**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

## ***SECOND DIVISION***

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| **TAGANITO MINING CORPORATION,** Petitioner, | **C.T.A. CASE NO. 6867** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** JUL 3 1 2009 4:28 p.m. |

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# DECISION

UY, J.:

Before the Court is a Petition for Review filed by Taganito Mining Corporation, praying for the refund of the amount of **FOUR MILLION FOUR HUNDRED FIFTY SEVEN THOUSAND FOURTEEN PESOS AND 85/100 CENTAVOS (₱ 4,457,014.85)**, allegedly representing its unutilized input value-added tax (VAT) for the period covering January 1, 2002 to December 31, 2002.

**THE FACTS**

Petitioner, Taganito Mining Corporation, is a corporation duly organized and existing under the laws of the Philippines, with address at 4th Floor, Solid

Mills Building, De La Rosa St., Legazpi Village, Makati City.[1] It is primarily engaged in the business of exploring, producing, and exporting beneficiated nickel silicate ores and chromite ores,[2] and is a duly registered VAT entity, with Certificate of Registration No. 94-470-000373 dated June 15, 1994.[3] Likewise, petitioner is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate and chromite ores, with BOI Certificate of Registration No. EP-88-306.[4]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including *inter alia*, the power to decide refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR). He holds office at the BIR National Office Building, Diliman, Quezon City.[5]

Petitioner filed all its Monthly and Quarterly VAT Returns from January 1, 2002 to December 31, 2002.[6] For easy reference, a summary of the filing dates of the original and amended Quarterly VAT Returns for taxable year 2002 of petitioner is as follows:

| Exhibit(s) | Quarter | Nature of the Return | Mode of filing | FILING DATE |
|---|---|---|---|---|
| G to G-4 | 1st | Original | Electronic | April 13, 2002 |
| F | | Amended | Manual | April 16, 2002 |
| I to I-4 | | Amended | Electronic | March 31, 2003 |
| HH to HH-3 | | Amended | Electronic | December 22, 2003 |

[1] Par. (a), Stipulated Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket, p. 92.
[2] Par. (b), Stipulated Facts, JSFSI, *Id.*
[3] Par. (c), Stipulated Facts, JSFSI, *Id.*
[4] Par. (d), Stipulated Facts, JSFSI, *Id.*
[5] Par. 2, Petition for Review, Docket, p. 2; Par. 1, Answer, Docket, p. 60.
[6] Par. (h), Stipulated Facts, JSFSI, Docket, p. 93.

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|---|---|---|---|---|
| P to P-3 | 2nd | Original | Electronic | July 11, 2002 |
| O | | Amended | Manual | July 12, 2002 |
| R to R-4 | | Amended | Electronic | March 31, 2003 |
| II to II-3 | | Amended | Electronic | December 22, 2003 |
| V to V-2 | 3rd | Original | Electronic | October 21, 2002 |
| JJ to JJ-3 | | Amended | Electronic | December 22,2003 |
| Z to Z-2 | 4th | Original | Electronic | January 17, 2003 |
| KK to KK-3 | | Amended | Electronic | December 22, 2003 |

As can be gleaned from its amended Quarterly VAT Returns[7], petitioner reported zero-rated sales amounting to ₱ 504,424,545.21; input VAT on its domestic purchases of taxable goods (including capital goods) and services amounting to ₱ 2,600,280.00; and input VAT on its importations of capital goods amounting to ₱ 1,847,371.32, the details of which are summarized as follows:

| Period Covered | Zero-Rated Sales | Input VAT on Domestic Purchases of Taxable Goods and Services | Input VAT on Importation of Capital Goods | Total Input VAT |
|---|---|---|---|---|
| 01/01/02 - 03/31/02 | ₱ 102,842,130.25 | ₱ 470,207.75 | - | ₱ 470,207.75 |
| 04/01/02 - 06/30/02 | 137,493,888.66 | 686,566.07 | - | 686,566.07 |
| 07/01/02 - 09/30/02 | 105,764,564.19 | 1,085,712.17 | ₱ 1,847,371.32 | 2,933,083.49 |
| 10/01/02 - 12/31/02 | 158,323,962.11 | 357,794.01 | - | 357,794.01 |
| **TOTAL** | **₱ 504,424,545.21** | **₱ 2,600,280.00** | **₱ 1,847,371.32** | **₱ 4,447,651.32** |

On December 1, 2003, Deputy Commissioner Estelita C. Aguirre, OIC, Large Taxpayers Service issued Letter of Authority (LA) No. 2000 00003437 addressed to petitioner, authorizing Revenue Officers Linda R. Macaspac, Julius Rex B Bungabong, and Group Supervisor Rolando M. Balbido of the LT Audit and Investigation Division II of the BIR to examine the books of accounts and other accounting records of petitioner for taxable year 2002.[8] Such LA, together with a letter dated December 1, 2003 requesting petitioner

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[7] Exhibits "HH to HH-3", "II to II-3", "JJ to JJ-3", and "KK to KK-3".
[8] BIR Records, p. 1026.

to submit certain documents, were received on the same date[9] by a certain Liza L. Mondejar, the authorized representative of petitioner.[10] Subsequently, a Second Notice/Request for Presentation of Records dated January 16, 2004 was sent by the BIR to petitioner and received once again by Ms. Mondejar on April 19, 2004.[11]

On December 30, 2003, petitioner filed with respondent, through respondent's Excise Taxpayers' Assistance Division under the Large Taxpayers Division, a claim (letter dated December 22, 2003)[12] for refund of its excess input VAT paid on its domestic purchases of taxable goods and services and importation of goods amounting to ₱ 4,447,651.32 for the period covering January 1, 2002 to December 31, 2002.[13] In the said claim, petitioner represented, *inter alia*, that the amount of its total zero-rated export sales from January 1, 2002 to December 31, 2002 is ₱ 504,424,545.21.[14]

On February 10, 2004, petitioner sent a letter dated February 3, 2004 to respondent, stating that, *"due to inadvertent errors"*, it is making some corrections in the amount of zero-rated export sales indicated in its letter dated December 22, 2003. Thus, instead of the amount of ₱ 504,424,545.21, petitioner's export sales from January 1, 2002 to December 31, 2002 should be ₱ 508,904,070.59.[15]

Due to respondent's failure to act on petitioner's request for refund and in order to preserve its right to claim refund by judicial action, petitioner filed

[9] *Id.*, pp. 1023 to 1024, and 1026.
[10] Exhibit "1-a".
[11] BIR Records, p. 1022.
[12] Exhibit "NN".
[13] Par. (g), Stipulated Facts, JSFSI, Docket, p. 93.
[14] Exhibit "NN".
[15] Exhibit "DD".

the instant Petition for Review on February 19, 2004.[16] However, in the said Petition, the amount of the claim increased to ₱ 4,457,014.85.

In his Answer[17] filed on April 15, 2004, respondent interposed the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. 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 Sections 6(a) and (b) of the 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 a VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 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 in pursuance to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro-forma, which is a condition *sine qua non* prior to the filing of judicial claim** in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the Bureau of Internal Revenue before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

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[16] Par. (j), Stipulated Facts, JSFSI, Docket, p. 93. Pars. 4 and 12, Petition for Review, Docket, pp. 2 to 5.

[17] Docket, pp. 60-63.

d. That the input taxes of P4,447,651.32 allegedly paid by the petitioner on its purchases of goods and services for the taxable year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services and importation of goods were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts, import entry documents, confirmation receipt evidencing payment of VAT 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 in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

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

6. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. *(Asiatic Petroleum Co. [P.I.] v. Llanes, 49 Phil. 466* cited in *Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670)*;

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

On August 30, 2006, respondent transmitted to the Court[18] the BIR Records pertaining to this case, containing, *inter alia*, a Memorandum Report[19] from the Deputy Commissioner for Special Concerns, Kim S. Jacinto-Henares, addressed to the Chief of the Litigation Division, both of the BIR, regarding the results of examination of petitioner's records conducted by the same, pursuant to LA No. 2000 00003437 and the request for refund of petitioner.

During trial, both parties presented their respective evidence and this case was submitted for decision on August 11, 2009, considering petitioner's "Memorandum" filed on August 5, 2008 and respondent's "Memorandum" filed on July 31, 2008.

Hence, this Decision.

**THE ISSUES**

The parties submitted the following issues[20] for this Court's resolution:

"I. Whether or not Petitioner's sales are export sales;

II. Whether or not Petitioner's 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);

III. Whether or not Petitioner's input taxes are attributable to its zero-rated transactions;

IV. Whether or not Petitioner's input taxes are sufficiently substantiated with VAT invoices or official receipts;

V. Whether or not the VAT input taxes being claimed for refund/tax credit by Petitioner has been credit against any output taxes or has been carried forward to the succeeding quarter or quarters;

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[18] Docket, p. 217.
[19] BIR Records, pp. 1088 to 1090.
[20] Issues, JSFSI, Docket, pp. 93-94.

VI. Whether or not Petitioner is entitled to a refund of VAT input taxes it paid from January 1, 2002 to December 31, 2002 amounting to Four Million Four Hundred Fifty Seven Thousand Fourteen and 85/100 (₱ 4,457,014.85)."

The foregoing issues may be simplified into the sole issue of whether or not petitioner is entitled to a refund in the amount of ₱ 4,457,014.85, representing its alleged unutilized input VAT for the period covering January 1, 2002 to December 31, 2002.

***Petitioner's arguments***

Petitioner asserts that it is primarily engaged in the business of exploring, producing and export beneficiated nickel silicate ores and chromite ores, and that these ores are 100% exported and/or shipped to foreign countries, specifically to Japan and Australia as certified by the BOI in accordance with Revenue Memorandum Order No. 9-2000; that all of its generated and recorded zero-rated sales from January 1, 2002 to December 31, 2002 were paid for in acceptable foreign currency, specifically, in US Dollars, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP, pursuant to Section 106(A)(2)(a)(1) of the NIRC, as amended.

Furthermore, petitioner points out that evidence show that its input VAT were paid for by it in the course of its trade and business and are directly attributable to its zero-rated sales; that the excess input VAT being claimed for refund or tax credit has not been applied against or are undiminished by any of its output VAT for the same or subsequent periods since it has no output VAT on its 100% export sales; and that said input VAT has not been carried forward to the succeeding quarter or quarters as the same were deducted by petitioner upon filing of their application for refund with respondent.

In addition, petitioner stresses that it properly supported the excess input VAT being claimed by VAT-registered invoices and/or official receipts issued by its suppliers, and official receipts issued by the Bureau of Customs, in accordance with Section 113(A) of the NIRC, as amended, as shown in the report of the independent auditor commissioned by this Court and that it complied with all the requirements of the respondent on claims for refund/tax credit by submitting to respondent all documents which the latter has requested.

***Respondent's counter-argument***

Respondent contends that petitioner did not comply with the requirements for filing a claim for refund or tax credit for excess/unutilized input VAT attributed to zero-rated sales and that petitioner is not entitled to a claim for refund or tax credit of its unutilized/excess input VAT because a claim for refund is not *ipso facto* granted upon filing of the same, since respondent still has to investigate and ascertain the veracity of the claim.

**THIS COURT'S RULING**

As noted earlier, there is a disparity between the amount of the refund being claimed at the administrative level and before this Court. In the former, the amount of the claim is ₱ 4,447,651.32; while in the latter, the amount is ₱ 4,457,014.85. Considering however that only a party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue who may file an appeal with the Court of Tax Appeals,[21] only the amount of claim presented at the administrative level which shall be considered in this case, or the amount of ₱ 4,447,651.32.

Proceeding from such consideration, We shall appropriately determine whether petitioner is entitled to the said amount.

Section 6(A) of the NIRC of 1997 provides as follows:

> "SEC. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—*
>
> (A) *Examination of Returns and Determination of Tax Due.—xxx*
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer."

Based on the foregoing provision, while the taxpayer (petitioner, in this case) is given a period of three (3) years from the filing of "(a)*ny return, statement or declaration"* to modify, change or amend the same, he or she may only do so, as long as *"no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer."* To give effect thereto, We shall disregard petitioner's amended Quarterly Returns for taxable year 2002 filed on December 22, 2003 which are all subsequent to the date when LA No. 2000 00003437 was served upon petitioner, *i.e.*, on December 1, 2003.

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[21] First paragraph of Sec. 11, R.A. 1125, as amended by R.A. 9282.

Thus, for purposes of determining the propriety of petitioner's refund claim, We shall have as reference points, the amounts in the following table, particularly the total zero-rated sales and total input VAT, which are all reflected in petitioner's original and amended Quarterly VAT Returns[22] for taxable year 2002 filed prior to the service of LA No. 2000 00003437 to petitioner by respondent, viz:

| Period Covered | Zero-Rated Sales | Input VAT on Domestic Purchases of Taxable Goods and Services | Input VAT on Importation of Capital Goods | Total Input VAT |
|---|---|---|---|---|
| 01/01/02 - 03/31/02 | ₱ 102,842,130.25 | ₱ 408,685.44 | - | ₱ 408,685.44 |
| 04/01/02 - 06/30/02 | 137,493,888.66 | 579,452.07 | - | 579,452.07 |
| 07/01/02 - 09/30/02 | 105,764,564.19 | 979,000.21 | ₱ 1,847,371.32 | 2,826,371.53 |
| 10/01/02 - 12/31/02 | 158,323,962.11 | 289,797.09 | - | 289,797.09 |
| **TOTAL** | **₱ 504,424,545.21** | ₱ 2,256,934.81 | ₱ 1,847,371.32 | **₱ 4,104,306.13** |

In this connection, Section 112(A) of the NIRC of 1997 reads:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 B(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods 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."

[22] Exhibits "I to I-4", "R to R-4", "V to V-2", and "Z to Z-3".

This provision lays down the requisites to be entitled to the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales. Such requisites are as follows:

1. the claimant must be a VAT-registered person;
2. there must be zero-rated or effectively zero-rated sales;
3. that input taxes being claimed were due or paid;
4. that such input taxes were attributable to zero-rated or effectively zero-rated sales;
5. that the input taxes were not applied against any output VAT liability; and
6. that the claim for refund was filed within the two-year prescriptive period.

We find that petitioner has satisfied all the above requisites.

Pertinent to the first requisite, Section 106(A)(2)(a)(1) of the NIRC of 1997 states:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* —
>
> xxx xxx xxx
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* — The term *'export sales'* means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"

Thus, in order for petitioner's export sale to qualify for zero-rating, the following requisites must be present:

1. there was a 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 *Bangko Sentral ng Pilipinas*.

As stipulated by the parties, petitioner is a VAT-registered person.[23]

Moreover, petitioner actually sold and shipped its products from the Philippines to foreign countries for the period from January 1, 2002 to December 31, 2002 as evidenced by its Schedule of Export Sales[24] and export documents, such as export sales invoices, export declarations/permits, bills of lading, ore transport permits, and outward foreign manifest.[25] The said export sales generated the amount of US$9,848,000.43, with peso equivalent of ₱ 508,904,070.60; and were inwardly remitted and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*, as shown by Security Bank Client Advices[26].

However, there is an apparent discrepancy between the amounts of zero-rated export sales as reflected in petitioner's original and amended Quarterly VAT Returns and as shown in petitioner's export documents. As stated above, petitioner's declared total zero-rated sales for taxable year 2002 amounted only to ₱ 504,424,545.21; but as revealed by the said export documents and as represented in petitioner's letter[27] dated February 3, 2004 to respondent, petitioner's export sale amounted to ₱ 508,904,070.60. Nevertheless, the amounts in the said Returns are controlling. This must be so because the grant of a refund is founded on the assumption that the tax

[23] Par. (c), Stipulated Facts, JSFSI, Docket, p. 92.
[24] Exhibit "A-II".
[25] Exhibits "C-1" to "C-15", including sub-markings.
[26] Included in Exhibits "C-1" to "C-15" and sub-markings.
[27] Exhibit "DD".

return is valid; that is, the facts stated therein are true and correct.[28] Thus, We find that it is the amount of ₱ 504,424,545.21 as declared in petitioner's returns pertaining to its export sales which qualify for VAT zero-rating.

We shall now determine the amount of input VAT attributable thereto.

We note that the input VAT being claimed for refund in the amount of ₱ 4,447,651.32 is higher by ₱ 343,345.19 when compared to the reported input VAT of ₱ 4,104,306.13; hence, such difference of ₱ 343,345.19 shall be denied outright.

In addition, the Court-commissioned Independent Certified Public Accountant (CPA), Mr. Leonardo D. Cuaresma of Punongbayan and Araullo, in his Report dated October 26, 2004, he stated, in part, that:

> "...we have ascertained that the input VAT applied for as tax refund totaling to P4,447,651.32 for the period January 1 to December 31, 2002, are:
>
> - properly recorded in the Company's books; and
> - properly supported by original supplier's invoices and/or official receipts.
>
> We have also verified that the photocopies of such suppliers' invoices and/or official receipts to be submitted to the CTA and marked as exhibits are faithful reproductions of the original documents examined."[29]

However, Mr. Cuaresma noted the following exceptions to such findings:[30]

| Exception | Exhibit A-III-A Page | Input Tax |
|---|---|---|
| Input VAT already claimed in prior months | 1 | ₱ 397,614.91 |
| Invoice date is not within the period covered in the claim | 2 | 33,563.49 |
| Invoice has a different VAT number compared with the OR | 3 | 1,856.25 |

[28] *Citibank, N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.
[29] Exhibit "A" at page 4 thereof.
[30] Exhibit "A-III".

| | | |
|---|---|---|
| OR is non-VAT registered | 4 | 1,184.09 |
| Invoice and OR are not on file | 5 | 936.36 |
| | | **₱ 435,155.10** |

Upon careful examination of petitioner's 2002 Monthly Schedules of Purchases and Corresponding Input VAT[31] for both petitioner's Head Office and Minesite, and the related suppliers' invoices/official receipts, Bureau of Customs (BOC) Import Entry and Internal Revenue Declarations and bank official receipts[32], We find the said Report of the Independent CPA in order, subject only to the amount of the claim as determined below.

Considering the foregoing, only the amount of ₱ 3,669,151.03 out of the ₱ 4,447,651.32 input VAT claim represents petitioner's valid and refundable input tax in accordance with Sections 110(A) and 113(A) of the NIRC of 1997, as implemented by Sections 4.104-1, 4.104-5, and 4.108-1 of Revenue Regulations No. 7-95[33]; computed as follows:

| | | |
|---|---|---|
| Input VAT Claim | | ₱ 4,447,651.32 |
| Less: Discrepancy between: | | |
| -Input VAT claim | ₱ 4,447,651.32 | |
| -Less: Input VAT declared per Quarterly VAT Returns | 4,104,306.13 | 343,345.19 |
| -Not properly substantiated input VAT | | 435,155.10 |
| **Valid Input VAT** | | **₱ 3,669,151.03** |

Anent the question of whether or not petitioner's input taxes were applied against any output tax liability, We rule in the negative.

Petitioner had no output tax liability against which the input VAT of ₱ 3,669,151.03 may be applied or credited, since it had no other sales but zero-rated sales for the four quarters of 2002. Moreover, the input VAT of ₱ 3,669,151.03 is entirely attributable to its zero-rated sales of

[31] Exhibits "A-I-A" and "A-I-B".
[32] Exhibits "B" to "B-812".
[33] SUBJECT: Consolidated Value-Added Tax Regulations.

₱ 508,904,070.60. However, only the input VAT of ₱ 3,636,854.07 is attributable to the substantiated and properly declared zero-rated sales of ₱ 504,424,545.21, computed as follows:

| | |
|---|---|
| Substantiated and Declared Zero-Rated Sales | ₱ 504,424,545.21 |
| Total Zero-Rated Sales | ÷ 508,904,070.60 |
| Multiplied by Valid Input VAT | × 3,669,151.03 |
| **Input VAT Attributable to Substantiated and Declared Zero-Rated Sales** | **₱ 3,636,854.07** |

Even though petitioner carried over the subject claim to the succeeding quarters until the fourth quarter of 2003, the same was fully deducted as "Any VAT Refund/TCC Claimed" in the fourth quarter of 2003.[34] In other words, the subject claim no longer formed part of the ₱ 9,127,120.20 excess input VAT as of the fourth quarter of 2003, which was to be carried over/applied to the succeeding first quarter of 2004.

Finally, as regards the requirement of filing the claim for refund within the two-year prescriptive period, We likewise confirm petitioner's compliance therewith reckoned from the close of the taxable quarter when the relevant sales were made pertaining to the input VAT, regardless of whether said tax was paid or not.[35]

The present claim involves petitioner's input VAT incurred for the four quarters of 2002. Petitioner filed its claim for refund[36] with the Bureau of Internal Revenue on December 30, 2003 and the Petition for Review on February 19, 2004. Both dates of filing fall within the two-year prescriptive period reckoned from March 31, 2002, June 30, 2002, September 30, 2002

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[34] Exhibit "MM-3a".
[35] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc), G.R. No. 172129, September 12, 2008.
[36] Exhibits "BB" and "NN".

and December 31, 2002, the close of the first, second, third, and fourth quarters of 2002, respectively. Evidently, petitioner's administrative and judicial claims for refund of input VAT for the first, second, third, and fourth quarters of 2002 fall within the two-year prescriptive period.

In sum, We find petitioner to have sufficiently proven its entitlement to a refund but in the reduced amount of ₱ 3,636,854.07, representing unutilized input taxes attributable to zero-rated sales from January 1, 2002 to December 31, 2002.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of **THREE MILLION SIX HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED FIFTY FOUR PESOS AND 7/100 CENTAVOS (₱ 3,636,854.07)**, representing its unutilized input taxes attributable to zero-rated sales from January 1, 2002 to December 31, 2002.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
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

## 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.

**ERNESTO D. ACOSTA**
Presiding Justice