REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO MINING CORPORATION, Petitioner,	**CTA Case No. 8822**
	Members:
	CASTAÑEDA, JR., *Chairperson,* **CASANOVA,** and **COTANGCO-MANALASTAS,** *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 12 2016 11:00 am

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RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Commissioner of Internal Revenue's ("CIR") **Motion for Partial Reconsideration (Re: Amended Decision promulgated 20 May 2016)**[1] filed on May 30, 2016 with Taganito Mining Corporation's ("Taganito") **Comment (To Respondent's Motion for Partial Reconsideration dated 20 May 2016)**[2] filed via registered mail on July 19, 2016 and CIR's **Reply (Re: Comment to Motion for Partial Reconsideration of the Amended Decision dated 20 May 2016)**[3] filed on August 1, 2016; and

[1] Docket, pp. 539-562.
[2] *Ibid.*, pp. 590-592.
[3] *Id.*, pp. 594-604.

2. Taganito's **Motion for Partial Reconsideration of the May 20, 2016 Amended Decision**[4] filed via registered mail on June 8, 2016 with CIR's **Comment/Opposition (Re: Motion for Partial Reconsideration)**[5] filed on July 1, 2016.

On May 20, 2016, the Court rendered an Amended Decision[6] partially granting Taganito's claim for refund in the reduced amount of ₱14,263,324.04 the dispositive portion of which is as follows:

> "**WHEREFORE**, premises considered, petitioner's *Motion for Partial Reconsideration* is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated September 14, 2015 is amended to read as follows:
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>> '**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **FOURTEEN MILLION TWO HUNDRED SIXTY THREE THOUSAND THREE HUNDRED TWENTY FOUR PESOS AND 4/100 (₱14,263,324.04)** representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding ₱1 Million incurred during the taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.'
>
> **SO ORDERED.**"

<u>CIR's Motion for Partial Reconsideration</u>

In his Motion, the CIR claims the following: *JL*

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[4] *Id.*, pp. 565-575.
[5] *Id.*, pp. 582-589.
[6] *Id.*, pp. 528-538.

a. Taganito failed to show that its purchases of non-capital goods and services were made in the course of its trade or business;

b. Taganito failed to show that the said purchases were properly supported by VAT invoices and/or official receipts and other documents such as entries made in its subsidiary purchase journals showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the National Internal Revenue Code of 1997, as amended (1997 NIRC) as well as Section 4.104-5(a) & (b) of Revenue Regulations (RR) No. 7-95;

c. Taganito failed to prove that the input taxes of ₱22,011,331.91 allegedly paid on its purchases of goods and services, were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in (sic) the succeeding taxable quarter or quarters; and

d. There was no proof of compliance with the prescribed checklist of requirements to be submitted involving a claim for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 53-98, hence, there was no sufficient compliance with the filing of administrative claim for refund.

At the outset, it bears stressing that the foregoing arguments are, in essence, mere reiterations or rehash of the CIR's averments in his Answer filed before the Court, and which had already been sufficiently discussed and passed upon in the Court's Decision dated September 14, 2015 as well as the assailed Amended Decision dated May 20, 2016. Moreover, a perusal of CIR's Motion for Partial Reconsideration reveals that the same failed to specify which findings or conclusions by this Court in the assailed Amended Decision are alleged to be contrary to law or not supported by evidence. Accordingly, this Court finds that the CIR's Motion for Partial Reconsideration is *pro forma*.

In *Coquilla v. COMELEC*,[7] the Supreme Court enumerated the instances when a motion for reconsideration is held to be *pro forma*. The Supreme Court held that:

> "Indeed, in the cases where a motion for reconsideration was held to be pro forma, the motion was so held because (1) it was a second motion for reconsideration, or **(2) it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence,** or (3) it failed to substantiate the alleged errors, or (4) it merely alleged that the decision in question was contrary to law, or (5) the adverse party was not given notice thereof. x x x" *(Emphasis supplied and citations omitted)*

It must be emphasized that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to law or the evidence.[8] Having failed to do so, the CIR's Motion for Partial Reconsideration must necessarily fail.

<u>Taganito's Motion for Partial Reconsideration</u>

Taganito raises the following grounds[9] in its Motion for Partial Reconsideration, to wit:

A. The Amended Decision failed to fully consider the relevance of Exhibit P-1920-1 and its effect on the amount of substantiated zero-rated sales for the taxable year 2012, specifically on Invoice No. 430;

B. The Amended Decision disallowed [p]etitioner's zero-rated sale on the mere fact that the full payment for the transaction is lower than what [p]etitioner originally wanted; and

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[7] G.R. No. 151914. July 31, 2002.
[8] *Ibid.*
[9] Docket, p. 566.

C. The Amended Decision failed to consider the fact that the input taxes claimed all pertain or are attributable to [p]etitioner's sale of [o]res.

Taganito's Motion for Partial Reconsideration lacks merit.

Failure to prove that a sale has been paid for in acceptable foreign currency which has been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) disqualify the same as zero-rated sale.

The grounds identified in items A and B can be addressed by stating that failure to prove that a sale has been paid for in acceptable foreign currency which has been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) as provided by law disqualify the same as zero-rated sale.

Invoice No. 430

Taganito argues that Invoice No. 430 in the amount of USD140,250.00[10] should be allowed because the remittance of the payment thereof has been proven through the following reconciliation:[11]

Exhibit	Invoice No.	Sales in USD	Sales in PHP	Exhibit	Credit Advice in USD	Bank Charge in USD
P-442 P-444	423	1,262,250.00	53,841,273.75	P-442	624,710.00	40.00
	Advance payment			P-1920-1	637,469.00	31.00
P-443	430	140,250.00	5,982,363.75	P-443	140,250.00	
		1,402,500.00	**59,823,637.60**		**1,402,429.00**	**71.00**

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[10] Exhibit P-443.

[11] Exhibit P-1920, Annex 1 p. 1.

The Court finds the foregoing incorrect. The invoice of a particular sale transaction cannot be made proof that the same has been paid or that the payment has been inwardly remitted, as shown by Taganito, thus:

Exhibit	Invoice No.	Sales in USD	Sales in PHP	Exhibit	Credit Advice in USD
P-443	430	140,250.00	5,982,363.75	P-443	140,250.00

Further, the credit advice dated February 21, 2012 in the amount of USD637,469.00[12] cannot be considered as advance payments for Invoice No. 430, as shown hereafter:

Advance payments for Shipment No. 2012-046C		
Exhibit	**Date**	**Amount**
P-1920-1	21-Feb-12	$ 637,469.00
P-444	20-Mar-12	624,710.00
TOTAL		**$ 1,262,179.00**
Invoice No. 423 for Shipment No. 2012-46C		
P-442	23-Mar-12	$ 1,262,250.00
Difference – Bank charges		**$ 71.00**

It should be noted that the bank client advice dated February 21, 2012[13] does not indicate which shipment or invoice it pertained to. Even so, the Court considered its relevance and applied the same as payment for Shipment No. 046C. However, nothing is left of it to be applied to the remaining sales from the said shipment covered by Invoice No. 430 in the amount of USD140,250.00 which is dated April 19, 2012.[14] Thus, Taganito's reconciliation should look like the following:

Exhibit	Invoice No.	Sales in USD	Sales in PHP	Exhibit	Credit Advice in USD	Bank Charge in USD
P-442	423	1,262,250.00	53,841,273.75	P-444	624,710.00	
	Advance payment			P-1920-1	637,469.00	
Sub-total		*1,262,250.00*	*53,841,273.75*		*1,262,179.00*	*71.00*
P-443	430	140,250.00	5,982,363.75		-	
TOTAL		**1,402,500.00**	**59,823,637.60**		-	

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[12] Exhibit P-1920-1.
[13] *Id.*
[14] Exhibit P-443.

Hence, the Court correctly disallowed the zero-rated sales covered by Invoice No. 430, considering that Taganito failed to prove that such sales has been paid for in acceptable foreign currency and said payment has been accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) as provided by law.

Invoices No. 499, 500 and 501

Zero-rated sales covered by Invoices No. 499, 500 and 501 are likewise disallowed by this Court for Taganito's failure to submit bank credit advices for the foreign currency proceeds.

Taganito avers that the subject invoices should be taken as a group together with Invoice No. 502 since payment thereof was made in a single remittance amounting to USD340,022.29. Moreover, "the original contract price for the shipment was substantially reduced because of quality control issues with the buyer",[15] as evidenced by a debit memorandum issued by Taganito's customer Mount Eastern Holdings Resources in the amount of USD403,267.00. Statements of Account were also issued by Taganito in the aggregate amount of USD39,548.29, as shown below:[16]

Exhibit	Invoice	Sales in USD
P-451	501	68,714.60
P-468	499	135,408.00
P-530	500	274,388.40
P-555	502	225,230.00
	TOTAL	**703,741.00**

Exhibit	Description	Payment in USD
P-556-A; P-1920-6	Credit Advice	340,022.29
P-1920-5.1 & P-1920-5.2	Debit Memo	403,267.00
P-1920-6.1 to P-1920-6.4	Statements of Account	(39,548.29)
	TOTAL	**703,741.00**

[15] Exhibit P-1920, p. 4, Docket Vol. II, p. 483.
[16] Motion for Reconsideration of May 20, 2016 Amended Decision, Paragraph 9, Docket Vol. II, p. 569.

It is noteworthy that the credit advice in the amount of USD340,022.29 previously marked as P-556-A in Taganito's Formal Offer of Evidence is the same as the credit advice marked as P-1920-6 in Taganito's Supplemental Formal Offer of Evidence. Such payment has been applied to Invoice No. 502[17] that is why the zero-rated sale covered by the said invoice was not disallowed.

The computation presented by Taganito could be in order. Nevertheless, it should be stressed that the debit memo is crucial in the foregoing computation. However, the Court denied admission of the original computer printouts of scanned copies of the said document for not being "electronic documents" under Section 1(h) of Rules on Electronic Evidence and for Taganito's failure to lay the basis for introducing these documents as secondary evidence".[18] Hence, the Court cannot give evidentiary value to the debit memo submitted by Taganito.

The law allows and recognizes adjustments to the sales made by a taxpayer. Section 106(D) of the NIRC of 1997, as amended, provides:

> "(D) *Sales Returns, Allowances and Sales Discounts.*—**The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued.** Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given." *(Emphasis supplied)*

In *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,*[19] the Supreme Court emphasized the importance of presenting documentary and evidentiary requirements:

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[17] Exhibit P-555.
[18] Resolution dated April 4, 2016, Docket Vol. II pp. 520-525.
[19] G.R. No. 145526, March 16, 2007.

> "x x x First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a **petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit**. Second, cases filed in the CTA are litigated *de novo*. Thus, a **petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA**. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim. *(Emphasis supplied.)*

In relation thereto, it must be noted that statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[20]

Thus, an allowance granted, such as the reduction of selling price due to quality issues, may be deducted from gross sales <u>as long as it is duly supported by documentary evidence</u>. This Taganito failed to do. Alleging that the zero-rated sales covered by the subject invoices were disallowed because the same were not fully paid is erroneous. Taganito failed to recognize failure in its part to submit as evidence the original debit memo so that the Court can fully appreciate the other evidence submitted.

In sum, the disallowance of Taganito's zero-rated sales covered by Invoices No. 499, 500 and 501 amounting to ₱20,616,953.65 (USD478,511.00) should be maintained.

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[20] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

Input taxes are attributable to Taganito's zero-rated sales.

As represented by Taganito in its Petition for Review, the input taxes claimed for refund are directly attributable to its zero-rated sales. Though, in its previous Motion for Reconsideration,[21] Taganito asserts that the claimed input taxes are directly attributable to its zero-rated sales of nickel ores only. As explained well in the assailed Amended Decision, the Court recognizes that Taganito had other zero-rated sales for the years 2012 and 2013 other than from mining activities, albeit Taganito failed to likewise substantiate the same.

Taganito wants the Court to attribute all of its substantiated input taxes to its substantiated zero-rated sales of nickel ores only, without considering its unsubstantiated zero-rated sales from activities other than mining. The Court simply cannot overlook the fact that Taganito failed to substantiate and prove the nature of its zero-rated sales that are not from mining activities. Hence, whether the capital goods from where the claimed input taxes arose were <u>not</u> used in the generation of such sales cannot be ascertained. The following testimony of Taganito's Vice-President for Finance Lennie A. Terre, does not suffice:[22]

> "Q: You mentioned a while ago that the input taxes of Taganito Mining Corporation came from domestic purchases of goods and services and from importation and local purchases of capital goods, can you tell us if there is any relationship between these purchases and petitioner's business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores?
>
> A: On importation and local purchases of capital goods, the capital goods consist of capital equipment and other capital goods used by the company in exploring and producing the mined ores which are the mineral products being exported by the company.
>
> The same is true for our domestic purchases of goods and services because these goods are purchased and

[21] Motion for Partial Reconsideration and/or New Trial, Docket Vol. I, p. 360.
[22] Exhibit P-8, pp.7-8.

the services secured for the purpose of being used for our mining operations and without which we cannot produce the mineral ores. Therefore, the input VAT that we pay on our capital goods and other purchases of goods and services are all essential and attributable to our company's export activities, more particularly because this is the sole business purpose and activity of our company."

The foregoing and Schedules IX and X of the Independent CPA Report[23] only prove that the capital goods were used in generating zero-rated sales of nickel ores. However, they do not prove that the same assets were <u>not</u> used in generating Taganito's <u>other</u> zero-rated sales so that the input taxes arising therefrom can be directly attributed to the zero-rated sales of nickel ores.

To reiterate, the substantiated input taxes should be allocated proportionately on the basis of the volume of sales, pursuant to Section 112(A) of the NIRC of 1997, as amended, which provides:

"(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

[23] Exhibit P-9.

> that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales." *(Emphasis supplied)*

In view of the foregoing, this Court finds no reason to reverse or even to modify its Amended Decision promulgated on May 20, 2016.

WHEREFORE, finding no reversible error in the assailed Amended Decision dated May 20, 2016 to warrant reconsideration thereof, CIR's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 20 May 2016)** filed on May 30, 2016 as well as Taganito's **Motion for Partial Reconsideration of the May 20, 2016 Amended Decision** filed via registered mail on June 8, 2016, are **DENIED** for lack of merit.

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