REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGANITO MINING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 6214**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 2 2 2002

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DECISION

This case involves a claim for the refund of the total amount of P11,338,246.64 allegedly representing the excess VAT input taxes paid by herein petitioner on its domestic purchases of taxable goods and services and importation of capital goods for the period covering January 1, 1999 to December 31, 1999.

The antecedent facts, as culled from the records of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 4th Floor, Solid Mills Building, Dela Rosa Street, Legaspi Village, Makati City. It is registered as a VAT entity with Certificate of Registration No. 94-470-000373. Petitioner is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores *(Joint Stipulation of Facts, Item No.1, CTA records p.46).*

From January 1, 1999 to December 31, 1999, petitioner allegedly generated zero-rated export sales in the aggregate amount of P428,707.378.16 on its domestic purchase of taxable goods and services and importation of capital goods amounting to P62,773,626.40 and P50,608,840.00, respectively. Thus, petitioner's amended quarterly value-added tax returns for the four quarters of 1999 reflected the following:

QUARTER INVOLVED	EXHIBIT		ZERO-RATED SALES		DOMESTIC PURCHASES		IMPORTATION OF GOODS
1st Qtr 1999	X	P	70,448,287.57	P	9,622,424.90	P	-
2nd Qtr 1999	AA		90,029,766.90		14,407,852.90		50,608,840.00
3rd Qtr 1999	DD		104,717,774.35		18,144,118.90		-
4th Qtr 1999	FF-1		163,511,549.34		20,599,229.70		-
	TOTAL	**P**	**428,707,378.16**	**P**	**62,773,626.40**	**P**	**50,608,840.00**

For the same period, petitioner paid input VAT on its domestic purchases of taxable goods and services amounting to P 6,277,362.64 and on its importation of capital goods amounting to P 5,060,884.00, the details of which are as follows:

QUARTER INVOLVED	EXHIBIT		ZERO-RATED SALES		DOMESTIC PURCHASES		IMPORTATION OF GOODS		INPUT VAT
1st Qtr 1999	X	P	70,448,287.57	P	962,242.49	P	-	P	962,242.49
2nd Qtr 1999	AA		90,029,766.90		1,440,785.29		5,060,884.00		6,501,669.29
3rd Qtr 1999	DD		104,717,774.35		1,814,411.89		-		1,814,411.89
4th Qtr 1999	FF-1		163,511,549.34		2,059,922.97		-		2,059,922.97
	TOTAL	**P**	**428,707,378.16**	**P**	**6,277,362.64**	**P**	**5,060,884.00**	**P**	**11,338,246.64**

Petitioner claims that all of its zero-rated export sales were allegedly paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), pursuant to Section 100 (a)(2)(a)(1) of the Tax Code as amended by RA 7716, now Section 106 (A)(2)(a)(1) of the Tax Code, as amended by RA No. 8424.

Believing that it is entitled to the refund of P11,338,246.64 allegedly representing input VAT in the amount of P6,277,362.64 and P5,060,884.00 paid on its domestic purchases of taxable goods/services and on its importation of capital goods, sales for the period January 1, 1999 to December 31, 1999, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund on December 27, 2000 ***(Exhibit YY)***. To prevent the lapse of the two-year prescriptive period, petitioner filed a Petition for Review with this Court on December 28, 2000.

Respondent, in his Answer, raised the following Affirmative Defenses, thus:

1. The Petition states no cause of action because the filing of the instant case on December 28, 2000 was premature as the application for tax refund was filed with BIR only a day before –December 27, 2000 – and respondent is yet to act on the same;

2. The Petition was filed without compliance with the conditions precedent for claiming input tax refund because there is no showing that Petitioner has submitted complete documents in support of its claim, in contravention with the requirements of Section 112 (D) of the Tax Code. Said provision reads: "In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

3. The petition is defective because petitioner failed to clearly show that it is entitled to tax refund sought in the instant case. It is well settled that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming in his favor and must be able to justify his claim by the clearest grant of organic law or statute and cannot be permitted to exist upon vague implications. *(Commissioner of Internal Revenue vs. Procter & Gamble Phil. Manufacturing Corp*

and the Court of Tax Appeals, GR No. 66838, December 2, 1991).

In order to substantiate its case, petitioner formally offered the following documentary evidence which have been admitted by this Court in its resolution dated September 27, 2001, thus:

Exhibit	Description
A, AAA	Report of Punongbayan and Araullo dated April 16, 2001 and March 10,2000 accompanied by Petitioner's Financial Statements
B to B-1,102 C to C-2,057	Various Sales Invoices and Official Receipts issued to Petitioner
D to D-107	Provisional/Final Invoices, Export Declarations/Permits, Bills of Lading, Bank Credit/Debit Advices
E to U	BIR Form No. 2550M (original and amended, for the Months of January to December 1999)
V to FF-1	BIR Form No. 2550Q (original and amended for the Four quarters of taxable year 1999)
GG to NN	BIR Form No. 2550M (for the months of January to December 2000)
OO to RR	BIR Form No. 2550Q (for the four quarters of taxable year 1999)
SS, TT	Petitioner letters addressed to the One-stop shop inter-agency tax credit and Duty Drawback Center
UU, WW	Petitioner's letter addressed to the Bureau of Customs and to the Board of Investments, respectively
VV, XX	Certificates issued by BOC and BOI, respectively
YY	Petitioner's letter filed with BIR Region 8 and Excise Taxpayer's Division

ZZ BIR Form No. 2552

Respondent, on the other hand, waived its right to present evidence and moved that the case be submitted for decision.

This Court is now tasked to resolve the following issues jointly stipulated by the parties, thus:

1. Whether or not petitioner's export sales qualify as zero-rated sales or revenue; and
2. Whether or not petitioner's claim are substantiated by supporting documents and that its excess input taxes have not been carried over to the succeeding quarter or quarters so as to entitle petitioner to a refund of VAT input taxes paid from January 1, 1999 to December 31, 1999 amounting to P11,338,246.64.

After a circumspect study of the documentary evidence submitted by petitioner as well as the pertinent law and jurisprudence applicable thereto, we find and so hold that petitioner is entitled to the refund sought for.

Anent the first issue, the court in a long line of cases including the same parties and issues had already ruled that petitioner's export sales are subject to VAT at zero percent (0%). (**Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5700, September 22, 2000 with Entry of Judgment dated October 13, 2000, Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA**

Case No. 5634, February 4, 2000 with Entry of Judgment dated February 25, 2000, Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5486, May 6, 1999 with Entry of Judgment dated May 26, 1999, Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5305, July 29, 1997 with Entry of Judgment dated August 15, 1997 and Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5114, November 12, 1996 with Entry of Judgment dated December 4, 1996.)

As can be gleaned from the records of the instant case, petitioner substantially observed all the requirements for the zero-rating of its sales as set forth under Section 106 (A)(2)(a)(1) and Section 112 (A) of the 1997 Tax Code, hereunder quoted as follows:

"Section 106. Value-added Tax on Sale of Goods or properties.-

(A) Rate and Base of Tax.

x x x x x x

(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);

x x x x x x

"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 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) x x x, 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 and properties or services, and the amount of creditable 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 the sales."

Petitioner, being a VAT registered entity, was able to prove that it actually made direct export sales amounting to P428,707,378.16 for the period January 1, 1999 to December 31, 1999 as evidenced by the various export invoices, export declarations, export permits and bills of lading ***(Exhibits D, D-1 to D-107)*** submitted to this Court. These export sales were properly reported and declared in its monthly and quarterly VAT returns ***(Exhibits E to FF-1)*** which were duly filed with the BIR. Significant also is the fact that petitioner, through the presentation of bank credit/debit advices was able to establish that its export sales were paid for in acceptable foreign currency inwardly remitted and accounted for in accordance with BSP regulations.

Since petitioner's sales qualify as zero-rated under Section 106 (A)(2)(a)(1) of the Tax Code, consequently it is not liable to pay output tax thereon and can claim tax credit or refund of the input VAT paid on its purchases of goods, properties or services related to such zero-rated sales.

Proceeding now to the second issue, this Cour' after a careful scrutiny of the documents submitted in evidence together with the findings of the independent CPA (Exhibits A and A-1 to A-10) finds that petitioner was able to partially substantiate its claim for refund.

It is significant to quote, at this point the Revenue Regulations appurtenant to the substantiation requirements necessary in claims for input tax credit. Section 4.104-5 of Revenue Regulations No. 7-95 in relation to Sections 108 and 238 of the Tax Code, as amended by Sections 113 (A) and 237 of the 1997 Tax Code so provides:

> ***"Section 4.104-5. Substantiation of claims for input tax credit.-***
>
> (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade and business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108(a) and 238 of the Code.
>
> x x x x x x
>
> (b) Input tax on importation shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods.
>
> x x x x x x"

As can be seen from the voluminous documents submitted by petitioner to support its claim, there can be no doubt that there was compliance with the foregoing requirements. However, upon a thorough examination of petitioner's documentary exhibits, more particularly its suppliers invoices and official receipts, Bureau of Customs official receipts, and import entry declarations, it was revealed that apart from the amount of P160,953.14 initially recommended by the independent CPA for disallowance, an additional P1,613.16 should likewise be disallowed. Thus, the noted exceptions should be increased to P162,566.30 after verification made by this court, as detailed below:

		PER INDEPENDENT CPA'S VERIFICATION		PER COURT'S VERIFICATION		DISCREPANCY
HEAD OFFICE	P	40,858.37	P	40,858.38	P	(0.01)
JANUARY		3,051.39		3,051.40		(0.01)
FEBRUARY		6,091.40		6,091.44		(0.04)
MARCH		20,124.91		20,124.91		-
APRIL		14,206.87		14,206.84		0.03
MAY		6,252.03		6,252.02		0.01
JUNE		33,519.66		33,519.67		(0.01)
JULY		1,130.05		2,743.14		(1,613.09)
AUGUST		9,062.42		9,062.44		(0.02)
SEPTEMBER		18,208.48		18,208.49		(0.01)
OCTOBER		5,794.87		5,794.87		-
NOVEMBER		1,547.45		1,547.44		0.01
DECEMBER		1,105.24		1,105.26		(0.02)
TOTAL	P	**160,953.14**	P	**162,566.30**	P	**(1,613.16)**

Hence, out of the total claim for refund in the amount of P11,338,246.64, the sum of P162,566.30 is to be disallowed for the following reasons ***(See Annex A for complete details):***

(a) Invoices and/or official receipts are not in the name of the company
(b) Invoice and/or official receipts have no BIR permit
(c) Non-VAT invoices and official receipts
(d) No supporting documents or supported only by provisional receipts
(e) Invoices and official receipts without TIN
(f) Not supported by official receipts/sales invoices
(g) Not within the period of claim
(h) Not supported by original invoices and/ or official receipts

Thus, aside from the foregoing disallowances noted by the court, we are nonetheless convinced that petitioner's claimed input taxes on domestic purchases of taxable goods and services are all directly attributable to its zero-rated sales and that these purchases were used directly in connection with petitioner's trade and business.

And lastly, it is likewise significant to note, that the input tax being claimed by the petitioner were never carried over to the succeeding quarter/s of 1999, as evidenced by petitioner's 1999 monthly and quarterly VAT returns ***(Exhibits GG to RR, inclusive)***.

Based on the foregoing, this court is inclined to grant petitioner's claim for refund but in a reduced amount of P11,175,680.34, computed as follows:

Amount of Claim	P11,338,246.64
Less: Disallowance per Court's verification	162,566.30
Amount Refundable	**P11,175,680.34**

IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** in favor of the petitioner the reduced sum of P11,175,680.34 representing the excess input VAT paid on its domestic purchase of taxable goods and services and importation of capital goods for the period January 1, 1999 to December 31, 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

Schedule of Disallowances Per Court's Verification
Taganito Mining Corporation vs. Commissioner of Internal Revenue
CTA Case No. 6214

ANNEX A

	A	B	C	D	E	F	G	H	I	TOTAL
HEAD OFFICE	P -	P 1,371.82	P 37,338.25	P 1,751.04	P 227.27	P 170.00	P -	P -	P -	P 40,858.38
JANUARY	2,704.08	-	-	-	-	-	347.32	-	-	3,051.40
FEBRUARY	975.42	-	-	1,702.74	-	10.91	-	3,402.37	-	6,091.44
MARCH	1,080.06	-	-	19,044.85	-	-	-	-	-	20,124.91
APRIL	1,848.06	-	-	2,307.84	-	-	-	438.18	9,612.76	14,206.84
MAY	4,718.03	-	-	-	-	-	-	-	1,533.99	6,252.02
JUNE	2,167.53	-	-	-	-	-	-	-	31,352.14	33,519.67
JULY	1,080.55	-	-	-	-	49.50	-	-	1,613.09	2,743.14
AUGUST	332.58	-	-	-	-	90.27	-	6,227.59	2,412.00	9,062.44
SEPTEMBER	1,820.89	-	-	809.09	-	8,695.17	-	3,971.25	2,912.09	18,208.49
OCTOBER	4,529.25	-	-	305.40	-	225.36	-	597.77	137.09	5,794.87
NOVEMBER	1,212.51	-	-	-	-	334.93	-	-	-	1,547.44
DECEMBER	595.19	-	-	-	-	286.55	-	223.52	-	1,105.26
TOTAL	**P 23,064.15**	**P 1,371.82**	**P 37,338.25**	**P 25,920.96**	**P 227.27**	**P 9,862.69**	**P 347.32**	**P 14,860.68**	**P 49,573.16**	**P 162,566.30**

A - Not in the name of the company
B - No BIR Permit
C - Non-VAT Invoices and/Official Receipts
D - No supporting document or Supported only by provisional receipts
E - Invoices and/Official Receipts without TIN
F - Not supported by Official Receipt/Sales Invoice
G - Not within the period of claim
H - With erasures
I - No original copy