REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PHIL. GOLD PROCESSING & REFINING CORP., *Petitioner,*	**CTA CASE NO. 8763** Members:
- *versus* -	***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 15 2017 3:30 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Phil. Gold Processing & Refining Corp. ("PGPRC") on February 11, 2014, pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], in relation to *Section*

[1] *Records, CTA Case No. 8763, Vol. 1, Petition for Review ("PFR"),* pp. 6-115, with annexes.

[2] *"Sec. 7. Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) xxx;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides for a specific period for action, in which case the inaction shall be deemed a denial; xxx"

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.

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3(a)(2)[6], *Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[7], which seeks for the Court to render judgment ordering respondent Commissioner of Internal Revenue ("CIR") to refund or to issue a tax credit certificate ("TCC") in favor of PGPRC in the amount of Fifty Eight Million Seven Hundred Seventy-Three Thousand Seventy Five and 12/100 Pesos (Php58,773,075.12) representing unutilized or unapplied creditable input Value-Added Tax ("VAT") for the period January 1, 2012 to June 30, 2012.[8]

The Parties

Petitioner PGPRC, formerly registered as "LFT Processing Corporation,"[9] is a domestic corporation duly organized in accordance with Philippine laws,[10] with the primary purpose of engaging in the "business of processing, milling, crushing, refining, smelting, concentrating, amalgamating and beneficiating mineral resources, and the products or by-products thereof, of every kind and description and by whatsoever process, method, or mode in which such activities can be carried out; and in conjunction with the foregoing[,] to build, construct, operate, purchase, lease or otherwise acquire such processing, milling, refining, and beneficiating plants, machinery, tools and other equipment[] whatsoever, which are necessary and incidental in carrying out the foregoing purpose, and to carry on the business of preparing for market, buying, selling, at wholesale, and exchanging mineral resources and the products or by-products thereof[.]"[11]

It is a VAT-registered entity with TIN No. 004-498-686-000 and OCN 8RC0000036156 issued on July 9, 2012 and registered since March

[6] "*Rule 4. Jurisdiction of the Court, Sec. 3. Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the NIRC or other applicable law provides a specific period for action: xxx"

[7] *A.M. No. 05-11-07-CTA*, November 22, 2005.

[8] *Records, Vol. 1, PFR, Prayer*, p. 13.

[9] *Id., Vol. 3, Exhibit "P-1," Amended Articles of Incorporation ("AOI")*, pp. 1865-1877, with annexes.

[10] *Id., Exhibit "P-1-b," SEC Certificate of Registration*, pp. 1891-1919.

[11] *Id., Amended AOI*, pp. 1867-1868.

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15, 1996,[12] and is likewise registered with the Board of Investments ("BOI") on a non-pioneer status as a New Producer of Gold and Silver *Doré*.[13]

Respondent CIR is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), with the power and authority to perform the duties of his office, including among others, the duty to act on and approve claims for refund or tax credit as provided by law.[14]

The Facts

On February 7, 2008, PGPRC was issued a BOI Certificate of Registration No. 2008-042.[15]

On July 24, 2012, PGPRC filed its Quarterly VAT Return or BIR Form No. 2550-Q for the Fourth Quarter (April 1 to June 30, 2012) of fiscal year ("FY") 2012, reflecting the amounts of Php29,136,415.95 as Total Available Input Tax, Php23,432,701.00 as VAT Refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.[16]

On February 8, 2013, PGPRC filed its Amended Quarterly VAT Return or BIR Form No. 2550-Q for the Third Quarter (January 1 to March 31, 2012) of FY 2012, reflecting the amounts of Php41,044,089.07 as Total Available Input Tax, Php35,340,374.12 as VAT Refund/TCC Claimed and the remaining Php5,703,714.95 as VAT Overpayment.[17]

On September 18, 2013, PGPRC filed its Applications for Tax Credits/Refunds or BIR Form No. 1914, asking specifically for TCCs, covering the periods January 1, 2012 to March 31, 2012 and April 1, 2012 to June 30, 2012, in the amounts of Php35,340,374.12[18] and Php23,432,701.00[19], respectively, based on *Section 112 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")* and *Section 4.112 of Revenue Regulations ("RR") No. 16-05.*

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[12] *Records, Vol. 3, Exhibit "P-4," BIR Certificate of Registration,* p. 1929.
[13] *Id., Exhibit "P-3," Board of Investments ("BOI") Certificate of Registration,* p. 1921.
[14] *Id., Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"),* p. 227-k.
[15] *Id., Vol. 3, Exhibit "P-3," BOI Certificate of Registration,* p. 1921.
[16] *Id., Exhibit "P-13," "P-13-a," BIR Form No. 2550-Q,* pp. 1958-1961, with annexes.
[17] *Id., Exhibit "P-12," "P-12-a," BIR Form No. 2550-Q,* pp. 1952-1957, with annexes.
[18] *Records, Vol. 3, Exhibit "P-14," "P-14-a," BIR Form No. 1914,* p. 1962.
[19] *Id., Exhibit "P-15," "P-15-a," BIR Form No. 1914,* p. 1963.

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Thereafter, petitioner filed the instant Petition for Review on February 11, 2014.[20]

On February 28, 2014, the Court issued Summons[21] to the CIR, ordering him to file his Answer to the Petition for Review within fifteen (15) days from receipt thereof. The BIR Litigation Division received the same on March 5, 2014.[22]

After being granted an extension,[23] the CIR filed his Answer[24] on April 14, 2014, with his Special and Affirmative Defenses, in sum: that petitioner is not entitled to claim for refund or the issuance of a TCC, for the period January 1 to June 30, 2012, for its failure to file a written claim for refund; that a taxpayer claiming a tax refund must first file a written claim for refund, categorically demanding recovery of taxes with the CIR; and that petitioner only filed BIR Form No. 1914, thus, the two (2)-year period within which to file a claim for refund has already prescribed.

The CIR also argues that assuming that the mere filing of BIR Form No. 1914 is sufficient, PGPRC failed to submit complete documents, as required under *Revenue Memorandum Order ("RMO") No. 53-98*, dated June 1, 1998, in relation to *Section 112 (C) of the 1997 NIRC*; that in a claim for tax refund or the issuance of a TCC, the applicant must prove not only entitlement to the grant of the claim under substantive law, but must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for tax refund or the issuance of a TCC; and that the taxpayer must also comply with the invoicing and accounting requirements mandated by the *1997 NIRC*. He contends, that he was deprived of the opportunity to examine, evaluate and act on petitioner's application for tax refund; and that petitioner violated the doctrine of exhaustion of administrative remedies.

Moreover, the CIR argues that petitioner must prove compliance with the provisions of the *1997 NIRC*, specifically, *Sections 106, 108 and 113* thereof; and that tax refunds are in the nature of tax exemptions, thus, it should be strictly construed against the taxpayer.

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[20] *Records, Vol. 1, PFR*, pp. 6-115, with annexes.
[21] *Id., Summons*, p. 116.
[22] *Id., Vol. 1*, p. 116.
[23] *Id.* at 117- 121, in relation to *Records, Vol. 1*, p. 124.
[24] *Id., Vol. 1, Answer*, pp. 125-143.

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On April 29, 2014, PGPRC filed its Reply[25] wherein it stated that the CIR is applying the old law which provides that the filing of BIR Form No. 1914 must necessarily be accompanied by a separate written claim for refund categorically demanding a tax refund. PGPRC argues that *Section 204 of the 1997 NIRC* has liberalized the requirement, to the effect that the filing of a mere return would suffice, provided that "a return filed showing an overpayment shall be considered as a written claim for refund."

PGPRC maintains that it has complied with respondent's checklist; that it filed BIR Form No. 1914 attaching therewith the pertinent documents, invoices and receipts; and that respondent did not call its attention as to any alleged documentary deficiency. It alleges that respondent was not deprived of the opportunity to examine, evaluate and act of PGPRC's application for tax refund since he had one hundred twenty (120) days to act on PGPRC's application, which he failed to do.

On May 26, 2014 and May 27, 2014, PGPRC and the CIR filed their respective Pre-Trial Briefs.[26]

On July 10, 2014, PGPRC filed a Motion (For Appointment of an Independent Certified Public Accountant [ICPA])[27]. Thereafter and during the August 28, 2014 hearing[28], Noel Peter F. Cañete ("Mr. Cañete") was presented and qualified as an ICPA.

On September 4, 2014, the parties filed their Joint Stipulation of Facts and Issues ("JSFI").[29]

On September 16, 2014, a Pre-trial Order[30] was issued by the Court terminating the Pre-Trial Conference.

On September 29, 2014, ICPA Mr. Cañete submitted his report[31].

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[25] *Records, Vol. 1, Reply,* pp. 148-153.
[26] *Id., Pre-Trial Brief,* pp. 155-170; *Records, Vol. 1, Respondent's Pre Trial Brief,* pp. 171-175.
[27] *Id., Motion (For Appointment of an Independent Certified Public Accountant [ICPA]),* pp. 214-222, with annexes.
[28] *Id., Minutes of Hearing dated August 28, 2014,* p. 227-a.
[29] *Id., JSFI,* pp. 227-k-227-x.
[30] *Id., Pre-Trial Order ("PTO"),* pp. 253-261.
[31] *Records, Vols. 1 and 2, Exhibit "P-21," ICPA Report,* pp. 279-1027, with annexes.

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During the trial, petitioner presented the following witnesses: *(1)* Atty. Juanita Lilet A. Dato-Abuel ("Atty. Dato-Abuel"), Treasurer of PGPRC[32]; and *(2)* ICPA Mr. Cañete[33].

On June 24, 2015, PGPRC filed its Formal Offer of Exhibits ("FOE")[34]; which was resolved by the Court in its Resolution[35] dated August 24, 2015, admitting *Exhibits* "P-1," "P-1-a," to "P-1-c," "P-2," "P-3," "P-3-a," "P-4," "P-5," "P-5-a," "P-6," "P-6-a," "P-11," "P-11-a," "P-12," "P-13," "P-15," "P-18," "P-18-a," to "P-18-w," "P-19," "P-21," "P-22," "P-22-a" to "P-22-e," "P-23," "P-24," "P-25," "P-26," and "P-26-a." In the same Resolution, the Court denied *Exhibits* "P-6-b," "P-12-a," "P-13-a," "P-15-a," "P-16," and "P-17," for failure to have them identified; *Exhibits* "P-7," to "P-7-a" to "P-7-eee," and "P-8," to "P-8-a" to "P-8-rr," for not being found in the records; *Exhibit* "P-10," for failure to present the original for comparison; *Exhibit* "P-5-b," for failure to have it identified and for failure to correspond with the description in the FOE; *Exhibit* "P-9," for failure to have it identified and for failure to submit the original for comparison; and *Exhibits* "P-14," "P-14-a," and "P-20," for failure of the documents actually marked to correspond with the documents formally offered.

On September 10, 2015, PGPRC filed a Motion for Reconsideration[36], which was resolved by the Court in its Resolution[37] dated December 11, 2015, admitting *Exhibits* "P-6-b," "P-12-a," "P-13-a," "P-15-a," "P-14," "P-14-a," and "P-20." However, *Exhibits* "P-16," "P-17," and "P-10" were still denied admission.

During the hearing on March 15, 2016, the CIR manifested that no Report of Investigation was submitted by the revenue officers, hence, he will no longer present any evidence.[38] This was confirmed by the Court in its Resolution[39] dated March 31, 2016.

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[32] *Records, Vol. 2, Exhibit "P-19," 2nd Amended Judicial Affidavit of Atty. Juanita Lilet A. Dato-Abuel,* pp. 1045-1710, with annexes; *Records, Vol. 2, Minutes of Hearing dated November 3, 2014,* p. 1029; *Records, Vol. 3, Minutes of Hearing dated March 2, 2015,* p. 1741.
[33] *Records, Vol. 3, Exhibit "P-26," Judicial Affidavit of Mr. Noel Peter F. Cañete,* pp. 1752-1800, with annexes; *Records, Vol. 3, Minutes of Hearing dated June 15, 2015,* p. 1843.
[34] *Records, Vol. 3, Petitioner's Formal Offer of Exhibits ("FOE"),* pp. 1844-1864.
[35] *Id., Resolution,* pp. 2074-2076.
[36] *Id., Vol. 4,* pp. 2077-2081.
[37] *Id.* at 2099-2103.
[38] *Id., Minutes of Hearing dated March 15, 2016,* p. 2104.
[39] *Id.* at 2107.

PGPRC filed its Memorandum[40] on April 8, 2016; while on April 29, 2016, the CIR filed his Memorandum[41].

Thereafter, the Court resolved to submit the case for decision through its Resolution[42] dated May 6, 2016; hence, this Decision.

The Issue[43]

WHETHER PGPRC IS ENTITLED TO A REFUND AND/OR THE ISSUANCE OF A TCC IN THE TOTAL AMOUNT OF FIFTY-EIGHT MILLION SEVEN HUNDRED SEVENTY-THREE THOUSAND SEVENTY-FIVE AND 12/100 PESOS (PHP58,773,075.12) REPRESENTING UNUTILIZED OR UNAPPLIED CREDITABLE INPUT VAT FOR THE PERIODS JANUARY 1 TO MARCH 31, 2012 AND APRIL 1 TO JUNE 30, 2012 OF FY ENDING JUNE 30, 2012.

PGPRC's Arguments[44]

PGPRC alleges that its revenues are solely derived from the export of mineral products, which are identified as VAT zero-rated sales; that it exported 100% of its total sales; and that in the course of its business, it did not incur any output VAT to offset its accumulated input VAT from local purchases and importations. It further contends that the BOI has acknowledged and certified that it exported 100% of its sales for the period covering FY July 1, 2011 to June 30, 2012, subject to VAT zero-rating; and that such representation is binding upon respondent.

PGPRC alleges further that it exported 100% of its processed gold and silver *doré*, which was paid for in acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP"); that it incurred excess unutilized or unapplied creditable input VAT within the Third and Fourth Quarters of FY ending in June 30, 2012; that it filed its administrative claim for refund and/or TCC complete with documentation; and that its claim remained unacted upon for more than one hundred twenty (120) days.

[40] *Records, Vol. 4, Petitioner's Memorandum,* pp. 2108-2125.
[41] *Id., Respondent's Memorandum,* pp. 2129-2150
[42] *Id. Vol. 4,* p. 2153.
[43] *Id., Vol. 1, PTO,* p. 254.
[44] *Id., Vol. 4, Petitioner's Memorandum,* pp. 2108-2120.

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The CIR's Counter-Arguments[45]

On the other hand, the CIR counter-argues that PGPRC anchored the instant petition on his alleged inaction on its claim for refund; that there was no written claim filed categorically demanding the refund of alleged unutilized input tax; that petitioner only submitted BIR Form No. 1914; that there being no written claim for refund, the two (2)-year period within which to file a claim for refund has already prescribed.

The CIR went on to state that assuming that PGPRC filed a claim in accordance with the requirements of the law, the instant Petition cannot be given due course for its failure to submit complete documents required under *RMO No. 53-98* dated June 1, 1998, in relation to *Section 112 (C) of the 1997 NIRC*; and that in a claim for tax refund or TCC, the applicant must prove not only its entitlement to the grant of the claim, it must also show satisfaction of all the documentary and evidentiary requirements.

Respondent posits that it was deprived of the opportunity to examine, evaluate and act on PGPRC's application for tax refund; that it violated the doctrine of exhaustion of administrative remedies; and that tax refunds are in the nature of tax exemptions, hence, it must be construed strictly against the taxpayer.

The Ruling of the Court

The Court has jurisdiction over the instant case.

The Court must first determine whether it has jurisdiction over the case at bar.

Anent the timeliness of filing the administrative claim for refund, *Section 112(A) of the 1997 NIRC*, provides as follows:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

[45] *Records, Vol. 4, Memorandum*, pp. 2129-2150.

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> (A) *Zero-Rated or Effectively Zero-Rated Sales.*- any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
>
> xxx xxx xxx[46]

As to the timeliness of the judicial claim for refund, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*[47], provides as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> 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 Subsections (A) and (B) 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.

[46] Underscoring ours.
[47] *Consolidated Value-Added Tax Regulations of 2005*, effective November 1, 2005.

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xxx xxx xxx[48]

Corollary, *Section 4.112-1(d) of RR No. 16-2005* states the following:

> *Sec. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax.*
>
> xxx xxx xxx
>
> *(d) Period within which refund or tax credit certificate/refund of input taxes shall be made*
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund 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 subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.[49]

Based on *Section 112(A) of the 1997 NIRC*, PGPRC has two (2) years from the close of the taxable quarter when the sales were made to file its administrative claim with the CIR. The latter is given one hundred and twenty (120) days from submission of complete supporting documents to decide on the claim. In case of inaction, *Section 112(C) of the 1997 NIRC*, in relation to *RR No. 16-2005*, grants PGPRC thirty (30) days from the lapse of the one hundred and twenty (120) days to file its judicial claim with the CTA.

[48] Italics retained, underscoring ours.
[49] *Id.*

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Records disclose the following pertinent dates relative to the filing of the administrative and judicial claims:

QUARTER	ADMIN DUE DATE (2 YRS. FROM CLOSE OF QTR)	ADMIN CLAIM FILED	DATE OF SUBMISSION OF ADDITIONAL DOCUMENTS	END OF 120 DAYS[50]	+ 30 DAYS FROM EXPIRATION OF 120 DAYS	JUDICIAL CLAIM FILED
Close of 3rd Qtr: **March 31, 2012**	March 31, 2014	September 18, 2013	N/A	January 16, 2014	February 17, 2014[51]	February 11, 2014
Close of 4th Qtr.: **June 30, 2012**	June 30, 2014					

In the instant case, PGPRC had until March 31 and June 30, 2014, within which to file its administrative claims for the Third and Fourth Quarters, respectively, of FY ending in June 30, 2012. Petitioner filed its administrative claim for refund for both quarters on September 18, 2013, thus complying with the two (2)-year prescriptive period.

There is no merit in respondent's assertion that PGPRC's failure to file a written request for administrative refund is fatal to its cause.

The Court finds it important to clarify that while petitioner filed only its Applications for Tax Credits/Refunds or BIR Form No. 1914, there is no need to submit complete documents required under *RMO No. 53-98* in relation to *Section 112(C) of the 1997 NIRC*. In the Supreme Court case of *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*[52], it was held that:

> The CIR's reliance on *RMO 53-98* is misplaced. There is nothing in *Section 112 of the [1997] NIRC, RR [No.] 3-88* or *RMO [No.] 53-98* itself that requires submission of the complete documents enumerated in *RMO [No.] 53-98* for a grant of a refund or credit of input VAT. The subject of *RMO [No.] 53-98* states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities x x x." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that *RMO [No.] 53-98* applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with *[RMC No.] 42-03.*

[50] Counted from the date of filing the administrative claim for refund.
[51] February 15, 2014 fell on a Saturday.
[52] G.R. No. 205055, July 18, 2014, 730 SCRA 242.

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> However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA *EB*'s finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
>
> Under *Section 112(C) of the 1997 NIRC*, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. In *Commissioner of Internal Revenue v. San Roque Power Corporation*, we emphasized that compliance with the 120-day waiting period is mandatory and jurisdictional. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC's claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Accordingly, we do not find merit in the CIR's argument that the judicial claim was prematurely filed.[53]

In claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to the taxpayer's judicial claim.[54] The CTA is not barred from receiving, evaluating and appreciating evidence submitted before it.[55] Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the *Rules of Court*.[56] The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.[57]

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[53] Underscoring and italics ours.

[54] *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA *EB* No. 474, September 1, 2009; *Commissioner of Internal Revenue v. Toledo Power Company*, CTA *EB* No. 589, September 15, 2010; *Commissioner of Internal Revenue v. San Roque Power Corporation*, CTA *EB* No. 657, April 4, 2012.

[55] *Id.*

[56] *Id.*

[57] *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Company, Inc.*, CTA *EB* No. 474, September 1, 2009; *Commissioner of Internal Revenue v. Toledo Power Company*, CTA *EB* No. 589,

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Anent the timeliness of the judicial claim for refund, petitioner submitted its administrative claim for refund together with the supporting documents on September 18, 2013, according to evidence presented and the testimony of Atty. Dato-Abuel[58]. Respondent failed to refute this claim despite opportunity to do so during trial.[59]

Considering that both the administrative and judicial claims for refund were filed on time, the Court has jurisdiction over the case at bar.

PGPRC is not entitled to the issuance of a TCC due to insufficiency of evidence.

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed *strictissimi juris* against the taxpayer and liberally in favor of the government. Accordingly, it is the claimant's burden to prove the factual basis of a claim for refund or tax credit.[60]

Thus, based on the afore-cited *Section 112(A) of the 1997 NIRC*, PGPRC must prove compliance with the following requisites to be entitled to its claim for refund or TCC of its unutilized input VAT, to wit:

1. There must be zero-rated or effectively zero-rated sales;

2. The input taxes were incurred or paid;

3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;

4. The input taxes were not applied against any output tax liability; and

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September 15, 2010; *Commissioner of Internal Revenue v. San Roque Power Corporation*, CTA *EB* No. 657, April 4, 2012.

[58] *Records, Vol. 2, Exhibit "P-19" 2nd Amended Judicial Affidavit of Atty. Dato-Abuel*, pp. 1045-1062.

[59] Transcript of Stenographic Notes ("TSN"), March 2, 2015 Hearing, pp. 8-9.

[60] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

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5. The claim for refund was filed within the two (2)-year prescriptive period.

Anent the fifth (5th) requisite, the Court already discussed that the instant Petition for Review was filed on time, hence, it now proceeds to determine compliance with the remaining requisites.

As to the first (1st) and third (3rd) conditions, the Court notes that petitioner has conflicting and unclear bases for its claim that the subject sales are VAT zero-rated.

It should be pointed out that in its Petition for Review, petitioner cites *Section 108(b)(1) of the 1997 NIRC* as basis for its claim that its revenues derived from export sales are subject to VAT at zero percent (0%) rate. However, testimonies of its witnesses, Atty. Dato-Abuel[61] and ICPA Mr. Cañete[62], show that the basis of its claim is *Section 106(A)(2)(a)(1) of the 1997 NIRC.*

Thus, the Court will consider this case as falling under *Section 106(A)(2)(a)(1) of the 1997 NIRC*, which reads as follows:[63]

> SECTION 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

[61] *Records, Vol. 2, Exhibit "P-19" 2nd Amended Judicial Affidavit of Atty. Dato-Abuel,* Q18-Q19, p. 1048.
[62] *Id., Vol. 3, Exhibit "P-26," Judicial Affidavit of Mr. Noel Peter F. Cañete,* pp. 1752-1800, with annexes
[63] Italics retained, underscoring ours.

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> 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 [BSP]; xxx

In an earlier CTA case also involving petitioner, the following are required by the Court in order for the export of goods to be considered a VAT zero-rated:[64]

1. The sales invoice as proof of sale of goods;

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

3. The bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

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

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

Section 113 (B)(2)(c) of the 1997 NIRC, as implemented by *Section 4.113-18(2)(c) of RR No. 16-05,* as amended, requires that if the sale is

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[64] *Phil. Gold Processing & Refining Corp. v. CIR,* CTA Case No. 8270, June 11, 2013, which denied petitioner's claim for refund/TCC; this case was appealed to the *CTA En Banc* and docketed as *Phil. Gold Processing & Refining Corp. v. CIR,* CTA *EB* No. 1082, November 26, 2014, which affirmed such dismissal; and was the subject of a Petition for Review on *Certiorari* with the Supreme Court docketed as GR No. 215643, February 25,2015, which was likewise denied; entry of judgment was made on April 7, 2015.

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subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.

For the period January to June 2012, petitioner actually shipped its processed gold and silver ore to its foreign buyers. It generated export sales in the total amount of USD129,102,464.10 as shown in its zero-rated VAT sales invoices, summarized as follows:

INV. NO.	DATE	EXHIBIT	CUSTOMER	USD	WITH ZERO VAT NOTATION
0104	1/31/2012	P-18	Standard Chartered	1,467,619.50	Yes
0105	1/31/2012	P-18-a	Metalor Technologies	1,059,385.37	Yes
0106	1/31/2012	P-18-b	West Lb Ag	1,350,599.25	Yes
0107	1/31/2012	P-18-c	BNP Paribas Bank	1,318,487.14	Yes
0108	2/29/2012	P-18-d	Standard Chartered	1,472,998.00	Yes
0109	2/29/2012	P-18-e	Metalor Technologies	17,229,852.37	Yes
0110	2/29/2012	P-18-f	West Lb Ag	1,355,379.45	Yes
0111	2/29/2012	P-18-g	BNP Paribas Bank	1,323,567.34	Yes
0113	3/31/2012	P-18-h	Metalor Technologies	32,443,562.68	Yes
0114	3/31/2012	P-18-i	Standard Chartered	1,478,410.50	Yes
0115	3/31/2012	P-18-j	West Lb Ag	1,360,159.65	Yes
0116	3/31/2012	P-18-k	BNP Paribas Bank	1,328,047.50	Yes
0118	4/30/2012	P-18-l	Metalor Technologies	4,514,344.64	Yes
0119	4/30/2012	P-18-m	West Lb Ag	1,364,939.85	Yes
0120	4/30/2012	P-18-n	BNP Paribas Bank	1,332,122.30	Yes
0121	4/30/2012	P-18-o	Standard Chartered	1,483,755.00	Yes
0122	5/31/2012	P-18-p	Metalor Technologies	9,692,709.91	Yes
0123	5/31/2012	P-18-q	Standard Chartered	1,490,004.30	Yes
0124	5/31/2012	P-18-r	BNP Paribas Bank	1,336,737.09	Yes
0125	5/31/2012	P-18-s	West Lb Ag	1,369,720.05	Yes
0126	6/30/2012	P-18-t	Metalor Technologies	39,118,661.86	Yes
0127	6/30/2012	P-18-u	BNP Paribas Bank	1,342,388.10	Yes
0128	6/30/2012	P-18-v	Standard Chartered	1,494,512.00	Yes
0129	6/30/2012	P-18-w	West Lb Ag	1,374,500.25	Yes
TOTAL				**129,102,464.10**	

The export sales are reflected in PGPRC's Third and Fourth Quarterly VAT Returns for FY ending June 30, 2012, in its peso equivalent amounting to Php5,518,931,547.76 (Php2,711928,561.84[65] plus Php2,807,002,985.92[66]).

While it is true that petitioner submitted before this Court documents such as sales invoices[67] and certification from Hong Kong and Shanghai Banking Corporation ("HSBC")[68], the same do not fully substantiate its alleged export sales for the Third and Fourth Quarters of FY ending June 30, 2012. The Court notes that petitioner failed to submit export documents such as export declarations and bills of

[65] *Records, Vol. 3, Exhibit "P-12-a," line 17,* p. 1953,
[66] *Id., Exhibit "P-13-b," line 17,* p. 1959.
[67] *Id., Exhibits "P-18" to "P-18-w,"* pp. 1965-1987.
[68] *Id., Exhibit "P-25,"* p. 2062.

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lading or airway bills. Moreover, it was noted that the foreign currency remittances indicated in the HSBC Certification[69] do not reconcile with those reflected in the invoices[70] issued by petitioner to its clients for the Third and Fourth quarters of FY ending June 30, 2012. Thus, this failure on the part of petitioner is fatal to its claim, for it cannot be ascertained whether such foreign currency remittances actually pertain to its export sales for the subject period of claim.

In view of this, petitioner's alleged export sales for the Third and Fourth Quarters of FY ending June 30, 2012, in the aggregate amount of Php5,518,931,547.76, cannot qualify for VAT zero-rating. Consequently, the alleged input VAT incurred by petitioner for the said periods in the aggregate amount of Php58,773,075.12 (Php35,340,374.12[71] plus Php23,432,701.00[72]) cannot be refunded.

The Supreme Court has held that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[73]

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[69] *Records, Vol. 3, Exhibit "P-25,"* p. 2062.
[70] *Id., Exhibits "P-18" to "P-18-w,"* pp. 1965-1987.
[71] *Id., Exhibit "P-12-a," line 21H,* p. 1953,
[72] *Id.* at 1959.
[73] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 171307, August 28, 2013, 704 SCRA 94, citing *Western Mindanao Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 181136, June 13, 2012, 672 SCRA 350.

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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.

LOVELL R. BAUTISTA
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

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