REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FILMINERA RESOURCES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8528 & 8576

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 2 5 2015

1:10 p.m.

x- -x

AMENDED DECISION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration of the Decision dated 25 September 2014** filed on October 13, 2014 with respondent's **Comment (To Petitioner's Motion for Partial Reconsideration of the Decision dated 25 September 2014)** filed on November 5, 2014.

Petitioner seeks reconsideration of the assailed Decision dated September 25, 2014, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

In its Resolution dated December 9, 2014, the Court set the instant cases for hearing for the purpose of presenting the documents attached to petitioner's Motion for Reconsideration. Consequently, the resolution of the afore-stated motion was held in abeyance.

On January 5, 2015, respondent moved for the reconsideration of the Resolution dated December 9, 2014, which the Court denied on February 9, 2015.

On March 11, 2015, petitioner presented and orally offered the abovementioned documents and the Judicial Affidavit of Joy P. Dompor dated February 4, 2015. On even date, the Court admitted the same.

Accordingly, the Court shall now resolve the Motion for Reconsideration.

In its Motion for Reconsideration, petitioner contends that it is entitled to a refund for its unutilized input VAT during the 3rd and 4th quarters of the fiscal year ended June 30, 2010 because the transactions between petitioner and Philippine Gold Processing and Refining Corporation (PGPRC) were allegedly zero-rated. Petitioner posits that since it had not used the creditable amount or carried over the same to succeeding taxable quarters, a refund may be granted.

Petitioner also claims that the processing, milling, crushing, refining, smelting, concentrating and amalgamating of the pre-production ore and ROM would take a substantial period of time before it becomes a processed product, either a silver or gold ore. Petitioner states that this explains the difference of actual production from the actual importation of the processed products. Hence, at the time of the sale to PGPRC, petitioner cannot pass on and/or charge output Value Added Tax (VAT) to PGPRC since it is a bona fide Bureau of Investments (BOI) registered enterprise enjoying incentives that its revenues from export sales of gold and silver ores are subject to value added tax (VAT) at zero percent.

Petitioner has attached to the aforesaid motion the Certified True Copy of BOI's Certification and Certified Reproduced Copy of Tax Credit Certificate. The said documents are presented to establish that PGPRC is a BOI registered entity which had exported 100% of its total sales volume/value for the fiscal year covering July 1, 2009 to June 30, 2010 and petitioner's administrative claim for the period October 1, 2010 to December 31, 2010 was granted.

On the other hand, respondent counter-argues that the Court correctly denied the Petitions for Review for insufficiency of evidence on the ground that petitioner failed to prove by clear and convincing evidence that PGPRC exported 100% of the latter's processed gold and silver dore'.

Respondent points out that the documents attached to the abovementioned motion are not newly discovered evidence which warrants reconsideration. Respondent argues that the grant of the administrative claim for refund or the issuance of the Tax Credit Certificate for the period October 1, 2010 to December 31, 2010 is not a judicial notice that the Court can take cognizance. With regard to the Certification issued by the BOI, respondent alleges that the said certification does not prove nor validate that all PGPRC's products from January 1, 2010 to June 30, 2010 were actually exported.

After careful evaluation of the additional evidence submitted, the Court finds petitioner partially entitled to the instant claim.

In the assailed Decision, this Court ruled that under Section 112(A) of the NIRC of 1997, as amended, to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be complied with:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and

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.

As previously found by this Court, petitioner satisfactorily met the first and third requisites. Petitioner is a VAT registered entity[1] and that the administrative and judicial claims were filed within the period prescribed by law[2].

With regard to the second requisite, Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-05, as amended, provide as follows:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* - xxx
>
> 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; xxx"

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[1] Assailed Decision dated September 25, 2014, CTA Case No. 8528 docket, volume (vol.) III, p. 1451.

[2] Assailed Decision dated September 25, 2014, CTA Case No. 8528 docket, vol. III, pp. 1449-1451.

"**SEC. 4.106-5.** ***Zero-Rated Sales of Goods or Properties***. — xxx

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) **Export Sales.** — "*Export Sales*" shall mean:

xxx xxx xxx

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

xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and *Provided, finally*, **that sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.**" (*Emphasis supplied*)

Based on the afore-quoted provisions of law and regulations, this Court ruled that petitioner must comply with the following requisites in order for its sales to be considered zero-rated:

1. the taxpayer seller must be VAT-registered;
2. the buyer must be a BOI-registered manufacturer/producer; and
3. the buyer's products must be 100% exported as shown by a certification issued by the BOI. *fr*

Pursuant to such requirements, this Court previously held that petitioner failed to prove that its buyer, PGPRC, had exported 100% of its products and the PGPRC's BOI Certification merely established that the latter's products were geared for export but not all of its products were actually exported.

However, with the supplemental evidence presented by petitioner, the Court finds petitioner's sales as zero-rated. Particularly, the BOI Certification[3] dated January 27, 2010 has certified that based on the information given, PGPRC exported 100% of its total sales volume for the period January 1 to December 31, 2009, and the same has been issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled "Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales". In the same certification, it was stated that the same shall be valid from January 1 to December 31, 2010 unless sooner revoked by the BOI.

In its Quarterly VAT Returns for the third and fourth quarters of FY ending June 30, 2010, petitioner's declared zero-rated sales/receipts amounted to ₱1,467,195,511.46, broken down as follows:

Exhibit	**Period Covered**	**Zero-Rated Sales/Receipts**
F	Jan. 1, 2010 to Mar. 31, 2010	₱ 756,319,274.58
G	Apr. 1, 2010 to June 30, 2010	710,876,236.88
	Total	**₱ 1,467,195,511.46**

However, scrutiny of petitioner's supporting invoices and summaries of sales transactions discloses that the above amount of ₱1,467,195,511.46 was comprised of petitioner's ore sales to PGPRC in the amount of ₱1,466,325,511.46 and revenues from lease of land to PGPRC in the amount of ₱870,000.00, detailed as follows:

Exh.	**Invoice No.**	**Date**	**Ore Sales to PGPRC**		**Exh.**	**Land Lease to PGPRC**	**Total**
			In US$	**In PhP**		**In PhP**	**In PhP**

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[3] Exhibit MM, CTA Case No. 8528 docket, vol. III, pp. 1469-1470.

"JJ"	00061	1/31/2010				145,000.00	145,000.00
"JJ-1"	00062	1/31/2010	5,839,666.80	273,657,881.61	"S"		273,657,881.61
"JJ-2"	00063	2/28/2010				145,000.00	145,000.00
"JJ-3"	00064	2/28/2010	4,884,583.00	228,666,380.10	"T"		228,666,380.10
"JJ-4"	00065	3/31/2010				145,000.00	145,000.00
"JJ-5"	00066	3/31/2010	5,584,136.72	253,560,012.87	"U"		253,560,012.87
		Subtotal	**16,308,386.52**	755,884,274.58		**435,000.00**	**756,319,274.58**
"JJ-6"	00067	4/30/2010				145,000.00	145,000.00
"JJ-7"	00068	4/30/2010	4,935,943.10	220,882,466.54	"V"		220,882,466.54
"JJ-8"	00069	5/31/2010				145,000.00	145,000.00
"JJ-9"	00070	5/31/2010	5,349,467.20	249,444,585.64	"W"		249,444,585.64
"JJ-10"	00071	6/30/2010				145,000.00	145,000.00
"JJ-11"	00072	6/30/2010	5,161,814.29	240,114,184.71	"X"		240,114,184.71
		Subtotal	**15,447,224.59**	710,441,236.88		**435,000.00**	**710,876,236.88**
		Total	**31,755,611.11**	**1,466,325,511.46**		**870,000.00**	**1,467,195,511.46**

Nevertheless, the amount of ₱870,000.00 revenues derived by petitioner from its lease of land to PGPRC, cannot be considered as zero-rated export sales of goods under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of RR No. 16-05. Thus, the same shall be disallowed.

Therefore, out of the total amount of ₱1,467,195,511.46 zero-rated sales/receipts declared by petitioner in its Quarterly VAT Returns for the third and fourth quarters of FY ending June 30, 2010, only the amount of ₱1,466,325,511.46 representing petitioner's ore sales to PGPRC for the same period is subject to zero percent (0%) VAT.

The Court shall now determine whether petitioner incurred input taxes in connection with its zero-rated sales of ₱1,466,325,511.46 and if such input taxes were not applied against any output VAT liability of petitioner.

As reflected in its Quarterly VAT Returns for the third and fourth quarters of FY ending June 30, 2010, petitioner incurred input VAT in the amounts of ₱58,490,679.34 and ₱56,764,417.06, respectively, totalling ₱115,255,096.40, broken down as follows:

Input VAT on:	**3rd Quarter** *(Exhibit "F")*	**4th Quarter** *(Exhibit "G")*	**Total**
Domestic Purchases	₱ 907,344.32	₱1,490,493.07	₱2,397,837.39

of Goods other than Capital Goods			
Domestic Purchase of Services	57,583,335.02	55,273,923.99	112,857,259.01
	₱58,490,679.34	**₱56,764,417.06**	**₱115,255,096.40**

In support of the aforesaid input VAT, petitioner submitted various suppliers' invoices and official receipts, which were all examined by the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Clifford E. Chua. In his report dated May 3, 2013, Mr. Chua accounted for petitioner's input VAT claim but in the higher amount of ₱115,262,920.22 as follows:

Findings	**Amount**	**Exhibit**
Third Quarter of Fiscal Year 2010		
Purchases with appropriate supporting documents	₱ 56,543,664.46	I to I-510
Exceptions Noted		
Summary of Input VAT on local purchases without proper supporting documents	₱ 1,618,186.80	I-511 to I-803
Summary of official receipts where Input VAT on local purchases with supporting documents not containing customer's TIN	46,433.42	I-804 to I-817
Summary of official receipts where the computation of Input VATon local purchases is erroneous	18,856.27	I-818 to I-821
Summary of Input VAT outside the period of claim	119,425.63	I-822 to I-852
Summary of Input VAT amount in words not indicated	126,084.62	I-853 to I-859
Total Exceptions Noted	₱ 1,928,986.74	
Total Input VAT for the 3rd Quarter of FY 2010	**₱58,472,651.20**	
Fourth Quarter of Fiscal Year 2010		
Purchases with appropriate supporting documents	₱ 55,292,787.02	J to J-602
Exceptions Noted		
Summary of Input VAT on local purchases without proper supporting documents	₱ 1,320,108.09	J-603 to J-691
Summary of official receipts where the computation of Input VAT on local purchases is erroneous	6,300.00	J-692
Not in the name of the company	49,200.00	J-693 to J-694
Summary of Input VAT on local purchases that	14,021.14	J-695 to J-

were disallowed due to noted alterations in the supporting documents		698
Summary of Input VAT outside the period of claim	105,574.27	J-699 to J-726
Summary of Input VAT amount in words not indicated	2,278.50	J-727 to J-730
Total Exceptions Noted	₱ 1,497,482.00	
Total Input VAT for the 4th Quarter of FY 2010	**₱56,790,269.02**	
Total Input VAT for the 3rd & 4th Quarters of FY 2010	**₱115,262,920.22**	

Upon scrutiny of the ICPA's report together with petitioner's supporting documents, the Court finds that aside from the input VAT of ₱1,928,986.74 and ₱1,497,482.00 excepted by the ICPA for the third and fourth quarters of FY 2010, the following input taxes in the amounts of ₱153,232.76 and ₱29,608.71 for the same taxable quarters, respectively, shall be disallowed for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-2005, as amended, detailed as follows:

Exhibit	OR/Invoice No.	Supplier	Input VAT 3rd Quarter	Input VAT 4th Quarter
Input VAT on domestic purchases of services supported by documents other than VAT official receipts				
I-17	3733/2106	Astron Communication Systems	₱ 10,232.14	₱ -
I-18	2057	Astron Communication Systems	71,322.86	-
I-19	2083	Astron Communication Systems	17,830.71	-
I-20	2066	Astron Communication Systems	8,105.36	-
I-22	2106	Astron Communication Systems	1,836.00	-
I-23	2104	Astron Communication Systems	1,260.00	-
I-370	PWKOR 000116951	PLDT	960.00	-
I-371	PWKOR 000116955	PLDT	151.09	-
I-407	1087	Santiago & Sons Metal & Services	6,825.00	-
J-13	2116	Astron Communication Systems	-	5,200.71
J-118	2287	Geotecnica Corporation	-	23,400.00
		Subtotal	**₱118,523.16**	**₱ 28,600.71**
Input VAT on domestic purchases of goods other than capital goods supported by documents other than VAT invoices.				
I-24	3734	Astron Communication Systems	₱ 5,732.14	₱ -

I-229	601	Hexad Sign Specialist	830.02	-
I-490	2810	Straight Forward Enterprises	520.71	-
I-508	324221	U-Bix Corporation	972.00	-
I-509	47701	Wyler Enterprises Inc.	8,142.86	-
I-510	47701	Wyler Enterprises Inc.	4,320.00	-
J-411	5656	Scuba World, Inc.	-	1,008.00
		Subtotal	**₱ 20,517.73**	**₱ 1,008.00**
Input VAT claim is higher than the amount reflected in the official receipt				
I-67 to I-83	118931	First United Travel, Inc.		
		Input VAT per claim 2,040.00		
		Input VAT per O.R. 1,320.00		
		Over-claim 720.00	₱ 720.00	-
I-175	11510	Full Support Enterprise		
		Input VAT per claim 40,178.57		
		Input VAT per O.R. 26,974.66		
		Over-claim 13,203.91	13,203.91	-
I-176	11543	Full Support Enterprise		
		Input VAT per claim 951.96		
		Input VAT per O.R. 684.00		
		Over-claim 267.96	267.96	-
		Subtotal	**₱ 14,191.87**	
Total Additional Disallowances per this Court's further verification			**₱153,232.76**	**₱ 29,608.71**

Therefore, out of petitioner's input VAT claim for the third and fourth quarters of FY 2010 in the amount of ₱115,255,096.40, only the amount of ₱111,645,786.19 represents petitioner's valid input tax, tabulated herein below:

	3rd Quarter	4th Quarter	Total
Input VAT Claimed	₱ 58,490,679.34	₱ 56,764,417.06	₱ 115,255,096.40
Less: Disallowances			
a) Per ICPA Report	₱ 1,928,986.74	₱ 1,497,482.00	₱ 3,426,468.74
b) Per this Court's findings	153,232.76	29,608.71	182,841.47
	₱ 2,082,219.50	₱ 1,527,090.71	₱ 3,609,310.21
Valid Input VAT	**₱56,408,459.84**	**₱55,237,326.35**	**₱111,645,786.19**

Since petitioner's sales for the third and fourth quarters of FY ending June 30, 2010 were all made to PGPRC, the substantiated input VAT of ₱111,645,786.19 is entirely attributable thereto. However, as previously stated, petitioner had receipts from lease of land for the same period in the amount of ₱870,000.00, hence, only the input VAT of ₱111,579,541.76 can be attributed to petitioner's zero-rated sales of ₱1,466,325,511.46, computed as follows:

	3rd Quarter	4th Quarter	Total
Valid Input VAT	**₱56,408,459.84**	**₱55,237,326.35**	**₱111,645,786.19**
Allocated to			
Zero-Rated Sales	₱ 755,884,274.58	₱ 710,441,236.88	₱1,466,325,511.46
Lease of Land	435,000.00	435,000.00	870,000.00
Total	₱ 756,319,274.58	₱ 710,876,236.88	₱1,467,195,511.46
Allocation Factor			
Zero-Rated Sales	99.9424846%	99.9388079%	
Lease of Land	0.0575154%	0.0611921%	
Input VAT Attributable to Zero-Rated Sales	**₱56,376,016.29**	**₱55,203,525.47**	**₱111,579,541.76**

As to whether or not the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Returns[4] for the subject period of claim showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. In addition, petitioner's reported unutilized input taxes for the third and fourth quarters of FY 2010 in the respective amounts of ₱58,940,679.34[5] and ₱56,764,417.06[6] were deducted as "VAT Refund/TCC claimed" in the Quarterly VAT Returns for the same taxable quarters preventing the carry-over or application of such input taxes in the next taxable quarter/s.

WHEREFORE, petitioner's **Motion for Reconsideration of the Decision dated 25 September 2014** is **PARTIALLY GRANTED.** Accordingly, the assailed Decision promulgated on September 25, 2014 is hereby **AMENDED** to read as follows:

> "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of

[4] Exhibits "F" and "G", line 15B.
[5] Exhibit "F", line 23D.
[6] Exhibit "G", line 23D.

petitioner in the amount of ₱111,579,541.76, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ending June 30, 2010."

SO ORDERED.

Juanito C. Castañeda, Jr.
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 Amended 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 Amended 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