REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HINATUAN MINING CORPORATION, Petitioner,	**CTA CASE NO. 9092**
	Members:
-versus-	**Castañeda, Jr.,** *Chairperson,* **Casanova,** *and* **Manahan,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 0 3 2017 3:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case involves a Petition for Review[1] filed by Hinatuan Mining Corporation to seek the refund of the amount of Three Million Five Hundred Seven Thousand Three Hundred Ten and 83/100 Pesos (₱3,507,310.83), allegedly representing its excess and unutilized input value-added tax (VAT) on purchases of capital goods exceeding ₱1 Million which was amortized in the third and fourth quarters of calendar year (CY) 2013.

[1] Petition for Review, Docket, pp. 12-25.

THE FACTS

Petitioner Hinatuan Mining Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig City.[2] It is registered with the Bureau of Internal Revenue (BIR) as a VAT entity with Certificate of Registration No. OCN 8RC0000042880 dated June 30, 1994,[3] and with the Board of Investments (BOI) as an export producer of beneficiated nickel ores with BOI Certificate of Registration No. 80-1193 issued on October 6, 1980.[4]

Petitioner is likewise registered with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 88919, and with the following stated primary purpose:[5]

> "To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals, and minerals and the products and by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims and to conduct all business appertaining thereto; to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage, to mine and market any mineral or other products that may be

[2] Par. 1, Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 98.
[3] Par. 3, Stipulated Facts, JSFI, Docket, p. 100.
[4] Par. 4, Stipulated Facts, JSFI, Docket, p. 100.
[5] Par. 5, Stipulated Facts, JSFI, Docket, pp. 99-100.

found in or on such lands, and to explore, work, exercise, develop or turn to account the same; and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, coke ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations."

On the other hand, respondent is the duly appointed Commissioner of the BIR, vested with authority to exercise the functions of said office, including, *inter alia,* the power to decide 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) of 1997, as amended, or other laws administered by the BIR under Section 4 of the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On February 11, 2015, petitioner filed with the BIR Large Taxpayers Service an administrative claim for refund of excess/unutilized input VAT for the third and fourth quarters of CY 2013 in the total amount of ₱4,662,142.56.[6]

[6] Exhibits "P-2" and "P-3".

On June 29, 2015, respondent denied petitioner's administrative claim for refund.[7]

Hence, this instant Petition for Review was filed before the Court on July 13, 2015.

Respondent filed his Answer[8] on August 4, 2015, interposing the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of ₱3,507,310.83 allegedly representing excess/unutilized VAT input taxes which have not been allegedly utilized and which were allegedly amortized in the 3rd and 4th quarters of the calendar year 2013 was not properly documented.
>
> 6. 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.
>
> 7. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R.* 145526, *16 March 2007*:
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> xxx xxx xxx

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[7] Exhibit "P-9".

[8] Docket, pp. 42-49.

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:

xxx xxx xxx

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:

xxx xxx xxx

Far from complying with the checklist of requirements, petitioner merely stated that it submitted complete documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case because the law already acknowledges it is entitled to a refund. Thus, it merely has to substantiate the export sales and the excess/unutilized amount of input taxes attributable to the said export sales. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people (***Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690***). Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with a condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R. SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

> Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

A Notice of Pre-Trial Conference was issued by this Court on August 6, 2015, setting the case for pre-trial conference on September 17, 2015.[9] Accordingly, respondent's Pre-Trial Brief[10] was filed on August 27, 2015; while petitioner's Pre-Trial Brief[11] was filed on September 11, 2015.

Pre-trial conference ensued. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[12] on September 28, 2015. On October 9, 2015, the Court issued a Pre-Trial Order[13] adopting the parties' joint stipulations and terminating the pre-trial.

Upon petitioner's motion,[14] the Court commissioned Ms. Maria Gracia L. Morfe as the Independent Certified Public Accountant (ICPA) for the case.[15]

During trial, petitioner presented (1) Mr. Fernando P. Cruz[16] – its Assistant Vice-President for Finance and Administration; and, (2) Ms. Maria Gracia L. Morfe[17] – the ICPA, as its witnesses.

Petitioner filed its Formal Offer of Evidence[18] on March 7, 2016.

In the Resolution[19] dated April 20, 2016, the Court admitted all of petitioner's evidence. gr

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[9] Docket, pp. 55-56.
[10] Docket, pp. 51-53.
[11] Docket, pp. 58-66.
[12] Docket, pp. 98-104.
[13] Docket, pp. 105-109.
[14] Motion to Commission an Independent CPA filed on September 22, 2015, Docket, pp. 87-89.
[15] Minutes of the Hearing dated October 28, 2015, Docket, p. 127.
[16] Minutes of the Hearing dated October 28, 2015, Docket, p. 127.
[17] Minutes of the Hearing dated January 20, 2016, Docket, p. 227.
[18] Docket, pp. 232-256.
[19] Docket, pp. 444-445.

On the other hand, respondent presented Ms. Thelma O. Pilar[20] as its witness, and filed its Formal Offer of Evidence[21] on July 18, 2016.

In the Resolution[22] dated September 9, 2016, the Court likewise admitted all of respondent's evidence.

The case was submitted for decision on November 28, 2016,[23] considering respondent's Memorandum[24] filed on October 11, 2016 and petitioner's Memorandum[25] filed by registered mail on November 15, 2016 and received by this Court on November 24, 2016.

THE ISSUE

The parties submitted the following issue[26] for this Court's resolution:

> Whether or not petitioner is entitled to the refund of its excess VAT input taxes of Three Million Five Hundred Seven Thousand Three Hundred Ten and 83/100 Pesos (₱3,507,310.83) on its purchases of capital goods exceeding ₱1 Million corresponding to the portion which was amortized in the third and fourth quarters of CY 2013.

THE COURT'S RULING

Pertinent to the resolution of the instant case are Sections 112(A) and (C) of the Tax Code, which provide:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* – *fe*

[20] Minutes of the Hearing dated July 18, 2016, Docket, p. 459.
[21] Docket, pp. 461-465.
[22] Docket, pp. 469-470.
[23] Docket, p. 500.
[24] Docket, pp. 471-476.
[25] Docket, pp. 483-498.
[26] Issues, JSFI, Docket, p. 100.

(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: *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.

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."

Based on the provisions above, in order to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period;
3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

The Court shall first resolve the question of timeliness of the filing of petitioner's claim for refund to determine whether this Court has acquired jurisdiction over the case.

Petitioner timely filed its administrative and judicial claims for refund or tax credit

Pursuant to Section 112(A) of the NIRC of 1997, as amended, 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.

Considering that the subject claim covers the third and fourth quarters of CY 2013, which closed on September 30, 2013 and December 31, 2013, respectively, petitioner had until September 30, 2015 and December 31, 2015 within which to file its administrative claim. Evidently, petitioner timely filed its administrative claim for refund or tax credits on February 11, 2015.[27]

[27] Exhibits "P-2" and "P-3", BIR Records, Folder II, pp. 433 and 429.

As to the timeliness of petitioner's judicial appeal, Section 112(C) of the Tax Code provides that the CIR has one hundred twenty (120) days from the date of submission of the complete documents in support of the application for refund or TCC within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days.

However, starting June 21, 2014 when Revenue Memorandum Circular (RMC) No. 54-2014 took effect, the 120-day period shall be reckoned from the date the administrative claim was filed. The RMC also required the taxpayer-claimant to submit complete supporting documents at the time of filing the claim.

At this point, it is relevant to refer to the pronouncement of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*.[28] In the said case, the Supreme Court held that RMC No. 54-2014 mandates that the application for VAT refund or tax credit must be accompanied by complete supporting documents, and a statement under oath attesting to the completeness of the submitted documents, which are the only documents the taxpayer will present to support the claim; that upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted or required from the taxpayer in the course of its evaluation and a decision shall be rendered by the BIR Commissioner based only on the documents submitted by the taxpayer, to wit:

> "It bears mentioning at this point that the foregoing summation of the rules <u>*should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014,*</u> such as the claim at bench. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:
>
> > The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in

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[28] G.R. No. 207112, December 8, 2015.

> Annex 'A' hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."

Inasmuch as the claim was filed on February 11, 2015, or after June 11, 2014, the rules under RMC No. 54-2014 shall apply. ge

Records show that petitioner submitted its supporting documents per the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund labeled as Annex "A"[29] upon the filing of its administrative claim on February 11, 2015 and executed a Sworn Certification[30] attesting to the completeness of the submitted documents.

Accordingly, respondent had 120 days from February 11, 2015, or until June 11, 2015 to decide on petitioner's claim. Considering that respondent did not act on petitioner's claim on or before June 11, 2015, the latter had until July 13, 2015,[31] the last day of the 30-day period, within which to file its appeal before this Court. Hence, petitioner's judicial claim filed on July 13, 2015 is within the period prescribed by law.

The Court shall now discuss petitioner's compliance with the other requisites.

Petitioner is a VAT-registered entity

Indubitably, petitioner is registered with the BIR as a VAT entity with Certificate of Registration No. OCN 8RC0000042880 dated June 30, 1994 and with Tax Identification Number 000-160-134-000.[32]

Petitioner had zero-rated or effectively zero-rated sales

In its Quarterly VAT Returns for CY 2013, petitioner declared zero-rated sales in the total amount of ₱3,443,481,180.55 of which the total amount of ₱2,122,377,654.36 pertains to the third and fourth quarters of 2013, as shown below:

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[29] BIR Records, Folder II, p. 431.
[30] Exhibit "P-13", Docket, p. 361.
[31] July 11, 2015 being a Saturday.
[32] Par. 3, Stipulated Facts, JSFI, Docket, p. 100; Exhibit "P-520", ICPA Report, Folder 2 of 18.

Exhibit	Period Covered	Zero-rated Sales
P-129	1st Quarter 2013	₱ 55,683,609.20
P-138	2nd Quarter 2013	1,265,419,916.99
	subtotal	*₱ 1,321,103,526.19*
P-147	3rd Quarter 2013	₱ 1,296,782,099.26
P-156	4th Quarter 2013	825,595,555.10
	subtotal	*₱ 2,122,377,654.36*
	Total	**₱3,443,481,180.55**

Petitioner asserts that, as a VAT-registered entity whose export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, its sales are subject to zero percent (0%) rate pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "SEC. 106. *Value-added Tax on Sale of Goods or Properties.* –
>
> **(A)** ***Rate and Base of Tax.*** **–**
>
> 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);
>
> xxx xxx xxx"

Based on the above 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 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); *Jr*

(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

xxx xxx xxx" *(Underscoring 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;

xxx xxx xxx"
(Underscoring supplied)

Aside from the above-stated requirements, the invoice or receipt must be duly registered with the BIR as prescribed under Sections 237 and 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." *(Underscoring supplied)*

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

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

xxx xxx xxx"

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;
2. 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. 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. 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 words "zero-rated" and the taxpayer's TIN-VAT number.

In support of its declared zero-rated sales for the third and fourth quarters of 2013, petitioner presented various export sales documents,[33] such as invoices, bank debit advice, bills of lading and/or

[33] Exhibits "P-3577" to "P-4800".

export declarations, statement of facts, outward foreign manifest and clearance vessel to a foreign port for selling of ore, as well as the official receipts[34] issued to BOI-registered entities, which were examined by the Court-commissioned ICPA.

Based on the ICPA's report, petitioner's zero-rated sales were derived from the following zero-rated activities:[35]

Export Sale of Ore	₱ 3,438,856,117.00
Rental Income subject to Zero rated VAT	4,625,063.00
Sub-total	***₱3,443,481,180.00***
Despatch income subject to Zero rated VAT	16,044,762.00
Total	**₱3,459,525,942.00**

The Court noted that the zero-rated sales accounted by the ICPA is greater than that declared by petitioner in its Quarterly VAT Returns by ₱16,044,761.45. The ICPA disclosed that the difference pertains to despatch income incidental to its zero-rated export sale of ores and pertains to an additional payment made by the buyer of the ores when the ore shipment is loaded within the allowable lay time. The said amount was not reflected in petitioner's VAT returns as zero-rated sales.[36]

Moreover, the Court found that out of the total declared amount of ₱3,438,856,117.00[37], the export sales of ore pertaining to the third and fourth quarters of CY 2013, which were duly substantiated by supporting documents, amounted to ₱1,294,107,349.12 and ₱801,480,939.32, respectively, or in the aggregate amount of ₱2,095,588,288.44, as detailed below:

2013	BUYER	Provisional Invoice	Final Invoice	US$	PESOS
FIRST QUARTER					
3/29/2013	Minecore Resources Inc.	P-4664	P-4662	1,430,617.50	58,369,194.00
	sub-total				***58,369,194.00***
SECOND QUARTER					
4/5/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3580	P-3578	1,388,200.00	57,138,312.00
4/10/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3601	P-3599	1,270,500.00	52,179,435.00
4/28/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3620	P-3617	1,422,131.88	58,620,276.09
5/2/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3638	P-3636	1,338,775.60	54,956,738.38

[34] Exhibits "P-4823" to "P-4826".
[35] Exhibit "P-4,945", p. 8; Docket, p. 381.
[36] Exhibit "P-4,945", p. 11; Docket, p. 384.
[37] With a discrepancy of ₱0.03 due to rounding off.

5/19/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3657	P-3655	1,055,101.40	43,464,902.17
5/25/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3676	P-3673	1,319,450.00	54,882,522.75
6/15/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3695	P-3691	1,234,143.00	52,833,661.83
6/18/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3713	P-3711	1,270,848.45	54,805,339.41
6/23/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3731	P-3729	1,294,016.20	56,574,388.26
4/18/2013	DH Kingstone Holding Co., Ltd.	P-4115	P-4113	202,898.50	8,363,476.17
4/19/2013	DH Kingstone Holding Co., Ltd.	P-4132	P-4130	1,197,057.25	49,169,126.55
4/26/2013	DH Kingstone Holding Co., Ltd.	P-4149	P-4147	1,346,286.00	55,493,908.92
5/9/2013	DH Kingstone Holding Co., Ltd.	P-4167	P-4165	1,189,752.00	48,613,266.72
5/16/2013	DH Kingstone Holding Co., Ltd.	P-4185	P-4183	1,343,100.00	55,369,297.50
5/24/2013	DH Kingstone Holding Co., Ltd.	P-4204	P-4202	1,359,600.00	56,552,562.00
6/2/2013	DH Kingstone Holding Co., Ltd.	P-4222	P-4220	514,033.41	21,723,051.91
6/27/2013	DH Kingstone Holding Co., Ltd.	P-4237	P-4235	1,239,700.00	53,840,171.00
5/7/2013	Grand Overseas Economic Development Co., Ltd.	P-4418	P-4416	1,396,450.00	57,072,911.50
6/6/2013	Grand Overseas Economic Development Co., Ltd.	P-4433	P-4431	1,371,700.00	57,803,438.00
5/7/2013	Grandpop International Ltd.	P-4505	P-4503	1,405,173.00	57,429,420.51
6/10/2013	Grandpop International Ltd.	P-4524	P-4522	1,353,000.00	57,881,340.00
5/15/2013	Hyss Holdings Limited	P-4543	P-4541	1,189,608.00	49,011,849.60
6/1/2013	Hyss Holdings Limited	P-4560	P-4558	1,268,599.50	53,611,014.87
5/28/2013	Minecore Resources Inc.	P-4684	P-4682	1,441,440.00	60,468,408.00
6/27/2013	Minecore Resources Inc.	P-4702	P-4700	1,313,373.60	57,039,815.45
	sub-total				***1,284,898,634.59***
THIRD QUARTER					
7/8/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3751	P-3747	1,263,328.65	55,270,628.44
7/17/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3773	P-3769	1,171,920.51	50,837,911.72
7/19/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3792	P-3790	1,115,490.00	48,356,491.50
8/12/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3810	P-3808	1,089,936.19	47,592,063.74
8/15/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3833	P-3829	1,156,302.24	50,634,475.09
8/21/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3853	P-3850	1,148,160.00	50,105,702.40
8/31/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3870	P-3867	1,138,365.05	50,776,773.05
9/17/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3889	P-3885	1,185,878.98	51,763,617.48
9/21/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3907	P-3905	1,139,784.36	49,073,415.62
9/24/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3924	P-3922	1,196,114.22	51,875,473.72
9/26/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3943	P-3941	1,197,774.00	51,803,725.50
7/13/2013	DH Kingstone Holding Co., Ltd.	P-4254	P-4252	1,224,894.00	53,160,399.60
7/25/2013	DH Kingstone Holding Co., Ltd.	P-4274	P-4272	1,215,155.76	52,670,926.42
7/30/2013	DH Kingstone Holding Co., Ltd.	P-4291	P-4289	1,206,700.00	52,376,813.50
8/28/2013	DH Kingstone Holding Co., Ltd.	P-4309	P-4307	1,187,450.00	53,138,387.50
9/5/2013	DH Kingstone Holding Co., Ltd.	P-4326	P-4324	1,157,575.65	51,552,631.58
9/12/2013	DH Kingstone Holding Co., Ltd.	P-4343	P-4341	1,285,838.80	56,435,464.94
9/15/2013	DH Kingstone Holding Co., Ltd.	P-4363	P-4361	1,346,235.91	59,045,907.01
8/6/2013	Grand Overseas Economic Development Co., Ltd.	P-4450	P-4448	1,152,505.80	50,180,102.53
9/1/2013	Grand Overseas Economic Development Co., Ltd.	P-4466	P-4464	1,170,290.88	52,200,824.70
8/5/2013	Hyss Holdings Limited	P-4578	P-4576	1,174,925.34	51,074,004.53
7/11/2013	Max Pine International Ltd.	P-4643	P-4641	1,256,112.00	54,414,771.84
9/6/2013	Minecore Resources Inc.	P-4722	P-4720	1,199,000.00	53,331,520.00
8/17/2013	Sumitomo Metal Mining Co., Ltd.	P-4739	P-4737	963,330.93	42,039,761.79
7/5/2013	Suzhou Moral Hill Minerals Co., Ltd.	P-4756	P-4754	1,253,353.80	54,395,554.92
	sub-total				***1,294,107,349.12***
FOURTH QUARTER					
10/3/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3960	P-3958	1,332,100.00	57,386,868.00
10/6/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3978	P-3976	1,157,634.74	49,836,175.56
10/17/2013	Bao Steel Hongkong Trading Co., Ltd.	P-3996	P-3993	1,710,500.00	73,662,682.50

10/19/2013	Bao Steel Hongkong Trading Co., Ltd.	P-4016	P-4013	1,327,150.00	57,160,350.50
10/22/2013	Bao Steel Hongkong Trading Co., Ltd.	P-4036	P-4034	1,326,830.00	57,279,251.10
10/31/2013	Bao Steel Hongkong Trading Co., Ltd.	P-4056	P-4051	1,331,602.35	57,538,537.55
11/10/2013	Bao Steel Hongkong Trading Co., Ltd.	P-4077	P-4075	1,200,870.00	51,877,584.00
11/23/2013	Bao Steel Hongkong Trading Co., Ltd.	P-4095	P-4093	1,280,053.32	56,143,138.62
10/11/2013	DH Kingstone Holding Co., Ltd.	P-4381	P-4379	1,320,011.00	56,938,674.49
11/1/2013	DH Kingstone Holding Co., Ltd.	P-4400	P-4398	1,238,732.00	53,525,609.72
10/18/2013	Grand Overseas Economic Development Co., Ltd.	P-4486	P-4484	1,366,164.00	58,840,683.48
10/25/2013	Hyss Holdings Limited	P-4598	P-4596	1,319,792.64	56,817,073.15
11/23/2013	Hyss Holdings Limited	P-4619	P-4617	1,330,427.77	58,352,561.99
11/14/2013	Suzhou Moral Hill Minerals Co., Ltd.	P-4776	P-4774	1,288,230.20	56,121,748.66
	sub-total				***801,480,939.32***
	TOTAL				**3,438,856,117.03**

Meanwhile, the amount of ₱4,625,063.00 pertains to petitioner's alleged rental income from BOI-registered entities, Rio Tuba Nickel Mining Corporation and Taganito Mining Corp., for which petitioner offered the Certificates of Registration[38] of both Rio Tuba Nickel Mining Corporation and Taganito Mining Corp. issued by the Board of Investments, as well as the official receipts it issued to the said BOI-registered entities.

However, upon examination, the Court found that the official receipt[39] issued to Rio Tuba Nickel Mining Corporation was dated March 14, 2014, which is outside the period of claim. The official receipt[40] issued to Taganito Mining Corp., on the other hand, was a "NON-VAT", not a "ZERO-RATED", official receipt. Consequently, the said rental income cannot qualify as sales subject to zero-rating.

Verily, only the export sales of ore in the amount of ₱2,095,588,288.44 qualified for VAT zero-rating.

Petitioner had input VAT

A perusal of petitioner's VAT Returns for the third and fourth quarters of CY 2013 shows that petitioner incurred total input VAT of ₱3,626,568.80 during the said periods, of which the amount of ₱3,507,310.83 pertaining to the amortization of its capital goods exceeding ₱1Million from previous quarters and current transactions is the subject of the present claim for refund/tax credit, to wit:

[38] Exhibits "P-4806" to "P-4822".
[39] Exhibit "P-4823".
[40] Exhibit "P-4825".

Particulars	3rd Quarter (Exhibit P-147)	4th Quarter (Exhibit P-156)	Total
Input tax deferred on Capital Goods Exceeding ₱1M from previous quarter	₱ 25,783,782.98	₱ 24,294,296.32	₱ 50,078,079.30
Add: Input tax on purchase of Capital Goods exceeding ₱1M	291,321.43	-	291,321.43
Total	₱ 26,075,104.41	₱ 24,294,296.32	₱ 50,369,400.73
Less: Input tax on purchase of Capital Goods exceeding ₱1M deferred for the succeeding period	24,294,296.32	22,567,793.58	46,862,089.90
Amortization of Input tax on purchases of capital goods exceeding ₱1M	**₱ 1,780,808.09**	**₱ 1,726,502.74**	**₱ 3,507,310.83**
Add: Input taxes on current purchases			
Importation of Goods Other than Capital Goods	₱ 3,675.00	₱ 7,392.00	₱ 11,067.00
Domestic Purchase of Services	44,573.71	63,617.26	108,190.97
Total input tax on current purchases	**₱ 48,248.71**	**₱ 71,009.26**	**₱ 119,257.97**
Total input taxes for the period	**₱ 1,829,056.80**	**₱ 1,797,512.00**	**₱ 3,626,568.80**

The input VAT amortization of ₱3,507,310.83 was related to the following purchases:

Particulars	Purchase Amount	Input VAT	Amortization for the 3rd Quarter 2013	Amortization for the 4th Quarter 2013	Total Input VAT Amortization
1 Unit 2010 Subaru Forester	₱ 1,560,714.25	₱ 187,285.71	₱ 9,364.29	₱ 9,364.29	₱ 18,728.57
2010 Honda CRV 4x2	1,138,392.86	136,607.14	56,919.64		56,919.64
1 Unit Honda Accord	1,464,285.71	175,714.29	8,785.71	8,785.71	17,571.43
10 Units Volvo DT	77,169,566.67	9,260,348.00	463,017.40	463,017.40	926,034.80
1 Unit Volvo DT	5,841,508.33	700,981.00	35,049.05	35,049.05	70,098.10
1 Unit Convection Oven	1,206,633.33	144,796.00	7,239.80	7,239.80	14,479.60
1 Unit Sandvikqe340 Screen	11,377,883.33	1,365,346.00	68,267.30	68,267.30	136,534.60
1 Unit Sandvik Mobile Crusher	15,999,175.00	1,919,901.00	95,995.05	95,995.05	191,990.10
1 Unit Komatsu Hydraulic Excavator	19,045,891.67	2,285,507.00	114,275.35	114,275.35	228,550.70
12 Units Volvo DT	83,970,250.00	10,076,430.00	503,821.50	503,821.50	1,007,643.00
1 Unit Volvo Grader	7,591,925.00	911,031.00	45,551.55	45,551.55	91,103.10
1 Unit Komatsu Hydraulic	5,430,141.67	651,617.00	32,580.85	32,580.85	65,161.70
1 Unit Volvo Back	4,314,908.33	517,789.00	25,889.45	25,889.45	51,778.90
1 Unit Shantui Crawler Dozer	11,135,650.00	1,336,278.00	66,813.90	66,813.90	133,627.80
1 Unit Toyota Hi Lux	1,303,571.42	156,428.57	7,821.43	7,821.43	15,642.86
1 Unit Toyota Hi-Lux 4x4G AT	1,298,214.29	155,785.71	7,789.29	7,789.29	15,578.57
5 Units Volvo DT	36,612,458.33	4,393,495.00	219,674.75	219,674.75	439,349.50
1 Unit Toyota Hi-Ace	1,120,535.71	134,464.29	6,723.21	6,723.21	13,446.43
1 Unit 2013 Toyota Fortuner	1,307,142.86	156,857.14	5,228.57	7,842.86	13,071.43
Total			**₱1,780,808.09**	**₱1,726,502.74**	**₱3,507,310.83**

In support of its input VAT on capital goods exceeding ₱1 Million, petitioner offered in evidence various import documents and invoices. However, upon verification, the Court found that only the following purchases with corresponding input VAT amortization of ₱1,412,929.57 were duly substantiated:

Exhibit No.	Particulars	Date	Input VAT	Est. Useful Life	Monthly Amort.	No. of Mos. Amortized	Total Input VAT Amortization
Input VAT on Importations of Capital Goods exceeding ₱1Million							
P-569 to P-574	1 Unit Convection Oven	31-May-12	₱ 144,796.00	60	₱ 2,413.27	6	₱ 14,479.60
P-575 to P-580	1 Unit Sandvikqe340 Screen	30-Jun-12	1,365,346.00	60	22,755.77	6	136,534.60
P-581 to P-585	1 Unit Sandvik Mobile Crusher	30-Jun-12	1,919,901.00	60	31,998.35	6	191,990.10
P-586 to P-590	1 Unit Komatsu Hydraulic Excavator	30-Jun-12	2,285,507.00	60	38,091.78	6	228,550.70
P-598 to P-601	1 Unit Volvo Grader	1-Aug-12	911,031.00	60	15,183.85	6	91,103.10
P-602 to P-606	1 Unit Komatsu Hydraulic	10-Aug-12	651,617.00	60	10,860.28	6	65,161.70
P-607 to P-612	1 Unit Volvo Back	16-Aug-12	517,789.00	60	8,629.82	6	51,778.90
P-613 to P-619	1 Unit Shantui Crawler Dozer	31-Oct-12	1,336,278.00	60	22,271.30	6	133,627.80
P-620 to P-624	5 Units Volvo DT	30-Apr-13	4,393,495.00	60	73,224.92	6	439,349.50
	sub-total						***₱1,352,576.00***
Input VAT on Domestic Purchases of Capital Goods exceeding ₱1Million							
P-632	1 Unit Toyota Hi Lux	14-Nov-12	156,428.57	60	2,607.14	6	₱ 15,642.86
P-633	1 Unit Toyota Hi-Lux 4x4G AT	21-Dec-12	155,785.71	60	2,596.43	6	15,578.57
P-634	1 Unit Toyota Hi-Ace	21-Jun-13	134,464.29	60	2,241.07	6	13,446.43
P-635	1 Unit 2013 Toyota Fortuner	23-Jul-13	156,857.14	60	2,614.29	6	15,685.71
	sub-total						***₱ 60,353.57***
	Total						**₱1,412,929.57**

Moreover, although petitioner was able to substantiate its domestic purchases of capital goods exceeding ₱1 Million, the amortized input VAT of ₱60,353.57 is not allowable as input tax credit.

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:

> "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 RR 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

In the present case, records show that petitioner was issued a certification[41] by the BOI attesting to the fact that petitioner is a BOI-registered entity with 100% exports.

Under Section 3.4 of RMO No. 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner covering the period January 1, 2013 to December 31, 2013. On the basis of said Certification, no output tax should be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund of input VAT from the said domestic purchases.

As held by the CTA *En Banc* in the case of *Coral Bay Nickel Corp. vs. Commissioner of Internal Revenue*[42], citing the Decision of the CTA Second Division, petitioner's recourse is not against the government but against the seller who shifted to it the output VAT, to wit:

> "To allow petitioner a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enrich himself at the expense of another. *'Niguno non deue enriquecerse*

[41] Exhibits "P-8" and "P-521".
[42] CTA EB No. 403 (CTA Case No. 7022), May 29, 2009.

tortizamente condano de otr' (Ong Yong, et. al. vs. David S. Tiu, et. al., 375 SCRA 640). Said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

In instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted to it the output VAT. *Revenue Memorandum Circular No. 42-03* is clearly instructive on this matter:

> 'In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.'

Pursuant to *Revenue Memorandum Circular No. 42-03*, petitioner's recourse for those purchases of goods and services where it paid VAT is not a claim for refund against the government, or the issuance of a tax credit certificate; but to seek reimbursement of the input VAT paid from its suppliers of goods and services."

The afore-quoted ruling was affirmed by the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*,[43] holding that the proper party to seek the tax refund or credit should be the suppliers, not Coral Bay.

Consequently, only the amortized input VAT of ₱1,352,576.00 arising from importations of capital goods exceeding ₱1Million represents petitioner's valid input VAT.

The input taxes incurred or paid are attributable to zero-rated or effectively zero-rated sales; petitioner has no excess/unutilized input taxes

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

Considering that petitioner is engaged in taxable sales subject to zero percent (0%) and twelve percent (12%) rates, and its input VAT cannot be directly or entirely attributed to any of the transactions, the Court shall allocate the valid input VAT proportionately on the basis of the volume of its sales. Thus:

Period Covered	Zero-Rated Sales	VAT Sales	Total Sales
2013	**(A)**	**(B)**	**[C=(A+B)]**
3rd Quarter	₱ 1,296,782,099.26	₱ 148,697,117.59	₱ 1,445,479,216.85
4th Quarter	825,595,555.10	147,500.00	825,743,055.10
Total	**₱ 2,122,377,654.36**	**₱ 148,844,617.59**	**₱ 2,271,222,271.95**

Substantiated Input VAT attributable to:	
Zero-Rated Sales *(A/C x ₱1,352,576.00)*	₱ 1,263,934.89
VAT Sales *(B/C x ₱1,352,576.00)*	88,641.11
Total	**₱ 1,352,576.00**

Since petitioner's input VAT allocated to VATable sales in the amount of ₱88,641.11 and its VAT payment in the amount of ₱10,262,249.84 made in July 2013[44] are not enough to cover its output VAT liability for the third and fourth quarters of calendar year 2013 in the total amount of ₱17,861,354.11, the substantiated input VAT attributable to zero-rated sales in the amount of ₱1,263,934.89 shall be utilized against the remaining output VAT of ₱7,510,463.16.

It should be noted that petitioner failed to substantiate its input tax carried over from previous period in the amount of ₱8,634,678.02,[45] as well as its input VAT on purchases other than capital goods exceeding ₱1 Million during the third and fourth quarters of CY 2013. Consequently, the same cannot be credited or applied against petitioner's output VAT liability for the same period. Hence, petitioner had no excess input VAT which may be claimed for refund/TCC, as computed below: *Jr*

[44] Exhibits "P-141", Line 26, and "P-143".
[45] Exhibit "P-147", Line 20A.

Output VAT liability		
3rd Quarter	₱17,843,654.11	
4th Quarter	17,700.00	₱ 17,861,354.11
Less: Input VAT attributable to VAT Sales	88,641.11	
Payment - July 2013	₱10,262,249.84	10,350,890.95
Output VAT Still Due		₱ 7,510,463.16
Less: Input VAT attributable to zero-rated sales		1,263,934.89
Output VAT Still Due		**₱6,246,528.27**

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

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(Please refer to my Concurring and Dissenting Opinion)
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

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Second Division

HINATUAN MINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9092

Members:

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

Promulgated:
NOV 03 2017
3:50 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with my esteemed colleagues in their conclusion that a large portion of the input VAT claimed as refund should be denied on the basis of the following findings:

1. The dates of some of the official receipts offered in evidence were outside the period of the claim for refund;
2. Some of the receipts did not indicate the words "zero-rated";
3. Petitioner failed to substantiate its input tax carried over from previous period hence cannot be allowed to be credited against petitioner's VAT liability.

The above findings were a result of an astute examination of the records of the case and I commend them for their strict attention to details and their hardline adherence to the principle that claims for refund must be strictly construed against the claimant for taxes are the lifeblood of the government. am

I, however, would like to tender a different perspective on their conclusion that the petitioner is not entitled to claim its input VAT derived from the purchases made from its local suppliers based on Revenue Memorandum Order (RMO) No. 9-00 issued on March 29, 2000 and the Supreme Court ruling in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[1] where it was ruled that the taxpayer's recourse is not against the government but against the seller/supplier who shifted to it the output VAT.

The rationale behind the above theory is that RMO 9-00 grants *automatic* VAT zero-rating on sales made by VAT registered suppliers to BOI-registered entities whose products are 100% exported. Hence, if these VAT-registered suppliers pass on the output VAT they paid to these BOI-registered entities, the latter's recourse is not to claim a refund from the government but instead go after the sellers/suppliers who should not have passed on the VAT to them. This was the position affirmed by the Supreme Court in the Coral Bay case.

It is on this matter, that I humbly offer a contrary view.

First, the case of *Coral Bay Nickel Corporation vs. CIR* (Coral Bay case) is not analogous to the instant case because in the Coral Bay case, the refund involves refund of input taxes originating from sales of local suppliers to *PEZA-registered enterprises*. Coral Bay Nickel Corporation is a PEZA-registered enterprise while herein petitioner is a BOI-registered enterprise. I will not however delve on the distinct differences between these two types of entities and the types of transactions considered to be zero-rated except to say that they (PEZA registered and BOI registered) are different types of entities entitled to a different set of incentives; different conditions for availment etc. To apply the Coral Bay case unequivocally to the situation of petitioner may lead to erroneous conclusions given the stark difference in the factual milieu of both cases.

Be that as it may, the accordance of a VAT zero-rating status to sales made to BOI-registered enterprises, although called "automatic", is not altogether automatic as the term implies. The term "automatic zero-rating" merely implies that the supplier need not secure the approval of the Bureau of Internal Revenue (BIR) for the zero-rating status of its sales. Nevertheless, there are still certain conditions for the sales of

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[1] G.R. No. 190506, June 13, 2006.

goods, properties or services to be zero-rated under RMO 9-00. Section 3 of RMO 9-00 provides as follows:

> Section 3. Sales or 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 as certified by the BOI;
>
> 4) the BOI-registered buyer shall furnish each of its suppliers with a copy of the BOI Certification;
>
> 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. (italics supplied).

The BOI certification that petitioner submitted as Exhibits "P-8" and "P-521"[2] is only one out of the five conditions provided under RMO 9-00. It cannot therefore be outrightly concluded that all the sales made by its local suppliers to petitioner are zero-rated unless it is ascertained (in minute detail) that all the five conditions were met. This process would require an audit of the supplier's accounting records including its VAT returns. Hence, the local suppliers/sellers who passed on the VAT that they paid to the government to herein petitioner should not be made liable to the latter for its alleged unused or excessive input VAT as some of the sales may not have been accorded a zero-rating status.

To my mind, there is a need to de-clutter the evidentiary standards for claims for refund of a similar nature, i.e., excess input VAT attributable to zero-rated or effectively zero-rated sales and simply resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;

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[2] Decision, page 24 of 26.

3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

Additionally, if records would show that output and input taxes were paid by the local supplier and the BOI-registered entity, respectively, I humbly believe that recourse against the government by way of a claim for refund, is more legally sound than directing the claimant to seek redress from its suppliers.

The principle of *solutio indebiti* applies equally to claims for refund of taxes. Article 2154 of the Civil Code is in point thus:

> "Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

In the case of *Filinvest Development Corporation vs. CIR and CTA*[3], the Supreme Court elaborated on the principle of *solutio indebiti* as they relate to the payment of taxes, thus:

> "That no one shall unjustly enrich oneself at the expense of another is a long-standing principle prevailing in our legal system. This applies not only to individuals but to the State as well. In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*,-the Government has to restore to petitioner the sums representing erroneous payments of taxes.

In view of the foregoing, I assent to the judgment of the majority on the appreciation of evidence to substantiate petitioner's claim for refund of input VAT, subject to the reservations I so hold and expressed.

CATHERINE T. MANAHAN
Associate Justice

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[3] G.R. No. 146941, August 9, 2007.