REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TAGANITO MINING CORPORATION, Petitioner, - *versus* - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 935**
COMMISSIONER OF INTERNAL REVENUE, Petitioner, - *versus* -	**CTA EB NO. 936** (CTA Case No. 8090) Present: *Del Rosario, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Fabon-Victorino,* *Mindaro-Grulla,* *Cotangco-Manalastas, and* *Ringpis-Liban, JJ.*
TAGANITO MINING CORPORATION, Respondent.	**Promulgated:** AUG 03 2015 3:10 p.m.

RESOLUTION

BAUTISTA, J.:

For consideration are:

a). Respondent Commissioner of Internal Revenue's ("CIR") "Motion for Reconsideration (Decision dated December 16, 2014)," filed on January 21, 2015;

b). Petitioner Taganito Mining Corporation's ("Taganito") "Motion for Reconsideration," filed by registered mail on February 4, 2015; and

c). Petitioner Taganito's "Comment (to Motion for Reconsideration)" filed on May 25, 2015.

The Court *En Banc* on December 16, 2014 promulgated a Decision, the dispositive portion thereof states:

> "**WHEREFORE**, premises considered, the Petitions for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision and Resolution dated May 25, 2012 and August 30, 2012, respectively, are hereby **AFFIRMED** in *toto*.
>
> **SO ORDERED.**

CIR's allegations in her "Motion for Reconsideration (Decision dated December 16, 2014)."

CIR alleges that Taganito failed to submit the complete documents listed in Revenue Memorandum Order No.("RMO") 53-98 dated June 1, 1998 to support its application for refund, therefore the period of 120 days prescribed in Section 112(C) of the National Internal Revenue Code, as, amended ("NIRC") did not start to run. Consequently, the judicial claim was filed prematurely warranting the dismissal of the Petition for Review filed before the Court *a quo*.

Finally, she avers that the submission of only eight documents in compliance with the requirements stated in RMO 53-98 would render its power to interpret the tax laws nugatory.

Taganito's allegations in its "Motion for Reconsideration."

Taganito alleges that by subjecting its input tax to its output tax, the ruling of the Court constitutes judicial legislation as there are no provisions in the Tax Code which require a 100% zero-rated VAT entity to charge its output tax, against its input tax when the transaction involves zero-rated sales.

Furthermore, it alleges that the CIR has not issued any Revenue Regulations which details how a 100% zero-rated VAT entity can be entitled to refund of the input tax corresponding to the amortized portion of its capital goods with aggregate value in excess of P1 Million.

Finally, it submits that there is a distinction between the terms "creditable input tax" under Section 110(A) of the NIRC and "input tax credit" under Section 110(B). The former refers to the input tax on purchases which can be credited against the output tax, while the latter refers to refund to zero-rated taxpayers.

Taganito's counter-arguments in its "Comment (to Motion for Reconsideration)"

Taganito argues that the burden of proof has shifted to CIR for it was able to prove that it submitted documents pursuant to RMO 53-98. Furthermore, it alleges that not all the documents listed in the RMO 53-98 are applicable to it as the RMO 53-98 does not provide for the complete list of documents for refund. Finally, it avers that it was denied due process when it was not informed of the missing documents required by CIR.

The arguments raised by both parties do not persuade the Court.

Anent the issue raised by CIR that Taganito failed to submit complete documents as prescribed in RMO 53-98, the Supreme Court has settled the issue in the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*[1] when it ruled that there is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 that requires submission of complete documents enumerated in RMO 53-98 to be granted a refund or credit of input VAT, to wit:

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[1] G.R No. 205055, July 18, 2014.

> "The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 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 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'"

Clearly from the foregoing, the RMO 53-98 does not require Taganito to submit all the documents enumerated therein. What it only requires is that it submits documents in compliance with the said RMO. Therefore, when it submitted eight (8) documents, there was compliance with the RMO.

Furthermore, the allegation that it would render its power to interpret tax laws nugatory upon failure of Taganito to complete the documents stated in the RMO No. 53-98 is baseless as Taganito merely submitted what it determined sufficient to support its claim. As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*,[2] the term "relevant supporting documents" refer to those documents necessary to support its claim as determined by the taxpayer, to wit:

> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Thus, when Taganito submitted the documents which it determined sufficient, there was no deviation from the RMO that will undermine the power of CIR to interpret tax laws.

[2] G.R. Nos. 172045-46, June 16, 2009, 589 SCRA 253.

Anent the insistence of Taganito that its input tax should not have been subjected to any output tax, the Court *En Banc* has already settled the issue in its Decision dated December 16, 2014,[3] when it ruled that:

> "SEC. 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 output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

Section 110(A)(1) of the 1997 NIRC refers to creditable input tax as any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof

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[3] *Rollo*, CTA EB Case No. 935, pp. 181-205; penned by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, and Associate Justice Amelia R. Cotangco-Manalastas, concurring.

on the following transactions[4] shall be credited against the output tax.

In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue*,[5] the Supreme Court recognizes that any excess of input taxes from zero-rated transactions over output taxes are refundable, to wit:

> 'Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters.

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[4] SEC. 110. *Tax Credits*. -

(A) Creditable Input Tax. -

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

(2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:

(a) To the purchaser upon consummation of sale and on importation of goods or properties; and

(b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, that in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

[5] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

> **Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.**
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> Zero-rated transactions generally refer to the export sale of goods and services. The tax rate in this case is set at zero. When applied to the tax base or the selling price of the goods or services sold, such zero rate results in no tax chargeable against the foreign buyer or customer. But, although the seller in such transactions charges no output tax, he can claim a refund of the VAT that his suppliers charged him. The seller thus enjoys automatic zero rating, which allows him to recover the input taxes he paid relating to the export sales, making him internationally competitive.'(Emphasis supplied).

Therefore, from the foregoing, any input tax from the purchase of capital goods is subject to amortization even if the transaction was zero-rated as petitioner can only claim refund based on its 'creditable input tax,' that is when input tax exceeds output tax.[6]"

Finally, there is no distinction between the term "creditable input tax" under Section 110(A) of the NIRC and the term "input tax credit" under Section 110(B) of the NIRC as both terms involved the charging of the input tax against the output tax. The only difference is that in Section 110(A), it discusses <u>what can be charged</u> from an input VAT against an output VAT. While in Section 110(B), it discusses on how the <u>excess</u> input or output tax shall be treated.

Therefore, the Court *En Banc* finds no reversible error when it ruled in the following manner:

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[6] *Id.*, pp.200-202.

> "SEC. 110. *Tax Credits.* -
>
> (A) *Creditable Input Tax.* -
>
> *(1)* <u>Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax</u>:
>
> xxx xxx xxx
>
> *Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000.00): *Provided,* however, That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee." (Emphasis supplied).

From the foregoing, it is clear that if the aggregate acquisition cost of the capital goods, excluding the VAT component thereof, exceeds one million pesos in a calendar month, the input tax on capital goods shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter.

In the case of *Abakada Guro Party List vs. Ermita,*[7] the Supreme Court has affirmed the spread of input tax to over 60 months or the estimated useful life of the capital goods

[7] G.R. No. 168056, September 1, 2005, 469 SCRA 1.

when the acquisition cost of the capital goods, excluding its VAT component thereof, exceeds one million pesos, to wit:

> 'The foregoing section imposes a 60-month period within which to amortize the creditable input tax on purchase or importation of capital goods with acquisition cost of ₱1 Million pesos, exclusive of the VAT component. Such spread out only poses a delay in the crediting of the input tax. Petitioners' argument is without basis because the taxpayer is not permanently deprived of his privilege to credit the input tax.
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> It is worth mentioning that Congress admitted that the spread-out of the creditable input tax in this case amounts to a 4-year interest-free loan to the government. In the same breath, Congress also justified its move by saying that the provision was designed to raise an annual revenue of 22.6 billion. The legislature also dispelled the fear that the provision will fend off foreign investments, saying that foreign investors have other tax incentives provided by law, and citing the case of China, where despite a 17.5% non-creditable VAT, foreign investments were not deterred. Again, for whatever is the purpose of the 60-month amortization, this involves executive economic policy and legislative wisdom in which the Court cannot intervene. (Emphasis supplied).'

In the present case the input VAT on the purchase of capital goods involves the aggregate amount of P33,608,456.58.[8] Therefore, it is but proper to spread the input VAT to five years pursuant to Section 110 of the 1997 NIRC."

WHEREFORE, the CIR's "Motion for Reconsideration (Decision dated December 16, 2014)," and Taganito's "Motion for Reconsideration," are hereby **DENIED** for lack of merit.

SO ORDERED.

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[8] *Rollo*, CTA Case No. 8090 (Decision) dated May 25, 2012, p. 53.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice