REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 9124 and 9200

Members:

CASTAÑEDA, JR., *Chairperson,*
MANAHAN, *JJ.*

Promulgated:
OCT 01 2018
2:50 p.m.

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DECISION

MANAHAN, *J.:*

This is a consolidation of two (2) Petitions for Review filed by Carmen Copper Corporation on August 24, 2015 and on November 16, 2015, docketed as CTA Case Nos. 9124[1] and 9200[2], praying for the refund or tax credit of its alleged excess and unapplied input value-added tax (VAT) payments attributable to its zero-rated sales for the first and second quarters of taxable year (TY) 2013, in the total amount of ₱49,389,885.74, broken down as follows:

CTA CASE NO.	PERIOD COVERED	INPUT VAT CLAIM
9124	First Quarter of TY 2013	₱ 38,654,759.77
9200	Second Quarter of TY 2013	₱ 10,735,125.97

[1] CTA Case No. 9124, docket, vol. I, pp. 10-20.
[2] CTA Case No. 9200, docket, pp. 10-19.

TOTAL	**₱49,389,885.74**

THE FACTS

Petitioner Carmen Copper Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. CS200414509. Petitioner's office address is located at the 7th Floor, Quad Alpha Centrum Building, 125 Pioneer Street, Mandaluyong City. It is engaged in the business of mining ores and other mineral resources.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer under Certificate of Registration No. OCN8RC0000048993 dated October 5, 2004.[4] It is also registered with the Board of Investments (BOI) as a "New Producer of Copper Concentrate" with non-pioneer status under Certificate of Registration No. 2006-158.[5]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Quarterly VAT Returns for the first and second quarters of TY 2013 on April 25, 2013[6] and on July 25, 2013[7], respectively.

Thereafter, petitioner filed with the BIR Large Taxpayers Services – Excise Tax Division administrative claims for refund of its alleged excess and unutilized input VAT payments for the first and second quarters of TY 2013 in the total amount of ₱135,859,423.45, broken down as follows:

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[3] Exhibit "P-2", CTA Case No. 9124, docket, vol. III, pp. 840-859.
[4] Exhibit "P-1", CTA Case No. 9124, docket, vol. III, p. 839.
[5] Exhibit "P-3", CTA Case No. 9124, docket, vol. III, pp. 860-866.
[6] Exhibit "P-6", CTA Case No. 9124, docket, vol. III, p. 874.
[7] Exhibit "P-7", CTA Case No. 9124, docket, vol. III, p. 875.

PERIOD COVERED (TY 2013)	DATE OF FILING	AMOUNT OF CLAIM
First Quarter	March 24, 2015[8]	₱ 56,789,119.62
Second Quarter	June 18, 2015[9]	₱ 79,070,303.83
TOTAL		**₱135,859,423.45**

On July 23, 2015, petitioner received a letter partially denying petitioner's claim for refund of its accumulated and unutilized input VAT for the first quarter of TY 2013.[10] In the said letter, respondent informed petitioner that only the amount of ₱18,134,359.85 was recommended for the issuance of tax credit certificate.

On October 20, 2015, petitioner received another letter from respondent, this time, partially denying its claim for refund of its accumulated and unutilized input VAT for the second quarter of TY 2013.[11] In the said letter, respondent informed petitioner that only the amount of ₱68,335,177.86 was recommended for the issuance of a tax credit certificate.

In view of the lapse of the 120-day period and the partial denial of its administrative claims for refund, petitioner filed separate Petitions for Review with this Court for the refund or issuance of TCC for its alleged excess and unutilized input VAT for the first and second quarters of TY 2013, the details of which are as follows:

CTA CASE NO.	TAXABLE PERIOD (TY 2013)	DATE FILED
9124	First Quarter	August 24, 2015[12]
9200	Second Quarter	November 16, 2015[13]

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[8] Exhibit "P-8", CTA Case No. 9124, docket, vol. III, pp. 876-880.
[9] Exhibit "P-9", CTA Case No. 9124, docket, vol. III, pp. 881-885.
[10] Exhibit "P-22", CTA Case No. 9124, docket, vol. III, p. 898.
[11] Exhibit "P-23", CTA Case No. 9124, docket, vol. III, pp. 899-900.
[12] CTA Case No. 9124, docket, vol. I, pp. 10-20.
[13] CTA Case No. 9200, docket, pp. 10-19.

On November 11, 2015, within the extended period granted by the Court,[14] respondent filed his Answer[15] for CTA Case No. 9124 and on February 12, 2016, he likewise filed his Answer[16] for CTA Case No. 9200.

CTA Case No. 9124 was set for pre-trial conference on January 21, 2016.[17] Upon motion of petitioner,[18] the pre-trial conference in CTA Case No. 9124 was reset to March 3, 2016[19] and then to April 14, 2016[20].

On the other hand, CTA Case No. 9200 was set for pre-trial conference on May 17, 2016.[21]

Meanwhile, on February 23, 2016, petitioner filed an Omnibus Motion to Consolidate With Urgent Motion to Reset Pre-Trial Conference[22] in CTA Case No. 9124, praying, among others, for the consolidation of the case with CTA Case No. 9200.

On March 14, 2016, petitioner filed a Motion to Consolidate in CTA Case No. 9200, moving for the consolidation of the case with CTA Case No. 9124.

On May 6, 2016, the CTA Third Division, in CTA Case 9200, granted petitioner's Motion to Consolidate and ordered the consolidation of the case with CTA Case No. 9124 subject to the approval of the CTA Second Division.[23]

Meanwhile, in the Resolution[24] dated May 13, 2016, the CTA Second Division stated that it has no objection to the Resolution of the CTA Third Division consolidating CTA Case No. 9200 with CTA Case No. 9124, and scheduled the pre-trial conference for the consolidated cases on June 9, 2016.

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[14] CTA Case No. 9124, Orders dated September 23, 2015 and October 27, 2015, docket, vol. I, pp. 104 and 110.
[15] CTA Case No. 9124, docket, vol. I, pp. 111-115.
[16] CTA Case No. 9200, docket, pp. 94-99.
[17] CTA Case No. 9124, Notice of Pre-Trial Conference, docket, vol. I, pp. 117-118.
[18] CTA Case No. 9124, docket, vol. I, pp. 136-140.
[19] CTA Case No. 9124, docket, vol. I, p. 142.
[20] CTA Case No. 9124, docket, vol. I, p. 221.
[21] CTA Case No. 9200, Notice of Pre-Trial Conference, docket, pp. 101-102.
[22] CTA Case No. 9124, docket, vol. I, pp. 143-148.
[23] CTA Case No. 9200, docket, pp. 368-369.
[24] CTA Case No. 9124, docket, vol. I, p. 261.

Petitioner filed its Consolidated Pre-Trial Brief[25] on June 6, 2016; while respondent filed his Consolidated Pre-Trial Brief[26] on June 7, 2016.

The parties filed their Joint Stipulation of Facts and Issues[27] on July 11, 2016. This was approved and adopted by the Court in the Pre-Trial Order[28] issued on July 15, 2016, which also terminated the pre-trial.

Upon motion of petitioner,[29] the Court commissioned Mr. Neil U. Sison as the Independent Certified Public Accountant (ICPA) for the case.[30]

During trial, petitioner presented the following witnesses: Mr. Fernando A. Rimando[31], its Chief Financial Officer; and Mr. Neil U. Sison[32], the Court-commissioned ICPA.

On November 22, 2016, petitioner filed a Motion to Recall Witness and Defer Submission of Formal Offer of Evidence[33]. It was granted by the Court in the Resolution[34] dated January 19, 2017 and the Court-commissioned ICPA, Mr. Neil U. Sison, was recalled during the hearing on January 30, 2017[35].

Petitioner filed its Formal Offer of Evidence[36] on February 6, 2017, consisting of Exhibits "P-1" to "P-45-a" and "P-51-A-1" to "P-54-a", inclusive of sub-markings. The Court admitted petitioner's formally offered exhibits, except for Exhibits "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", and "P-43" for failure to present their originals for comparison; and Exhibits "P-51-F-13" to "P-51-F-15", "P-51-X-1" to "P-51-X-12",

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[25] CTA Case No. 9124, docket, vol. I, pp. 262-291.
[26] CTA Case No. 9124, docket, vol. I, pp. 442-445.
[27] CTA Case No. 9124, docket, vol. II, pp. 577-588.
[28] CTA Case No. 9124, docket, vol. II, pp. 592-602.
[29] CTA Case No. 9124, Motion to Commission Independent Certified Public Accountant, docket, vol. II, pp. 615-620.
[30] CTA Case No. 9124, docket, vol. II, pp. 696-699.
[31] Exhibit "P-44", Amended Judicial Affidavit of Mr. Fernando A. Rimando, CTA Case No. 9124, docket, vol. II, pp. 634-652; Minutes of the Hearing dated August 31, 2016, CTA Case No. 9124, docket, vol. II, p. 700.
[32] Exhibit "P-52", Judicial Affidavit of Mr. Neil U. Sison, CTA Case No. 9124, docket, vol. II, pp. 735-747; Minutes of the Hearing dated November 7, 2016, CTA Case No. 9124, docket, vol. II, p. 750.
[33] CTA Case No. 9124, docket, vol. II, pp. 763-766.
[34] CTA Case No. 9124, docket, vol. III, pp. 776-777.
[35] Minutes of the Hearing dated January 30, 2017, CTA Case No, 9124, docket, vol. III, p. 807.
[36] CTA Case No. 9124, docket, vol. III, pp. 812-837.

"P-51-Y-187", "P-51-Z-178", "P-51-AE-50", "P-51-AE-108", "P-51-AI-154", "P-51-AI-155", "P-51-AJ-40", and "P-51-AV-1" for not being found in the records of the case.[37]

During the hearing on May 3, 2017, respondent presented Revenue Officer Roque Gildo M. Ganaden[38] as his lone witness. Thereafter, respondent filed his Formal Offer of Evidence[39] on May 10, 2017, consisting of Exhibits "R-1" to "R-7". Respondent's formally offered evidence were all admitted by the Court via Resolution[40] dated October 10, 2017.

Respondent filed his Memorandum[41] on November 10, 2017; while petitioner filed its Memorandum[42] on December 12, 2017. Hence, in the Resolution[43] dated January 5, 2018, the Court declared the case submitted for decision.

THE ISSUE

The parties submitted the following issue for this Court's disposition:[44]

> "Whether Petitioner is entitled to a tax refund/credit in the amount of Thirty Eight Million Six Hundred Fifty Four Thousand Seven Hundred Fifty Nine Pesos and 77/100 (₱38,654,759.77) and Ten Million Seven Hundred Thirty Five Thousand One Hundred Twenty Five Pesos and 97/100 (₱10,735,125.97) allegedly representing disallowed and unapplied Input VAT directly attributable to Petitioner's zero-rated sales for the first and second quarters of TY 2013, respectively."

[37] Resolutions dated May 2, 2017 and October 10, 2017, docket, vol. III, pp. 1035-1037 and 1222-1223.
[38] Minutes of the Hearing dated May 3, 2017, CTA Case No. 9124, docket, vol. III, p. 1038.
[39] CTA Case No. 9124, docket, vol. III, pp. 1040-1043.
[40] CTA Case No. 9124, docket, vol. III, pp. 1222-1223.
[41] CTA Case No. 9124, docket, vol. III, pp. 1224-1230.
[42] CTA Case No. 9124, docket, vol. III, pp. 1268-1293.
[43] CTA Case No. 9124, docket, vol. III, p. 1296.
[44] Issue, Joint Stipulation of Facts and Issues (JSFI), CTA Case No. 9124, docket, vol. II, p. 578.

Petitioner's Arguments

Petitioner maintains that it complied with all the requisites for claiming a refund of excess input VAT (attributable to zero-rated sales), thus:

1. The taxpayer is VAT registered;
2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
3. The claim was filed within two (2) years after the close of the taxable quarter when such sales were made;
4. The input taxes are attributable to zero-rated or effectively zero-rated sales, except the transitional input tax;
5. The input taxes have not been applied against the output tax;
6. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations.

Petitioner avers that it has satisfactorily shown that it is engaged in the mining, selling and production of all kinds of ores, minerals etc., and is registered with the BOI as a new producer of copper concentrates and has also submitted documents as well as testimonies of its witnesses to prove that it is engaged in sales which are characterized as zero-rated pursuant to Section 106 (A) (2) of the 1997 NIRC.

Respondent's Counter-Arguments

In CTA Case No. 9124, respondent interposed the following Special and Affirmative Defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, defendant respectfully allege as her affirmative defense that:
>
> 4. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are

essential to its very existence; hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered.

5. Since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority.

6. Tax refunds partake of the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State.

7. Thus, the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

8. In the case at hand, it is incumbent upon petitioner to establish its right to tax refund and that it is indubitably entitled thereto; and failure to sustain such burden is fatal for this claim of tax refund.

9. Likewise, not only should petitioner establish that it is entitled to tax refund, it is also imperative that petitioner prove its compliance with the following:

   a. The registration requirement of a VAT taxpayer in compliance with Revenue Regulations No. 7-2012 in relation to Section 236 (A), (B), (C) and (D) of the Tax Code;

   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 Section 113 and 114 of the Tax Code;

   c. Proof of compliance with the prescribed checklist of requirements to be submitted in cases involving a claim for VAT refund pursuant to

Revenue Memorandum Order No. 53-1998 and Revenue Memorandum Circular No. 54-2014. Otherwise, there would be no sufficient compliance with the filing of an administrative application for tax 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. 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 Petition for Review;

d. Petitioner's alleged zero-rated sales complied with the requirements set forth in Section 108 of the Tax Code;

e. Input taxes in the amount of Thirty Seven Million Three Hundred Ninety Three Thousand One Hundred Ninety Five Pesos (P37,393,195.00) allegedly representing unutilized Input VAT were directly attributable to its zero rated sales and such have not been applied against any Output VAT and were not carried over to the succeeding taxable quarter or quarters;

f. Petitioner's administrative and judicial claims for tax refund were filed within the periods provided in Sections 112 (A) and (C) of the Tax Code;

g. Petitioner's local purchases and importation of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts under Sections 110 (A) (2) and 113 of the Tax Code; and

h. The requirements as enumerated under Section 4-110-7 of Revenue Regulations No. 14-2005 (sic).

10. It is noteworthy that the alleged unutilized Input VAT claimed by petitioner in the amount of Thirty Eight Million Nine Hundred Five Thousand Three Hundred

Forty Five Pesos and 15/100 (₱38,905,345.15) was not properly documented.

11. It has been uniformly and consistently held by the Honorable Supreme Court that the taxpayer bears the burden of establishing the factual and legal basis of its claim for tax refund. In the case at hand, petitioner failed to present clear and convincing evidence to merit a full tax refund.

12. The case of Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation emphatically pointed out that:

> Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. **Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer**, as taxes are the lifeblood of the government. (**Emphasis supplied**).

13. Following the premise above petitioner has miserably failed to establish its right to a full tax refund."

While in CTA Case No. 9200, respondent submitted the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully allege as her affirmative defense that:

xxx xxx xxx

9. Likewise, not only should petitioner establish that it is entitled to tax refund, it is also imperative that petitioner prove its compliance with the following:

xxx xxx xxx

e. That the input taxes in the amount of Ten Million Seven Hundred Thirty Five Thousand One Hundred Twenty Five Pesos and 97/100 (₱10,735,125.97) allegedly representing unutilized Input VAT were directly attributable to its zero rated sales and such have not been applied against any Output VAT and were not carried over to the succeeding taxable quarter or quarters;

xxx xxx xxx

10. It is noteworthy that the alleged unutilized Input VAT claimed by petitioner in the amount of Ten Million Seven Hundred Thirty Five Thousand One Hundred Twenty Five Pesos and 97/100 (₱10,735,125.97) was not properly documented.

xxx xxx xxx

13. Following the premise above, petitioner has miserably failed to establish its right to a full tax refund."

THE RULING OF THE COURT

The Court shall first ascertain the timeliness of the filing of petitioner's claims as this will determine whether it is still necessary to resolve petitioner's compliance with the other requisites for input VAT refund.

Petitioner's administrative and judicial claims were

filed within the prescriptive period

Pursuant to Section 112(A) of NIRC of 1997, as amended, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thus, petitioner's administrative claims for the first and second quarters of TY 2013 were filed within the two-year prescriptive period, as shown below:

CTA CASE NO.	COVERED PERIOD (TY 2013)	CLOSE OF TAXABLE QUARTER	LAST DAY TO FILE ADMINISTRATIVE CLAIM	DATE OF FILING OF ADMINISTRATIVE CLAIM
9124	1st Quarter	March 31, 2013	March 31, 2015	March 24, 2015[45]
9200	2nd Quarter	June 30, 2013	June 30, 2015	June 18, 2015[46]

Anent the timeliness of petitioner's judicial appeal, Section 112(C) of the NIRC of 1997, as amended, provides the period for filing a judicial claim for the refund or tax credit of input VAT, namely: (1) the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[47]

The Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of the complete documents in support of the application for refund or tax credit within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the Court of Tax Appeals within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for refund or tax credit, the remedy of the

[45] Exhibit "P-8", CTA Case No. 9124, docket, vol. III, pp. 876-880.
[46] Exhibit "P-9", CTA Case No. 9124, docket, vol. III, pp. 881-885.
[47] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

taxpayer is to appeal the inaction of the CIR to the Court of Tax Appeals within 30 days after the expiration of such 120-day period.

Applying the same to the instant case, the following are the pertinent dates to petitioner's judicial claims for refund:

COVERED PERIOD (TY 2013)	DATE OF FILING OF ADMINISTRATIVE CLAIM	END OF THE 120-DAY PERIOD	END OF 30-DAY PERIOD	DATE OF FILING OF PETITION FOR REVIEW
First	March 24, 2015[48]	July 22, 2015	August 21, 2015[49]	August 24, 2015[50]
Second	June 18, 2015[51]	October 16, 2015	November 15, 2015[52]	November 16, 2015[53]

Based on the records, petitioner had until August 21, 2015 and November 15, 2015, within which to file its judicial claims for refund of input VAT for the first and second quarters of TY 2013. However, considering that August 21, 2015 was a holiday that fell on a Friday and November 15, 2015 fell on a Sunday, petitioner had until August 24, 2015 and November 16, 2015, respectively, within which to file its Petitions for Review with this Court.

Thus, the Petitions for Review filed on August 24, 2015 and on November 16, 2015 were likewise filed within the period prescribed by law.

Having determined that petitioner timely filed both its administrative and judicial claims for refund, the Court shall now proceed to determine petitioner's compliance with the other requisites.

Petitioner seeks the refund of its alleged excess and unutilized input VAT it incurred/paid during the first and second quarters of TY 2013 in the total amount ₱49,389,885.74, which is broken down as follows:

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[48] Exhibit "P-8", CTA Case No. 9124, docket vol. III, pp. 876-880.
[49] August 21, 2015 was a holiday and fell on a Friday.
[50] CTA Case No. 9124, docket, vol. I, pp. 10-20.
[51] Exhibit "P-9", CTA Case No. 9124, docket, vol. III, pp. 881-885.
[52] November 15, 2015 fell on a Sunday.
[53] CTA Case No. 9200, docket, pp. 10-19.

CTA CASE NO.	PERIOD COVERED (TY 2013)	AMOUNT OF CLAIM
9124	First Quarter	₱ 38,654,759.77
9200	Second Quarter	10,735,125.97
TOTAL		**₱49,389,885.74**

The above-mentioned amounts pertain to the portions disallowed by respondent upon acting on petitioner's respective administrative claims for the first and second quarters of TY 2013.[54] The following shows the summary of the allowed and disallowed portions of petitioner's administrative claim:

EXHIBIT NO.[55]	PERIOD COVERED (TY 2013)	TOTAL AMOUNT CLAIMED	AMOUNT GRANTED FOR REFUND	AMOUNT DISALLOWED
P-22	1st Quarter	₱ 56,789,119.62	₱ 18,134,359.85	₱ 38,654,759.77
P-23	2nd Quarter	79,070,303.83	68,335,177.86	10,735,125.97
TOTAL		**₱135,859,423.45**	**₱86,469,537.71**	**₱49,389,885.74**

In claiming the refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales, the pertinent provision of law is Section 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which states:

> "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

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[54] Exhibits "P-8" and "P-9", CTA Case No. 9124, docket, vol. III, pp. 876 and 881.
[55] CTA Case No. 9124, docket, vol. III, pp. 898-899.

> 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: *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.
>
> 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 Subsection (A) 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."

Pursuant thereto, in order to be entitled to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. that the taxpayer is VAT-registered;
2. that the claim for refund was filed within the prescriptive period both in the administrative and judicial levels;

3. that there must be zero-rated or effectively zero-rated sales;
4. that input taxes were incurred or paid;
5. that the input taxes due or paid were attributable to zero-rated sales or effectively zero-rated sales; and
6. that the input taxes were not applied against any output VAT liability.

The first two requisites were met by petitioner. However, with regard to item 3 of the foregoing, petitioner failed to support them with complete, adequate and accurate factual substantiation.

The records show that petitioner is registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS200414509. Its Articles of Incorporation show that its primary purpose is to "carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the relevant mining laws."[56]

Petitioner is likewise registered with the Board of Investments as a "New Producer of Copper Concentrate," with BOI Certificate of Registration No. 2006-158.[57]

Petitioner alleges that for the first and second quarters of TY 2013, it exported 100% of its copper concentrates. Petitioner also claims that the export sales proceeds were paid for in acceptable foreign currency, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP) pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which provides:

> "SEC. 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 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 Bangko Sentral ng Pilipinas (BSP);"

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[56] Exhibit "P-2", CTA Case No. 9124, docket, vol. III, pp. 840 and 843.
[57] Exhibit "P-3", CTA Case No. 9124, docket, vol. III, p. 860.

Based on the afore-quoted provision, in order for an export sale to qualify as zero-rated, the following conditions 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 or 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 VAT-Registered 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 that 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)*

In addition to the above requirements, the invoice must be duly registered with the BIR as prescribed under Sections 237 and 238 of the NIRC of 1997, as amended, to wit:

> "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 **sales** or **commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service. xxx" *(Emphasis supplied)*

> "SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* – All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), and (2)(c) of the same Code and Sections 4.113-1(A)(1), (B)(1) and (2)(c) of Revenue Regulations No. 16-05, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely:

1. Sales Invoice as proof of sale of goods;
2. 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. 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.

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

Petitioner's Quarterly VAT Returns for the first and second quarters of TY 2013 reflected zero-rated sales in the respective amounts of ₱2,894,091,775.45[58] and ₱3,172,230,335.76[59] totalling ₱6,066,322,111.21, equivalent to US$146,316,266.35 as accounted for by the ICPA, to wit:[60]

Customer	In PHP	Equivalent in USD
Goldwin Holdings Limited	14,912,848.58	366,378.23
MRI Trading AG-Zug Switzerland/Daye Nonferrous Metals Co., Ltd.	5,391,897,449.32	130,425,411.36
Philippine Associated Smelting & Refining Corporation	659,511,813.31	15,524,476.76
Total	**6,066,322,111.21**	**146,316,266.35**

However, a comparison of the foregoing amounts with that shown in petitioner's Schedule[61] of Export Sales reveals the following sales discrepancy amounting to ₱33,882,120.18 equivalent to USD825,663.85:

Customer	In PHP	Equivalent in USD
Goldwin Holdings Limited	14,912,848.58	366,378.23
MRI Trading AG-Zug Switzerland/Daye Nonferrous Metals Co., Ltd.	5,409,208,981.36	130,847,509.69
Philippine Associated Smelting & Refining Corporation	676,082,401.45	15,928,042.28

[58] Exhibit "P-6", Line 17, CTA Case No. 9124, docket, vol. III, p. 874.
[59] Exhibit "P-7", Line 17, CTA Case No. 9124, docket, vol. III, p. 875.
[60] Exhibit "P-54-A", pp. 8 and 9.
[61] Exhibits "P-51-I-1" and "P-51-I-2".

Total Per Schedule of Export Sales	6,100,204,231.39	147,141,930.20
Total Per ICPA Report	6,066,322,111.21	146,316,266.35
Discrepancy	**33,882,120.18**	**825,663.85**

To support its reported zero-rated sales, petitioner submitted various documents such as sales invoices[62], certification of inward remittances[63], export documents[64] (*i.e.*, Bills of Lading or Mate's Receipts), which were examined by the Court-commissioned Independent Certified Public Accountant.

However, a scrutiny of petitioner's supporting documents and the ICPA report[65] leads us to disallow the entire sales amounting to ₱6,100,204,231.39 or US$147,141,930.20 due to the following reasons:

Exh. No.	Customer	Invoice No.	Invoice Date	Amount in US$	Amount in PHP
Amount of sales per schedule CANNOT be TRACED to the supporting sales invoice					
P-51-N-3	MRI Trading AG	200F	2/13/2013	52,011.42	2,127,267.28
P-51-N-11	MRI Trading AG	362F	3/11/2013	159,037.73	6,528,498.74
P-51-N-11	MRI Trading AG	362F	3/11/2013	44,274.71	1,797,996.00
P-51-N-15	MRI Trading AG	367P	4/16/2013	9,716,853.87	399,119,772.74
P-51-N-15	MRI Trading AG	367F	4/16/2013	140,443.76	5,711,847.88
	Subtotal			***10,112,621.49***	***415,285,382.64***
Supporting sales invoice is UNREADABLE					
P-51-O-9	MRI Trading AG	5009P	7/10/2013	8,990,235.80	369,678,496.09
P-51-O-10	MRI Trading AG	5010P	7/12/2013	9,394,276.99	397,002,145.39
P-51-O-17	MRI Trading AG	5014P	8/1/2013	8,652,442.55	376,035,153.02
P-51-O-18	MRI Trading AG	5015P	8/14/2013	8,609,469.74	371,929,092.63
	Subtotal			***35,646,425.08***	***1,514,644,887.13***
Zero-rated sales with documents showing that the goods were only SHIPPED LOCALLY to Isabel, Leyte					

[62] Exhibits "P-51-N-1" to "P-51-N-19" and "P-51-O-1" to "P-51-O-19".
[63] Exhibit "P-5", CTA Case No. 9124, docket, vol. III, pp. 870-873, and Exhibit "P-51-M".
[64] Exhibits "P-51-N-1.1" to "P-51-N-19.19" and "P-51-O-1.1" to "P-51-O-19.19".
[65] Exhibit "P-54-A".

P-51-N-4.4	Philippine Associated Smelting & Refining Corp	354F	3/31/2013	18,822.90	773,432.81
P-51-N-5.5	Philippine Associated Smelting & Refining Corp	355F	2/25/2013	54,363.42	2,232,977.30
P-51-N-6.6	Philippine Associated Smelting & Refining Corp	356F	2/25/2013	110,663.75	4,544,960.23
P-51-N-7.7	Philippine Associated Smelting & Refining Corp	357F	3/31/2013	94,326.16	3,879,163.42
P-51-N-8.8	Philippine Associated Smelting & Refining Corp	358F	3/13/2013	75,950.04	3,117,749.06
P-51-N-9.9	Philippine Associated Smelting & Refining Corp	359F	3/13/2013	52,646.40	2,161,134.90
P-51-N-10.10	Philippine Associated Smelting & Refining Corp	360P/F	3/13/2013	2,907,946.67	118,964,098.19
P-51-O-11.11	Philippine Associated Smelting & Refining Corp	374P	5/31/2013	4,310,520.76	182,162,607.32
P-51-O-16.16	Philippine Associated Smelting & Refining Corp	376P	6/14/2013	4,347,759.55	187,388,436.82
P-51-O-19.19	Philippine Associated Smelting & Refining Corp	382	6/30/2013	3,955,042.63	170,857,841.40
	Subtotal			***15,928,042.28***	***676,082,401.45***
Zero-rated sales with sales invoice and export documents but amount in sales invoice CANNOT BE TRACED WITH CERTAINTY in the Certificate of Inward Remittance					
P-51-N-13	MRI Trading AG	363P/F	3/13/2013	9,767,544.56	396,855,335.35
P-51-N-14	MRI Trading AG	364P/F	3/22/2013	10,335,867.16	420,514,755.44
P-51-N-16	MRI Trading AG	371P	5/8/2013	9,900,648.51	403,500,929.99
P-51-N-16	MRI Trading AG	371F	5/8/2013	(104,334.79)	(4,252,164.51)
P-51-N-17	MRI Trading AG	372P	5/8/2013	9,188,806.13	374,260,073.69
P-51-N-17	MRI Trading AG	372F	5/8/2013	(205,709.36)	(8,378,542.28)
P-51-N-18	MRI Trading AG	377P	5/21/2013	9,473,354.15	386,512,849.41
P-51-N-18	MRI Trading AG	377F	5/21/2013	(206,679.88)	(8,432,539.24)
P-51-N-19	MRI Trading AG	378P	6/4/2013	9,464,952.27	386,170,052.50
P-51-N-19	MRI Trading AG	378P	6/4/2013	(209,268.48)	(8,538,154.18)
P-51-N-19	MRI Trading AG	378F	6/4/2013	(284,865.42)	(11,622,508.96)
P-51-O-2	MRI Trading AG	379P	6/13/2013	9,266,094.55	382,411,722.12
P-51-O-2	MRI Trading AG	379F	6/13/2013	(59,702.09)	(2,463,905.18)
P-51-O-4	MRI Trading AG	380P	6/13/2013	8,555,189.76	352,644,921.96

P-51-O-4	MRI Trading AG	380F	6/13/2013	687,075.96	28,321,271.03
P-51-O-15	MRI Trading AG	381P	6/13/2013	8,901,498.29	366,341,162.02
P-51-O-15	MRI Trading AG	381F	6/13/2013	617,991.80	25,433,452.43
	Subtotal			***85,088,463.12***	***3,479,278,711.59***
Zero-rated sales WITHOUT proof of foreign currency inward remittance					
P-51-N-1	Goldwin Holdings Ltd	368F	3/31/2013	8,230.69	338,034.51
P-51-N-2	Goldwin Holdings Ltd	369P/F	3/22/2013	358,147.54	14,574,814.07
	Subtotal			***366,378.23***	***14,912,848.58***
	TOTAL			**147,141,930.20**	**6,100,204,231.39**

A bulk of the disallowances was due to the fact that the Court is unable to trace the sales invoice amount to the certification of inward remittances. The certification shows the foreign remittances for the whole TY 2013 listed by date of remittance and the amount remitted. However, nothing from said list can be tied up, whether singularly or cumulatively, with the amounts indicated in the sales invoices. As such, the Court cannot ascertain whether or not these remittances pertain to the same sales transactions included in the Schedule of Export Sales for the first and second quarters of TY 2013.

In sum, the pieces of evidence show that the total zero-rated sales reported by petitioner in the Quarterly VAT Returns for the first and second quarters of TY 2013 must be disallowed for VAT refund purposes. There being no valid zero-rated sales pursuant to Section 106(A)(2)(A)(1) of the NIRC of 1997, as amended, the claimed input VAT allegedly attributable thereto cannot be refunded.

It must be stressed that in a claim for tax refund or credit, the claimant has the burden of proof to establish the factual basis of his or her claim.[66] In this case, petitioner failed to meet the requirements for entitlement to a refund or tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales.

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[66] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

WHEREFORE, premises considered, the instant Petitions for Review are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases ~~was~~ were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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 cases were assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice