Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

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PHIL. GOLD PROCESSING AND REFINING CORP., Petitioner,	**CTA CASE No. 8542**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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PHIL. GOLD PROCESSING AND REFINING CORP., Petitioner,	**CTA CASE No. 8577**
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* CASANOVA, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 1 1 2014 4:30 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This case is a consolidation of two Petitions for Review separately filed by Phil. Gold Processing and Refining Corp. to seek the refund or the issuance of tax credit certificate in the aggregate amount of ₱42,967,020.74, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sale of goods during the third and fourth quarters of fiscal year ending June 30, 2010, broken down as follows: *gr*

CTA Case No.	Period Covered	Amount
8542	January 1 to March 31, 2010	₱19,065,073.61[1]
8577	April 1 to June 30, 2010	23,901,947.13[2]
TOTAL		**₱42,967,020.74**

THE FACTS

Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, principally engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources. It was issued a Certificate of Incorporation on December 27, 2004 by the Securities and Exchange Commission (SEC) under its former name, LFT Processing Corporation.[3] It is registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 004-498-686-000 issued on March 15, 1996.[4] Petitioner is likewise a *bonafide* Board of Investment (BOI)-registered enterprise with a Non-Pioneer Status with Pioneer Incentives being located in Less Developed Area (LDA) as a new producer of Gold and Silver Dore. It commenced its commercial operation sometime in March 2009.[5]

On the other hand, respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code (NIRC) of 1997 to examine any taxpayer, to assess the correct amount of internal revenue tax, and to act on refund claims. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On March 7, 2012, petitioner filed its Amended Quarterly VAT Return for the third quarter of fiscal year ending June 30, 2010 before the BIR, showing creditable input taxes on domestic purchases of goods and services as well as importations of capital equipment and landed cost for the said quarter in the amount of ₱19,065,073.61.[6]

On June 29, 2012, petitioner filed its Amended Quarterly VAT Return for the fourth quarter of fiscal year ending June 30, 2010 with the BIR, indicating creditable input taxes on various purchases of goods and services, importations of capital equipment, and landed costs for the said quarter in the amount of ₱23,901,947.13.[7]

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[1] Petition for Review, docket (CTA Case No. 8542), pp. 6-23.
[2] Petition for Review, docket (CTA Case No. 8577), pp. 6-23.
[3] Par. 1, Summary of Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI),docket, p. 747.
[4] Exhibit "B".
[5] Exhibit "A".
[6] Exhibit "D".
[7] Exhibit "E".

In a letter dated July 8, 2009, petitioner sought confirmation from the BIR that the input VAT on its domestic purchases of goods and services and importations of capital equipment attributable to zero-rated sales can be claimed as tax credit or refund pursuant to Section 112 of the NIRC of 1997.[8]

In BIR Ruling No. DA (VAT-073) 435-2009 dated August 3, 2009, respondent, through Assistant Commissioner James H. Roldan, confirmed the entitlement of petitioner to claim tax credit or refund.[9]

Accordingly, on March 30, 2012, petitioner filed an Application for Input Tax Credit for the third quarter of fiscal year ending June 30, 2010 with the Tax and Revenue (VAT) Group under the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance in the total amount of ₱19,065,073.61.[10]

On June 29, 2012, petitioner filed another Application for Input Tax Credit for the fourth quarter of fiscal year ending June 30, 2010 with the Revenue District Office No. 121 (Large Taxpayers Service Excise), BIR National Office, Quezon City in the total amount of ₱23,901,947.13.[11]

Claiming that respondent failed to act on both applications for refund or issuance of tax credit certificate, petitioner filed two (2) Petitions for Review, later docketed as CTA Case Nos. 8542 and 8577, on September 7, 2012 and November 23, 2012, respectively, seeking a refund or tax credit of its purported unutilized input VAT attributable to zero-rated sales of goods during the third and fourth quarters of fiscal year ending June 30, 2010.

In her Answer[12] in CTA Case No. 8542 filed on October 29, 2012, respondent alleged the following counter-arguments:

> "1. Respondent reiterates and repleads the preceding paragraphs of the answer as part of his Special and Affirmative Defenses;
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> 2. Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

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[8] Exhibit "U", docket, pp. 845-849.
[9] Exhibit "V", docket, pp. 850-853.
[10] Par. 4, Summary of Stipulated Facts, JSFI, docket, p. 747.
[11] Par. 5, Summary of Stipulated Facts, JSFI, docket, p. 748.
[12] Docket (CTA Case No. 8542), pp. 678-680.

3. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

4. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

5. It is incumbent upon the petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

6. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php19,065,073.61, as alleged excess and unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the 3rd Quarter of fiscal year ending June 2010 (or for the period January 1, 2010 to March 31, 2010) was not fully substantiated by proper documents, such as sales invoices, official receipts and others;

7. In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206);*

8. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*"

Respondent interposed the following special and affirmative defenses in her Answer[13] in CTA Case No. 8577 filed on January 17, 2013:

"5. The instant case should be dismissed outright on the ground that the petition for review is already time-barred. The judicial claim for refund or for issuance of a tax credit certificate for the creditable input VAT payment made by petitioner Phil. Gold Processing & Refining Corporation filed on November 23, 2012 was filed beyond the period provided by law for such claim. *gr*

[13] Docket (CTA Case No. 8577), pp. 399-405.

Petitioner anchors its claim for refund or the issuance of a tax credit certificate under Section 112(A) & (C) of the Tax Code of 1997, as amended, which provides:

'Sec. 112. – Refunds or Tax Credits of Input Tax. –

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter <u>when the sales were made</u>, apply for the issuance of a tax credit certificate or refund of creditable input tax <u>due or paid</u> 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.'

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Tax shall be Made.* – In proper cases, <u>the Commissioner shall grant a refund or issue the tax credit certificate</u> for creditable input taxes <u>within one hundred twenty (120) days from the date of submission of complete documents</u> 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, <u>the taxpayer affected may, within thirty (30) days</u> from the receipt of the decision denying the claim or <u>after the expiration of the one hundred twenty-day period</u>, appeal the decision or the unacted claim with the Court of Tax Appeals. xxx xxx' (Emphasis/Underlining supplied)

Pursuant to the aforequoted provision, a VAT registered taxpayer whose sale is 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 a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales.

The Honorable Supreme Court in the case of ***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation*** has already put to rest the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

> 'The claim for refund or tax credit for the creditable input VAT payment made by MPC embodied in OR No. 0189 was filed beyond the period provided by law for such claim. Sec. 112 (A) of the NIRC pertinently reads:
>
> > (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.(Emphasis ours)
>
> The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer **must be claimed within two years 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.** As the CA aptly puts it, albeit it erroneously applied the aforequoted Sec. 112 (A), '[P]rescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued'. Thus, when a zero-rated VAT taxpayer pays it input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. **The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.** Be that as it may, and given that the last creditable input VAT due for the period covering the progress billing of September 6, 1996 is the third quarter of 1996 ending on September 30, 1996, any claim for unutilized creditable input VAT refund or tax credit for said quarter prescribed two years

after September 30, 1996 or, to be precise, on September 30, 1998. Consequently, MPC's claim for refund or tax credit filed on December 10, 1999 had **already prescribed**.'

From the foregoing, it is clear that the two-year prescriptive period provided in Section 112(A) of the Tax Code of 1997, as amended, should be reckoned not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

In this case, petitioner is claiming for refund or the issuance of a tax credit certificate of its alleged unutilized input VAT paid on domestic purchases of goods or services as well as importation of capital goods allegedly attributable to its zero-rated sales of goods for the 4th quarter of fiscal year ending June 30, 2010, hence, the two (2) year prescriptive period should be reckoned from June 30, 2010, the close of the taxable 4th quarter. Accordingly, petitioner had until June 30, 2012, within which to file its claim both in the administrative and judicial levels.

Records show that while the administrative claim for refund or the issuance of a tax credit certificate filed by petitioner on June 29, 2012 falls within the two (2)-year prescriptive period; however, the Petition for Review filed before this Honorable Court on November 23, 2012 is beyond the two (2)-year period prescribed by law. Thus, petitioner is barred from claiming refund of the alleged unutilized input taxes for the 4th quarter of fiscal year ending June 30, 2012 in the amount of ₱23,901,947.13, due to prescription.

It is the respondent's humble submission that the two-year period is a limitation of action not only in submitting the written claim for refund or issuance of tax credit certificate to the Commissioner of Internal Revenue, but likewise in instituting an action with the Court of Tax Appeals. A different interpretation would necessarily allow an extension of the two-year prescriptive period, for as long the 120-day period had not elapsed from the filing of the administrative claim for refund.

Notably, nowhere in Section 112 is it stated nor implied, that the periods under paragraphs (A) and (B) thereof, are limited to administrative claims only, while it is more evident that the periods (120 days and 30 days) mentioned in paragraph (C) thereof, are provided for the taxpayer's guidance in the exhaustion of administrative remedies. Clearly, the mandate to act on claims for refund or issuance of tax credit certificate of creditable input VAT due within the 120-day period mentioned under the first paragraph of Section 112(C) is addressed to the Commissioner of Internal Revenue, while the second paragraph of the same Section is an optional recourse given to the taxpayer-claimant, should there be a denial of the refund claim, or inaction on the part of the Commissioner on the claim for 120 days.

In the case of **Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.), supra**, the Supreme Court held that Section 112 of the NIRC clearly provides in no uncertain terms that an unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years **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.**The Supreme Court further said the prescriptive period commences from the close of the taxable quarter when the sales were made and not from the time the input VAT was paid nor from the time the official receipt was issued. Thus, when a zero-rated VAT taxpayer pays its input VAT a year after the pertinent transaction, said taxpayer only has a year to file a claim for refund or tax credit of the unutilized creditable input VAT. The reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid.

Additionally, Section 112(C) grants the Commissioner a **120-day period** from submission of complete documents in support of the administrative claim within which to act on claims for refund/application for issuance of the tax credit certificate, and upon denial of such claim or upon expiration thereof, the taxpayer only has a **30-day period** within which to appeal said adverse decision or unacted claim before the Court of Tax Appeals. Thus, it becomes incumbent upon the taxpayer-claimant to adjust the dates of filing of its administrative claims, to ensure compliance not only with the 120-day and 30-day periods, but prior to the lapse of the two-year prescriptive period, which is appealable to both administrative and judicial claims.

While the respondent agrees that it is only upon full or partial denial of the claim for tax refund or tax credit, or failure of the Commissioner to act on the application within the prescribed 120-day period, may the taxpayer-claimant seek judicial recourse, within the 30-day period from submission of complete documents in support of said application, however, it is the respondent's humble opinion that in the observance of the 120-day and 30-day periods mentioned in Section 112, the two-year prescriptive period from the close of the taxable quarter when the sales were made for seeking judicial recourse must not be disregarded. And as mentioned earlier, it is the taxpayer-claimant's duty to monitor the dates of filing of its administrative claims to ensure compliance, not only with the 120-day and 30-day periods, but also with the two-year prescriptive period, in filing both its administrative and judicial claims.

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

8. In order for petitioner to be entitled to its claim for refund/issuance of tax credit certificate allegedly representing unutilized input VAT attributable to its zero-rated sales for the fourth quarter fiscal year ending June 30, 2012, it must comply with the substantiation requirements under the appropriate Revenue Regulations. Thus, it is incumbent upon the petitioner to show that it has complied with the provisions of Section 112(A)(C) of the 1997 Tax Code, as amended, including but not limited to Revenue Regulations No. 5-87 as amended by Revenue Regulations Nos. 3-88 and 7-95 as further amended by Revenue Regulations No. 16-2005; and Revenue Memorandum Order No. 9-2000.

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)**.

10. The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government. **[Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue, G.R. No. 184398, February 25, 2010]**."

On November 22, 2012, CTA Case No. 8542 was set for pre-trial conference.[14] Petitioner filed its Pre-Trial Brief[15] on November 16, 2012; while respondent filed her Pre-Trial Brief[16]on November 19, 2012.

The parties filed their Joint Stipulation of Facts and Issues[17]in CTA Case No. 8542on December 20, 2012, which was approved in a Resolution[18] dated December 27, 2012.

On January 21, 2013, petitioner filed an Urgent Omnibus Motion[19], praying, among others, for the consolidation of CTA Case No. 8542 with CTA Case No. 8577; which was subsequently granted by the Court during the hearing held on January 28, 2013.[20]

The parties filed their consolidated Joint Stipulation of Facts and Issues[21] on April 23, 2013, which was approved by this Court on May 6, 2013.

After presentation, marking, identification and formal offer of petitioner's evidence, Exhibits "A" to "Q-181", "R" to "HH-1", "II", and "JJ" to "KK-1"were admitted as part of its documentary evidence; while Exhibits "Q-182", "Q-183", "Q-184", "Q-185", "Q-186", and "Q-187"were denied admission for not being found in the records of the case and for petitioner's failure to have the same identified in Court.[22]

On the other hand, during the hearing held on September 11, 2013, respondent manifested that she will not present any evidence and will be submitting the case for decision.[23]

The case was submitted for decision on April 28, 2014, considering petitioner's Memorandum[24]filed on April 15, 2014 and respondent's Memorandum[25] submitted through registered mail on April 11, 2014.[26]

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[14] Notice of Pre-Trial Conference issued on November 5, 2012, docket (CTA Case No. 8542), p. 681.
[15] Docket, pp. 682-691.
[16] Docket, pp. 692-694.
[17] Docket, pp. 698-700.
[18] Docket, p. 702.
[19] Docket, pp. 707-712.
[20] Minutes of the Hearing held on January 28, 2013, docket, p. 714.
[21] Docket, p. 746-749.
[22] Resolutions dated November 28, 2013 and February 10, 2014, docket, pp. 1022-1023 and 1068-1069.
[23] Minutes of the hearing held on September 11, 2013, docket, p. 1008.
[24] Docket, pp. 1080-1099.
[25] Docket, pp. 1100-1108.
[26] Resolution dated April 28, 2014, docket, p. 1109.

THE ISSUES

The parties submitted the following issues[27] for this Court's disposition:

"1. Whether petitioner PGPRC's sale of gold and silver dore qualifies as zero-rated sales?

2. Whether petitioner PGPRC has accumulated excess input VAT for the 3rd Quarter of Fiscal Year ending June 2010 amounting to Php19,065,073.61 and for the 4th Quarter of Fiscal Year ending June 2010 amounting to Php23,901,947.13?

3. Whether petitioner PGPRC's Input VAT in the amounts ofPhp19,065,073.61 and Php23,901,947.13 are directly attributable to its alleged zero-rated sales for the 3rd and 4th Quarters of Fiscal Year ending June 2010?

4. Whether petitioner PGPRC's Input VAT in the amounts of Php19,065,073.61 and Php23,901,947.13 remain unutilized?

5. Whether petitioner PGPRC is entitled to claim for refund or tax credit in the amounts of Php19,065,073.61 and Php23,901,947.13 representing alleged unutilized Input VAT for the 3rd and 4th Quarters of the Fiscal Year ending June 2010?

6. Whether petitioner PGPRC's claim for refund or tax credit of alleged Input VAT for the 3rd and 4th Quarters of Fiscal Year ending June 2010 is duly substantiated by documentary evidence?

7. Whether petitioner PGPRC has complied with the invoicing requirements pursuant to Revenue Regulation (RR) 16-2005?"

The above-enumerated issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of tax credit certificate for its alleged unutilized input tax attributable to zero-rated sale of goods for the third and fourth quarters of fiscal year ending June 30, 2010in the aggregate amount of ₱42,967,020.74." *ge*

[27] Statement of the Issues, JSFI, docket, p. 748.

THE COURT'S RULING

Section 112(A) and (C) of the NIRC of 1997, as amended, provides the basis for administrative and judicial claims for refund or tax credit of input tax attributable to zero-rated or effectively zero-rated sales, quoted hereunder for easy reference:

> "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 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.
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> 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." (Emphasis supplied)

Based on the afore-quoted provision, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. the taxpayer is engaged in sales which are zero-rated or effectively zero-rated;
2. the taxpayer is VAT-registered;
3. the claim must be filed within two years after the close of the taxable quarter when such sales were made;
4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax; and
5. in case of zero-rated sales under Section 106(A)(2)(a)(1) and (2), Section 106(B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations.[28]

Before addressing the other requisites, determination of the timeliness of the filing of petitioner's claim for refund or issuance of tax credit certificate must be dealt first.

As stated in Section 112(A) of the NIRC of 1997, as amended, the administrative claim must be filed within two years after the close of the taxable quarter when the zero-rated sales were made. The application of the two-year period provided under Section 112(A) to administrative claims for refund or tax credit of unutilized input VAT is consistent with the ruling in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia Inc.*,[29] where the High Court said:

"xxx To be clear, Section 112 of the NIRC is the pertinent provision for the refund/credit of input VAT. Thus, the two-year period should be reckoned from the close of the taxable quarter when the sales were made.

The administrative claim was timely filed ℊℓ

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[28] *AT&T Communication Services Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010, citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[29] G.R. No. 184823, October 6, 2010.

Bearing this in mind, we shall now proceed to determine whether the administrative claim was timely filed.

xxx xxx xxx

Applying this to the present case, the two-year period to file a claim for tax refund/credit for the period July 1, 2002 to September 30, 2002 expired on September 30, 2004. Hence, respondent's administrative claim was timely filed.

xxx xxx xxx

xxx Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two 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.'**The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**." (Emphasis supplied)

In the instant case, the claims cover the third and fourth taxable quarters of fiscal year ending June 30, 2010, which closed on March 31, 2010 and June 30, 2010, respectively. Counting two years from said dates, petitioner had until March 31, 2012 and June 30, 2012 within which to file its administrative claim. Thus, petitioner's administrative claims for refund were seasonably filed on March 30, 2012 and June 29, 2012, as shown below:

CTA Case No.	Period Covered	Close of the taxable quarter	Last day to file Administrative Claim	Date of filing of Administrative Claim	Exhibit
8542	January 1 to March 31, 2010 (3rd Qtr)	March 31, 2010	March 31, 2012	March 30, 2012	"Y"[30]
8577	April 1 to June 30, 2010 (4th Qtr)	June 30, 2010	June 30, 2012	June 29, 2012	"AA"[31]

Anent petitioner's judicial appeal, the applicable provision is Section 11 of Republic Act No. (RA) 1125,[32] as amended by RA No. 9282,[33] which provides the

[30] Docket, p. 862.
[31] Docket, p. 868.
[32] An Act Creating the Court of Tax Appeals.
[33] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No.1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

period of limitation within which to appeal before this Court, in relation to Section 112(C) of the NIRC of 1997, as amended, to wit:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*– Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal should be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, **from the expiration of the period fixed by law to act thereon.** xxx"(Emphasis supplied)

Aside from the mandate of the foregoing provision that a Petition for Review must be filed with this Court within thirty (30) days from the receipt of the decision or ruling, or the expiration of the period fixed by law to act thereon, such as the period under Section 112(C) of the NIRC of 1997, as amended, the mandatory nature of the periods provided under Section 112(C) was upheld in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[34] where the High Court said:

> "To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the **120+30 day mandatory and jurisdictional periods**. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as **mandatory and jurisdictional**." (Emphasis supplied)

In the case of *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue,*[35] the Supreme Court, in applying the ruling in the *San Roque* case, provided a Summary of Rules on Prescriptive Periods involving VAT as a

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[34] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[35] G.R. Nos. 193301 and 194637, March 11, 2013.

guide on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT as provided in Section 112 of the NIRC of 1997, to wit:

> (1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
>
> (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
>
> (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
>
> (4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

Considering the foregoing, taxpayer-claimants only have a period of thirty (30) days from the expiration of the 120-day period of inaction of the BIR Commissioner to file its judicial claim with this Court, with the exception of claims made during the effectivity of BIR Ruling No. DA-489-03 (from December 10, 2003 to October 5, 2010). Failure to do so, the judicial claim shall prescribe.

It is equally noteworthy that the non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level. This Court consistently ruled in several CTA *En Banc* cases, one of which is the case of *Commissioner of Internal Revenue v. Toledo Power Company,*[36] that:

> "In a VAT refund case such as the present case, **the alleged non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level** as held in several CTA *En Banc* cases one of which is *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.* It will not

[36] CTA EB No. 589, Resolution dated January 12, 2011.

bar the CTA from receiving, evaluating, and appreciating evidence submitted before it. **Once the claim for refund has been elevated to the CTA, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court**." (Emphasis supplied)

In the consolidated case of *Team Sual Corporation (formerly: Mirant Sual Corporation) v. Commissioner of Internal Revenue, and Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation),*[37] the Court *En Banc* explained that **the completeness of documents to support a claim is determined by the taxpayer**. It is the duty of the BIR, under Section 112(C) of the NIRC of 1997, to act on the claim within the 120-day period from the date of submission of complete documents. Should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not, to submit any document at all, in support of its application for refund or tax credit certificate under Section 112 of the NIRC of 1997, it is reasonable and logical to conclude that **the reckoning date of the 120-day period thereunder, should be reckoned from the filing of the said application**.

Applying the foregoing discussion to the facts of this case, it appears that petitioner's judicial claims for refund filed on September 7, 2012 and November 23, 2012 were filed before the lapse of the 30-day period provided under Section 112(C) of the NIRC of 1997, as amended, detailed as follows:

CTA Case No.	Period Covered	Date filing of Administrative Claim	Date of Submission of additional requirements	End of 120-day period	End of 30 days	Date of Filing of Judicial Claim
8542	January 1 to March 31, 2010 (3rd Qtr)	March 30, 2012[38]	May 3, 2012[39]	August 31, 2012	September 30, 2012	September 7, 2012
8577	April 1 to June 30, 2010 (4th Qtr)	June 29, 2012[40]		October 27, 2012	November 26, 2012	November 23, 2012

After establishing the timeliness of the petition, the Court shall now determine petitioner's compliance with the remaining requisites.

For the third and fourth quarters of fiscal year ending June 30, 2010, petitioner allegedly exported 100% of its processed gold and silver ore and

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[37] CTA EB Nos. 649 and 651, Resolution dated March 21, 2012.
[38] Exhibit "Y", docket, p. 862.
[39] Exhibit "Z", docket, p. 867.
[40] Exhibit "AA", docket, p. 868.

generated sales therefrom in the respective amounts of ₱1,943,817,077.47[41] and ₱2,181,389,239.39[42] or in the sum of ₱4,125,206,316.86. These sales were purportedly paid for in foreign currency and duly accounted for based on the rules and regulations of the *Bangko Sentral ng Pilipinas*. Petitioner posits that such export sales are subject to zero percent (0%) VAT under 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.* –
>
> 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);"

Based on the afore-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present:

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

Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, provide that a VAT

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[41] Exhibit "D".
[42] Exhibit "E".

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 **VAT invoice** 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);
>
> (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 **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> xxx xxx xxx
>
> (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and" *(Emphasis supplied)*
>
> "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

xxx xxx xxx

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:

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;" (Emphasis supplied)

In accordance with the above-quoted provisions, any VAT-registered person claiming VAT zero-rating on direct export sales must present at least three (3) types of documents, to wit:

1. the sales invoice as proof of sale of goods;
2. the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and

3. the 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.

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

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

As evidenced by its BIR Certificate of Registration,[43] petitioner is a VAT-registered entity. While petitioner submitted before this Court documents such as sales invoices,[44] official receipts,[45] schedule of export sales,[46] and Certification[47] from Hong Kong and Shanghai Banking Corporation Limited (HSBC), the same do not fully substantiate its alleged export sales for the third and fourth quarters of fiscal year ending June 30, 2010, since petitioner failed to submit export documents such as export declarations and bills of lading or airway bills. Moreover, it was noted that the foreign currency remittances indicated in the HSBC Certification do not reconcile with those reflected in the invoices and official receipts issued by petitioner to its clients for the third and fourth quarters of fiscal year ending June 30, 2010. Thus, it cannot be ascertained whether such foreign currency remittances actually pertain to petitioner's export sales for the subject period of claim. Considering so, petitioner's alleged export sales for the third and fourth quarters of fiscal year ending June 30, 2010 in the aggregate amount of ₱4,125,206,316.86 cannot qualify for VAT zero-rating. Consequently, the alleged input VAT incurred by petitioner for the third and fourth quarters of fiscal year ending June 30, 2010 in the aggregate amount of ₱42,967,020.74 cannot be refunded.

Jurisprudence dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[48]

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[49]

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[43] Exhibit "B".
[44] Exhibits "C" to "C-23".
[45] Exhibits "CC" to "CC-41", docket, pp. 873-894.
[46] Exhibits "BB" to "BB-1", docket, pp. 869-872.
[47] Exhibit "DD", docket, p. 895.
[48] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013, citing *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

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

On the basis of the foregoing, petitioner's claim for refund or issuance of tax credit certificate for unutilized input tax attributable to zero-rated sale of goods in the aggregate amount of ₱42,967,020.74 for the third and fourth quarters of fiscal year ending June 30, 2010 would be denied due to insufficiency of evidence.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
Associate Justice
Chairperson

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[49] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999; *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., et al.*, G.R. No. L-68252, May 26, 1995.