Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

RIO TUBA NICKEL MINING CORPORATION, Petitioner,	**CTA Case No. 9127**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 30 2018 3:15 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] filed on August 26, 2015 by petitioner Rio Tuba Nickel Mining Corporation against respondent Commissioner of Internal Revenue (CIR) to seek a refund in the aggregate amount of Twenty-Three Million Seven Hundred Thirty One Thousand Seven Hundred Eighty Seven and 81/100 Pesos (₱23,731,787.81), allegedly representing its excess/unutilized input Value Added Tax (VAT) for calendar year (CY) 2013.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig City.[2] It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000042879 duly issued by the Bureau of Internal Revenue (BIR) on January 1, 1997.[3] It is also registered with the Board of Investments

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[1] Docket, pp. 10-24.
[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 92.
[3] Par. 4, JSFI, Docket, p. 94; Exhibit P-1-G".

(BOI) as an expanding export producer of lateritic nickel ores with BOI Certificate of Registration No. EP2004-091.[4]

Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 38850[5].

Respondent 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) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On April 1, 2015, petitioner filed its administrative claim for refund of excess VAT input taxes paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods, together with supporting documents with the respondent's Excise Taxpayers' Assistance Division under the Large Taxpayers Division.[6]

On July 29, 2015, respondent issued a Decision[7] on petitioner's claim for refund, granting only the amount of ₱1,617,120.37 out of its ₱26,331,332.84 claim for refund/tax credit. Thus, petitioner filed its Petition for Review on August 26, 2015. Respondent filed his Answer[8] on October 27, 2015, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

> On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleged as her affirmative defense that:
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> 4. Taxes collected are presumed to be in accordance with laws and regulations.

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[4] Par. 5, JSFI, Docket, p. 94; Exhibit "P-10".
[5] Par. 3, JSFI, Docket, pp. 93-94.
[6] Exhibits "P-1-A" to "P-1-F" and "P-2".
[7] Exhibit "P-16".
[8] Docket, pp. 59-70.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

6. Taxes are essential to government's very existence; hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption.

7. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

8. To support its claim, it is imperative for petitioner to prove the following, viz:

   a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

   b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Section 113 and 114 of the Tax Code, as amended;

   c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of an administrative application for refund which is a condition *sine qua non* prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of P23,731,787.81 allegedly incurred by petitioner for the 2nd, 3rd and 4th quarters of taxable year 2013 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. **That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within the periods provided in Sections 112 (A) and (C) of the Tax Code, as amended;**

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and /or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue

Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits).

9. Petitioner must prove that the aggregate amount of P23,731,787.81 being claimed by petitioner arising from excess and unutilized input VAT for the 2nd, 3rd and 4th quarter of taxable year 2013 is properly documented.

10. The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX

(For audit involving Claim for Refund / TCC)

A.) Requirements from Taxpayer

I. Requirements mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

xxx

3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid by cash from those paid by tax debit memo)

6) VAT returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of the transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation - for first time filers

10) Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statement, if applicable.
17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

<u>Additional Specific Requirements</u>

1) For Zero-Rated Sales of Services (contractors, mining, etc)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

11. As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

2) Proof of Tax Compliance Certificates applied

3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable

4) Proof of payment of deficiency tax, if any

a) current year / period

b) previous year / period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives. if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable

9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable

10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable

11) Sample invoice / s for 'Export/Exempt Sales', if applicable

12) Proof that the acceptable foreign currency exchange proceeds on export/ sales foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations *of the Bangko Sentral ng Pilipinas (BSP), if applicable.*

12. Indubitably, the law requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue.

13. Respondent respectfully avers that before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before **trial de novo** proceeds and disposes of the issue of refund entitlement under **substantive** law, it must first be proved that there was **procedural** compliance in pursuing the administrative claim leading to the **appellate** proceedings. As stated by the Honorable Supreme Court:

> *'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court.* ***First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.*** *Second,*

> *cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA.* ***Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.*** (*Emphasis and underscoring supplied*)

14. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because, as previously stated, these are matters peculiarly within the competence of the administrative agency.

15. Well-settled is the rule that exhaustion of available administrative remedies is a condition sine qua non before taking a judicial action. The Honorable Supreme Court, in a long line of cases, has consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

16. The party with an administrative remedy must not merely initiate the prescribed administrative

procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

17. The doctrine of exhaustion of administrative remedies has practical and legal reasons. Resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Thus, for reasons of comity and convenience, courts will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.

18. Equally noteworthy is the fact that the Highest Tribunal in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, held:

> *'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceeding in that court. First a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that quasi-judicial agency a quo did not have reason to deny its claim.* ***In this case, it is necessary for petitioner to show the CTA not only that it was entitled under substantive law to grant of its claim but also that it satisfied all the***

> ***documentary evidence and evidentiary requirements for administrative claim for refund or tax credits.*** xxx'

19. Thus, as clearly stated by the above jurisprudence, the necessity for petitioner to submit all relevant documents to substantiate its administrative claim for refund is imperative. The filing of the petition for review to this Honorable Court must be due to the denial of its claim or inaction which is tantamount to a denial of the said action. Absent these circumstances, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

20. Failure of petitioner to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for purposes of formality but is jurisdictional in nature.

21. Based on the foregoing, petitioner's claim for refund has no basis in fact and in law."

The Pre-Trial Conference[9] was set on December 10, 2015. Respondent's Pre-Trial Brief[10] was filed on November 23, 2015; while petitioner's Pre-Trial Brief[11] was filed on December 3, 2015.

The parties filed their Joint Stipulation of Facts and Issues[12], through registered mail on January 11, 2016 and received by the Court on January 20, 2016. The same was approved by the Court in its Pre-Trial Order[13] dated March 1, 2016.

Petitioner presented the following witnesses: Mary Caroline B. Lagman[14], petitioner's Assistant Manager for Accounting; and Maria Gracia L. Morfe, Independent Certified Public Accountant (ICPA)[15].

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[9] Notice of Pre-Trial Conference, Docket, pp. 71-72.
[10] Docket, pp. 73-78.
[11] Docket, pp. 79-84.
[12] Docket, pp. 92-96.
[13] Docket, pp. 104-109.
[14] Minutes of the Hearing dated April 4, 2016 and July 18, 2016, Docket, pp. 134 and 272, respectively.
[15] Minutes of the Hearing dated May 23, 2016 and August 10, 2016, Docket, pp. 252 and 286, respectively.

On September 7, 2016, petitioner filed its Formal Offer of Evidence[16], offering Exhibits "P-1-A" to "P-1-C", "P-1-D", "P-1-E", "P-1-F", "P-1-G", "P-2" "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9-A", "P-9-B", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-A", "P-18" to "P-161", "P-162" to "P-528", "P-529" to "P-561", "P-562" to "P-597", "P-598" to "P-642", "P-643" to "P-3652", "P-4647" to "P-4668", "P-3653" to "P-3857", "P-4669" to "P-4703", "P-3858" to "P-3860", "P-3861", "P-3862", "P-3863" to "P-3865", "P-3866" to "P-3884", "P-3885" to "P-4646", "P-4704", "P-4704-A", "P-4705", "P-4705-A", "P-4706", "P-4706-A", "P-4707", "P-4707-A", "P-4708" to "P-4805-L", "P-4806", "P-4806-A", "P-4806-B", "P-4807" and "P-4807-A, as its documentary evidence. Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence)[17] on September 8, 2016.

Except for Exhibits "P-9-A" and "P-9-B", the Court, in the Resolution[18] dated September 23, 2016, admitted Exhibits "P-1-A" to "P-1-C", "P-1-D", "P-1-E", "P-1-F", "P-1-G", "P-2" "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-A", "P-18" to "P-161", "P-162" to "P-528", "P-529" to "P-561", "P-562" to "P-597", "P-598" to "P-642", "P-643" to "P-3652", "P-4647" to "P-4668", "P-3653" to "P-3857", "P-4669" to "P-4703", "P-3858" to "P-3860", "P-3861", "P-3862", "P-3863" to "P-3865", "P-3866" to "P-3884", "P-3885" to "P-4646", "P-4704", "P-4704-A", "P-4705", "P-4705-A", "P-4706", "P-4706-A", "P-4707", "P-4707-A", "P-4708" to "P-4805-L", "P-4806", "P-4806-A", "P-4806-B", "P-4807" and "P-4807-A.

In the hearing[19] held on October 19, 2016, the Court granted petitioner's oral motion for reconsideration of the Court's Resolution dated September 23, 2016, praying for the reconsideration of Exhibits "P-9-A" and "P-9-B". In the same hearing, respondent presented Revenue Officer Malik D. Dimakuta as his lone witness, and also made an oral formal offer of evidence, offering Exhibits "R-1", "R-2", "R-3" and "R-3-A" which were admitted by the Court.

On December 1, 2016, respondent manifested that he is adopting his Answer dated October 26, 2015 as his Memorandum[20],

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[16] Docket, pp. 297-314.
[17] Docket, pp. 382-385.
[18] Docket, pp. 388-389.
[19] Minutes of the Hearing dated October 19, 2016, Docket, pp. 398-399.
[20] Docket, pp. 408-411.

while petitioner filed its Memorandum (with Manifestation)[21] through registered mail on January 17, 2017. The case was submitted for decision[22] on January 31, 2017.

In the Joint Stipulation of Facts and Issues[23], the parties raised this sole issue for the consideration of the Court:

> Whether petitioner is entitled to a tax refund or tax credit in the aggregate amount of Twenty-Three Million Seven Hundred Thirty-One Thousand Seven Hundred Eighty-Seven and 81/100 Pesos (₱23,731,787.81) allegedly representing excess/unutilized input VAT for CY 2013.

Petitioner seeks the refund of excess/unutilized input VAT paid in the total amount ₱23,731,787.81 which arose from the following:

Amortized portion of input VAT on purchases of Capital Goods exceeding ₱1Million	₱ 22,928,868.13
Input taxes on local purchases and importation of goods and services for the 2nd, 3rd, and 4th quarters of the CY 2013	802,919.68
Total Input VAT claim	**₱ 23,731,787.81**

In claiming input VAT refund or tax credits attributable to zero-rated or effectively zero-rated sales, the pertinent provisions of law are Section 112(A) and (C) of the NIRC of 1997, as amended, which respectively provide:

> "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

[21] Docket, pp. 417-431.
[22] Resolution dated January 31, 2017, Docket, p. 436.
[23] JSFI, Docket, p. 94.

Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sales 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: *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 nonzero-rated sales."

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Clearly from the foregoing provisions, in order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive periods;
3. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
4. the input taxes were incurred or paid;
5. the input taxes claimed are attributable to zero-rated sales or effectively zero-rated sales; and
6. the input taxes have not been applied against any output VAT liability.

First requisite:

Petitioner complied with the first requisite. It is undisputed that petitioner is a VAT-registered entity with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000042879 duly issued by respondent.[24]

Second requisite:

The second requisite pertains to the timeliness of the filing of the claim both in the administrative and judicial levels.

Applying the above-quoted Section 112(A), the administrative claim for the issuance of a Tax Credit Certificate (TCC) or refund of 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. Since the present claim covers the four (4) taxable quarters of 2013, the two (2)-year prescriptive period is reckoned from March 31, 2013, June 30, 2013, September 30, 2013 and December 31, 2013. Therefore, the close of the taxable quarters were until March 31, 2015, June 30, 2015, September 30, 2015 and December 31, 2015, respectively.

Records show, however, that petitioner filed its administrative claim together with supporting documents with the respondent's Excise Taxpayers' Assistance Division under the Large Taxpayers Division on April 1, 2015. Thus, only the input VAT claim for the second, third and fourth quarters of CY 2013 were seasonably filed; while the input VAT claim for the first quarter of 2013 has already prescribed, as shown below:

Taxable Year 2013	**Close of the Taxable Quarter**	**Last Day to File Administrative Claim**	**Date of Filing of Administrative Claim**
1st Quarter	March 31, 2013	March 31, 2015	April 1, 2015
2nd Quarter	June 30, 2013	June 30, 2015	
3rd Quarter	September 30, 2013	September 30, 2015	
4th Quarter	December 31, 2013	December 31, 2015	

[24] Par. 4, JSFI, Docket, p. 94; Exhibit P-1-G".

Anent the timeliness of petitioner's judicial appeal, Section 112 (C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for refund or issuance of a tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of thirty (30) days, which refers to the period for filing a judicial claim with the CTA.[25]

It is to be noted that the 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit or actually submitted – additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed.[26]

Accordingly, counting from the filing of petitioner's administrative claim with the supporting documents on April 1, 2015, respondent had 120 days or until July 30, 2015 to act on the claim.

In this case, respondent rendered a decision on petitioner's claim on July 29, 2015, which was allegedly received by petitioner on August 11, 2015.[27] Petitioner had thirty (30) days from the receipt of the denial on August 11, 2015, or until September 10, 2015 within which to file an appeal before this Court. Clearly, petitioner's judicial appeal, by way of the instant Petition for Review, filed before this Court, was also timely filed on August 26, 2015.

It must be noted that even if the thirty (30)-day period is to be counted from the issuance of respondent's decision on July 29, 2015, petitioner still had until August 28, 2015 within which to file an appeal before the Court. Moreover, even without respondent's decision on petitioner's claim for refund, the Petition for Review was still filed on time. In such case, the thirty (30)-day period to appeal before the Court shall be counted from the lapse of the 120-day period on July 30, 2015 or until August 31, 2015[28], within which to appeal its claim for refund before this Court. Thus, the instant Petition for Review was timely filed on August 26, 2015.

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[25] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015

[26] Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 182737, March 2, 2016.

[27] As culled from Par. 5 of the Petition for Review, Docket, p. 12.

[28] August 29, 2015 being a Saturday.

The Court shall now proceed to make a determination of petitioner's compliance with the other requisites.

Third requisite:

The third requisite requires that the taxpayer be engaged in zero-rated or effectively zero-rated sales.

Petitioner is registered with the SEC with Certificate of Registration No. 38850.

The parties, likewise, stipulated that petitioner is registered with the BOI as an expanding export producer of lateritic nickel ores with BOI Certificate of Registration No. EP2004-091.[29]

Records also reveal that petitioner is registered with Philippine Economic Zone Authority (PEZA) and was issued Certificate of Registration No. EZ 02-11 dated December 27, 2002, as a developer/operator of Rio Tuba Processing Zone, located in Brgy. Rio Tuba, Municipality of Bataraza, Palawan.[30]

For the year 2013, petitioner alleges that its nickel ores are 100% exported/sold to foreign countries; and that the foreign currency proceeds derived therefrom are subject to zero percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Section 106(A)(2)(a)(1) and (5) of the NIRC of 1997, as amended, provide thus:

> SEC. 106. Value-Added Tax on Sale of Goods or Properties. –
>
> (A) Rate and Base of Tax. – x x x
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

[29] Par. 5, JSFI, Docket, p. 94; Exhibit "P-10".
[30] Exhibit "P-463".

(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);

xxx xxx xxx

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; x x x

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

1.) there was sale and actual shipment of goods from the Philippines to a foreign country;
2.) the sale was made by a VAT registered person;
3.) the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4.) the payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Section 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provides that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

'(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

'(1) A <u>VAT invoice</u> for every sale, barter or exchange of goods or properties; and xxx xxx xxx

'(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:

'(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and

'(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

xxx xxx xxx

'(c) If the sale is subject to zero percent (0%) value-added tax, the term <u>'zero-rated sale'</u> shall be written or printed prominently on the invoice or receipt;

'(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and xxx (*underlining supplied*)

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

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

(1) A <u>VAT invoice</u> for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT-registered persons are required to print their <u>TIN followed by the word 'VAT' in their invoice</u> or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

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

xxx xxx xxx

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

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

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale 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. xxx ."

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations.

to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to the foregoing provisions of Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c), and (3) of the same Code and Sections 4.113-1(A)(1), B(1), and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: **a)** the sales invoice as proof of sale of goods; **b)** bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and **c)** bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

Whereas for the considered export sales made to BOI-registered entities or entities entitled to exemptions under special laws, any VAT registered person claiming VAT zero-rated sales must present at least two (2) types of documents, to wit: (a) the sales invoice as proof of sale of goods; and (b) proof of buyer's registration as an entity covered by the Omnibus Investment Code or special laws.

Petitioner submitted the relevant documents, in accordance with the BIR and BOC rules and regulations, to prove its zero-rated sales declared for the CY 2013. These include sales invoices, bank credit advice, export documents (i.e. bills of lading, Mines and Geosciences Bureau Transport permit),[31] and BOI and/or PEZA certificates of registration of its customer.[32]

As indicated in the Quarterly VAT Returns[33], petitioner had declared a total amount of ₱3,647,526,813.97 zero-rated sales. However, comparing the said amount with the petitioner's Summary List of Export Sales[34] would show a discrepancy of ₱294,958,280.48, computed as follows:

[31] Exhibits "P-643" to "P-3652".
[32] Exhibits "P-3861" to "P-3862".
[33] Exhibits "P-142" to "P-143"; "P-148" to "P-149"; "P-154" to "P-155"; and "P-160" to "P-161".
[34] BIR Records, Folder 10, pp. 62-65

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Zero-Rated Sales per Quarterly VAT Return	₱1,104,533,725.38	₱ 843,266,947.27	₱ 847,904,747.19	₱ 851,821,394.13	₱3,647,526,813.97
Zero-Rated Sales per Summary List of Export Sales	953,523,153.46	765,840,615.44	817,093,980.36	816,110,784.23	3,352,568,533.49
Difference	**₱151,010,571.92**	**₱77,426,331.83**	**₱30,810,766.83**	**₱35,710,609.90**	**₱294,958,280.48**

Thus, the difference in the amount of ₱294,958,280.48 should be disallowed outright for not having been accounted by petitioner.

Further, the Court finds that the following export sales in the total amount of ₱212,410,245.44 should, likewise, be disallowed due to the following reasons:

Exh. No.	Customer	Final Invoice No.	Invoice Date	Sales Amount per Final Invoice (in US$)	Sales Amount per Final Invoice (in Php)	Amount with Supporting US$ Credit Remittance	Disallowed Amount of Sales as Declared in SLS (in Php)
Export sales without supporting credit remittances							
P-3453	BAOSTEEL RESOURCES INTERNATIONAL CO LTD	A519	12/27/2013	$ 1,102,500.00	₱ 47,633,287.50	$ 1,102,500.00	₱ 42,588,983.20
P-3227	BAOSTEEL RESOURCES INTERNATIONAL CO LTD	A518	12/27/2013	719,940.00	29,423,947.80	598,104.00	4,979,437.32
P-3250	DH KINGSTONE HOLDING CO LTD	A522	12/27/2013	724,430.00	30,176,131.66	671,895.00	2,188,345.43
P-3271	GRAND OVERSEAS ECONOMIC DEVELOPMENT CO LTD	A521	12/27/2013	756,210.00	33,492,540.90	-	32,840,115.98
P-3292	SUMITOMO METAL MINING CO LTD	A523	12/31/2013	914,973.97	39,654,971.86	-	42,072,913.19
P-3349	SOJITZ CORPORATION	A516	12/19/2013	1,302,842.45	53,807,393.13	1,199,411.22	4,271,709.80
			Subtotal	***$ 5,520,896.42***	***$ 234,188,272.85***	***$ 3,571,910.22***	***$ 128,941,504.91***
Export sales where supporting export declaration documents do not match details in final invoice							
P-3534	DH KINGSTONE HOLDING CO LTD	A390	3/27/2013	$ 973,306.05	$ 39,122,036.68	$ 973,306.05	$ 39,214,267.48
P-3599	DH KINGSTONE HOLDING CO LTD	A506	9/27/2013	1,032,270.00	41,951,452.80	1,032,270.00	44,254,473.05
			Subtotal	***$ 2,005,576.05***	***$ 81,073,489.48***	***$ 2,005,576.05***	***$ 83,468,740.53***
			GRAND TOTAL	**$ 7,526,472.47**	**₱ 315,261,762.33**	**$ 5,577,486.27**	**₱ 212,410,245.44**

In sum, out of the total reported zero-rated sales in the 2013 VAT returns amounting to ₱3,647,526,813.97, only the amount of ₱2,186,635,134.59 shall be considered for the claim for refund, broken down as follows:

Zero-rated sales Declared for the Four Quarters of CY 2013		₱ 3,647,526,813.97
Less: Disallowed Export Sales		
(1) Unaccounted Difference	₱294,958,280.48	
(2) Prescribed 1st Quarter Sales	953,523,153.46	
(3) Sales disallowed by the Court	212,410,245.44	1,460,891,679.38
Valid Zero-Rated Sales for CY 2013		**₱2,186,635,134.59**

Fourth to Sixth Requisites

After having resolved that petitioner had [VAT] zero-rated [direct] export sales for the second, third and fourth quarters of CY 2013 in the reduced amount of ₱2,186,635,134.59, the Court shall proceed to the determination of whether petitioner incurred input taxes in connection therewith and if said input taxes were not applied against any output VAT liability of petitioner.

Prior to proceeding with the verification of whether petitioner incurred input VAT, the Court deems it proper to first discuss the legal merits of the case.

Pursuant to Revenue Memorandum Order (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:

> "**SECTION.3.** *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are

100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

(4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and

(5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, record shows, and as asserted by petitioner that it was issued a Certification[35] by the BOI attesting to the fact that petitioner is a BOI registered entity with 100% exports for the year 2013.

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 on the year 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 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*,[36] which affirms 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:

[35] Exhibit "P-593" to "P-597".
[36] CTA EB Case No. 403 (CTA Case No. 7022), May 29, 2009.

> "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 enriched 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 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."

The aforequoted ruling was affirmed by the Supreme Court in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[37], holding that the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

In this light, only the petitioner's input VAT from importations shall be given credit by the Court.

To reiterate, petitioner's input VAT claim in the total amount of ₱23,731,787.81 consisted of ₱22,928,868.13 input VAT amortization

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

on capital goods exceeding ₱1 million and ₱802,919.68 input VAT on domestic purchases of goods and services. Hence, the input VAT on domestic purchases of goods and services should be disallowed outright without further verification of the supporting documents.

With regard to the claimed input VAT amortization on capital goods exceeding ₱1 million, it is noteworthy to mention that the amount of ₱22,928,868.13 is the net of output tax due for the four quarters of CY 2013 in the total amount of ₱12,415,947.14. Said amount is computed as follows:

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input Tax Deferred on Capital Goods exceeding ₱1 Million from Previous Quarter	₱113,412,254.36	₱107,812,771.16	₱98,685,907.34	₱90,206,623.72	₱410,117,556.58
Add: Input Tax on Capital Goods exceeding ₱1 Million Purchased this Quarter	4,098,556.29	-	139,821.43	-	4,238,377.72
Total: Unamortized Input Tax on Capital Goods exceeding ₱1 Million	117,510,810.65	107,812,771.16	98,825,728.77	90,206,623.72	414,355,934.30
Less: Input Tax on Purchases of Capital Goods exceeding ₱1 Million deferred for the succeeding period	107,812,771.16	98,685,907.34	90,206,623.72	82,305,817.12	379,011,119.34
Amortization of Input Tax on Capital Goods exceeding ₱1 Million	**9,698,039.49**	**9,126,863.82**	**8,619,105.05**	**7,900,806.60**	**35,344,814.96**
Less: Output Tax Due	**2,676,423.11**	**2,161,255.51**	**5,275,618.73**	**2,302,649.79**	**12,415,947.14**
Total	**₱7,021,616.38**	**₱6,965,608.31**	**₱3,343,486.32**	**₱5,598,156.81**	**₱22,928,867.82**[38]

As can be seen from the above computation, petitioner's total amortization of input VAT of capital goods exceeding ₱1 million, before deducting the output tax due, was ₱35,344,814.96. Since the input VAT for the first quarter of CY 2013 had already prescribed, only the amount declared in the second, third and fourth quarters of CY 2013 or in the total amount of ₱25,646,775.47[39] should be considered by the Court.

[38] ₱0.31 difference with the amount of claim is due to rounding off.
[39] Sum of Second, Third, and Fourth Quarters of CY 2013.

However, out of the ₱25,646,775.47 input VAT, the amount of ₱169,264.24 pertaining to the input VAT amortization on domestic purchases of capital goods exceeding ₱1 million should be disallowed since the composition of the capital good have no supporting documents/no original supporting documents, as shown below[40]:

Supplier	Purchase Date	Input VAT Claimed	Amortization Period (in months)	Monthly Amortization	Period Amortized for 2nd to 4th Qtrs.	Disallowed 2013 Amortization
Toyota Pasong Tamo	1/23/2009	₱ 162,857.14	60	₱ 2,714.29	9	₱ 24,428.57
Toyota Pasong Tamo	8/14/2009	181,714.00	60	3,028.57	9	27,257.10
Citimotors	2/29/2012	125,357.14	60	2,089.29	9	18,803.57
Citimotors	3/7/2012	180,857.14	60	3,014.29	9	27,128.57
Citimotors	3/22/2012	125,357.14	60	2,089.29	9	18,803.57
Citimotors	3/22/2012	125,357.14	60	2,089.29	9	18,803.57
Citimotors	1/16/2013	133,714.29	60	2,228.57	9	20,057.14
Toyota Shaw	7/25/2013	139,821.43	60	2,330.36	6	13,982.14
TOTAL						**₱ 169,264.24**

Further, the Independent Certified Public Accountant (ICPA) recommended the following disallowances in the total amount of ₱11,302,193.90, due to the following reasons[41]:

Particulars	Reference to ICPA Report	Input VAT	Amortization for the 2nd, 3rd, and 4th Quarters of CY 2013
Importations of Capital Goods without the original documents presented	Page 13	₱ 52,806,380.54	₱ 484,117.63
Unsupported Importations of Capital Goods	Page 14-15	4,881,637.00	7,672,105.60
No supporting documents for the evidence of payment of Input VAT	Page 15	14,918,802.50	1,810,691.78
No supporting documents for IEIRD	Page 16	8,893,645.00	1,334,046.75
Discrepancy of input VAT	Page 16-17	11,785.71	1,232.14
Total		**₱81,512,250.75**	**₱11,302,193.90**

After examination of the supporting documents submitted by the petitioner, the Court finds the above disallowances proper. In addition, the Court arrived at the following findings:

(A) The following were supported by proof of VAT payments but were found insufficient as will be shown below. Hence,

[40] Schedule VIII, ICPA Report, Exhibit P-4705.
[41] Exhibit P-4806.

the corresponding input VAT amortization for the 2nd to 4th quarters of CY 2013 to the extent of the deficient VAT payment must be disallowed, totaling ₱648,035.60:

Exh. No.	**Import Date**	**Supplier**			**Disallowed 2013 Amortization**
P-3683	7/12/2008	Mitsubishi Corp	Customs and Duties Paid	591,321.00	
			Less: CUD/FIN/Others/IPF	138,812.00	
			Amount attributed to VAT	452,509.00	
			Input VAT claimed	570,107.00	
			Input VAT payment deficiency	117,598.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	3	₱ 5,879.90
P-3729	11/24/2010	Volvo Truck Corp	Customs and Duties Paid	6,673,241.00	
			Less: CUD/FIN/Others/IPF	2,076,466.00	
			Amount attributed to VAT	4,596,775.00	
			Input VAT claimed	8,584,525.00	
			Input VAT payment deficiency	3,987,750.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	598,162.50
P-3740	5/12/2011	Dressta Asia Pacific PTE Ltd	Customs and Duties Paid	1,425,093.00	
			Less: CUD/FIN/Others/IPF	133,784.00	
			Amount attributed to VAT	1,291,309.00	
			Input VAT claimed	1,409,655.00	
			Input VAT payment deficiency	118,346.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	17,751.90
P-3744	5/12/2011	Dressta Asia Pacific PTE Ltd	Customs and Duties Paid	1,530,457.00	
			Less: CUD/FIN/Others/IPF	143,620.00	
			Amount attributed to VAT	1,386,837.00	
			Input VAT claimed	1,513,949.00	
			Input VAT payment deficiency	127,112.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	19,066.80
P-3831	1/7/2013	Sandvik Mining and Construction	Customs and Duties Paid	2,604,912.00	
			Less: CUD/FIN/Others/IPF	753,312.00	
			Amount attributed to VAT	1,851,600.00	
			Input VAT claimed	1,899,430.00	
			Input VAT payment deficiency	47,830.00	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	7,174.50
			TOTAL		**₱ 648,035.60**

(B) The following imported capital goods were found to be incompletely declared in their respective supporting

IEIRDs. The VAT assessments in the IEIRDs were significantly lower than that of paid and claimed as credit by petitioner. This effectively resulted to an overclaim of input VAT. Hence, the corresponding input VAT amortization for the 2nd to 4th quarters of CY 2013 to the extent of the overclaimed VAT payment must be disallowed, totaling ₱1,101,544.89:

Exh. No.	Import Date	Supplier			Disallowed 2013 Amortization
P-3797	6/13/2012	Marubeni Corp	Input VAT claimed	₱ 9,878,528.00	
			VAT as assessed in IEIRD	3,530,071.81	
			Overclaimed input VAT	6,348,456.19	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	₱ 952,268.43
P-3837	1/7/2013	I&N International Corp	Input VAT claimed	2,065,412.00	
			VAT as assessed in IEIRD	1,070,235.61	
			Overclaimed input VAT	995,176.39	
			Divide by amortization period	60	
			Multiply by period amortized for 2nd to 4th qtrs.	9	149,276.46
			TOTAL		**₱ 1,101,544.89**

(C) The following imported capital goods are without proof of VAT payments:

Exh. No.	ICPA Report Ref.	Supplier/ Particulars	Import Date	Input VAT Claimed	Amortization Period (in months)	Monthly Amortization	Period Amortized for 2nd to 4th Qtrs.	Disallowed 2013 Amortization
Importation of capital goods without proof of VAT payment								
P-3653	Sch. VIII and XI	Sumiko Eco-Engineering Co Ltd	4/17/2008	2,671,427.00	60	44,523.78	0	-
P-3676		Mitsubishi Corp	7/8/2008	5,396,826.00	60	89,947.10	3	₱ 269,841.30
Total				**8,068,253.00**		**134,470.88**		**₱269,841.30**

Summarizing the above findings, the Court finds that out of the total declared input VAT amortization amounting to ₱25,646,775.47 from second to fourth quarters of CY 2013, only ₱12,155,895.54 pertains to valid input VAT amortization. Utilizing said valid input VAT against petitioner's output VAT liabilities for the same period totaling ₱9,739,524.03 brings down to excess/unutilized input VAT amounting to ₱2,416,371.51, which can be attributed to petitioner's total declared zero-rated sales for the second, third, and fourth quarters of CY 2013. However, only the input VAT of ₱2,077,757.45 is attributable to the valid zero-rated sales, computed as follows:

Amortization of Input VAT declared for the 2nd, 3rd, and 4th Quarters of CY 2013		₱ 25,646,775.47
Less: Disallowances		
(A) Domestic purchases of capital goods exceeding ₱1million	₱ 169,264.24	
(B) Per ICPA Report	11,302,193.90	
(C) Per this Court's further verification:		
1. Imported Capital Goods with insufficient VAT payment	648,035.60	
2. Overclaimed Input VAT	1,101,544.89	
3. Imported Capital Goods without proof of VAT payments	269,841.30	
Total		13,490,879.93
Valid Input VAT amortization		₱ 12,155,895.54
Less: Output Tax Due		9,739,524.03
Excess Input VAT Amortization		**₱ 2,416,371.51**
Multiply by ratio of valid zero-rated sales over total zero-rated sales declared for the 2nd, 3rd, and 4th Quarters of CY 2013		
Valid zero-rated sales	₱ 2,186,635,134.59	
Divide by total zero-rated sales declared	2,542,993,088.59	85.99%
Refundable Input VAT Amortization for the 2nd, 3rd, and 4th Quarters of CY 2013		**₱ 2,077,757.45**

Finally, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained that petitioner deducted the amount of ₱26,331,332.84 as VAT Refund/TCC in its Quarterly VAT Return for the first quarter of 2014.[42] This amount includes the present claim herein and broken as follows:[43]

Unutilized input VAT subject to refund under this CTA Case	₱ 22,928,868.13
Amount of input VAT from domestic purchase and importations other than capital goods for the year 2013	3,402,464.71
VAT Refund/TCC claim	**₱ 26,331,332.84**

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is entitled to a tax refund in the amount of **₱2,077,757.45** representing its unutilized input taxes attributable to zero-rated sales for the second to four quarters of CY 2013

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[42] Exhibits "P-3858" to "P-3860".
[43] Original ICPA Report, Exhibit "P-4705", p. 23.

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
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
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice