Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PHIL. GOLD PROCESSING & REFINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 1192
(CTA Case No. 8301)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS and
RINGPIS-LIBAN, JJ.

Promulgated:
JAN 04 2016 11:24 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 34-55.

dated February 27, 2014, rendered by the Second Division of this Court in CTA Case No. 8301, and its Resolution[3] dated May 29, 2014.

Petitioner Phil. Gold Processing and Refining Corporation assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated February 27, 2014:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.*

SO ORDERED."

Resolution dated May 29, 2014:

*"**WHEREFORE**, petitioner's "Motion for Reconsideration" is **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

"Petitioner Phil. Gold Processing and Refining Corp. is a domestic corporation duly organized and existing under Philippine laws, with business address at 3rd Floor, Corinthian Plaza Condominium Building, 121 Paseo de Roxas, Legaspi Village, Makati City. It is engaged in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export, in accordance with its original Articles of Incorporation, two Amended Articles of Incorporation and By-Laws, all of which were approved by and filed with the Securities and Exchange Commission with Company Registration No. ASO94-00011711. Petitioner is likewise registered with the Board of Investments on a non-pioneer status as a "New Producer of Gold and Silver Dore," under Certificate of Registration No. 2008-042 issued on February 7, 2008. It is also a value-added tax (VAT)-registered entity.

[3] En banc Docket, pp. 57-59.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed with the BIR its Quarterly VAT Return for the third quarter of the fiscal year ending June 30, 2009, showing creditable input VAT paid on purchases of goods and services and various importation of goods for the said quarter in the amount of P107,502,796.09.

SGV & Co., on behalf of petitioner, sent a letter to the BIR Law Division on July 8, 2009, seeking confirmation that the input taxes paid by petitioner for goods and services purchased can be claimed as a tax refund or credit. On August 3, 2009, the BIR, through Acting Commissioner James H. Roldan, confirmed that the input taxes paid by petitioner may be claimed as tax credit or refund.

As it had no output VAT liability during that period with which it could utilize the incurred input VAT, petitioner filed an administrative claim for refund or issuance of tax credit certificate with BIR Revenue District Office (RDO) No. 70 in Aroroy, Masbate on February 9, 2011 for input taxes paid by petitioner for various purchases of goods and services and importations during the period of January 1, 2009 to March 31, 2009 in the amount of P107,502,796.09. Together with its claim for refund/tax credit, petitioner likewise submitted documents required by the BIR for the evaluation of its refund claim.

Claiming respondent's inaction on the claim, petitioner filed the instant Petition for Review before this Court on June 28, 2011.

In her Answer filed on September 15, 2011, respondent interposed the following special and affirmative defenses:

"5. Respondent hereby repleads the above admissions and denials as part of special and affirmative defenses.

6. The Petition for Review does not merit to be given due course. Petitioner clearly failed to exhaust all administrative remedies before elevating this case to this Honorable Court.

6.1. The judicial claim for refund was filed prematurely and warrants the immediate dismissal of the instant petition for review.

6.2. The specific provision of law governing the periods for filing of judicial claims of excess unutilized input taxes attributable to VAT zero-rated sales is Section 112 (D) (now Section 112 (C), as amended by R.A. 9337) of the National Internal Revenue Code (NIRC) of 1997. The said Section provides:

'SEC. 112. Refunds or Tax Credits of Input Tax. —
xxx xxx xxx
(D) 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.'

6.3. Pursuant to the aforequoted Section 112 (C) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of the complete supporting documents to decide the claim for refund. Thus, a taxpayer must first submit the complete supporting documents before the 120-day period should commence. The Bureau of Internal Revenue (BIR) Commissioner cannot decide the application or claim for refund without the complete supporting documents.

6.4. A careful reading of the petition for review, shows that petitioner failed to prove that it has submitted the complete supporting documents to warrant the *granting of the application for tax refund and to reckon the commencement of the 120-day period for the BIR Commissioner to decide its claim for refund. Petitioner even failed to file a written claim for refund that must categorically demand reimbursement. Instead, on February 9, 2011 petitioner submitted only BIR Form 1914 or Application for Tax Credits/Refund with Revenue District Office No. 70, BIR Masbate, which was attached to the petition as Annex 'K'. Absent a written claim for refund and complete supporting documents, the BIR Commissioner cannot act on the administrative application for refund.*

6.5. Considering that petitioner failed to file a written claim for refund and submit supporting documents to respondent when it filed its application for refund on February 9, 2011, the 120 day period shall not begin to run. The law provides that petitioner had 30 days after the lapse of the 120 days, within which, to elevate its claim before the Honorable Court of Tax Appeals. However, in the instant case, the 120 days has not commenced, hence, the filing of the petition for review on June 28, 2011 is premature.

6.7. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions. Judicial review of administrative decisions entails the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

6.8. The hurried recourse of petitioner to this Honorable Court deprived petitioner of the opportunity to fully exercise her function to decide claims for refund, correct, modify or affirm the findings of her subordinates. It must be remembered, that in the case of Jariol vs. Commission on Elections, the Supreme Court reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.

6.9. The above-mentioned periods are clearly given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions (Agpalo, Statutory Construction, Third Edition 1995, p. 266). For this reason, the courts construe these provisions of statutes as mandatory (Ibid. citing Alvero vs. De la Rosa, 76 Phil. 428, 434).

6.10. Settled is the rule that the non-exhaustion of administrative remedies is jurisdictional and it renders only the action premature, i.e., the claimed cause of action is not ripe for judicial determination and for that a party has no cause of action to ventilate in court. The premature invocation of the court's intervention is fatal to one's cause of action; and absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action.'

7. Petitioner when it submitted its application for refund before the Office of Revenue District No. 70, BIR Masbate on February 9, 2011, failed to prove the following, viz.:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) or Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, otherwise, there would be no sufficient compliance with the filing of an administrative claim for refund which is a condition sine qua non prior to the filing of a judicial claim in accordance with Section 112 of the Tax Code, as amended. This requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of the judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the *above-stated requirements warrants immediate dismissal of the petitioner for review;*

d. That the input taxes of P107,502,796.09 allegedly paid by petitioner on its purchases of goods and services for the period January 1, 2009 to March 31, 2009 or the third quarter of fiscal year ended June 30, 2009 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over to the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the Tax Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code, as amended, and pursuant to Section 4.104-5 (a) and (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credits);

g. The requirements as enumerated under Section 4.104-5 of Revenue Regulations No. 7-95. (Re: Substantiation of Claims for Input Tax Credits)

8. Petitioner also failed to prove by clear and convincing evidence that the requirements for refund claim were met.

(8.1) There must be a written claim for refund filed by taxpayer with respondent.

(8.2) The claim of refund must be a categorical demand for reimbursement.

9. Section 112(D) of the NIRC of 1997 must be read in conjunction with Section 112(A) and (B), which are hereunder quoted for ready reference:

'SEC. 112. Refunds or Tax Credits of Input Tax. — ℒ

(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: . . .

(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.'

9.1. The above proviso clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due 'must be claimed within two years reckoned from the close of the taxable quarter when the relevant sales were made pertaining to input VAT regardless of whether said tax was paid or not.' The reckoning frame would always be the end of the quarter when the pertinent sales or transactions was made, regardless when the input VAT was paid.

9.2. The instant petition is a claim for refund in the amount of One Hundred Seven Million Five Hundred Two Thousand Seven Hundred Ninety Six Pesos and 09/100 (P107,502,796.09) allegedly input vat paid by petitioner on its purchases of goods and services covering the period January 1, 2009 to March 31, 2009, the third quarter of fiscal year ended June 30, 2009. Applying the above-mentioned provision, petitioner should have filed its administrative claim for refund on or before March 31, 2011.

9.3. Considering that petitioner failed to file a written claim for refund on or before March 31, 2011, the right of the petitioner to claim for tax refund or credit of its input vat paid for the period January 1, 2009 to March 31, 2009, the third quarter of fiscal year ended June 30, 2009 in the amount of One Hundred Seven Million Five Hundred Two Thousand Seven Hundred Ninety Six Pesos and 09/100 (P107,502,796.09) had already prescribed.

10. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because respondent CIR still has to investigate and ascertain the validity of the claim.

11. It is well established in this jurisdiction that a claim for refund partakes the nature of an exception and is therefore held against the claimant in favor the State.

11.1. The burden of proof in establishing the factual and legal basis for refund claims is on the claimant.

11.2. In the case of Far East Bank & Trust Company vs. Commissioner of Internal Revenue, the Supreme Court held:

A tax refund is in the nature of a tax exemption which must be construed strictissimi juris against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund.

11.3. Indeed, a claim for refund is in the nature of an exemption and is construed in strictissimi juris against the taxpayer. In the 2008 case of M.E. Holding Corp. vs. Court of Appeals the Supreme Court held that '(w)e reiterate at this juncture that claims for refund/credit, as in the instant case, are in the nature of claims for exemption.'

12. Taxes collected are presumed to be in accordance with laws and regulations.

13. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavoured in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670).

14. Respondent humbly manifests that this Honorable Court is bereft of jurisdiction to hear and try the instant case, due to failure of the petitioner to exhaust all *administrative remedies. Respondent submits that the instant petition for review was filed prematurely.*

15. In view of the foregoing, for lack of merit and want of jurisdiction, this Honorable Court should therefore dismiss the case outright. In so doing, a long and tedious trial would be dispensed with and the Honorable Court as well as the parties would be spared from undergoing the rigors and expenses of a full blown trial."

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During trial, petitioner presented Attys. Clifford E. Chua and Juanita Lilet Dato-Abuel as its witnesses.

Petitioner filed its Formal Offer of Documentary Exhibits on September 13, 2012, offering Exhibits "A" to "GG-1". Respondent filed her Comment (Re: Petitioner's Formal Offer of Evidence) on September 17, 2012. In a Resolution dated October 9, 2012, the Court admitted Exhibits "A" to "C", "D", "E", "E-1", and "F" to "GG-1" and denied Exhibits "C-1" and "E-1-a" for petitioner's failure to submit the duly marked documents.

During the hearing on December 10, 2012, respondent, through counsel, manifested that she will be submitting the case for decision instead of presenting her evidence.

The case was submitted for decision on April 3, 2013, considering the Memorandum each filed by petitioner and respondent on March 11, 2013 and March 25, 2013, respectively."

On February 27, 2014, this Court's Division denied the petition for lack of merit. The pertinent portion of which states:

"It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before the Court documents such as official receipts, HSBC Certification, and BNP Paribas Consolidated Cash Statements proving its receipt of foreign currency remittances, the Court however sees no connection or relevance to its alleged export sales for the first and second quarters of fiscal year 2010 since petitioner ***failed to submit VAT zero-rated invoices and export documents such as export declarations***

> ***and bills of lading or airbills. Thus, petitioner's alleged export sale for the first and second quarters of fiscal year ending June 30, 2010 in the amount of P3,252,883,799.44 cannot qualify for VAT zero rating*** *and the alleged input VAT incurred by petitioner for the period covering January to March 2009 in connection thereto in the amount of P107,502,796.09 cannot be refunded."*[4] *(Emphasis Supplied)*

Petitioner filed a Motion for Reconsideration, which was denied in a Resolution dated May 29, 2014, hence, the instant petition.

Petitioner raised the following issues:

> **"I. ESTOPPEL HAS SET IN. RESPONDENT CIR HAD EARLIER ACKNOWLEDGED AND CONFIRMED PETITIONER TO BE VAT ZERO RATED. MOREOVER, THE STATE, THRU, THE BOARD OF INVESTMENTS, CONFIRMED PETITIONER'S STATUS AS VAT ZERO-RATED. THERE WAS NO NEED TO ESTABLISH ANEW SUCH FACT.**
>
> **II. THE HONORABLE COURT BELITTLED THE FACT THAT THE REPUBLIC, THRU BOARD OF INVESTMENTS, HAD ISSUED A CERTIFICATION TO THE EFFECT THAT PETITIONER, EXPORTED 100% OF ITS TOTAL SALES FOR THE PERIOD JANUARY 1 TO DECEMBER 31, 2009, THEREBY QUALIFYING IT FOR VAT ZERO-RATING.**
>
> **III. THE BOI CERTIFICATION, IN THE ABSENCE OF PROOF AS TO MISREPRESENTATION, WAS SUFFICIENT PROOF THAT PETITIONER'S EXPORT SALES WERE ZERO-RATED."**

Petitioner claims that respondent previously issued an opinion confirming petitioner's status as VAT zero-rated. Petitioner thus argued that this Court cannot require any further evidence when respondent demonstrated to be in estoppel to question petitioner's status. Petitioner also claims that the propriety or validity of its export sale was never put an issue and it is one of the facts jointly stipulated by the parties, thus, there is no need to present evidence to

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[4] Supra Note 2, p.54.

establish that fact. Lastly, petitioner claims that this Court's Division adopted a myopic view and belittled the evidentiary value of the BOI Certification. Petitioner insists that a BOI Certification was sufficient proof that petitioner's export sales were zero-rated.

In her Comment, respondent disagrees that the BOI Certification was sufficient proof that petitioner's export sales were zero-rated. Respondent insists that duly registered invoices or receipts evidencing zero-rated sales must be presented citing Microsoft Philippines, Inc., vs. Commissioner of Internal Revenue[5] and Western Mindanao Power Corporation vs. Commissioner of Internal Revenue[6].

The main issue in the petition is whether a BOI Certification is sufficient proof that petitioner's export sales were zero-rated.

We resolve.

The following pertinent facts are undisputed:

1. Petitioner is a VAT registered taxpayer[7];
2. Petitioner is in the business of processing, milling, crushing, refining, smelting and concentrating mineral resources for export[8];
3. Petitioner is registered with the BOI as "New Producer of Gold and Silver Dore" under Certificate of Registration No. 2008-042 issued on February 7, 2008[9].
4. On August 3, 2009, the BIR, through Acting Commissioner James H. Roldan, confirmed that the input taxes paid by petitioner may be claimed as tax credit or refund[10].
5. BOI Certification dated January 27, 2010[11].

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[5] G.R. No. 180173, April 6, 2011.
[6] G.R. No. 181136, June 13,2012.
[7] Joint Stipulations of Facts, Division Docket, pp. 187-192.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.

6. Petitioner's administrative and judicial claim was timely filed.[12]

Notwithstanding the aforementioned facts, taxpayer claimant must likewise follow the invoicing and substantiation requirements [13] of the zero-rated sales. Stated differently, it is not enough that a VAT registered taxpayer's engagement in zero-rated transactions be proven. Compliance with the invoicing and substantiation requirements of the zero-rated transactions must likewise be proven.

In Kepco Philippines Corporation vs. Commissioner of Internal Revenue[14], the failure to comply with the correct substantiation requirement for zero-rated transactions resulted to the denial of the claim for refund, to wit:

> *"The issue of whether the word zero-rated should be imprinted on invoices and/or official receipts as part of the invoicing requirement has been settled in the case of Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue and restated in the later case of J.R.A. Philippines, Inc. v. Commissioner. In the first case, Panasonic Communications Imaging Corporation (Panasonic), a VAT-registered entity, was engaged in the production and exportation of plain paper copiers and their parts and accessories. From April 1998 to March 31, 1999, Panasonic generated export sales amounting to US$12,819,475.15 and US$11,859,489.78 totaling US$24,678,964.93. Thus, it paid input VAT of P9,368,482.40 that it attributed to its zero-rated sales. It filed applications for refund or tax credit on what it had paid. The CTA denied its application. Panasonics export sales were subject to 0% VAT under Section 106(A)(2)(a)(1) of the 1997 NIRC but it did not qualify for zero-rating because the word zero-rated was not printed on Panasonics export invoices. This omission, according to the CTA, violated the invoicing requirements of Section 4.108-1 of RR No. 7-95. Panasonic argued, however, that in requiring the printing on its sales invoices of the word zero-rated, the Secretary of Finance unduly expanded,*

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[12] Division's Decision p.49.
[13] Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 181858. November 24, 2010.
[14] Ibid.

amended, and modified by a mere regulation (Section 4.108-1 of RR No. 7-95) the letter and spirit of Sections 113 and 237 of the 1997 NIRC, prior to their amendment by R.A. 9337. Panasonic stressed that Sections 113 and 237 did not necessitate the imprinting of the word zero-rated for its zero-rated sales receipts or invoices. The BIR integrated this requirement only after the enactment of R.A. No. 9337 on November 1, 2005, a law that was still inexistent at the time of the transactions. Denying Panasonics claim for refund, the Court stated:

> *Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTAs First Division, the appearance of the word zero-rated on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.*
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> *Further, the printing of the word zero-rated on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.*

Following said ruling, Section 4.108-1 of RR 7-95 neither expanded nor supplanted the tax code but merely supplemented what the tax code already defined and discussed. In fact, the necessity of indicating zero-rated into VAT invoices/receipts became more apparent when the provisions of this revenue regulation was later integrated into RA No. 9337, the amendatory law of the 1997 NIRC. Section 113, in relation to Section 237 of the 1997 NIRC, as amended by RA No. 9337, now reads:

> *SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -*
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> *(A) Invoicing Requirements. - A VAT-registered person shall issue:*
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> *(1) A VAT invoice for every sale, barter or exchange of goods or properties;* ***and***

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

*(b) If the sale is exempt from value-added tax, the term "**VAT-exempt sale**" shall be written or printed prominently on the invoice or receipt;*

*(c) If the sale is subject to zero percent (0%) value-added tax, the term "**zero-rated sale**" shall be written or printed prominently on the invoice or receipt;*

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

(C) Accounting Requirements. - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary

journals shall contain such information as may be required by the Secretary of Finance.

x x x x

SEC. 237. Issuance of Receipts or Sales or Commercial Invoices. - All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

Evidently, as it failed to indicate in its VAT invoices and receipts that the transactions were zero-rated, Kepco failed to comply with the correct substantiation requirement for zero-rated transactions. (Emphasis supplied)

In the instant case, petitioner wants the invoicing and substantiation requirements of zero-rated transactions to be proven by a mere BOI Certification. It was stated that the Certification was 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" and that the Certification was valid from January 01 to December 31, 2010. Considering that the BOI Certification stated that petitioner exported 100% of its sales, petitioner bank on it as sufficient to prove the export sales.

We find that mere BOI Certification alone is insufficient to prove export sales.

Article 23 of Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1997" defined export sales as follows"

> *"Article 23. "Export sales" shall mean the Philippine port F.O.B. value,* ***determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported*** *directly by a registered export producer or the net selling price of export product sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same:* ***Provided, That sales of export products*** *to another producer or to an export trader* ***shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents:*** *Provided, further, That without actual exportation the following shall be considered constructively exported for purposes of this provision: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials used in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue and the Bureau of Customs; (4) sales to foreign military bases, diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not: Provided, further, That export sales of registered export trader may include commission income: and Provided, finally, That exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee.*
>
> *Sales of locally manufactured or assembled goods for household and personal use to Filipinos abroad and other*

non-residents of the Philippines as well as returning Overseas Filipinos under the Internal Export Program of the government and paid for in convertible foreign currency inwardly remitted through the Philippine banking systems shall also be considered export sales."

Evidently, export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of exports products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents. In the case of Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue[15], the Supreme Court had occasion to rule on the documentary evidences to prove export sales, to wit:

"In this connection, petitioner, ***in order to prove that it was engaged in export sales during the second quarter of 1998, offered in evidence copies of summary of export sales, sales invoices, official receipts, airway bills, export declarations and certification of inward remittances during the said period.*** *In addition, petitioners Certificate of Registration with RDO Control No. 96-540-000713 issued by the BIR and Certificate of Registration No. 95-133 issued by the PEZA were likewise offered in evidence to prove that it is a VAT-registered entity as well as an Ecozone export enterprise.*

To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the sale and actual shipment of goods from the Philippines to a foreign country. In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. *Moreover, the certification of inward remittances attests to the fact of payment 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" (Emphasis supplied)*

[15] G.R. No. 166732, April 27, 2007.

Concomitantly, a BOI Certification alone is not sufficient to prove a taxpayer claimant's export sales for a particular period. Thus, We find that the Division of this Court did not err when it ruled as follows:

> *"xxx, in order for an export sale to qualify as zero-rated, the following must be present:*
>
> *1. That there was sale and actual shipment of goods from the Philippines to a foreign country;*
> *2. That the sale was made by a VAT-registered person;*
> *3. That the sale was paid for in acceptable foreign currency or its equivalent in goods and services; and*
> *4. That the payment was accounted for in accordance with the rules and regulations of the BSP.*
>
> *Corollary to the first requisite, Sections 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, as implemented by Sections 4.113-1 (A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-2005, as amended, provide that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties issue a VAT invoice which must contain the following information:*
>
> *"SEC. 113. Invoicing and Accounting Requirements for VATRegistered Persons.-*
>
> *(A) Invoicing Requirements. - A VAT -registered person shall issue:*
> *(1) A VAT invoice for every sale, barter or exchange of goods or properties; and*
>
> *xxx xxx xxx*
>
> *(B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:*
> *(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);*
> *(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication fhat such amount includes the value-added tax: Provided, That:*
>
> *xxx xxx xxx*
>
> *(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;*
>
> *xxx xxx xxx*

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and" (Emphasis supplied)

"SEC. 4.113-1. Invoicing Requirements. –

(A) A VAT -registered person shall issue: -
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

xxx xxx xxx

Only VAT -registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. - The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his TIN;
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

xxx xxx xxx

(c) If the sale is subject to zero percent (0%) VAT, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;" (Emphasis supplied)

xxx xxx xxx

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

It is undisputed that petitioner is a VAT-registered entity. While petitioner proffered before the Court documents such as official receipts, HSBC Certification, and BNP Paribas Consolidated Cash Statements proving its receipt of foreign currency remittances, the Court however sees no connection or relevance to its alleged export sales for the first and second quarters of fiscal year 2010 since petitioner ***failed to submit VAT zero-rated invoices***

> ***and export documents such as export declarations and bills of lading or airbills. Thus, petitioner's alleged export sale for the first and second quarters of fiscal year ending June 30, 2010 in the amount of P3,252,883,799.44 cannot qualify for VAT zero rating*** *and the alleged input VAT incurred by petitioner for the period covering January to March 2009 in connection thereto in the amount of P107,502,796.09 cannot be refunded.*
>
> *Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in strictissimi juris against the person or entity claiming it."*[16] *(Emphasis Supplied)*

In sum, petitioner failed to substantiate its claim for refund. Accordingly, finding no reversible error, the Court En Banc finds no cogent reason or justification to disturb the conclusions reached by the CTA Second Division.

WHEREFORE premises considered, the petition is **DENIED** for lack of merit. The Decision of the Second Division of this Court in CTA Case No. 8301, promulgated on February 27, 2014 and its Resolution, promulgated on May 29, 2014, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[16] Supra Note 2.

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice