REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FILMINERA RESOURCES CORPORATION,
Respondent.

CTA EB No. 1362
(CTA CASE Nos. 8528 & 8576)

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

Promulgated:

MAR 29 2017 3:16 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for Decision of this Court En Banc is a Petition for Review filed by the Commissioner of Internal Revenue under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended,* seeking the

[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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nullification of the Amended Decision[2] dated May 25, 2015 and the Resolution[3] dated September 10, 2015, partially granting respondent's the claim for refund, allegedly representing unutilized input value-added tax (VAT) attributable to zero-rated sales of goods during the third and fourth quarters of fiscal year ending June 30, 2010 in the total amount of P42,967,020.74, the dispositive portions of which, respectively, read as follows:

> Decision dated May 25, 2015:
>
> "**WHEREFORE**, petitioner's **Motion for Reconsideration of the Decision dated 25 September 2014** is **PARTIALLY GRANTED**. Accordingly, the assailed Decision promulgated on September 25, 2014 is hereby **AMENDED** to read as follows:
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> > "**WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P111,579,541.76, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of FY ending June 30, 2010."
>
> **SO ORDERED.**"
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> Resolution dated September 10, 2015:
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> "**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (of the Amended Decision promulgated on 25 May 2015)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

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[2] Penned by Associate Justice Juanito C. Castaneda, concurred in by Associate Justice Caesar A. Casanova and Associate Justice Amelia Cotangco-Manalastas, En Banc Docket, pp. 49-61.
[3] Id., pp. 62-64.

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The factual antecedents, as found by the Court in Division[4], read as follows:

> Petitioner Filminera Resources Corporation [Filminera] is a domestic corporation incorporated under the laws of the Republic of the Philippines, engaged in the business of operating coal mines; and of prospecting, exploration and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all other kinds of ores, metals, minerals, hydrocarbons, acids, and chemicals. It is duly registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-153-880-000.
>
> Respondent (now, herein petitioner) is the duly appointed Commissioner of the BIR empowered to perform the duties of her office, including, among other things, the duty to act upon and approve claims for refund or tax credit as provided by law. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman Quezon City.
>
> On July 5, 2007, [Filminera] and Philippine Gold Processing and Refining Corporation (PGPRC), a duly registered corporation with the Securities and Exchange Commission (SEC) and Board of Investment (BOI), entered into an Ore Sales and Purchase Agreement.
>
> [Filminera], through the Electronic Filing and Payment System (eFPS), filed its Quarterly VAT Returns for the 3rd quarter and 4th quarter of fiscal year ending in June 30, 2010 with Revenue District Office No. 121 on April 22, 2010 and July 26, 2010, respectively.
>
> On March 30, 2012, [Filminera] filed its administrative claims for refund or issuance of tax credit certificate with BIR Revenue District Office No. 121 (Large Taxpayers Service-Excise) for its

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[4] Decision dated September 25, 2014, En Banc Docket, pp. 66-86.

alleged unutilized input VAT for the 3rd and 4th quarters of fiscal year ended in June 30, 2010.

On August 16, 2012 and November 23, 2012, [Filminera] filed Petitions for Review before this Court, which were docketed as CTA Case No. 8528 and CTA Case No. 8576, respectively.

On December 12, 2012, respondent in her Answer in CTA Case No. 8576 alleged by way of Special and Affirmative Defenses that:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau.
>
> 5. The amount of P56,764,471.06 allegedly representing unutilized or unapplied creditable input tax for the period 1 April 2010 to 30 June 2010 was not properly documented.
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and the failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Section 112 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
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> 8. There is no record of petitioner ever submitting complete documents to substantiate its administrative claim for refund. Such is a requirement, otherwise, the administrative body will have sufficient reason to deny the claim.

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The implementing rule for these complete documents required by law is RMO No. 53-98. Annex B-1 of said RMO lists all the required documents as follows:

VALUE-ADDED TAX
(For audit involving Claim for Refund/TCC)

A. Requirements from Taxpayer

I. Requirement mention in Annex B

II. Additional General Requirements

1) 3 copies of 'Application for VAT Credit/Refund'

2) Summary List of Local Purchases specifying the following:

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3) Photocopies of VAT purchase invoices for purchase of goods and official receipts for purchase of services. (The invoices/official receipts must be arranged according to the summary list)

4) Summary of importations made during the period with the following details:

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5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment of VAT. (Segregate documents paid in cash from those paid by tax debit memo)

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6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT Return for the succeeding quarter

7) Certification of taxpayer showing the amount of Zero-rated Sales, Taxable Sales and Exempt Sales

8) A statement showing the amount and description of the sale of goods and services, name of persons or entities (except in case of exports) to whom the goods or services were sold and date of transaction, where the applicant's zero-rated transactions are regulated by certain government agency.

9) Articles of Incorporation- for first time filers

10)Sales Contract/Agreement

11) BOI Certificate of Registration

12) BIR Certificate of Registration

13) Certification from the BOI, DOF, BOC, EPZA, etc., that subject taxpayer has not filed similar claim for refund covering the same period.

14) Sworn statement that ending inventory as of the close of the period covered by the Claim has been used directly or indirectly in the products subsequently exported as supported by export

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documents, if the applicant is 100% exporter.

15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter.

16) Copy of the ITR and Certified Financial Statements, if applicable.

17) Beginning and ending inventory of raw materials, work-in-process, finished goods, supplies and materials.

Additional Specific Requirements

1) For Zero-Rated Sales of Services (contractors, mining, etc.)

a. Authenticated copy/ies of the contract/s showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments.

b. Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c. Bank credit memoranda and certificate from the BSP with information similar to 1-c (export sales)

As stated above, the first documentary requirement is that provided in Annex B of the same RMO. Annex B provides for more requirements as follows:

VALUE-ADDED TAX

A) Requirements from Taxpayers

1) Proof of claimed tax credits

2) Proof of Tax Compliance Certificates applied.

3) Xerox copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable

4) Proof of payment of deficiency tax, if any

a) current year/period
b) previous year/period

5) Certification of the appropriate government agency as to taxpayer's entitlement to tax incentives, if applicable

6) Xerox copies of the Official Receipts evidencing VAT payment on imported purchases, if applicable

7) Proof of exemption under special law, if applicable

8) Certification of the appropriate regulatory agency as to the exempt

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> or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
>
> 9) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable
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> 10) Proof of 'Approval for Effective Zero-Rating of Sales', if applicable
>
> 11) Sample invoice/s for 'Export/Exempt Sales', if applicable
>
> 12) Proof that the acceptable foreign currency exchange proceeds on export sales/foreign currency exchange proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), if applicable.

Far from complying with the checklist of requirements, petitioner merely alleged in the petition for review that it submitted complete documents in support of its administrative claim for refund. This is not a claim for erroneously or illegally collected taxes where petitioner has the discretion of choosing the evidence it deems fit to prove its case. This is a claim for excess but legally collected, unutilized input taxes. It does not have to prove its case, it merely has to substantiate the excess amount. Hence, petitioner's failure to comply with the duly mandated legal requirements in such claims for refund/tax credit warranted the denial by inaction of the administrative claim.

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Moreover, petitioner's failure to submit documents supporting its claim for refund makes its administrative claim for refund pro-forma. This pro-forma administrative claim should not be taken as proper compliance with the requirements of the law that an administrative claim for refund should have been filed prior to the institution of a judicial claim for refund. Thus, without a validly and duly filed administrative claim for refund, the Honorable Court is without jurisdiction to entertain the Petition for Review. Petitioner's failure to comply with the condition precedent prior to the institution of its petition for review makes it dismissible for absence of jurisdiction on the part of the Honorable Court.

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Respondent likewise filed an Answer on October 23, 2012 for CTA Case No. 8528, and interposed the following Special and Affirmative Defenses:

"4. At the outset, it must be pointed out that taxes remitted to the Bureau are presumed to have been made in the regular course of business and in accordance with provisions of law.

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

6. Petitioner must prove that its sales are zero-rated sales as defined under Section 106 of the NIRC of 1997.

7. To support its claim, it is imperative for petitioner to prove and present the following:

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a. The registration requirements of value-added taxpayer in compliance with section 6 (a) and (b) of 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 Section 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 application 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 petition for review;

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d. That the input taxes of P58,490,679.34 allegedly incurred by petitioner for the 3rd Quarter of fiscal year ended 30 June 2010 was 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 the periods provided in Sections 112 (A) and (C) 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. With all due respect, respondent humbly manifests that petitioner failed to substantiate its claim that it is entitled to the refund being prayed for. Petitioner failed to comply with the invoicing and accounting requirements laid down in Section 113, 114 and 236 of the NIRC of

1997, as amended, and its implementing regulations under RR 16-2005. In addition, petitioner was not able to prove that it has strictly complied with the submission of all supporting and relevant documents provided under Revenue Memorandum Order (RMO) No. 53-98 and other existing rules and regulations to warrant the grant of the application for refund.

9. The aforementioned provisions of the NIRC as well as the existing rules and regulations are necessary to establish its claim that indeed there is the presence of valid zero-rated sales that would (warrant the grant of administrative application for refund on its unapplied/unutilized input VAT as well as the submission of supporting documents to corroborate the claim being applied for.

10. Further, Section 4.108-1 of Revenue Regulations No. 7-95 specifically enumerates the information that must appear on the face of the receipt or invoice issued by all VAT-registered persons.

> Section 4.108-1 of Revenue Regulations No. 7-95. - Invoicing requirements - All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:
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> 1. the name, TIN and address of seller;
> 2. the date of transaction;
> 3. quantity, unit cost and description of merchandise or nature of service;
> 4. The name, TIN, business style, if any, and address of the VAT - registered purchaser, customer or client;

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5. The word 'zero-rated' imprinted on the invoice covering zero-rated sales;
6. The invoice value or consideration.

11. The requirement of imprinting the word 'zero-rated' is useful, practical and necessary not only with respect to the proper implementation of the provisions of the 1997 NIRC on zero-rated transactions but more importantly, to prevent the granting of refund or tax credit to non-existent input VAT.

12. In the case entitled 'JRA Philippines, Inc. vs. Commissioner of Internal Revenue', the Second Division of the Honorable Court of Tax Appeals explained the rationale behind the requirement of imprinting the word 'zero-rated' on sales invoices/official receipts, as follows:

> Section 110 of the NIRC of 1997, as amended provides that:
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> > '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: xxx.' If the invoice or official receipt was not imprinted with 'zero-rated', <u>there is a danger that the purchaser of the goods or services may be able to claim input tax on the sale to it by the taxpayer of the goods or services</u>, as the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services since the taxpayer is zero-rated.
> >
> > The zero-rated taxpayer should be entitled to a tax credit/refund paid on its purchases of goods or services subject to the mandatory

compliance with the invoicing requirements under the regulations. Otherwise, there may result the absurd situation where the government would be crediting/refunding nonexistent input tax to purchasers of goods or services of such zero-rated taxpayer.

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14. In relation thereto, Revenue Memorandum Order No. 53-98 dated June 1, 1998 explicitly provides:

A. Requirements from Taxpayers (Annex B)

1. Proof of claimed tax credits
2. Proof of Tax Compliance Certificate applied
3. Xerox Copy of used Tax Credit Certificate (TCC) with annotation of issued TDM at the back, if applicable
4. Proof of payment of deficiency tax, if any
- current year/period
- previous year/period
5. Certification of the appropriate government agency as to the taxpayer's entitlement to tax incentives, if applicable.
6. Xerox copies of the Official Receipts evidencing VAT payments on imported purchases, if applicable
7. Proof of exemption under special law, if applicable
8. Certification of the appropriate regulatory agency as to the exempt or zero-rated sales of the taxpayer under its regulatory supervision, if applicable
9. Certificate of Registration issued by the appropriate regulatory agency,

together with the conditions attached to such registration, if applicable
10. Proof of 'Approval of Effective Zero-Rating of Sales, if applicable
11.Sample invoice/s for Export/ Exempt Sales, if applicable
12. Proof that the acceptable foreign currency proceeds on export sales/foreign currency denominated sales had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, if applicable

Annex 8-1
VALUE ADDED TAX (For audit involving claim for Refund/TCC)
a. Requirements from Taxpayer
I. Requirements mentioned in Annex B
II. Additional General Requirements
(1) 3 copies of 'Application for VAT Credit/Refund
(2) Summary List of Local Purchases specifying the following:
a. Registered Name of Supplier
b. VAT Number of Supplier
c. Invoice Number
d. Date of Invoice
e. OR No.
f. Date of OR
g. Amount of Purchase
h. Input Tax
i. Total Invoice Amount
(3) Photocopies of VAT purchase invoices for purchases of goods and official receipts for purchase of services. (The invoice/official receipts must be arranged according to summary list)
(4) Summary of importation made during the period with the following details:
  a. Date of Invoice
  b. Supplier
  c. Item

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d. AWB/BL No,
e. Date of Arrival
f. Total Value
g. Date of Payment
h. O.R. No.
i. VAT

(5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payments of VAT (Segregate documents paid by cash from those paid by tax debit memo)
(6) VAT Returns filed for the quarter showing that the amount applied for refund/TCC has been reflected as a deduction from the total available input tax, as well as VAT return for the succeeding quarter.
(7) Certification of taxpayer showing the amount of Zero-rated sales, Taxable Sales and Exempt Sales
(8) A statement showing the amount and description of the sale of goods and services, the name of persons or entities (except in case of export sales) to whom the goods or services were sold and date of the transactions, where the applicant's zero-rated transactions are regulated by certain government agency
(9) Article of Incorporation - for first time filers
(10) Sales Contract/Agreement
(11) BOI Certificate of Registration
(12) BIR Certificate of Registration
(13) Certification from BOI, DOF, BOC, PEZA, etc. that subject taxpayer has not filed similar claim for refund covering the same period
(14) Sworn statement that ending inventory as of the close of the period covered by the claim has been used directly or indirectly in the products subsequently exported as supported

by export documents, if the applicant is 100% exporter
(15) Documents of liquidation evidencing the actual utilization of the raw materials in the manufacture of goods at least 70% of which has been actually exported, if the applicant is an indirect exporter
(16) Copy of ITR and Certified Financial Statements, if applicable
(17) Beginning and ending inventory or raw materials, work-in-process. xxx' (Emphasis and underscoring supplied)

15. Revenue Audit Memorandum Order dated January 11, 1991 which governs the audit of claims arising from refund or tax credit of VAT arising from zero-rated transactions, as well as purchase or importation of capital goods defines the administrative policies governing the audit of VAT claims. Paragraph II (7) of said RAMO explicitly provides:

Paragraph II

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(7) That the sixty (60) day period for the processing of claims shall start on the day of submission of the last of the documents specified in the checklist of requirements (Annex B).

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16. On the other hand, Revenue Memorandum Order (RMO) No. 40-94 dated May 6, 1991 which prescribes the modified procedures on the processing of claims for VAT Credit/Refund with the end purpose of facilitating and expediting the processing of VAT claims states:

'Paragraph II (Guidelines)

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C. The Revenue District Office shall accept only applications with complete supporting documents as prescribed in the Checklist of Requirements under Annex 'A' hereof. VAT credit refund shall be issued to the taxpayer/claimant within sixty (60) working days from the date of the application was received. <u>Applications are considered duly received only on the day of the submission of the last of the documents specified</u> in the aforementioned checklist of requirements.

D. Claims for VAT credits/refunds <u>shall be acted upon only after confirmation that no similar claims</u> covering transactions for the same period have been filed by claimants/taxpayers with the BOI, <u>BOC, Center-DOF</u> and other agencies concerned.

E. <u>All processing and audit of investigation of claims for refund</u> or tax credit of VAT arising from zero-rated transactions, as well as purchase or importation of capital goods <u>must strictly adhere to the guidelines set forth under RAMO No. 1-91.'</u>

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19. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. Pending the closure of this investigation, no grant of refund or issuance of a tax credit certificate may be given to petitioner based on the filed claim. It has been held by the Supreme Court that

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a claim for refund is not ipso facto granted because the Commissioner of Internal Revenue still has to investigate and ascertain the veracity of the claim.

20. It is well-established in this jurisdiction that claims for refund are construed strictly against the claimants for they partake of the nature of tax exemptions, petitioner's judicial claim deserves no merit and should therefore fall for failure on their part to establish clearly and convincingly that it is entitled to the claim being sought for.

21. Accordingly, the burden of proof of compliance to substantiate its claim for refund or issuance of tax credit certificate is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

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22. Petitioner alleged that it is engaged in sales which are VAT zero-rated or effectively zero-rated and that the alleged creditable input tax due or paid by it has not been applied against any output tax. However, other than its own bare allegations, petitioner offers no proof of such effect.

23. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules of Court. It is a basic rule of evidence that the party making an allegation has the burden of proving it by preponderance of evidence.

24. Again without sounding repetitious, petitioner should comply with the submission of the required documents enumerated in RMO No. 53-98, particularly the specific requirements for zero-rated and effectively zero-rated sales, to wit:

III. Additional Specific Requirements

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2) For Zero-Rated Sale of Services

a) Authenticated copies of the contracts showing the person/s for whom the services were rendered, amount of consideration, description of the services and documents evidencing actual payments

b) Photocopies of official receipts and billings together with a summary of the date of billing, name of principal, official receipt number, date of receipt, amount in foreign currency and the corresponding value thereof, date of remittance, name of bank, bank credit memo number and amount remitted in pesos.

c) Bank credit memoranda and certificate from the BSP with information similar to 1- C (export sales)

a) Monthly BSP report on income of agency received.

b) Breakdown of gross foreign receipts specifying the nature of foreign currency received (e.g. Commission, allotment, manning fee, agency fee, advances, etc.) showing the total foreign currency value with its peso equivalent, bank credit memo number, name of bank and date of remittance.

3) Effectively zero-rated sale of goods

a) Summary of Sales invoices/receipts showing the name of the person/entity to whom the sale of goods or services were delivered, order

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of delivery, amount of consideration and description of goods or services delivered (RR 6-89 and RMC 2- 9U)

b) Reconciliation of billings against payment.

c) Evidence of actual receipt of goods and services.

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25. Petitioner undoubtedly failed to discharge the burden of proving that its sales are VAT zero-rated or effectively zero-rated as contemplated under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

26. In addition, petitioner alleged that in the course of its business, it incurred various expenses which includes domestic purchases of goods and services used for its operation for the period 1 January 2010 to 31 March 2010 which are subject to input VAT. However, just like in its previous allegations and averments, petitioner should substantiate by clear and convincing evidence that the alleged input VAT paid for its domestic purchases of goods and services for the period in question was attributable to its alleged VAT zero-rated sales and that the alleged input VAT was not utilized against any output VAT liability.

27. As can be gleaned from Section 4.112-1 of Revenue Regulations No. 16-2005, the substantiation of input tax credit is as follows:

SEC. 4.110-8. Substantiation of Input Tax credits.

<u>a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business,</u>

> **whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:**
>
> > **(1) For the importation of goods-import entry or other equivalent document showing actual payment of VAT on the imported goods.**
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29. It cannot be emphasized enough that mere filing of an administrative claim for refund or issuance of tax credit certificate without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim for a refund.

30. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefrom is the exception.

31. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of sovereign authority. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed strictissimi juris against the person or entity claiming exemption.

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> 32. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. 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.
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> 33. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

Considering that both cases involved common questions of facts and law, in a Court Resolution[5] dated January 17, 2013, this Court granted the consolidation of the said cases.

Trial ensued thereafter. In a Resolution[6] dated September 4, 2013, this Court admitted respondent's exhibits except Exhibits "L", "L-1 ", and "GG" for failure to present the original documents. In the Manifestation[7] filed on September 25, 2013, petitioner stated that considering that there is no audit report yet per advise of the revenue officers assigned to investigate/audit the claim for refund of petitioner, he will no longer present evidence in this case.

Thus, in a Resolution[8] dated September 26, 2013, this Court granted the parties thirty (30) days from receipt of the said Resolution within which to file their respective Memoranda.

After both parties submitted their respective Memoranda on March 21, 2014, the case was then submitted for decision.

The Court in Division previously held in the Decision[9] dated September 25, 2014, that respondent failed to prove that its buyer, Philippine Gold Processing and Refining Corporation (PGPRC), had exported 100% of its products

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[5] CTA Case No. 8528, Docket, pp. 749-750 and CTA Case No. 8576, Docket, p. 722.
[6] CTA Docket, p. 1285.
[7] Ibid., pp. 1286-1288.
[8] Ibid., p. 1292.
[9] En Banc Docket, pp. 65-93.

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and that BOI Certification merely established that the latter's products were geared for export but not all of its products were actually exported.

Aggrieved, respondent filed a Motion for Reconsideration of the Decision attaching thereto as supplemental evidence the Certified True Copies of the BOI Certification and the Certified Reproduced Copy of the Tax Credit Certificate. Additionally, respondent also presented and orally offered the Judicial Affidavit of Joy P. Dompor dated February 4, 2015. Thereafter, the Court in Division aptly admitted and considered the supplemental evidence causing it to arrive at the assailed Amended Decision.

Hence, this Petition for Review was filed.

Petitioner CIR insists that the Court in Division erred in amending its decision and partially granting respondent's claim for refund of its unutilized input VAT during the 3rd and 4th quarters of the fiscal year ended June 30, 2010 because the transactions between petitioner and PGPRC were allegedly zero-rated.

It is further argued that the supplemental evidence admitted by the Court in Division are not newly discovered evidence and do not prove nor validate that PGPRC's products from January 1, 2010 to June 30, 2010 were actually exported 100% of the latter's processed gold and silver dore. Petitioner seeks the strict application of the technical rules in admitting as evidence the BOI Certification issued to PGPRC.

The Court En Banc finds the instant petition bereft of merit, and finds no reason to reverse or modify the assailed Amended Decision.

It bears emphasis that "substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen or entities which have complied with the requirements of the law in order to forward the claim for refund."[10]

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[10] Winebrenner and Iñigo Insurance Brokers Inc. v. CIR, G.R. No. 206526, January 28, 2015.

In the assailed Amended Decision, respondent anchors its entitlement to the claim for refund or issuance of a tax credit certificate under Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides as follows:

> "SECTION 112. Refunds or Tax Credits of Input Tax. -
>
> (A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against 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. xxx
>
> xxx xxx xxx"

In sum, Section 112 (A) of the NIRC provides the following requisites that must be complied with in order to be entitled to a refund or tax credit of unutilized VAT, to wit;

1. There must be zero-rated or effectively zero-rated sales;
2. Input taxes were incurred or paid;

3. Such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. The input taxes were not applied against any output tax; and
5. The claim for refund was filed within the two-year prescriptive period.

As already established by the Court in Division, respondent satisfactorily met the first and third requisites. Respondent is a VAT registered entity[11] and that the administrative and judicial claims were filed within the period prescribed by law[12].

With respect to the second requisite, petitioner anchors its claim on Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of Revenue Regulations (RR) No. 16-2005 which state as follows:

> 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:
>
> xxx xxx xxx
>
> (5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
>
> xxx xxx xxx
>
> SECTION. 4.106-5. Zero-Rated Sales of Goods or Properties. –
>
> xxx xxx xxx

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[11] Assailed Decision dated September 25, 2014, CTA Case No. 8528 Docket, Vol. III, p. 1451.

[12] Ibid., pp. 1449- 1451.

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The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. - "Export Sales" shall mean:

xxx xxx xxx

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

xxx xxx xxx

For purposes of zero-rating, the export sales of registered export traders shall include commission income. The exportation of goods on consignment shall not be deemed export sales until the export products consigned are in fact sold by the consignee; and **Provided, finally, that sales of goods, properties or services made by a VAT registered supplier to a BOI-registered manufacturer/producer whose products are 100% exported are considered export sales. A certification to this effect must be issued by the Board of Investment (BOI) which shall be good for one year unless subsequently re-issued by the BOI.** (*Emphasis supplied*)

Thus, the conditions must be complied with in order for an export sale to qualify as zero-rated. To reiterate, the following must concur:

1. The sale was made by a VAT-registered person;
2. The buyer must be a BOI-registered manufacturer/producer; and
3. The buyer's products must be 100% exported as shown by a certification issued by the BOI.

Clearly, respondent is a VAT-registered entity. Meanwhile, the BOI Certification[13] dated January 27, 2010 certifies that PGPRC exported 100% of its total sales volume for the period January 1 to December 31, 2009, and the same has been issued pursuant to the Guidelines on the

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[13] Exhibit MM, CTA Case No. 8528 Docket, Vol. III, pp. 1469-1470.

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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". In the same certification, it was stated that the same shall be valid from January 1 to December 31, 2010 unless sooner revoked by the BOI.

A close scrutiny of respondent's supporting invoices and summaries of sales transactions would reveal that the declared amount of P1,467,195,511.46 for its zero-rated sales/receipts in its Quarterly VAT Returns for the third and fourth quarters of FY ending June 30, 2010 is comprised of respondent's ore sales to PGPRC in the amount of P1,466,325,511.46 and revenues from lease of land to PGPRC in the amount of P870,000.00[14].

Considering that revenues derived by respondent from its lease of land to PGPRC are not zero-rated export sales of goods under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and Section 4.106-5(a)(5) of RR No. 16-05, the amount of P870,000 shall be disallowed. Therefore, out of the total amount of P1,467,195,511.46 zero-rated sales/receipts, only the amount of P1,466,325,511.46 representing petitioner's ore sales to PGPRC for the same period is subject to zero percent (0%) VAT.

As to the determination on whether respondent incurred input taxes in connection with the zero-rated sales and whether such taxes were not applied against any output VAT liability, the Court En Banc agrees *en toto* with the discussion of the Court in Division.

As reflected on the Quarterly VAT returns[15], respondent incurred the following input VAT amounts for the third and fourth quarters of FY ending June 30, 2010:

Input VAT on:	3rd Quarter (Exhibit "F")	4th Quarter (Exhibit "G")	**Total**
Domestic	P 907, 344.32	P1,490,493.07	P2,397,837.39

[14] Amended Decision dated May 25, 2015, En Banc Docket, p. 55.
[15] Exhibits "F" and "G", CTA Case No. 8528, Docket, Vol.III, p.1024.

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Purchases of Goods other than Capital Goods			
Domestic Purchase of Services	P 57,583,335.02	P55,273,923.99	112,857,259.01
	P58,490,679.34	**P56,764,417.06**	**P115,255,096.40**

From the foregoing, and in addition to the suppliers' invoices, and official receipts submitted by respondent to support the aforesaid input VAT, the Court Commissioned Independent Certified Public Accountant (ICPA), Atty. Clifford Chua, was able to attribute and verify the accounted amount for respondent's input VAT Claim. Accordingly, he was also able to establish from these documents the correct amount that should be refunded to respondent. In his report, a higher amount of P115,262,920.22 as input VAT claim was disclosed.

After careful evaluation of the ICPA's report together with respondent's supporting documents, the Court in Division found out that the following input taxes in the amounts of P153,232.76 and P29,608.71[16] for the third and fourth quarters of FY 2010, respectively, shall be disallowed as well, in addition to the input VAT of P1,928,986.74 and the excepted amount of P1,497,482.00 due to respondent's failure to substantiate with VAT invoices or official receipts such taxes as mandated by Sections 110(A) and 113 (A) and (B) of the NIRC of 1997, as amended, and as implemented by Sections 4.110-8 and 4.113 of RR No. 16-2005, as amended. Without the corresponding VAT invoices or official receipts, the said input taxes cannot be applied against any output liability of the respondent.

Respondent's input VAT claim for the third and fourth taxable quarters of FY 2010 in the amount of P115,255,096.40, only the amount of P111,645,786.19 represents respondent's valid input tax, detailed as follows:

[16] En Banc Docket, Amended Decision, pp.57-58.

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	3rd Quarter	4th Quarter	Total
Input VAT Claimed	P58,490,679.34	P56,764,417.06	P115,255,096.40
Less: Disallowances			
a) Per ICPA report	P1,928,986.74	P1,497,482.00	P3,426,498.74
b) Per Court in Division's findings	P153,232.76	P29,608.71	P181,841.47
	P2,082,219.50	P1,527,090.71	P3,609,310.21
Valid Input VAT	**P56,408,459.84**	**P55,237,326.35**	**P111,645,786.19**

Considering that respondent's sales were all made to PGPRC, the amount of P111,645,786.19 is entirely attributable thereto as input VAT for the third and fourth quarters of FY 2010. However, as earlier discussed, the lease of land to PGPRC in the amount of P870,000 shall be disallowed, thus, only P111,579,541.76 can be attributed to respondent's zero rated sales of P1,466,325,511.46, computed as follows:

	3rd Quarter	4th Quarter	Total
Valid Input VAT	P56,408,459.84	P55,237,326.35	P111,645,786.19
Allocated to			
Zero-rated sales	P755,884,274.58	P710,441,236.88	P1,466,325,511.46
Lease of Land	435,000.00	435,000.00	870,000.00
Total:	P756,319,274.58	P710,876,236.88	P1,467,195,511.46
Allocation Factor			
Zero-Rated Sales	99.9424846%	99.9388079%	
Lease of Land	0.0575154%	0.0611921%	
Input VAT Attributable to Zero-rated Sales	**P56,376,016.29**	**P55,203,525.47**	**P111,579,541.76**

Lastly, a perusal of respondent's Quarterly VAT Returns reveal that it had no output tax liability against which the claimed input VAT may be applied to or credited from. The Court En Banc agrees that respondent may no longer avail of the carry-over or application of input taxes for the next taxable quarter/s because its reported unutilized input taxes for the third and fourth quarters of FY 2010 in the respective amounts of P58,940,679.34 and P56,764,417.06 were already deducted as "VAT Refund/TCC Claimed" in the Quarterly VAT Returns for the same taxable quarter.

Finding no reversible error, We **AFFIRM** the assailed Amended Decision of the Second Division dated May 25, 2015 and the Resolution dated September 15, 2015.

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

SO ORDERED.

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

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1362** (CTA Case Nos. 8528 and 8576)
	Present: **DEL ROSARIO**, PJ, **CASTAÑEDA, JR.**, **BAUTISTA**,
-versus-	**UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and
FILMINERA RESOURCES CORPORATION, *Respondent.*	**MANAHAN**, JJ.
	Promulgated: MAR 29 2017 3:16 p.m.

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DISSENTING OPINION

DEL ROSARIO, PJ.:

While I agree that the Court *a quo* did not commit a reversible error in admitting the supplemental evidence [1] submitted by respondent, with due respect, I am constrained to withhold my assent to the conclusion that the **Certification by the Board of Investments** (BOI Certification) issued on January 27, 2010 sufficiently proved that respondent complied with the requirement that its buyer's products were 100% exported for the period from January 1, 2010 to June 30, 2010.

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[1] Comprising of the BOI Certification (Exhibit "MM"), Tax Credit Certificate (Exhibit "NN"), and Affidavit of Ms. Joy P. Dompor (Exhibit "OO") and her signature thereon (Exhibit "OO-1"), Docket (CTA Case No. 8528), p. 1534.

For ease of reference, the BOI Certification[2] is reproduced below:

RMO 9-2000/BOI-ID Certificate No. 2010-057
Date Filed: January 15, 2010
Appln. No.:2010-C107

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

This is to certify that PHIL. GOLD PROCESSING & REFINING CORP. is registered with the BOARD of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, with the following data:

Reg'n. No./Date Reg'd/Law	Reg'd Product	Type/Staus of Reg'n
2008-042 / 07 February 2008/ EO 226	Gold and Silver Dore	New/Non-Pioneer with Pioneer Incentives

Information is hereby given that the firm exported 100% of its total sales volume/value for the calendar year covering January 01 to December 31, 2009 based on the attached documents (Annexes B & C) submitted to the BOI, summarized as follows:

TIN	:	233-903-100-000
Total Sales Volume/Value*	:	3,820,982.5 g / $75,178,299.96
Total Export Sales Volume/Value	:	3,820,982.5 g / $75,178,299.96
Direct Export Volume/Value	:	3,820,982.5 g / $75,178,299.96
Constructive Export Volume/Value	:	None
Indirect Export Volume/Value	:	None
% of Export to Total Sales	:	100%
Period Covered	**:**	**CY January 01 to December 31, 2009**

*subject to post audit in case of computational discrepancy

It is understood that based on the affidavit executed by **Phil. Processing & Refining Corp.**, attached as Annex "A", all information provided therein are true and correct, and any misrepresentation shall be a ground for cancellation of BOI registration without prejudice to the institution of criminal and civil actions that may be warranted under the premises.

This Certification is 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" dated February 2, 2000.

This Certification is valid from January 01 to December 31, 2010 unless sooner revoked by the BOI Governing Board for any or all of the following grounds: (a) Failure of the herein registered enterprise to comply with any of its BOI registration

[2] Exhibit "MM", Docket (CTA Case No. 8528), pp. 1469-1470.

terms, commitment, and conditions; (b) Failure to export 100% in any of the instances set forth in Section 2 of RMO No. 9-2000; (c) Submission of fraudulent documents; and (d) Failure to submit Audited Financial Statements, Annual Income Tax Return and Annual Report on Actual Operations.

Since the firms's accounting reporting period ends every 30th day of June, its succeeding application should be filed within fifteen (15) days from the end of the said fiscal year period in order that the BOI certification to be issued shall be valid for a period of one (1) year effective from the date of the start of the new fiscal year.

This Certification is issued in accordance to Section 3.3 of subject RMO No. 9-2000 on this 27th day of January 2010 at Makati City, Philippines, upon the request of the Phil. Gold Processing & Refining Corp., subject to the foregoing conditions.

(Signed)
LUCITA P. REYES
Executive Director
Project Assessment Group

(Boldfacing supplied)

Clear from the quoted Certification is the BOI's confirmation that **Philippine Gold Processing & Refining Corp. (PGPRC), the buyer of respondent's products, is BOI-registered and that PGPRC exported 100% of its total sales volume/value for the calendar year covering January 1, 2009 to December 31, 2009.** The said BOI Certification is valid from January 1 to December 31, 2010.

Considering that the refund claim covers the period **January 1 to June 30, 2010** (3rd and 4th quarters of FY ending June 30, 2010), the same is obviously outside the period referred to in the BOI Certification anent the firm's exportation of 100% of its total sales volume/value. Thus, I submit that respondent's claim for refund must be denied for failure to prove that PGPRC indeed exported 100% of its total sales for the period from January 1, 2010 to June 30, 2010.

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In fine, I VOTE to GRANT the Petition for Review filed by the Commissioner of Internal Revenue and REVERSE AND SET ASIDE the assailed Amended Decision and Resolution and REINSTATE the September 25, 2014 Decision of the Court *a quo*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

FILMINERA RESOURCES CORPORATION,
Respondent.

CTA *EB* NO. 1362
(CTA Case Nos. 8528 & 8576)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

MAR 29 2017 3:16 p.m.

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Dissenting Opinion

MANAHAN, J.:

With due respect, I manifest my dissent to the evidentiary value given to the BOI Certification submitted by Filminera Resources Corporation (Filminera or respondent).

The Court in Division initially denied Filminera's claim for refund due to insufficiency of evidence.[1] Upon submission of the Certified True Copy of BOI Certification and other documents, the Court in Division issued an Amended Decision partially granting Filminera's claim in the amount of Php111,579,541.76.[2] In the Amended Decision, the Court in Division reasoned:

> "However, with the supplemental evidence presented by petitioner [now, respondent Filminera], the

[1] *Rollo*, CTA EB No. 1362, Decision dated September 25, 2014, pp. 65-93.
[2] *Rollo*, Amended Decision dated May 25, 2015, pp. 49-61.

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> Court finds [respondent]'s sales as zero-rated. Particularly, the BOI Certification dated January 27, 2010 has certified that based on the information given, PGPRC exported 100% of its total sales volume for the period January 1 to December 31, 2009 and the same has been 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". In the same certification, it was stated that the same shall be valid from January 1 to December 31, 2010 unless sooner revoked by the BOI."

The majority affirms this reasoning. However, I concur with the opinion of Presiding Justice Roman G. Del Rosario when he took issue with the period of effectivity/validity of the BOI Certification *vis-à-vis* the actual period of the refund claim. It is my view that in the instant case, the BOI Certification issued on January 27, 2010 does not attest to the 100% export sale of Philippine Gold Processing and Refining Corportion (PGPRC) for calendar year 2010. At most, the BOI Certification attests that for the period of January 1 to December 31, 2009, PGPRC exported 100% of its total sales volume.

The validity period of January 1 to December 31, 2010 indicated in the BOI Certification of PGPRC made the majority conclude that the claim for refund pertaining to the period of January 1 to June 30, 2010 falls within the coverage of the certification as it is valid until December 31, 2010. This may well be true if the purpose is to accord zero-rating status to sales made during the covered period including its extended validity period but it does not prove that PGPRC, as a BOI-registered exporter, exported 100% of its products for the period January 1 to June 30, 2010.

Thus, Filminera submitted a BOI Certification from PGPRC, its BOI-registered buyer, which failed to prove that PGPRC exported 100% of its sales from January 1 to June 30, 2010. Hence, Filminera failed to prove an essential aspect of its claim for refund/issuance of tax credit certificate.

For the foregoing, I vote to grant the Petition for Review filed by the Commissioner of Internal Revenue, to reverse and

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set aside the assailed Amended Decision and Resolution, and to reinstate the September 25, 2014 Decision of the Court *a quo*.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice