REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIO TUBA NICKEL MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6293

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

Promulgated:
FEB 03 2004

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of TWELVE MILLION FORTY FOUR THOUSAND TWO HUNDRED SEVENTY FIVE AND 86/100 PESOS (P 12,044,275.86) allegedly representing petitioner's unutilized and unapplied input VAT for the first, second, third and fourth quarters of the taxable year 1999.

The antecedent facts are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 2nd Floor, Solid Mills Building, De la Rosa Street, Legaspi Village, Makati City (*par. 1, Stipulation of Facts, CTA Docket, p. 46).* It is registered as an export producer on a preferred non-pioneer basis with the Board of Investments (BOI) under Republic Act No. 6135, as amended, to engage, among others, in the

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production, manufacture and export of beneficial nickel silicate ore, and was issued Board of Investments Certificate of Registration No. 74-446 dated March 1, 1974 (*par. 3, Stipulation of Facts, CTA Docket, p. 47).*

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with the requirements of law, and was issued Taxpayer Identification No. 470-000-142-665-V (*par. 4, Stipulation of Facts, CTA Docket, p. 47*). In 1999, petitioner filed its Quarterly VAT Returns as follows:

Exhibit	Quarter Involved	Date Filed	Output VAT	Input VAT: Domestic Purchases	Input VAT: Importations
J	First	4/26/1999	P 198,114.67	P 1,922,825.56	P 3,279,005.00
K	Second	7/23/1999	135,673.65	1,714,956.93	1,373,003.00
L	Third	10/25/1999	117,671.10	1,787,224.50	171,460.00
M	Fourth	1/25/2000	122,006.73	2,125,430.94	4,318.00
		TOTAL:	P 573,466.15	P 7,550,437.93	P 4,827,786.00

On June 23, 2000, petitioner simultaneously amended its 1999 Quarterly Value-Added Tax Returns in order to reflect the following entries:

Exhibit	Quarter Involved	Output VAT	Input VAT: Domestic Purchases	Input VAT: Importations
N	First	P 198,817.31	P 1,923,528.20	P 3,279,005.00
O	Second	176,326.62	1,774,810.87	1,373,003.00
P	Third	166,699.97	1,844,966.81	171,460.00
Q	Fourth	209,130.50	2,428,476.38	-
	TOTAL:	P 750,974.40	P 7,971,782.26	P 4,823,468.00

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Relying on Revenue Regulations 7-95, more specifically, Section 4.100-2, petitioner averred that as a VAT-registered taxpayer and exporter of goods, it is subject to VAT at the rate of zero (0%) percent on its export sales. As such, it has no output VAT against which to credit its excess input taxes on its domestic purchases of goods and services and importations (*par. 14, Petition for Review*).

Furthermore, petitioner relied on Section 112 (A) and (B) of the 1997 Tax Code and Section 4.106-1 (a) & (b) of Revenue Regulations No. 7-95, as amended, which provide that a VAT-registered person whose sales are zero-rated is entitled to apply for the refund or the issuance of a tax credit certificate for its unutilized input VAT attributable to such zero-rated sales as well as input VAT paid on the importation or local purchase of capital goods, within two (2) years after the close of the taxable quarter when the sales/importation or purchase of capital goods were made (*par. 15, Petition for Review*).

Consequently, on December 4, 2000, petitioner filed with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF) an application for refund/tax credit of VAT input taxes paid from January 1, 1999 to December 31, 1999 (*par. 7, Stipulation of Facts, CTA Docket, p. 47*), totaling P12,044,275.86, detailed as follows:

		Input VAT			
Period Covered	**Output VAT**	**Domestic Purchases**	**Importations**	**Total**	**Amount of Claim**
First	P 198,817.31	P 1,923,528.20	P 3,279,005.00	5,202,533.20	5,003,715.89
Second	176,326.62	1,774,810.87	1,373,003.00	3,147,813.87	2,971,487.25
Third	166,699.97	1,844,966.81	171,460.00	2,016,426.81	1,849,726.84
Fourth	209,130.50	2,428,476.38	-	2,428,476.38	2,219,345.88
TOTAL:	P 750,974.40	P 7,971,782.26	P 4,823,468.00	12,795,250.26	12,044,275.86

As there was no action on the part of the respondent and before it could be barred by prescription, petitioner elevated its claim to this court on April 25, 2001 through a Petition for Review.

Respondent filed his Answer through registered mail June 28, 2001, averring the following as his Special and Affirmative Defenses:

(4) Petitioner's claim is partially barred by the statute of limitations;

(5) Petitioner failed to show compliance with the substantiation requirements under the provision of Section 16 (c)(3) of Revenue Regulations No. 5-87, as amended by Revenue Regulations No. 3-88;

(6) Petitioner failed to show that the alleged VAT input taxes are attributable to its export sales and that the same have not yet been applied to the output tax for the period covered in its claim or on any succeeding period and that the alleged total foreign exchange proceeds have been accounted for by the Bangko Sentral ng Pilipinas and it also failed to show that it is qualified as zero-rated VAT taxpayer;

(7) That petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

(8) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs Ledesma, 31 SCRA 95; Manila Electric Co. vs Commissioner of Internal Revenue, 67 SCRA 35);

(9) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs Llanes, 49 Phil 466; Union Garment Co. vs Court of Tax Appeals, 4 SCRA 304);

(10) In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

(11) It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

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

The issues for this court's resolution have been stipulated by the parties to be as follows:

(1) Whether or not the goods exported or services rendered were paid for in acceptable foreign currency and duly accounted for in accordance with the Bangko Sentral ng Pilipinas rules and regulations;

(2) Whether or not the domestic goods and services and importation of goods/capital equipment were all attributable to petitioner's zero-rated sales;

(3) Whether or not the input taxes were utilized in the succeeding years; and

(4) Whether or not petitioner is entitled to the refund of the amount of P 12,044,275.86 representing the unutilized and unapplied VAT input tax for the four quarters of 1999.

As a VAT-registered taxpayer and exporter, petitioner claimed that it is subject to VAT at 0% on its export sales. Petitioner anchored its claim for refund or issuance of a tax credit certificate on Section 112 (A) and (B) of the Tax Code which provides:

Section 112. Refunds or Tax Credits of Input Tax. –

(A) **Zero-rated or Effectively Zero-rated Sales.** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against the 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.

(B) **Capital Goods.** – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Based on the foregoing provisions of law, petitioner, as a VAT-registered entity, is entitled to file a claim for refund of unutilized VAT input taxes on domestic purchases of goods and services and on the importation of goods attributable to its zero-rated sales. However, petitioner must still prove compliance with the substantiation requirements provided for by law and its implementing rules and regulations. In the case of ***Intel Philippines Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA Case Nos. 5760 and 5902, February 5, 2002***, this court laid down the following requirements to be entitled to the refund of input VAT on purchases of goods and services attributable to zero-rated sales:

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(1) both the administrative and judicial claims for refund were filed within two (2) years upon filing of the quarterly VAT return(s) covered by the claim as provided under Section 4-106.2(c) of Revenue Regulations No. 7-95 in relation to Section 112(D) of the Tax Code;

(2) the claimed input VAT payments were not applied against any output tax during the period covered by the claim and in the succeeding periods;

(3) the claimed input VAT payments are directly attributable to zero-rated sales; and

(4) the claimed input VAT payments are duly supported by VAT invoices or official receipts in accordance with Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 113 and 237 of the Tax Code.

Records show that both the administrative and judicial claims for refund which were filed on December 4, 2000 and April 25, 2001, respectively, were filed within the two-year prescriptive period reckoned from the corresponding filing of the 1999 quarterly VAT returns.

As to the second requirement, petitioner, as part of its documentary evidence, submitted its amended Quarterly VAT Returns for the taxable year 2000 (*Exhibits "R", "S", "T" & "U"*). And as shown on its amended 4th Quarterly VAT Return (*Exhibit "U"*), the amount claimed of P12,044,275.86 was included in the total amount deducted of P14,853,248.68 from its total available input tax of P54,193,078.73. Apparently, petitioner was able to establish that the amount sought to be refunded was not applied against any output tax.

Nonetheless, after a close scrutiny of all the documentary evidence presented, the court noted that all the export sales invoices of petitioner (*Exhibits "G-1", "G-5", "G-9", "G-13", "G-17", "G-21", "G-25" and "G-29"*) do not show the imprinted word **"zero-rated"**, in contravention of Section 2(c)(1)(2)(4) of Revenue Regulations No. 3-88 and to Section 4.108-1 of Revenue Regulations No. 7-95, pertinent provisions of which are hereunder quoted for easy reference:

Section 2. Section 16 of Revenue Regulations No. 5-87 is hereby amended to read as follows:

SECTION 16. Refunds or tax credits of input tax. –

(c) Claims for tax credits/refunds. - Application for Tax Credit/Refund of Value-Added Tax Paid (BIR Form No. 2552) shall be filed with the Revenue District Office of the city or municipality where the principal place of the business of the applicant is located or directly with the Commissioner, Attention: VAT Division.

A photocopy of the purchase invoice or receipt evidencing the value added tax paid shall be submitted together with the application. The original copy of the said invoice/receipt, however, shall be presented for cancellation prior to the issuance of the Tax Credit Certificate or refund. In addition, the following documents shall be attached whenever applicable:

1. Export Sales

(i) photocopy of the export document showing the amount of export, and the date and destination of the goods exported. With respect to foreign currency denominated sale, the photocopy of the invoice or receipt evidencing the sale of the goods, as well as the name of the person to whom the goods were delivered.

(ii) statement from the Central Bank or any of its accredited agent banks that the proceeds of the sale in acceptable foreign currency has been inwardly remitted and accounted for in

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accordance with applicable banking regulations.

Section 4.108-1. Invoicing Requirements. – All VAT registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN, and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales;** and
6. the invoice value or consideration

(*Emphasis supplied*)

In the case of ***Intel Philippines Manufacturing, Inc. vs Commissioner of Internal Revenue, CTA Case No. 6040, October 24, 2003***, this court had denied petitioner Intel's claim for refund, emphasizing that failure to present the required valid VAT export invoice is fatal to its claim for refund. Although petitioner was able to present the other export documents, such as the Bills of Lading, Export Declarations and Permit (*Exhibits "G-3", "G-4", "G-7", "G-8", "G-11", "G-12", "G-15", "G-16", "G-19", "G-20", "G-23", "G-24", "G-27" & "G-28"*), these documents are insufficient to support the refund sought. In the case of ***Commissioner of Internal Revenue vs Philippine Bobbin Corporation, CA-G.R. SP No. 59452, March 8, 2001***, the Court of Appeals had the occasion to rule that these documents are not enough to be entitled to a claim for refund. Rather, these documents, together with the valid sales invoices, should be taken collectively as the best means to prove the exportation of goods, thus:

> *"By and large, export sales invoices alone are inadequate proofs that the subject goods were actually exported. Such invoices are merely written accounts of the particulars of merchandise shipped or sent to a purchaser or consignee with the value or prices and charges annexed (Philippine Law Dictionary, 3rd Ed., p. 495). By no means are they accurate confirmations that goods were actually shipped out of the country. Yet, that is what the law requires. Section 100 (a)(2) of the* ***National Internal Revenue Code*** *(then in effect at the time of the alleged exportation) defines "Export Sales" as the sale and 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. In that case, it is imperative for any claimant of a tax refund or credit in relation to the Input VAT paid to prove not only the existence of the sale but also the actual shipment of the goods from the Philippines to a foreign country.*
>
> *"Rather than limiting the documentary requirements to just the export invoices, the law specifically enjoined the production of "export documents" to affirm the authenticity of the export sales. In commercial practice, export documents include commercial invoices or receipts, bills of lading, airway bills, and export declarations or permits. These documents, taken collectively, are the best means to prove the exportation of goods." (Underscoring supplied)*

Thus, this court rules that petitioner's export sales for taxable year 1999 cannot qualify for zero-rating and petitioner is not entitled to a refund of the input VAT attributable thereto. However, as regards petitioner's claim for refund of input VAT pertaining to capital goods, we find petitioner entitled to a refund. The following provisions of Section 112 (B) of the Tax Code, as amended, and Section 4.106-1 of Revenue Regulations No. 7-95 apply, thus:

Section 112. Refunds or Tax Credits of Input Tax. –

Xxx xxx xxx

(B) **Capital Goods.** – A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Section 4.106-1. Refunds or tax credits of input tax (a) Zero-rated sales of goods or properties or services – x x x

(a) Capital goods. – Only a VAT-registered person may apply for issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased. The refund shall be allowed to the extent that such input taxes have not been applied against output taxes. The application should be made within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT taxable business. If it is also used in exempt operations; the input tax refundable shall only be the ratable portion corresponding to the taxable operations.

"Capital goods or properties" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29(f), used directly or indirectly in the production or sale of taxable goods or services."

On the basis of the foregoing, petitioner must show compliance with the following requirements:

(1) that it is a VAT-registered person or entity

(2) the input taxes claimed by petitioner were paid on capital goods

(3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts

(4) the input taxes have not been applied against its output tax liability;

(5) the administrative claim for refund was seasonably filed ***(Telecommunications Technologies Philippines vs Commissioner of Internal Revenue, CTA Case No. 6018, November 24, 2003; Air Liquide Philippines, Inc. vs Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5652, July 6, 2000)***

That petitioner is a VAT-registered entity is conceded. Likewise, as discussed earlier, petitioner was able to show that the input taxes have not been applied against its output tax liability and that the administrative claim for refund was seasonably filed. Thus, we now resolve whether or not the input taxes claimed by petitioner were paid on capital goods and whether or not these input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts.

Section 4.106-1(b) of Revenue Regulations No. 7-95 defines capital goods as goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services. Based on the invoices and

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official receipts submitted in evidence by herein petitioner, only the following may be considered as capital goods of petitioner, to wit:

Supplier	Description	Exhibit	Invoice Amount	Taxable Amount	Input VAT
Creative Technologies, Inc	Computer	C-129	P 42,500.00	P 38,636.36	P 3,863.64
Creative Technologies, Inc	Printer	C-130	15,500.00	14,090.91	1,409.09
Creative Technologies, Inc	Accessories	C-131	875	795.45	79.55
Int'l Scientific Int'l Inc	Air Sampler Staplex	C-198	80,000.00	72,727.27	7,272.73
Transport Equipment Corp	Excavator	C-744	3,570,000.00	3,245,454.55	324,545.45
Yale Hardware	Impact Wrench	C-805	126,800.00	115,272.73	11,527.27
U-Bix Corp	Copying Machine	C-3647	124,100.00	112,818.18	11,281.82
	INPUT VAT FROM DOMESTIC PURCHASES		P 3,959,775.00	P 3,599,795.45	P 359,979.55

Supplier	Description	Exhibit	Total Duties/ Taxes	Taxable Amount	Input VAT
Caterpillar MHI Mktg	Wheel Loader	E-1 to E-4	P 820,011.00	P 820,011.00	P 635,523.00
Nisho Iwai Corporation	Dump Truck	E-5 to E-8	695,783.00	695,783.00	556,626.40
Nisho Iwai Corporation	Excavator	E-9 to E-11	1,679,565.00	1,679,565.00	1,373,003.00
	INPUT VAT FROM IMPORTATION		**P 3,195,359.00**	**P 3,195,359.00**	**P 2,565,152.40**
	TOTAL INPUT VAT			**P 6,795,154.45**	**P 2,925,131.95**

WHEREFORE, the Petition for Review is ***PARTIALLY GRANTED.*** Accordingly, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of Two Million Nine Hundred Twenty Five Thousand One Hundred Thirty One and 95/100 Pesos(P2,925,131.95) representing unutilized input VAT on capital goods.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge