.

TMC's claimed input VAT remained unutilized.

The CIR avers that the Court in Division erred in ruling that the claimed input VAT subject of the instant case remained unutilized despite being carried over to the succeeding periods.

We are not convinced.

At this juncture, this Court notes that the CIR failed to make a specific discussion to support the subject argument, nor did it point out any supposed error in the findings by the Court in Division.

[32] Exhibit "P-22."
[33] The Merriam-Webster Dictionary © 2005, p. 31.

On the contrary, the factual findings of the Court in Division in the assailed Amended Decision are thoroughly supported by the evidence on record. Thus, We quote with approval the Court in Division's ruling on the matter, to wit:

> "Moreover, the input VAT claim of ₱8,326,025.84 remained unutilized until it was deducted by petitioner as 'VAT Refund/TCC claimed' in its Amended Quarterly VAT Return for the fourth quarter of 2014. As such, the same could not have been carried over/utilized in the succeeding first quarter of 2015. Thus, petitioner has sufficiently proven that the subject input VAT claim was not applied against any output VAT for the current taxable year 2013 and the succeeding periods."[34]

There being no showing that the above-quoted factual findings of the Court in Division were irregular or erroneous, there is no reason to reverse the said findings.

TMC has sufficiently proven its partial entitlement to its claim for refund.

Finally, the CIR stresses that the claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

While it is true that tax exemptions are strictly construed against the taxpayer, however, it has been ruled that the government should not misuse technicalities to keep money it is not entitled to, to wit:

> "Lastly, while tax exemptions are strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.
>
>> Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. **<u>Under</u>**

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[34] EB Docket (CTA EB No. 1972), p. 42.

> **<u>the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it</u>**. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, **<u>simple justice requires the speedy refund of the wrongly held taxes</u>**."[35] *(Emphasis supplied.)*

In applying the principle of *solutio indebiti* in claims for tax refunds, it was held once the taxpayer has presented sufficient proof of its entitlement thereto, it should not be denied its right to a speedy refund of wrongly held taxes. Considering that TMC has sufficiently proven its partial entitlement to the refund sought, there is no valid reason to deny its claim for refund in its entirety.

WHEREFORE, in light of the foregoing considerations, both *Petitions for Review* are hereby **DENIED** for lack of merit. The Amended Decision dated July 27, 2018 and the Resolution dated November 20, 2018 rendered by the Second Division and Special Second Division of this Court, respectively, in CTA Case No. 9057 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[35] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018.

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION, *Petitioner,*	**CTA *EB* NO. 1972** (CTA Case No. 9057)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x---x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1975** (CTA Case No. 9057)
-versus-	Present:
TAGANITO MINING CORPORATION, *Respondent.*	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
	Promulgated: SEP 03 2020 3:47pm

x---x

DISSENTING OPINION

MANAHAN, J.:

Time and again, this Court has ruled that in instances where a taxpayer paid input value-added tax (VAT), notwithstanding that it is subject to VAT at zero percent rate, the taxpayer's recourse is not against the government but against the seller who shifted the output VAT.

This is one such case and I remain consistent with my dissent,[1] and humble belief that this recourse or remedy is not in accord with the nature of the input VAT as seen in the relevant provisions of the 1997 National Inetrnal Revenue Code (NIRC), as amended, and is all the more emphasized in this case where the refund of excess input VAT is based on Taganito Mining Corporation's (TMC) importation and local purchases of capital goods.

Under Section 110 (A) of the 1997 NIRC, as amended, input tax may be sourced from local purchases or importation of goods, including acquisition of capital goods, as in the instant case. The majority opinion agreed with the Court in Division that TMC was "able to prove that the capital goods purchased, from where the input taxes arose, were used in generating zero-rated sales" which, to my mind, is an acknowledgment that input taxes were indeed passed on to and paid by TMC. In the case of *CIR vs. Toshiba Information Equipment (Phils.)*,[2] the Supreme Court clearly ruled that in cases of purchase of capital goods (in zero-rated or effectively zero-rated sales), it is the purchaser that is entitled to the tax refund or tax credit, and we quote:

> "Before anything else, this Court wishes to point out that petitioner CIR is working on the erroneous premise that respondent Toshiba is claiming tax credit or refund of input VAT based on Section 4.100-2, in relation to Section 4.106 (a) of RR No. 7-95, as amended, which allows the tax credit/refund of input VAT on zero-rated sales of goods, properties or services. Instead, respondent Toshiba is basing its claim for tax credit/refund of input VAT on Sec. 4.106 (b) of the same regulations, **which allows a VAT-registered person to apply for a tax credit/refund of the**

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[1] *CBK vs. CIR*, CTA EB No. 1685, February 20, 2019; *Wells Fargo Enterprise Global Services, LLC-Philippines vs. CIR* , CTA Case No. 9617; *Rio Tuba Nickel Mining Corporation vs. CIR*, CTA Case No. 9127.
[2] G.R. No. 150154, August 9, 2005.

> **input VAT on its capital goods. While in the former, the seller of the goods, properties or services is the one entitled to the tax credit/refund, in the latter, it is the purchaser of the capital goods.**" (emphasis supplied).

To my mind, there is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to its zero-rated or effectively zero-rated sales and simply resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:

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

More so, in requirement No. 4, the Court should determine whether or not the VAT-registered suppliers/sellers passed on or charged its output VAT to TMC, if it did, then TMC should be entitled to the input VAT it paid, subject of course to compliance with the other requirements. On the other hand, if they did not, then TMC has no right to claim for the refund of its excess input VAT.

I humbly believe that recourse against the government by way of a claim for refund, is more legally sound than directing the taxpayer/claimant to seek redress from its suppliers.

Also, in the case of VAT paid on its importations, the VAT was paid to the government prior to the release or removal of goods from customs custody, hence, taxpayer cannot seek reimbursement from its suppliers because it was not paid to them but to the government. This is clear from Section 107 (A) which we quote in part, as follows:

> "Section 107. *Value-added Tax on Importation of Goods.* –
>
> (A) In General. – There shall be levied, assessed and collected on every importation of goods, a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by

> the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of goods, the value-added tax shall be based on the landed cost, plus excise taxes, if any: xxx xxx"

In view of the foregoing, I vote to decide the Petition for Review on the basis of the factual veracity of the evidence presented by TMC instead of denying a portion of the claim for refund because it should have sought redress from its suppliers and not from the government.

CATHERINE T. MANAHAN
Associate Justice