REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9957

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and,*
CUI-DAVID, *JJ.*

Promulgated: JUN 03 2022
3:11 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Oceanagold (Philippines), Inc. (**petitioner/Oceanagold**) pursuant to Rule 4, Section 3(a)(1)(2)[2] of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 23 October 2018, Division Docket, Volume I, pp. 10-28.

[2] **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions*.- The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law

(**RRCTA**). The petition seeks the refund and/or issuance of tax credit certificate (**TCC**) for unutilized input taxes attributable to petitioner's zero-rated sales/receipts for the 2nd, 3rd, 4th quarters of calendar year (**CY**) 2016 in the aggregate amount of ₱54,431,590.09.

PARTIES OF THE CASE

Petitioner is a corporation organized under the laws of the Philippines, engaged in large-scale exploration, development and utilization of mineral resources.[3] It has its office address at 2nd Floor Carlos J. Valdes Building, 108 Aguirre Street, Legaspi Village, 1229 Makati City, Philippines. Petitioner is a value-added tax (**VAT**)-registered entity with Tax Identification Number (**TIN**)/VAT Registration No. 004-870-171-000[4] with the Bureau of Internal Revenue (**BIR**) Certificate of Registration No. OCN8RC0000048136.[5]

Respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) with the power among others, to abate tax liabilities and provide tax refunds.

FACTS OF THE CASE

On 16 December 2011, the Board of Investments (**BOI**) issued to petitioner a Certificate of Registration No. 2011-270[6] as "New Export Producer of Doré Bars and Copper Concentrate". On 29 January 2015, petitioner's registration was renewed as indicated in the Revenue

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provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

3 Division Docket, Volume I, pp. 10-11.

4 Exhibit "P-4", id., Volume III, p. 1020.

5 Id., Volume I, p. 11.

6 Exhibit "P-5", id., Volume III, p. 1021.

Memorandum Order (**RMO**) No. 9-2000/BOI ID-Certificate No. 2015-033 (**2015 BOI Certificate**).[7]

Petitioner had engaged in zero-rated sales of minerals in the 2nd, 3rd, and 4th quarters of 2016, out of which it had claimed an aggregate input VAT of ₱54,431,590.09 (which remained unapplied to the same quarters).[8]

On 28 June 2018, petitioner filed with the VAT Credit Audit Division (**VCAD**) of the BIR an administrative claim for refund[9] of the above-mentioned amount.[10] On 25 September 2018, petitioner received a Letter[11] dated 12 September 2018 denying its application for refund.

Aggrieved, petitioner filed the instant Petition for Review before this Court. In its petition, petitioner asked for the Court to: (1) declare petitioner entitled to a refund in the amount of ₱54,431,590.09, representing unutilized input VAT arising from petitioner's importation of goods (other than capital goods) and purchases of capital goods attributable to zero-rated sales for the 2nd, 3rd and 4th quarters of taxable year 2016; and, (2) order respondent to grant petitioner a refund in the said amount of ₱54,431,590.09.[12]

On 30 October 2018, the Court issued Summons[13] on respondent who, on 14 January 2019, filed an Answer[14] essentially stating that his denial of petitioner's claim was proper and based on documents submitted by the latter.

On 24 January 2019, the Court issued a Notice of Pre-Trial Conference.[15] On 08 March 2019, respondent filed his Pre-Trial Brief[16] (**PTB**) while petitioner filed its PTB[17] on 11 March 2019.

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7 Exhibit "P-5.1", id., p. 1022.
8 Id., Volume I, p. 15.
9 Exhibit "38", id., Volume III, pp. 1358-1365,
10 Id., Volume I, p. 15,
11 Exhibit "P-40", Volume III, pp. 1367-1368.
12 Id., Petitioner for Review, Volume I, p. 23.
13 Id., p. 122.
14 Id., pp. 134-145.
15 Id., pp. 147-148.
16 Id., pp. 154-161.
17 Id., pp. 598-612.

On 14 March 2019, the pre-trial was held and the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**).[18] Thereafter, on 29 March 2019, the parties submitted their JSFI.[19] In the Pre-Trial Order dated 03 April 2019[20], the Court admitted the parties' JSFI.

In the trial that ensued, petitioner presented the following witnesses who all testified *via* their judicial affidavits: (1) Hesther T. Bahiwag (**Bahiwag**); (2) Atty. Joan D. Adaci-Cattiling (**Atty. Adaci-Cattiling**); (3) Annalyn B. Artuz (**Artuz**); and, (4) Dorelyn Casono-Rosbero (**Casono-Rosbero**).

On the witness stand, Bahiwag, petitioner's Financial Accounting Superintendent, declared that petitioner is VAT-registered. She also testified on the latter's accumulation of input VAT for the 2nd, 3rd, and 4th quarters of 2016, and the filing of VAT Returns during said quarters.[21]

Atty. Adaci-Cattiling, petitioner's Senior Legal Counsel and Corporate Secretary, also assumed the witness stand where she identified and authenticated some of petitioner's legal documents.[22]

The Independent Certified Public Accountant (**ICPA**) later testified to her findings as contained in the ICPA Report. The ICPA concluded that after a review and verification of petitioner's documents, out of the total refund claim of ₱54,431,590.09, it was to be entitled only to the lesser amount of ₱41,419,232.21, representing input VAT on importation of goods (other than capital goods) and purchase of capital goods attributable to its zero-rated sales for the 2nd, 3rd and 4th quarters of TY 2016.[23]

Lastly, Casono-Rosbero also identified and authenticated certain documents that petitioner presented in court. She likewise explained

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18 See Order dated 14 March 2019, id., Volume II, p. 616.
19 Id., pp. 621-635.
20 Id., pp. 646-654.
21 Exhibit "P-52" and "P-52.2", Judicial Affidavit and Supplemental Judicial Affidavit of Hesther T. Bahiwag, id., Volume I, pp. 218-239 and Volume II, pp. 662-665, respectively.
22 Exhibit "P-51", Judicial Affidavit of Atty. Joan D. Adaci-Cattiling, id., pp. 171-175.
23 Exhibit "P-54", Judicial Affidavit of Annalyn B. Artuz, id., Volume II, pp. 743-748.

her responsibilities as a customs broker and the whole importation process utilized by Antrak Philippines Transport Solutions Corporation (**Antrak**).[24]

Later, in an Order dated 03 July 2019[25], the Court ordered petitioner to file its Formal Offer of Evidence (**FOE**) within ten (10) days from such order. The Court likewise gave respondent an equal period to file a comment to petitioner's FOE. On 25 July 2019, petitioner filed its "FOE with Motion for Re-marking"[26] while, respondent filed his Comment[27] thereto on 08 August 2019.

In a Resolution dated 28 August 2019[28], the Court granted petitioner's Motion for Re-marking and set a commissioner's hearing for the marking anew of petitioner's exhibits. After the commissioner's hearing[29] on 16 September 2019, the Court resolved to admit all of petitioner's exhibits[30], except:

1. Exhibits **"P-33.3" to "P-33.10", "P-29.7", "P-34.1", "P-36.801", "P-36.804", "P-36.823", "P-36.825", "P-36.827", "P-36.861", "P-36.871", "P-36.888" to "P-36.889", "P-36.893", "P36.902", "P-36.907", "P-36.917" to "P-36.918", "P-36.920"" to "P-36.921", "P-36.925", "P36.927" to "P-36.928", "P-36.930" to "P36.931", "P-36.947", "P-36.949" to "P-36.950", "P-36.954", "P-36.970" to "P-36.971", "pP36.973", "P-59.1", "P-59.2", "P-59.3", "P-65.414", "P-65.487" to "P-65.489", "P-65.491", "P-67.374 (1 of 2)" to "P-67.374 (2 of 2)", "P-67.381 (1 of 3)" to "P-67.381 (3 of 3)", "P-67.386 (1 of 2)" to "P-67.386 (2 of 2)", "P-67.397 (1 of 2)" to "P-67.398 (3 of 3)", "P-67.402 (1 of 3)" to "P-67.402 (3 of 3)", "P-67.404 (1 of 4)" to "P-67.404 (4 of 4)", "P-67.410 (1 of 3)" to "P-67.410 (3 of 3)", "P-67.422 (1 of 6)" to "P-67.422 (6 of 6)", "P-67.437 (1 of 2)" to "P-67.437 (2 of 2)" and "P-67.480 (1 of 3)" to "P-67.481 (2 of 2)"**, for petitioner's failure to present their originals for comparison;

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[24] Exhibit "P-77", Judicial Affidavit of Dorelyn Casono-Rosbero, id., pp. 928-936.
[25] Id., pp. 945-946.
[26] Id., Volume III, pp. 951-982.
[27] Id., pp. 1447-1450.
[28] Id., pp. 1454-1455.
[29] Id., p. 1456.
[30] See Resolution dated 09 January 2020, id., Volume IV, pp. 1469-1475.

2. Exhibits **"P-36.492" to "P-36.493", "P-36.966", "P-58 (6 of 41)", "P-67 (1 of 2)" to "P-67.373 (1 of 1)", "P-67.375 (1 of 2)" to "P-67.380", "P-67.383 (1 of 3)" to "P-67.384 (1 of 4)", "P-67.384 (4 of 4)" to "P-67.385 (2 of 2)", "P-67.387 (1 of 3)" to "P-67.396 (4 of 4)", "P-67.400 (1 of 3)" to "P-67.401 (5 of 5)", "P-67.403 (1 of 2)" to "P-67.403 (2 of 2)", "P-67.405 (1 of 3)" to "P-67.409 (2 of 2)", "P-67.411 (1 of 3)" to "P-67.421 (3 of 3)", "P-67.423 (1 of 2)" to "P-67.436 (3 of 3)", "P-67.438 (1 of 2)" to "P-67.467 (3 of 3)", "P-67.469 (1 of 6)" to "P-67.479 (2 of 2)", "P-67.484 (1 of 3)" to "P-67.487 (3 of 3)", "P-67.482 (1 of 2)" to "P-67.482 (2 of 2)", "P-67.488 (1 of 2)" to "P-67.489 (2 of 2)", "P-67.654 (1 of 2)" to "P-67.710 (2 of 2)" and "P-67.712 (1 of 2)" to "P-67.787 (2 of 2)"**, for petitioner's failure to indicate or certify that the said exhibits are faithful copies of the original documents;

3. Exhibits **"P-59", "P-67.382", "P-67.399", "P-37.468", "P-67.483", "P-67.490" to "P-67.653" and "P-67.711"**, for not being found in the records of the case;

4. Exhibits **"P-36.504" to "P-36.505", "P-55.12" and "P-67.384 (2 of 4)" to "P-67.384 (3 of 4)**, for being unreadable; and

5. Exhibits **"P-34.41 (1 of 3)" to "P-34.41 (3 of 3)", "P-34.72 (1 of 2)" to "P-34.72 (2 of 2)", "P-34.75 (1 of 3)" to "P-34.75 (3 of 3)", "P-34.103 (1 of 2)" to "P-34.103 (2 of 2)", "P-34.114 (1 of 2)" to "P-34.114 (2 of 2)", "P-34.135 (1 of 2)" to "P-34.135 (2 of 2)", "P-34.157 (1 of 2)" to "P-34.157 (2 of 2)", "P-34.171 (1 of 2)" to "P-34.171 (2 of 2)", "P-34.175 (1 of 4)" to "P-34.176 (2 of 2)", "P-34.233 (1 of 2)" to "P-34.233 (2 of 2)", "P-34.246 (1 of 3)" to "P-34.246 (3 of 3)", "P-34.257 (1 of 2)" to "P-34.257 (2 of 2)", "P-34.283 (1 of 2)" to "P34.283 (2 of 2)", "P-34.293 (1 of 3)" to "P-34.293 (3 of 3)", "P-34.298 (1 of 2)" to "P-34,298 (2 of 2)", "P-34.305 (1 of 2)", "P-34.305 (2 of 2)", "P-34.310 (1 of 2)" to "P-34.310 (2 of 2)', P-34.314 (1 of 2)" to "P-34.314 (2 of 2)", "P-34.316 (1 of 2)" to P-34.316 (2 of 2)", "P-34.324 (1 of 2)" to "P-34.324 (2 of 2), "P-34.351 (1 of 3)" to "P-34.352 (2 of 2)", "P-34.356 (1 of 2)" to "P-34.356 (2 of 2)", "P-34.358 (1 of 2)" to "P-34.358 (3 of 3)", "P-34.364 (1 of 2)" to "P-34.364 (2 of 2)", "P-34.367 (1 of 2)" to "P-34.387 (2 of 2)", "P-34.389 (1 of 3)" to "P-34.390 (3 of 3)", "P-34.398 (1 of 3)" to "P-34.399 (2 of 2)", "P-34.424 (1 of 3)" to "P-34.424 (3**

of 3)", "P-34.428 (1 of 2)" to "P-34.428 (2 of 2)" "P-34.444 (1 of 5)" to "P-34.444 (5 of 5)", "P-34.451 (1 of 2)" to "P-34.452 (2 of 2)", "P-34.482 (1 of 3)" to "P-34.482 (3 of 3)", "P-34.494 (1 of 4)" to "P-34.494 (4 of 4)", "P-34.497 (1 of 3)" to "P-34.497 (2 of 2)", "P-34.499 (1 of 2)" to "P-34.499 (2 of 2), "P-34.504 (1 of 2)" to "P-34.504 (2 of 2)", "P-34.513 (1 of 3)" to "P-34.513 (3 of 3)", "P-34.522 (1 of 2) to "P-34.522 (2 of 2)" "P-34.533 (1 of 2)" to "P-34.533 (2 of 2)", "P-34.540 (1 of 3)" to "P-34.540 (3 of 3)", "P-34.558 (1 of 2)" to "P-34.558 (2 of 2)", "P-34.563 (1 of 2)" to "P-334.563 (2of 2)", "P-34.573 (1 of 2)" to "P-34.573 (2 of 2), "P-34.577 (1 of 4)" to "P-34.577 (4 of 4)" "P-34.584 (1 of 3)" to "P-34.584 (3 of 3)", "P-34.589 (1 of 3)" to "P-34.589 (3 of 3)", "P-34.670 (1 of 4)" to "P-34.670 (4 of 4)", "P-34.679 (1 of 2)" to "P-34.679 (2 of 2)", "P-34.681 (1 of 2)" to "P-34.681 (2 of 2)", "P-34.686 (1 of 5)" to "P-34.686 (5 of 5)", "P-34.687 (1 of 3)" to "P-34.687 (3 of 3)", "P-34.707 (1 of 2)" to "P-34.707 (2 of 2)", "P-34.746 (1 of 2)" to "P-34.746 (2 of 2)", "P-34.760", "P-34.797 (1 to 2)", "P-34.798 (1 of 2)", "P-34.799 (1 of a 2)" to "P-34.800 (2 of 2)", "P-34.823 (1 of 2)" to "P-34.823 (2 of 2), "P-34.846 (1 of 2)" to "P-34.846 (2 of 2)", "P-34.856 (1 of 3)" to "P-34.856 (3 of 3)", "P-34.864 (1 of 2)" to "P-34.865 (2 of 2)", "P-34.869 (1 of 2)" to "P-34.869 (2 of 2)", "P-34.882 (1 of 3)" to "P-34.882 (3 of 3)", "P34.887 (1 of 5)" to "P-34.887 (5 of 5)", "P-34.908 (1 of 3)" to "P-34.908 (3 of 3)", "P-34.918 (1 of 2)" to "P-34.918 (2 of 2)", "P-34.925 (1 of 2)" to "P-34.925 (2 of 2)", "P-34.927 (1 of 20)" to "P-34.927 (2 of 2)", "P-34.935 (1 of 3)" to "P-34.935 (3 of 3)", "P-34.939 (1 of 2)" to "P-34.939 (2 of 2)", "P-34.971 (1 of 2)" to "P-34.971 (2 of 2)", "P-34.974 (1 of 2)" to "P-34.974 (2 of 2)", "P-34.986 (1 of 2)" to "P-34.987 (2 of 2)", and "P-34.1014 (1 of 2)" to "P-34.1014 (2 of 2)", for petitioner's failure to present their originals for comparison;

6. Exhibits "P-34.63 (1 of 3)" to "P-34.63 (3 of 3)", "P-34.413 (1 of 2)", "P-34.706 (2 of 2)", "P-34.772 (1 of 2)" to "P-34.772 (2 of 2)", "P-34.798 (2 of 2)", "P-34.836 (2 of 2)", and "P-34.1189 (1 of 4)" to "P-34.1189 (4 of 4)", for petitioner's failure to indicate or certify that the said exhibits are faithful copies of the original documents; and,

7. Exhibit "P-34.763", for being unreadable.

On 30 January 2020, petitioner filed a Motion for Partial Reconsideration[31] (**MPR**) of the above resolution with respondent's Comment[32] filed on 11 February 2020.

In a Resolution dated 24 February 2020[33], the Court partially granted petitioner's MPR and admitted petitioner's **Exhibits "P-34.1", "P-34.413 (1 of 2)", "P-34.63 (1 of 3)" to "P-34.63 (3 of 3)", "P-34.706 (2 of 2)", "P-34.772 (1 of 2)" to "P-34.772 (2 of 2)", "P-34.836 (2 of 2)", "P-34.1189 (1 of 4)" to "P-34.1189 (4 of 4)", "P-34.686 (1 of 5)" to "P-34.686 (5 of 5)", "P-34.687 (1 of 3)" to "P-34.687 (3 of 3)", "P-36.492" to "P-36.493", "P-36.966", and "P-58 (6 of 41)".**

For his part, respondent presented Leo-Gibbs C. Tapiru (**Tapiru**) who testified through his judicial affidavit. In his testimony, he identified all documentary evidence submitted by respondent.[34]

With no further witnesses, the Court, in an Order dated 07 September 2020[35], gave respondent five (5) days to file his FOE. Petitioner was also given an equal period to file its comment thereto.

On 17 September 2020, respondent filed a "Motion for Leave to Admit Attached Formal Offer of Evidence"[36] with petitioner's Comment[37] on 19 October 2020.

In a Resolution dated 11 December 2020[38], the Court granted the above motion. Subsequently, petitioner filed its Comment[39] to

31 Id., pp. 1476-1484.
32 Id., pp. 1516-1521.
33 Id., pp. 1523-1525.
34 Id., pp. 1536-1539.

Exhibit No.	Description
"R-1"	Tax Verification Notice TVN2017-00022689 dated 28 June 2018.
"R-2"	Memorandum Report dated 20 August 2018.
"R-3"	Memorandum dated 12 September 2018.
"R-4"	Letter Denial dated 12 September 2018.
"R-5"	BIR Records.

35 Id., p. 1530.
36 Id., pp. 1531-1539.
37 Id., pp. 1545-1549.
38 Id., pp. 1556-1558.
39 Id., pp. 1559-1561.

respondent's FOE. On 23 February 2021, the Court admitted all of respondent's documentary exhibits.[40]

Thereafter, petitioner filed its Memorandum[41] on 21 May 2021. With respondent's failure to file a memorandum[42], the Court submitted the present petition for decision *via* a Resolution[43] dated 08 June 2021.

ISSUE

The parties put forth a single issue for the Court's resolution –

> WHETHER BASED ON THE DOCUMENTS SUBMITTED, THE DENIAL OF PETITIONER OCEANAGOLD (PHILIPPINES), INC'S CLAIM FOR REFUND IN THE AMOUNT OF ₱54,431,590.09 WAS PROPER.[44]

ARGUMENTS

Petitioner argues that it is entitled to a refund of the input VAT being claimed. It maintains that the same remains unutilized and is directly attributable to its zero-rated sales. Likewise, petitioner contends that the documents it presented at trial substantiate its claim.

On the other hand, respondent argues that his denial of petitioner's claim for refund is justified and is based on the documents provided by petitioner. Respondent contends that the reason for administrative claim's denial was due to petitioner's failure to substantiate the same.

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40 See Resolution dated 23 February 2021, id., pp. 1582-1583.
41 Id., pp. 1584-1617.
42 *Per* Records Verification dated 31 May 2021, id., p. 1618.
43 Id., p. 1620.
44 JSFI, id., Volume II, p. 624.

RULING OF THE COUIRT

After a careful review of the records of the case, the Court finds the present petition partly meritorious.

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (**NIRC**) of 1997, as amended by Republic Act (**RA**) No. 10963[45], otherwise known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**). The said provisions read as follows:

> ...
>
> **Sec. 110.** *Tax Credits.* —
>
> ...
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> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
>
> ...
>
> **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

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45 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> 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.
>
> ...
>
> (C) Period within which Refund of Input Taxes shall be Made.— In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided,* however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.
>
> ...

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[46] (**Luzon**), the Supreme Court laid down the requisites that must concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit:

> ...
>
> A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the

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46 721 Phil. 202 (2013); Citation omitted.

> acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.
>
> ...

The Court shall now proceed with the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, the Court shall begin with the first (1st) and ninth (9th) requisites, followed by the second (2nd) and seventh (7th) requisites, then the third (3rd), fourth (4th), fifth (5th) and eighth (8th) requisites, jointly.

<u>FIRST (1ST) REQUISITE:</u>
PETITIONER IS A VALUE-ADDED TAX (VAT)-REGISTERED ENTITY.

Undisputedly, petitioner is a VAT-registered entity with TIN 004-870-171-000 as evidenced by its Certificate of Registration Number OCN 8RC0000048136 dated 28 February 2014.[47]

<u>NINTH (9TH) REQUISITE:</u>
PETITIONER'S ADMINISTRATIVE AND JUDICIAL CLAIMS WERE FILED WITHIN THE PRESCRIPTIVE PERIOD.

Pursuant to Section 112(A) and (C)[48] of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claim covers the 2nd, 3rd, and 4th quarters of CY 2016. Petitioner's last day for filing its administrative claims and the actual filing thereof fell on the following dates:

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47 Exhibit "P-4", Formal Offer of Evidence (FOE), CD, supra at note 4.

48 Supra at pp. 10-11.

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
April to June 2016 (2nd Quarter)	30 June 2018	28 June 2018[49]
July to September 2016 (3rd Quarter)	30 September 2018	
October to December 2016 (4th Quarter)	31 December 2018	

Clearly from the foregoing, petitioner's administrative claim was filed within the two-year prescriptive period.

As to the timeliness of petitioner's judicial claim, respondent had ninety (90) days, or until 26 September 2018, to decide petitioner's administrative claim. Considering that respondent denied in full the claim in a letter[50] dated 12 September 2018 (which petitioner received on 25 September 2018), petitioner had thirty (30) days therefrom or until 25 October 2018, within which to file a judicial claim before the Court. Thus, the instant Petition for Review was also seasonably filed on 23 October 2018.[51]

SECOND (2ND) AND SEVENTH (7TH) REQUISITES:
PETITIONER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES AND FOR WHICH THE ACCEPTABLE FOREIGN CURRENCY EXCHANGE PROCEEDS HAVE BEEN DULY ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BANGKO SENTRAL NG PILIPINAS (BSP).

Petitioner claims that during the 2nd, 3rd and 4th quarters of CY 2016, it generated export sales of gold, silver and copper to its foreign customers Trafigura Pte. Ltd. and Perth Mint Australia, and that these export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**). Petitioner submits that such export

49 Exhibit "P-102", id.
50 Exhibit "P-40", id., supra at note 11.
51 Supra at note 1.

sales are subject to zero-percent (0%) VAT pursuant to Section 106 (A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> ...
> **SEC. 106**. *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — ...
> ...
>
> (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)[.]
> ...

Based on the foregoing, in order for an export sale of goods to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the following essential elements must be present:

1. The sale was made by a VAT-registered person;
2. There was a sale and actual shipment of goods from the Philippines to a foreign country; and,
3. The sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

The presence of the *first* essential element is undisputed.

As for the *second* essential element, Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (**RR**) No. 16-2005[52], respectively provide:

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52 *Consolidated Value-Added Tax Regulations of 2005.*

...

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

2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(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:

   ...

   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[.]

...

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

2. A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

   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:
>
>   ...
>
>   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[.][53]
>
> ...

According to the above provisions, any VAT-registered person claiming for VAT zero-rating in relation to export sales of goods must present the following documents: (1) sales invoice as proof of sale of goods; and, (2) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

In addition to the above requirements, the sales invoices supporting the export sales must be duly registered with the BIR and must contain all the required information, pursuant to Sections 237 and 238 of the NIRC of 1997, as amended, *viz*:

> ...
>
> **SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service...
>
> ...

[53] Emphasis supplied.

> **SEC. 238.** *Printing of Receipts or* ***Sales*** *or* ***Commercial Invoices.*** — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or **sales or commercial invoices** shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.[54]
>
> ...

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

In the 2nd, 3rd, and 4th quarters of CY 2016, petitioner reported total sales of ₱9,180,463,473.95 as shown below:

	2nd Quarter[55]	3rd Quarter[56]	4th Quarter[57]	**Total**
Vatable sales subject to 12%	₱72,616.05	₱-	₱7,035,830.36	**₱7,108,446.41**
Zero-rated sales/receipts	2,262,126,285.81	3,749,302,941.41	3,169,034,246.73	**9,180,463,473.95**
Total sales	**₱2,262,198,901.86**	**₱3,749,302,941.41**	**₱3,176,070,077.09**	**₱9,187,571,920.36**

The aforesaid declared zero-rated sales were incurred by petitioner from the shipments of gold and copper to its foreign clients, Trafigura Pte. Ltd. and Western Australian Mint, pursuant to their respective Offtake Agreement[58] and Refining Agreement.[59]

To prove these sales, petitioner submitted the corresponding provisional[60] and final sales invoices[61], and export documents, such as,

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[54] Emphasis supplied and italics in the original text.
[55] Exhibit "P-14.3", Formal Offer of Evidence (FOE), CD.
[56] Exhibit "P-15.3", id.
[57] Exhibit "P-16.2", id.
[58] Exhibit "P-24", id.
[59] Exhibit "P-25", id.
[60] Exhibit "P-26" to "P-26.18", id.
[61] Exhibit "P-27" to "P-27.22", id.

bills of lading/air waybills[62], permits to export[63], which were all examined by the ICPA.

Upon scrutiny of the supporting documents, together with the ICPA report[64], petitioner's zero-rated sales are summarized below:

Particular	Customer	Provisional Invoice		Sales Invoice		Bill of Lading/Airway Bill		Summary List of Sales	
		Exhibit No.	Date	Exhibit No.	Date	Exhibit No.	Date	Amount in USD	Amount in PHP
2nd Quarter of 2016									
CuCon Shipment 42	Trafigura PTE Ltd.	"P-26.3"	16-Dec-15	"P-27"	01-Apr-16	P-28.3	15-Dec-15	2,184,823.21	101,123,449.86
CuCon Shipment 44	Trafigura PTE Ltd.	"P-26.4" "P-26.5"	24-Feb-16 12-May-16	"P-27.1"	01-Jul-16	P-28.4	23-Feb-16	(317,299.82)	(14,850,361.37)
CuCon Shipment 45	Trafigura PTE Ltd.	"P-26.6" "P-26.7"	31-Mar-16 07-Jun-16	"P-27.3"	31-Jul-16	P-28.5	29-Mar-16	1,559,044.21	72,440,209.70
CuCon Shipment 46	Trafigura PTE Ltd.	"P-26"	18-May-16	"P-27.4"	01-Sep-16	P-28	17-May-16	30,354,672.38	1,420,668,483.13
Dore 24	Perth Mint Australia	"P-26.13"	20-May-16	"P-27.11"	21-Dec-16	P-33.5	18-May-16	6,127,090.68	286,761,936.13
Dore 25	Perth Mint Australia	"P-26.14"	30-Jun-16	"P-27.12"	21-Dec-16	P-33.6	30-Jun-16	8,522,260.40	395,982,568.36
Subtotal								48,430,591.06	2,262,126,285.81
3rd Quarter of 2016									
CuCon Shipment 44	Trafigura PTE Ltd.	"P-26.4" "P-26.5"	24-Feb-16 12-May-16	"P-27.1"	01-Jul-16	P-28.4	23-Feb-16	(12,476.91)	(587,139.68)
CuCon Shipment 45	Trafigura PTE Ltd.	"P-26.6" "P-26.7"	31-Mar-16 07-Jun-16	"P-27.3"	31-Jul-16	P-28.5	29-Mar-16	166,616.21	7,840,642.27
CuCon Shipment 46	Trafigura PTE Ltd.	"P-26"	18-May-16	"P-27.4"	01-Sep-16	P-28	17-May-16	(4,283,844.60)	(203,180,179.07)
CuCon Shipment 47	Trafigura PTE Ltd.	"P-26.8"	15-Jul-16	"P-27.5"	17-Nov-16	P-28.6	14-Jul-16	26,632,349.35	1,253,267,758.95
CuCon Shipment 48	Trafigura PTE Ltd.	"P-26.1"	15-Aug-16	"P-27.2"	09-Nov-16	P-28.1	12-Aug-16	25,607,914.96	1,195,400,517.46
CuCon Shipment 49	Trafigura PTE Ltd.	"P-26.9"	29-Sep-16	"P-27.6"	12-Jan-17	P-28.7	27-Sep-16	25,780,426.54	1,222,750,162.54
Dore 26	Perth Mint Australia	"P-26.15"	28-Aug-16	"P-27.13"	21-Dec-16	P-33.7	26-Aug-16	5,865,593.40	273,811,178.95
Subtotal								79,756,578.95	3,749,302,941.42
4th Quarter of 2016									
CuCon Shipment 47	Trafigura PTE Ltd.	"P-26.8"	15-Jul-16	"P-27.5"	17-Nov-16	P-28.6	14-Jul-16	1,226,214.65	60,274,581.12
CuCon Shipment 48	Trafigura PTE Ltd.	"P-26.1"	15-Aug-16	"P-27.2"	09-Nov-16	P-28.1	12-Aug-16	(1,909,260.87)	(93,849,718.06)
CuCon Shipment 50	Trafigura PTE Ltd.	"P-26.2"	27-Oct-16	"P-27.7"	17-Feb-17	P-28.8	26-Oct-16	22,107,387.35	1,068,852,385.08
CuCon Shipment 51	Trafigura PTE Ltd.	"P-26.10"	20-Dec-16	"P-27.8"	04-Apr-17	P-28.2	15-Dec-16	27,324,293.90	1,361,176,095.35
Dore 22	Perth Mint Australia	"P-26.11"	24-Feb-16	"P-27.9"	21-Dec-16	P-33.3	22-Feb-16	8,526.04	424,729.80
Dore 23	Perth Mint Australia	"P-26.12"	30-Mar-16	"P-27.10"	21-Dec-16	P-33.4	28-Mar-16	11,107.40	553,321.80
Dore 24	Perth Mint Australia	"P-26.13"	20-May-16	"P-27.11"	21-Dec-16	P-33.5	18-May-16	10,275.74	511,892.15
Dore 25	Perth Mint Australia	"P-26.14"	30-Jun-16	"P-27.12"	21-Dec-16	P-33.6	30-Jun-16	13,252.16	660,164.30
Dore 26	Perth Mint Australia	"P-26.15"	28-Aug-16	"P-27.13"	21-Dec-16	P-33.7	26-Aug-16	8,594.11	428,120.75
Dore 27	Perth Mint Australia	"P-26.16"	01-Oct-16	"P-27.14"	21-Dec-16	P-33.8	28-Sep-16	5,069,667.77	245,121,442.45
Dore 28	Perth Mint Australia	"P-26.17"	04-Dec-16	"P-27.15"	21-Dec-16	P-33.9	02-Dec-16	4,293,547.99	213,885,669.25
Dore 29	Perth Mint Australia	"P-26.18"	23-Dec-16	"P-27.16"	21-Dec-17	P-33.10	22-Dec-16	6,242,935.20	310,995,562.75
Subtotal								64,406,541.44	3,169,034,246.74
Total								192,593,711.45	9,180,463,473.97

62 Exhibit "P-28" to "P-28.8", id.
63 Exhibit "P-29" to "P-29.16", id.
64 Exhibit "P-53", id.

As can be gleaned from the table above, the following zero-rated sales declared in the total amount of ₱3,652,778,642.97 ($75,212,107.79) are supported by sales invoices *not* dated within the period of the claim, *i.e.*, 01 April 2016 to 31 December 2016:

Particular	Customer	Provisional Invoice		Sales Invoice		Summary List of Sales	
		Exhibit No.	Date	Exhibit No.	Date	Amount in USD	Amount in PHP
3rd Quarter of 2016							
CuCon Shipment 49	Trafigura PTE Ltd.	"P-26.9"	29-Sep-16	"P-27.6"	12-Jan-17	25,780,426.54	1,222,750,162.54
4th Quarter of 2016							
CuCon Shipment 50	Trafigura PTE Ltd.	"P-26.2"	27-Oct-16	"P-27.7"	17-Feb-17	22,107,387.35	1,068,852,385.08
CuCon Shipment 51	Trafigura PTE Ltd.	"P-26.10"	20-Dec-16	"P-27.8"	04-Apr-17	27,324,293.90	1,361,176,095.35
Total						75,212,107.79	3,652,778,642.97

Moreover, *per* examination of the relevant provisional invoices, the Court noted that these do not have the word "zero-rated" prominently written or printed thereon in clear violation of Sections 113(A)(1), (B)(1) and (2)(c) of the NIRC of 1997, as amended, and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005.

In a case involving herein same parties, entitled *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*[65], this Court, sitting *En Banc*, declared:

> ...
>
> Again, nowhere in the NIRC of 1997, as amended, does it state that provisional invoices do not need to contain the words "zero-rated sale", or any other information required to be contained in a regular VAT invoice, or the final VAT invoice.
>
> **The completeness of the information contained in the provisional invoices gains particular importance in the case of petitioner, where the provisional invoice is used as proof of the actual sale and actual shipment of the goods together with the bill of lading, in determining that the sales were made within the period claimed for refund/tax credit.**

[65] CTA EB No. 2358 (CTA Case No. 9112), 10 February 2022.

In fact, in *Commissioner of Internal Revenue v. Philex Mining Corporation*, the CTA *En Banc* held:

> As correctly found by the Court in Division, it was established that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. The Final Invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country, as contemplated under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, had actually transpired during the period of claim. The final invoices are merely additional evidence to support respondent's claimed zero-rated sales, having been issued by respondent in reference to sales transactions consummated during the period of claim.
>
> As stated in the assailed Decision, aside from the provisional invoice issued by respondent upon shipment, a final invoice was issued after the contracting parties reached an agreement regarding the final settlement of weigh[t]s, assays and quotations or final value of the shipment which is done after arrival of the shipment at the port of loading. Thus, the Final Invoices dated outside the period of claim do not cover separate sales transactions for different taxable periods, but actually relates to the sales transactions of respondent during the period of claim as indicated in the provisional invoices, bills of lading and export declarations.

The abovequoted case also reiterated the need for indicating the word "zero-rated sales" on the provisional invoices, *to wit*:

> A scrutiny of the sales invoices, both provisional and final, supporting petitioner's sales of gold to Heraeus Ltd. amounting to P1,099,909.00, shows that the same were not duly registered with the BIR as there was no BIR Permit number reflected thereon and the word 'VAT' after petitioner's TIN was not imprinted. <u>Likewise, the word 'zero-rated sales' was not stamped nor imprinted on the Provisional Invoice</u>. Thus, petitioner's reported sales in the amount of P1,099,909.00 cannot qualify for VAT zero-rating.[66]

...

Further examination of the documents offered by petitioner reveals that some of its zero-rated sales were also exported outside the period of claim, *i.e.*, 01 April 2016 to 31 December 2016, to wit:

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[66] Citations omitted, emphasis supplied and underscoring in the original text.

Particular	Customer	Bill of Lading/Airway Bill		Summary List of Sales	
		Exhibit No.	Date	Amount in USD	Amount in PHP
2nd Quarter of 2016					
CuCon Shipment 42	Trafigura PTE Ltd.	P-28.3	15-Dec-15	2,184,823.21	101,123,449.86
CuCon Shipment 44	Trafigura PTE Ltd.	P-28.4	23-Feb-16	(317,299.82)	(14,850,361.37)
CuCon Shipment 45	Trafigura PTE Ltd.	P-28.5	29-Mar-16	1,559,044.21	72,440,209.70
Subtotal				*3,426,567.6*	*158,713,298.19*
3rd Quarter of 2016					
CuCon Shipment 44	Trafigura PTE Ltd.	P-28.4	23-Feb-16	(12,476.91)	(587,139.68)
CuCon Shipment 45	Trafigura PTE Ltd.	P-28.5	29-Mar-16	166,616.21	7,840,642.27
Subtotal				*154,139.30*	*7,253,502.59*
4th Quarter of 2016					
Dore 22	Perth Mint Australia	P-33.3	22-Feb-16	8,526.04	424,729.80
Dore 23	Perth Mint Australia	P-33.4	28-Mar-16	11,107.40	553,321.80
Subtotal				*19,633.44*	*978,051.60*
Total				**3,600,340.34**	**166,944,852.38**

It bears noting that under Section 106(A)(2)(a)(1)[67] of the NIRC of 1997, as amended, "export sales" is defined as:

> ...
>
> ...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).[68]
>
> ...

The term "export sales" is further defined under Article 23 of Executive Order No. 226 (Omnibus Investments Act of 1987), which states:

> ...
>
> ART. 23. "Export sales" shall mean the Philippine port F.O.B. value, **determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents**, of exports products exported directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same: Provided, That sales of export products to another producer or to an export trader shall **only be deemed export sales when actually exported by**

67 Supra at pp. 13-14.
68 Emphasis supplied.

> **the latter, as evidenced by landing certificates or similar commercial documents:** ...[69]
>
> ...

Likewise, in *Saludo, Jr., et al. v. Court of Appeals, et al.*[70], the Supreme Court ruled that the airway bill or bill of lading is a receipt of the goods shipped, as follows:

> ...
>
> A bill of lading is a written acknowledgment of the receipt of the goods and an agreement to transport and deliver them at a specified place to a person named or on his order. Such instrument may be called a shipping receipt, forwarder's receipt and receipt for transportation. The designation, however, is immaterial. It has been held that freight tickets for bus companies as well as receipts for cargo transported by all forms of transportation, whether by sea or land, fall within the definition. Under the Tariff and Customs Code, **a bill of lading includes airway bills of lading**. The two-fold character of a bill of lading is all too familiar; **it is a receipt as to the quantity and description of the goods shipped** and a contract to transport the goods to the consignee or other person therein designated, on the terms specified in such instrument.
>
> ...

Thus, zero-rated sales supported by airway bills dated outside the period of claim may be disallowed.

As for the *third* essential element (*i.e.*, the sale was paid for in acceptable foreign currency in accordance with the rules and regulations of the BSP), petitioner presented Certifications issued by HSBC dated 22 March 2018.[71] *Per* the ICPA's verification, petitioner's export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. Thus, petitioner satisfactorily complied with the *third* essential element.

Accordingly, out of petitioner's ₱9,180,463,473.95 (equivalent to US$192,593,711.45) reported zero-rated sales arising from export sales of

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69 Emphasis supplied.
70 G.R. No. 95536, 23 March 1992, Citations omitted and emphasis supplied.
71 Exhibits "P-31" to "P-31.38", FOE, CD.

goods to its non-resident foreign customers (*i.e.*, Trafigura Pte. Ltd. and Perth Mint Australia), only ₱5,360,739,978.60 could qualify for VAT zero-rating based on the evidence presented and pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. The total amount of petitioner's substantiated zero-rated sales are thus computed as follows:

Particulars	**Zero-Rated Sales**
Declared Zero-Rated Sales	₱9,180,463,473.95
Less: Disallowances	
Export sales supported by provisional invoices with no "zero-rated" word printed thereon	3,652,778,642.97
Export sales supported by AirWay Bill dated outside the period of claim	166,944,852.38
Total Valid Zero-Rated Sales	₱5,360,739,978.60

<u>THIRD (3RD), FOURTH (4TH), FIFTH (5TH), and EIGHTH (8TH) REQUISITES:</u>
PETITIONER INCURRED EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

To reiterate, the 3rd, 4th, 5th, and 8th requisites enumerated in *Luzon* are as follows:

a. 3rd requisite: the input taxes are due or paid;

b. 4th requisite: the input taxes are not transitional input taxes;

c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,

d. 8th requisite: where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

Anent the *third* requisite, it is of fatal importance that petitioner provides supporting documents to prove that the input VAT claimed during the subject period are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides:

> ...
> **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.
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
>
> a. To the purchaser upon consummation of sale and on importation of goods or properties; and
> b. To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
>
> *Provided,* That the input tax on goods purchased or **imported** in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the

purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.[72]

...

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005 stating that:

...

SEC. 4.110-1. ***Credits For Input Tax.*** — 'Input tax' means the VAT due on or paid by a VAT-registered person on **importation** of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

a. Purchase or **importation** of goods
   1. For sale; or
   2. For conversion into or intended to form part of a finished product for sale, including packaging materials; or
   3. For use as supplies in the course of business; or
   4. For use as raw materials supplied in the sale of services; or
   5. For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

...

SEC. 4.110-2. ***Persons Who Can Avail of the Input Tax Credit.*** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

a. To the importer upon payment of VAT prior to the release of goods from customs custody[.]

...

72 Emphasis supplied.

SEC. 4.110-3. ***Claim for Input Tax on Depreciable Goods.*** — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

a. If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.

b. If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; *Provided*, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

The aggregate acquisition cost of a depreciable asset in any calendar month refers to the total price agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired in installment for an acquisition cost of more than ₱1,000,000.00 will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed ₱1,000,000.00.

...

If the depreciable capital good is sold/transferred within a period of five (5) years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made but subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.[73]

...

Meanwhile, Section 4.110-8 of RR No. 16-2005 provides for the substantiation requirements of input tax credits, as follows:

...

SEC. 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 is 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 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.[74]

...

To establish that petitioner incurred/paid the aforementioned input VAT, petitioner submitted the original printouts of Statement of Settlement of Duties and Taxes (**SSDT**)[75], Single Administrative Document (**SAD**)[76], Bank Payment Details[77], and Schedule of Importations for the period April 1, 2016 to December 31, 2016.[78]

The ICPA noted the following exceptions in the amount of ₱13,865,371.37:[79]

Particulars	ICPA Annex	Amount
Importation of goods supported by photocopies of SAD and original print-outs of SSDT and further supported by original Bank payment details.	Annex 2-Q2.8 Annex 2-Q3.8 Annex 2-Q4.8	₱2,137,139.00
Importation of goods supported by original	Annex 2-Q3.9	188,179.00

[73] Emphasis supplied.
[74] Emphasis supplied.
[75] Exhibits "P-36" to "P-36.1147", FOE, CD.
[76] Exhibits "P-34" to "P-34.1193", id.
[77] Exhibits "P-65" to "P-65.1180", id.
[78] Exhibit "P-37", id.
[79] ICPA Report, Exhibit "P-53", Table 20, pp. 15-17, id.

print-outs of SAD and SSDT and further supported by photocopies of Bank payment details.		
Importation of goods supported by photocopies of SAD and original print-outs of SSDT and further supported by photocopies of Bank payment details.	Annex 2-Q3.10	39,939.00
Importation of goods supported by original print-outs of SAD and SSDT but not supported by Bank payment details.	Annex 2-Q4.11	8,362.00
Importation of goods supported by original print-outs of SAD and Bank payment details and further supported by original print-outs of SSDT not within the VAT taxable year.	Annex 2-Q4.12	67,051.00
Amortization of 2016 2nd to 4th quarters importation of capital goods supported by photocopies of SAD and original print-outs of SSDT and further supported by original Bank payment details.	Annex 2-Q2.13 Annex 2-Q3.13 Annex 2-Q4.13	453,813.03
Amortization of 2016 2nd to 4th quarters importation of capital goods supported by original print-outs of SAD and SSDT but not supported by Bank payment details.	Annex 2-Q4.14	5,895.77
Amortization of 2016 1st quarter importation of capital goods supported by original print-outs of SAD and original Bank payment details but not supported by SSDT.	Annex 2-Q2.15 Annex 2-Q3.15 Annex 2-Q4.15	1,632,326.25
Amortization of 2016 2nd to 4th quarter importation of capital goods supported by photocopies of SAD and original Bank payment details but not supported by SSDT.	Annex 2-Q4.16	10,484.05
Amortization of 2016 1st quarter importation of capital goods supported by original print-outs of SAD but not supported by SSDT and by Bank payment details.	Annex 2-Q2.17 Annex 2-Q3.17 Annex 2-Q4.17	22,777.80
Amortization of 2015 importation of capital goods supported by original print-outs of SAD and SSDT but not supported by Bank payment details.	Annex 2-2Q-18 Annex 2-3Q-18 Annex 2-4Q-18	664,014.45
Amortization of 2015 importation of capital goods supported by original print-outs of SAD/IEIRD and Bank payment details but not supported by SSDT.	Annex 2-Q2.19 Annex 2-Q3.19 Annex 2-Q4.19	1,864,579.62
Amortization of 2012 domestic purchase of capital goods supported by scanned copies of VAT Invoices.	Annex 2-Q2.20 Annex 2-Q3.20 Annex 2-Q4.20	31,789.29
Amortization of 2016 1st quarter importation of capital goods not supported.	Annex 2-Q2.21 Annex 2-Q3.21 Annex 2-Q4.21	120,712.50
Amortization of 2015 importation of capital goods not supported.	Annex 2-Q2.22 Annex 2-Q3.22 Annex 2-Q4.22	141,234.00
Amortization of 2013 domestic purchases of capital goods not supported.	Annex 2-Q2.23 Annex 2-Q3.23 Annex 2-Q4.23	1,402,413.77
Amortization of 2012 domestic purchases of capital goods not supported.	Annex 2-Q2.24 Annex 2-Q3.24 Annex 2-Q4.24	68,914.26
Amortization of 2011 domestic purchases of capital goods not supported.	Annex 2-Q2.25 Annex 2-Q3.25	2,151,540.58
Difference in input VAT amount on importation of goods other than capital goods per schedules and supporting documents.	Annex 2-Q2.26 Annex 2-Q3.26 Annex 2-Q4.26	37,474
Difference in amount of input VAT on importation of goods other than capital goods per quarterly VAT	Annex 2-Q2.27 Annex 2-Q3.27	2,816,732.00

Returns and schedules.	Annex 2-Q4.27	
Total		**₱13,865,371.37**

Upon further examination of the ICPA Report and the other submitted documentary evidence, the Court finds that an additional amount of ₱153,490.00 should likewise be disallowed for failure to meet the substantiation requirements as listed below:

ICPA Annex	Date	Exporter	Input VAT	Reason
Annex 2-Q3.1	7/21/2016	CHALLENGE PUMP AUSTRALIA	₱32,836.00	Not supported by SAD[80]
	9/19/2016	METSO MINERALS INTERNATIONAL TRADE	25,977.00	
Annex 2-Q4.1	10/27/2016	ATOM SUPPLY WELSHPOOL	7,029.00	
	12/9/2016	METSO MINERAL OY	27,925.00	
	12/14/2016	TORNADO SOLUTIONS PTY LTD	54,442.00	
	12/20/2016	OUTOTEC PTY LTD	5,281.00	
Total			**₱153,490.00**	

Thus, out of petitioner's claimed input VAT of ₱55,284,603.66 for the 2nd to 4th quarters of CY 2016, only the amount of ₱41,265,742.29 represents the substantiated input VAT, computed as follows:

Total Amount of Input VAT	₱55,284,603.66
Less: Disallowances	
Per ICPA	13,865,371.37
Per Court's Verification	153,490.00
Substantiated/Valid Input	**₱41,265,742.29**

Consequently, only the substantiated unutilized input VAT of ₱40,412,728.72, after deducting output VAT of ₱853,013.57, can be attributed to the total zero-rated sales in the amount of ₱9,180,463,473.95. Pursuant to the *eighth* requisite, where there are both zero-rated or effectively zero-rated sales and taxable or exempt

80 *Exhibits "P-34.358", "P-34.522", "P-34.746", "P-34.856", "P-34.925" and "P-34.939" were denied admission due to petitioner's failure to present their originals for comparison*. Resolution dated 09 January 2020, Division Docket, Volume IV, pp. 1469-1475.

sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume, as follows:

	Amount
Total Zero-Rated Sales [A]	₱9,180,463,473.95
Valid Zero-Rated Sales [B]	5,360,739,978.60
Percentage of Valid Zero-Rated Sales [C= B/A]	58.39%
Substantiated/Valid Input VAT [D]	41,265,742.29
Less: Output VAT [E]	853,013.57
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [F= D - E]	40,412,728.72
Excess and Unutilized Input VAT attributable to Valid Zero-Rated Sales [F x C]	**₱23,596,992.30**

As regards the 4th requisite, in petitioner's amended 2nd, 3rd, and 4th quarterly VAT Returns for CY 2016[81], it declared excess and unutilized input VAT of ₱54,431,590.09, after deducting output VAT on its importations and amortization of deferred input VAT, as shown below:

	2nd Quarter of 2016	**3rd Quarter of 2016**	**4th Quarter of 2016**	**Total**
Input Tax on Importation of Goods Other Than Capital Goods	8,108,173.00	9,482,762.00	12,506,310.00	**30,097,245.00**
Amortization of input tax on purchases of capital goods exceeding 1 million	7,255,881.03	8,425,330.61	9,506,147.02	**25,187,358.66**
Total Amount of Input VAT	*15,364,054.03*	*17,908,092.61*	*22,012,457.02*	***55,284,603.66***
Less: Output VAT	8,713.93	-	844,299.64	**853,013.57**
Total Input VAT Applied for Refund	**₱15,355,340.10**	**₱17,908,092.61**	**₱21,168,157.38**	**₱54,431,590.09**

The above input VAT does not appear to be transitional input taxes as understood under Section 111(A) of the NIRC of 1997, as amended, that reads:

...

SEC. 111. *Transitional Presumptive Input Tax Credits.* —

[81] Exhibits "P-14.3", "P-15.3", and "P-16.2", FOE, CD.

> (A) *Transitional Input Tax Credits.* — A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.
>
> ...

Parenthetically, transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisitions of their beginning inventory of goods, materials and supplies. During the period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[82] Since there is no showing that the claimed input VAT is transitional input VAT, petitioner is deemed to have complied with the *fourth* requisite for the grant of an input VAT refund.

Furthermore, the claimed input VAT of ₱54,431,590.09 was deducted as "VAT Refund/TCC Claimed" in petitioner's 1st Quarter 2018 Amended VAT Return[83], thus complying with the *fifth* requisite.

As for the 8th requisite, the same does not apply as petitioner does not claim any to excess input VAT resulting from tax-exempt sales.

In sum, petitioner has sufficiently proven its entitlement to the refund of the lesser amount of ₱23,596,992.30, representing the unutilized input VAT attributable to its zero-rated sales for the 2nd, 3rd, and 4th quarters of CY 2016.

WHEREFORE, the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2018 is hereby **PARTIALLY GRANTED.** Accordingly,

82 *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, et al.*, 602 Phil. 100 (2009).

83 Exhibit "P-47", FOE, CD.

respondent Commissioner of Internal Revenue is hereby **ORDERED** to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱23,596,992.30** in favor of petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division 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 Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice