REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9057

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 27 2018 4:30 p.m.

x - x

AMENDED DECISION

CASANOVA, *J.*:

For the Court's resolution are the following:

1. petitioner's **Supplemental Formal Offer of Evidence**, filed through registered mail on April 16, 2018, without respondent's comment as per Records Verification dated April 27, 2018;

2. petitioner's **Motion for Partial Reconsideration and/or New Trial**, filed through registered mail on April 21, 2017, with respondent's **Comment/Opposition (Re: Motion for Partial Reconsideration and/or New Trial)** filed on May 24, 2017; and

3. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 April 2017)**, filed

on April 21, 2017, with petitioner's **Comment To Respondent's Motion for Partial Reconsideration** filed on May 15, 2017.

At the outset, it must be noted that petitioner filed a Motion for a New Trial to present additional documents, which motion was later granted in a Resolution[1] dated August 17, 2017. Accordingly, petitioner presented additional documents and later filed its Supplemental Formal Offer of Evidence.

Thus, the Court shall first resolve petitioner's Supplemental Formal Offer of Evidence.

Acting on the Supplemental Formal Offer of Evidence, the Court **ADMITS** Exhibits **"P-756", "P-756-A", "P-756-B", "P-756-B.1", "P-756-C", "P-758" to "P-759", "P-760" to "P-770", "P-771" to "P-793", "P-855", "P-860", "P-917", "P-929", "P-952", "P-987", "P-987A" to "P-987B", "P-987C", "P-988" to "P-990A", "P-991", "P-992A" to "P-999", "P-1002" to "P-1006", "P-1026" to "P-1080A", "P-1081 to "P-1083", "P-1085" to "P-1089", "P-1094" to "P-1102", "P-1104" to "P-1108", "P-1110" to "P-1164", "P-1175" to "P-1179", "P-1181" to "P-1192", "P-1195" to "P-1226", "P1228" to "P-1248A", "P-1249" to "P-1263", "P-1266" to "P-1292", "P-1294" to "P-1303", "P-1305", "P-1307" to "P-1351", "P-1354" to "P-1392", "P-1400" to "P-1417", "P-1419" to "P-1423", "P-1425" to "P-1449", "P-1454" to "P-1528", "P-2576" to "P-2842, "P-1737" to "P-1738", "P-1830" to "P-1838", "P-2145" to "P-2150", "P-2220" to "P-2224A", "P-2225" to "P-2225A", "P-2226" to "P-2226A", "P-2227" to "P-2227A", "P-2228" to "P-2575", "P-2843", "P-2843-A", "P-2844"** and **"P-2844-A"**, subject to the Court's final evaluation and appreciation of their purposes, materiality, relevancy and probative value to the issues involved in this case.

However, the Court **DENIES** the admission of **Exhibits "P-794" to "P-854", "P-856" to "P-859", "P-861" to "P-916", "P-918" to "P-928", "P-930" to "P-951", "P-953" to "P-980", "P-981" to "P-986", "P-1000" to "P-1001", "P-1007" to "P-1025", "P-1025A", "P-1084", "P-1090" to "P-1093", "P-1103", "P-1109", "P-1165" to "P-1174", "P-1180", "P-1193" to "P-1194", "P-1227", "P-1264" to "P-1265", "P-1293", "P-**

[1] Docket (Vol. II) pp. 612-619.

1304", "P-1306", "P-1352" to "P-1353", "P-1393" to "P-1399", "P-1418", "P-1424", "P-1450" to "P-1453", "P-1529" to "1736", "P-1739" to "P-1829", "P-1839" to "P-2144" and **"P-2151" to "P-2219"**, for failure to present their original documents for comparison.

With the admission of the abovementioned exhibits, petitioner is deemed to have rested its case. Thus, the Court shall proceed to address the parties' respective motions for reconsideration of the assailed Decision promulgated on April 5, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund to petitioner the 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.
>
> **SO ORDERED**."

Petitioner's Motion for Partial Reconsideration

Petitioner seeks reconsideration of the assailed Decision claiming that there was a double deduction of its output value added tax (VAT); that the *Coral Bay ruling* is not applicable to the instant case as the said case revolves around the Cross Border Doctrine which has specific application only to PEZA-registered entities and not to BOI-registered export entities like petitioner; that it is erroneous to apply its output tax only against its input taxes on importation of capital goods and disregard its input taxes from local purchases which are clearly ruled to be properly substantiated *albeit* considered as non-refundable; that the disallowed "out-of-period" sale of ₱1,885,454.49 be reconsidered as this pertains to services rendered during the period of the claim and billed during the same time but were paid after the said period; and that there was improper pro-rating of input taxes to exempt sales since the input taxes allowed by the Court for being substantiated pertain only to input taxes on expenses incurred in relation to its sale of ores from mining activities.

On the other hand, respondent argues that petitioner's contentions that Coral Bay ruling finds no application in the instant case, and that the out-of-period sales pertain to services rendered during the period of the claim and billed during the same time but were paid after the said period, are untenable.

Petitioner's motion is partly meritorious.

As to the alleged double deduction of output VAT, the Court finds the same without merit.

Contrary to petitioner's claim, under item II, page 9 of Exhibit "P-755"[2] (ICPA Report), the ICPA clearly stated that *"there is no input VAT subjected for refund that was utilized"*. Hence, the input VAT being claimed for refund was not applied against any output VAT.

Moreover, the amounts lifted from the Quarterly VAT Returns, from where the substantiated input VAT was determined, pertain to the actual input VAT on Purchases of Capital Goods exceeding ₱1 million (Line 21D) during the year 2013 and not the Net VAT Payable in Box 25. In other words, the amount of input VAT considered by this Court is yet undiminished by output VAT liability. Thus, the Court correctly deducted the output VAT for taxable year 2013 in order to arrive at the excess input tax attributable to zero-rated sales. Petitioner should be mindful that in claiming excess/unutilized input tax from zero-rated transactions, it is the excess over the output taxes which should be refunded to the taxpayer or credited against other internal revenue taxes.

Further, petitioner's insistence that the input tax from its local purchases be applied against its output VAT is unmeritorious.

As correctly ruled by the Court in Division in the assailed Decision:

> "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.

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[2] Docket (Vol. I) p. 163.

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.

Meanwhile, the documents[3] supporting the claimed input taxes on importations of non-capital goods for the taxable year 2013

[3] Exhibits "P-794" to "P-854"; "P-856" to "P-859".

cannot be considered since the same were denied admission by the Court. Even if admitted, as in the case of Exhibit "P-855", the related IEIRD is without machine validation.

In addition, petitioner did not present the Quarterly VAT Returns for the taxable year 2012, thus, nowhere can the Court verify if the claimed input VAT on importations of non-capital goods for the taxable year 2012 were indeed declared therein. Moreover, the documents[4] presented were likewise denied admission by the Court, and even if admitted, as in the case of Exhibits "P-860", "P-917", "P-929" and "P-952", the related IEIRDs are without machine validation.

Anent the alleged improper pro-rating of input taxes to its exempt sales, petitioner maintains that the substantiated input VAT pertain only to its expenses incurred in relation to its sales of ores from mining activities, thus, the same may be attributed to its zero-rated sales and VAT sales but not to its exempt sales, which pertain to its income from use of pier facilities.

Such allegation deserves scant consideration.

Even though petitioner 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 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 Section 112(A) of the NIRC of 1997, as amended, which 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

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[4] Exhibits "P-861" to "P-916"; "P918" to "P-928"; "P-930" to "P-971".

> such input tax has not been applied against output tax: xxx: *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:** xxx." *(Emphasis supplied.)*

As regards the disallowed zero-rated sales in the assailed Decision subject for herein reconsideration, petitioner presented additional evidence to support the same.

For the disallowed export sales of ore in the amount of ₱44,586,628.80, petitioner submitted valid VAT zero-rated invoices duly registered with the BIR. However, only the amount of ₱44,480,909.77 was paid and remitted in acceptable foreign currency. The details of which are as follows:

					Inward Remittance		
Exhibit	**Invoice No.**	**Sales in USD**	**Forex Rate**	**Sales in PHP**	**Exhibit**	**Amount in USD**	**Amount in PHP**
"P-758"	524	967,680.00	40.705	39,389,414.40	"P-276"	965,082.80	39,283,695.37
"P-759"	527	127,680.00	40.705	5,197,214.40	"P-278"	127,680.00	5,197,214.40
		1,095,360.00		**44,586,628.80**			**44,480,909.77**

For the disallowed zero-rated sales without any supporting documents and out-of period sale, the additional pieces of evidence submitted show that the following zero-rated sales in the amount of ₱47,172,600.19 are properly substantiated:

Materials Handling Services						
Exhibit (PEZA Cert.)	**Customer Name**	**Exhibit**	**OR No.**	**Exhibit**	**Billing No.**	**Amount in PHP**
"P-225"	Taganito HPAL Nickel Corporation	"P-760"	6295	"P-761"	Z0006	11,553,596.72
	Taganito HPAL Nickel Corporation	"P-760"	6295	"P-762"	Z0008	13,017,499.62
	Taganito HPAL Nickel Corporation	"P-760"	6295	"P-763"	0204	18,134,182.89
"P-744"	Visayas Slaked Lime Corporation	"P-764"	6229	"P-765"	0205	1,885,454.48
					subtotal	**44,590,733.71**
Despatch Service						

Customer Name	**Exhibit**	**OR No.**	**Exhibit (remittance)**	**Amount in USD**	**Amount in PHP**
Baosteel Resources International Co. Ltd.	"P-776"	6018	"P-313"	59,128.97	2,581,866.48
				subtotal	**2,581,866.48**
				Total	**47,172,600.19**

As for the rental income in the amount of ₱5,497,040.00,[5] petitioner still failed to provide zero-rated official receipts to substantiate the same. While, with regard to the despatch services of ₱25,931,355.52,[6] petitioner failed to prove that the same were paid for and remitted in acceptable foreign currency. Consequently, the disallowance thereof shall be sustained.

In sum, the sales amounting to ₱91,653,509.96 (₱44,480,909.77 plus ₱47,172,600.19), qualify for VAT zero-rating, and consequently, petitioner's total valid zero-rated sales for the taxable year 2013 shall be adjusted to ₱3,242,247,906.69, as shown below:

Zero-Rated Sales per assailed Decision[7]	₱ 3,150,594,396.73
Add: Reconsidered Zero-Rated Sales	91,653,509.96
Adjusted Valid Zero-Rated Sales	**₱ 3,242,247,906.69**

All else being the same, the adjusted valid zero-rated sales of ₱3,242,247,906.69 shall be incorporated in the computation of the refundable input VAT in the assailed Decision.[8]

As previously held, petitioner's remaining input VAT of ₱2,975,598.99 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱3,273,782,021.06. Consequently, only the input VAT of ₱2,946,937.07 is attributable to the valid zero-rated sales of ₱3,242,247,906.69, computed as follows:

Excess Input Tax attributable to zero-rated sales	₱ 2,975,598.99
Divide by Declared Zero-Rated Sales	÷ 3,273,782,021.06
Multiply by Substantiated Zero-Rated Sales	X 3,242,247,906.69
Refundable Input VAT attributable to Zero-Rated Sales	**₱ 2,946,937.07**

[5] Schedule X of Supplemental ICPA Report.
[6] ₱28,513,222.00 (Decision, Docket [Vol. II] p. 466) less ₱2,581,866.48 (amount substantiated); Schedule X-A of Supplemental ICPA Report.
[7] Docket (Vol. II) p. 467.
[8] Docket (Vol. II) p. 472.

Respondent's Motion for Partial Reconsideration

Respondent claims that the Court erred in partially granting petitioner's claim for refund in the amount of ₱2,863,631.56 representing the alleged excess/unutilized input VAT for taxable year 2013. He alleges that no evidence was presented by petitioner to prove that the input tax on importation is directly attributable to export sales. Respondent also argues that the Court erred in ruling that the claimed input VAT subject of the instant case remained unutilized despite being carried over to the succeeding periods.

On the other hand, petitioner asserts that it complied with the substantiation requirements to prove that the input tax paid on its importation and domestic purchases of capital goods are directly attributable to its zero-rated sales for taxable year 2013. Further, it states that the exact amount of input VAT being claimed was fully deducted from the VAT Return in the 4th Quarter of 2014 as "VAT Refund/TCC Claimed".

Respondent's motion is bereft of merit.

Section 112(A) of the NIRC of 1997, as amended, mandates, among others, that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, thus:

> **"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: xxx." *(Underscoring supplied.)*

Contrary to respondent's position, Section 112(A) of the Tax Code does not decree that the input tax be directly attributable to petitioner's zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, neither should we.[9]

In this regard, petitioner's witness, Ms. Lennie A. Terre, testified that the importation and domestic purchases of goods and services are essential to its export activities, *viz*:

> "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 activities, more particularly because this is the sole business purpose and activity of our company.**"[10] *(Emphasis supplied.)*

Verily, the input VAT on importations of capital goods, which are undeniably necessary for the production of petitioner's exports, are attributable to its zero-rated sales.

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[9] *Philippine Free Press, Inc. vs. Court of Appeals,* G.R. No. 132864, October 24, 2005.
[10] Exhibit "P-22".

Moreover, the input VAT claim of ₱8,326,025.84 remained unutilized until it was deducted by petitioner as "VAT Refund/TCC claimed"[11] in its Amended Quarterly VAT Return for the fourth quarter of 2014[12]. 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.

In fine, there is no cogent reason for the Court to reverse its ruling on the matters raised by respondent.

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.

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.

CAESAR A. CASANOVA
Associate Justice

[11] Exhibit "P-728", Line 23D.
[12] Exhibits "P-727" to "P-733".

WE CONCUR:

JUANITO C. CASTANEDA, JR
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTANEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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