REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FILMINERA RESOURCES CORPORATION, Petitioner,	CTA EB No. 1466 (CTA Case Nos. 8690 and 8716)
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 19 2017 3:06 p.m.

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DECISION

FABON-VICTORINO, J.:

Challenged in this Petition for Review[1] filed by Filminera Resources Corporation on June 24, 2016, is the Decision dated January 22, 2016[2], which denied its consolidated judicial claims for tax refund/tax credit for insufficiency of evidence, and the Resolution dated May 24, 2016[3], which denied its subsequent Motion for Reconsideration for lack of merit, both rendered by the Court in Division in CTA Case Nos. 8690 and 8716.

[1] *En Banc* Docket, pp. 8-24.
[2] *Ibid.,* pp. 30-56.
[3] *Ibid.,* pp. 59-63.

THE FACTS AND THE PROCEEDINGS

Petitioner Filminera Resources Corporation is a domestic corporation primarily engaged in mining business. Its primary purpose per its Articles of Incorporation is as follows:

> "To carry on 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, and 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, and other property, both real and personal."

Petitioner is a VAT-registered entity with Tax Identification No. (TIN) 000-153-880-000 issued on July 4, 1994.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the power to grant or deny claims for refund or issuance of tax credit certificate (TCC) as provided by law. He holds office at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 5, 2007, petitioner and Philippine Gold Processing and Refining Corporation (PGPRC), another domestic corporation registered with the Board of Investments (BOI), entered into an Ore Sales and Purchase Agreement.

On July 22, 2011, petitioner, thru the BIR's Electronic Filing and Payment System (EFPS), filed its VAT Return for the 4th quarter of Fiscal Year (FY) 2011 (April 1, 2011 to June 30, 2011), while its VAT Return for the 1st quarter of FY

2012 (July 1, 2011 to September 30, 2011) was filed on June 30, 2012.

On March 15, 2013 and May 8, 2013, petitioner filed with respondent separate Applications for Tax Credit/Refund of input VAT for the 4th quarter FY 2011 in the amount of ₱78,982,003.52 and for the 1st quarter of 2012 in the amount of ₱27,484,241.04, or in the total amount of ₱106,466,244.56.

Due to inaction of respondent on its administrative claims for Tax Credit/Refund, petitioner, on August 8, 2013, filed with the Court in Division a Petition for Review for the refund/TCC of the amount of ₱78,982,003.52, which was docketed as CTA Case No. 8690. A similar petition for the amount of ₱27,484,241.04 was filed on October 4, 2013, which was docketed as CTA Case No. 8716.

On September 11, 2013, respondent filed the required Answer in CTA Case No. 8690, and on November 5, 2013, in CTA Case No. 8716.

The two (2) Petitions for Review were subsequently consolidated in the Resolution dated January 7, 2014.

After the parties filed the required pleadings, the cases were submitted for decision on January 20, 2015.

On January 22, 2016, the Court in Division denied the consolidated Petitions for Review for insufficiency of evidence. The Court ruled that petitioner failed to sufficiently substantiate its refund claims, specifically, it was unable to prove that the input taxes have not been applied against output taxes during and in the succeeding pertinent quarters, warranting the denial of the consolidated petitions.

The said Decision was effectively affirmed in the equally assailed Resolution of May 24, 2016, which denied petitioner's plea for reconsideration.[4]

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[4] *En Banc* docket, pp. 93-99.

On June 24, 2016, petitioner filed with the Court *En Banc* the instant Petition for Review on the following grounds, to wit:

> THE HONORABLE COURT OF TAX APPEALS, FIRST DIVISION COMMITTED GRAVE ERROR, IF NOT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT DENIED PETITIONER'S VAT REFUND FOR INSUFFICIENCY OF EVIDENCE FOR THE PERIOD COVERING 1 APRIL 2011 TO 30 SEPTEMBER 2011, EVEN AS:
>
> I.
>
> THE HONORABLE COURT FOUND THAT PETITIONER INCURRED AN EXCESS OF UNUTILIZED INPUT VAT BY VIRTUE OF ITS ZERO-RATED SALES TO PGPRC FOR THE PERIOD FROM MARCH 2011 TO SEPTEMBER 2011, IN THE TOTAL AMOUNT OF P106,466,244.56
>
> II.
>
> THE HONORABLE COURT OF TAX APPEALS AND THE ICPA REVIEWED THE OFFICIAL RECEIPTS AND INVOICES SUBSTANTIATING PETITIONER'S ZERO-RATED SALES, THEREBY WARRANTING A REFUND OF INPUT VAT.
>
> III.
>
> THE HONORABLE COURT OF TAX APPEALS UNDULY DENIED THE ENTIRE CLAIM FOR REFUND AND/OR ISSUANCE OF TAX CREDIT CERTIFICATE FOR INSUFFICIENCY OF EVIDENCE.

Petitioner claims that the Court in Division unduly denied the entire claim for refund or issuance of TCC on the ground of insufficiency of evidence as it was able to satisfy all the requirements for entitlement. That being the case, it is entitled to refund.

Petitioner contends that the Court in Division recognized the existence of its zero-rated sales pursuant to Ore Sales and Purchase Agreement it executed with PGPRC, and that it is qualified for VAT zero-rating. And given that its sales to PGPRC are also imposed a zero percent VAT as provided by Sec. 4.016-5(a)(5) of RR No. 16-2005, it incurs no output VAT during or in any of the succeeding taxable quarters, justifying its claim for unutilized input VAT.

By virtue of such VAT zero-rated sales, petitioner accumulated input VAT during the pertinent quarters which allegedly is still unutilized. Contrary to the finding of the Court in Division, it cannot incur any output VAT to offset its excess accumulated input VAT, justifying the refund prayed for.

Petitioner also puts premium on the finding and recommendation of the Court-commissioned Independent Certified Public Accountant (ICPA) who allegedly examined and verified the documents it submitted in relation to its claims for refund/TCC. Having complied with all the requirements for refund/TCC and considering that all its documents have been examined by the ICPA, the Court should grant the relief prayed for.

Finally, petitioner claims that an examination of its Quarterly VAT Return for the 4th Quarter of FY 2011, specifically Line 23D thereof shows that it did not claim any TCC or input VAT. On the other hand, the Quarterly VAT Return for the 1st quarter of FY 2012 shows that it claimed the amount of ₱360,739,406.31 out of the total available input VAT of ₱417,509,030.79. According to petitioner, the amount of ₱360,739,406.31 is comprised of input VAT from March 2010 to September 2011.

Petitioner also claims that the record of the case shows that the amounts of ₱78,982,003.52 and ₱27,484,241.04 formed part of the entire claim of ₱360,739,406.31.

As to the amount of ₱56,299,762.02, petitioner believes that the Court cannot demand it to substantiate the same since it is not claiming the said amount which it incurred in 2009, thus, it can no longer be part of its present claim for refund/TCC due to the lapse of the period to do so.

In his Comment, respondent posits that petitioner failed to discharge its burden of proving the factual basis of its alleged entitlement to refund/TCC as to justify the grant thereof. He points out that like tax exemptions, claims for refund are construed strictly against the taxpayer.[5] They are looked upon with disfavor[6], for they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[7]

In its Reply, petitioner states that respondent merely lifted its arguments from the assailed Decision and Resolution of the Court in Division, ignoring the ICPA Report finding that it was able to substantiate its claim for VAT refund. It cannot also accept that it is still possible that it could incur output VAT to offset its alleged excess and/or unutilized input VAT.

Such speculation, according to petitioner is contrary to the evidence presented that it exclusively sells its pre-production ore to PGPRC. Therefore, it is not possible for it to incur any output VAT during and in the succeeding quarters. Moreover, by applying for a VAT refund/tax credit, it effectively abandoned the option to carry over and offset its input VAT during and in the succeeding quarters.

Petitioner now explains the amount of ₱56,299,762.02 which it allegedly incurred in early 2009, before PGPRC became a BOI-registered entity. In any event, it did not incur any output VAT since 2010. Further, it is not claiming the said amount for refund.

On October 19, 2016, the case was submitted for decision[8] with respondent's Manifestation filed on September 21, 2016[9] adopting the arguments in his Comment filed on August 9, 2016, while petitioner filed its Memorandum on September 30, 2016[10].

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[5] Citibank NA v. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation v. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).
[6] Western Minolco Corp. v. Commissioner of Internal Revenue, 124 SCRA 1211.
[7] Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., 309 SCRA 87.
[8] *En Banc* Docket, pp. 150-151.
[9] *Ibid.*, pp. 131-132.
[10] *Ibid.*, pp. 135-148.

THE RULING OF THE COURT *EN BANC*

In *Compaignie Fincanciere Sucres El Denrees v. Commissioner of Internal Revenue*[11], the Supreme Court held that "xxx Tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken or too categorical to be misinterpreted.

In view of petitioner's insistence that it has complied with all the conditions for the grant of the refund sought, a revisit of the record to verify its contention is in order.

Under Section 112 of the NIRC of 1997, as amended, petitioner must satisfy the following requisites to be entitled to the tax refund/credit of its alleged unutilized input VAT, *viz.*:

1) that the claim for refund was filed within the two-year prescriptive period.

2) that the taxpayer-claimant must be VAT-registered;

3) that there must be zero-rated or effectively zero-rated sales;

4) that input taxes were incurred or paid;

5) that such input taxes are attributable to zero-rated or effectively zero-rated sales; and

6) that the input taxes were not applied against any output VAT liability.

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[11] G.R. No. 133834, August 28, 2008.

As found by the Court in Division, petitioner seasonably filed both its administrative and judicial claims for refund/TCC, as illustrated in the following tables, thus:

CTA Case No.	Period	Close of the Taxable Quarter	Last Day to File Administrative Claim	Filing Date of Administrative Claim
8690	4th Quarter of 2011	June 30, 2011	June 30, 2013	March 15, 2013
8716	1st Quarter of 2012	September 30, 2011	September 30, 2013	May 8, 2013

CTA Case No.	Period	Date of Filing of Administrative Claim	End of 120 days for CIR to decide on refund claim	End of 30 days from expiration of 120 days	Date of Filing of Petition for Review
8690	4th Quarter of 2011	March 15, 2013	July 13, 2013	Aug. 12, 2013	Aug. 8, 2013
8716	1st Quarter of 2012	May 8, 2013	Sept. 5, 2013	Oct. 5, 2013	Oct. 4, 2013

That it is a registered VAT taxpayer was also proved by petitioner through its Certificate of Registration with the corresponding TIN 000-153-880-000.

Evidence also established that PGPRC is a BOI-registered entity that exported 100% of its processed gold and silver ore during the period July 1, 2010 to June 30, 2011, as indicated in the Certification dated July 21, 2011 valid from July 1, 2011 to June 30, 2012 issued by the BOI.

With the presentation of official receipts, invoices and Summary of Sales Transactions, petitioner was able to prove its zero-rated sales of processed gold and silver ore to PGPRC, a BOI-registered entity, in the amount of ₱868,443,843.68, as declared in its Quarterly VAT Return for the 4th quarter of FY 2011, and its zero-rated sales of ₱394,303,072.15, as shown in its Quarterly VAT Return for the 1st quarter of 2012, or a total of ₱1,262,746,915.83.

However, the same official receipts, invoices and Summary of Sales Transactions presented by petitioner to prove its zero-rated sales revealed that of the amount of ₱1,262,746,915.83, only ₱1,261,876,915.83 pertained to petitioner's ore sales to PGPRC, while the difference of ₱870,000.00 pertained to its total receipts from the lease of land to PGPRC. Under Section 106(A)(2)(a)(5) of the NIRC, as amended, and Section 4.106-5(a)(5) of RR No. 16-2005, the amount of ₱870,000.00 cannot be considered as zero-rated sales and only the amount of ₱1,261,876,915.83 may qualify for VAT zero-rating for the pertinent quarters.

Per petitioner's Quarterly VAT Returns for the 4th quarter of FY 2011 and the 1st quarter of FY 2012, it incurred input VAT in the total amount of ₱106,466,244.56. Of the said amount however, only ₱101,361,470.80 was substantiated as reported by the ICPA in his Report dated June 4, 2014. For lack of supporting documents, the difference of ₱5,104,773.76 was disallowed.

The amount of ₱16,246,865.24 was also rightly disallowed as petitioner failed to support the same by VAT invoices or official receipts compliant with the requirements under Sections 110(A) and 113(A) and (B) of the 1997 Tax Code, as amended.

The input VAT of ₱13,705.76 was likewise disallowed as the documents allegedly supporting such amount were not found in the record, hence, they were denied admission. In other words, the said amount cannot be considered for purposes of petitioner's claims for refund/TCC.

In view of the foregoing disallowances, only the amount of ₱85,100,899.80 appears as petitioner's valid input VAT, as demonstrated by the Court in Division in the table below:

	4th Quarter of FY ending June 30, 2011	**1st Quarter of FY ending June 30, 2012**	**Total**
Input VAT Claimed	₱ 78,982,003.52	₱ 27,484,241.04	₱ 106,466,244.56
Less: Disallowances			
a) Per ICPA Report	8,538,975.93	7,707,889.31	16,246,865.24
b) Per this Court's findings			
1.Without supporting documents	4,891,268.46	213,505.30	5,104,773.76
2.The supporting documents were denied admission by this Court		13,705.76	13,705.76
Total Disallowances	13,430,244.39	7,935,100.37	21,365,344.76
Valid Input VAT	**₱ 65,551,759.13**	**₱19,549,140.67**	**₱85,100,899.80**

Not to be forgotten is the amount of ₱870,000.00, which represents petitioner's receipts from the lease of land to PGPRC during the relevant quarters, specifically from April 1, 2011 to September 30, 2011. Such amount which cannot be attributed to petitioner's zero-rated or effectively zero-rated sales must as well be deducted from the amount of ₱85,100,899.80.

Apparently, petitioner concedes with the foregoing findings of the Court in Division. In fact, in this appeal, it already abandoned its original claim for refund/TCC in the aggregate amount of ₱106,466,244.56 for the pertinent quarters FY 2011 and 2012 and prays that it be issued a TCC in the amount of ₱85,046,498.33, allegedly representing its creditable input VAT covering the period "1 March 2011 to 20 June 2011 and 1 July 2011 to 30 September 2011". Notably, the quarters subject of this appeal is the 4th quarter of 2011, *i.e* from April 1, 2011 to June 30, 2011, and the 1st quarter of 2012, *i.e.* from July 1, 2011 to September 30, 2011. The period March 1, 2011 to March 31, 3011 is definitely not included.

In any event, the Court *En Banc* concurs with the finding of the Court in Division that petitioner failed to sufficiently establish that the subject input taxes have not been applied against any output tax liability during and in the succeeding quarters as to justify the grant of at least the amount of ₱85,046,498.33 for the pertinent quarters of the FY 2011 and 2012.

Petitioner insists that the amounts of ₱78,982,003.52 and ₱27,484,241.04 do not form part of the entire claimed amount for refund/TCC of ₱360,739,406.51.

As to the amount of ₱56,299,762.02, petitioner explains that the said amount was incurred in early 2009 before PGPRC became a BOI-registered entity. Thus, it can no longer be the subject of a VAT claim for refund. Further, considering that it has not incurred any output VAT since 2010, it could no longer offset or carry over input VAT in the said quarters or in any succeeding quarters.

The Court cannot agree with petitioner's arguments.

To begin with, the foregoing arguments are mere rehash of petitioner's arguments in its pleadings filed with the Court in Division, which have already been considered and passed upon by the Court in the assailed Decision of January 2, 2016 and Resolution of May 2, 2016.

Verification of petitioner's Quarterly VAT Return for the 1st Quarter of FY 2012 disclosed that petitioner has a total available input tax of ₱417,509,030.79. Petitioner deducted from the said total available input tax the amount ₱360,739,406.51 and ₱469,862.26, representing the "VAT Refund/TCC Claimed" and "Input Tax Purchase of Capital Goods exceeding P1Million deferred from the succeeding period", respectively, leaving petitioner's allowable input tax of ₱56,299,762.02. However, petitioner failed to establish that the subject amounts being claimed, i.e., ₱78,982,003.52 and ₱27,484,241.04, form part of its allowable input tax of ₱56,299,762.02. The record is bereft of any document or proof that indeed, the subject amounts do not comprise the amount that petitioner previously deducted or claimed, *viz*, ₱361,209,268.77, or that it was not carried-over to the succeeding taxable quarters. Hence, the Court *En Banc* must deny the claim for refund/TCC.

In the assailed Resolution of May 24, 2016, the Court in Division held that the possibility of carrying over the amount of ₱56,299,62.02, as excess or overpaid input VAT for the subject period, to the succeeding periods existed. As such, petitioner should have presented during trial, the composition or breakdown of the said amount of ₱56,299,62.02, as well as the amount of ₱360,739,406.51, for the Court in Division to definitely conclude that the amounts being claimed for refund or issuance of tax credit certificate, were indeed not carried over to the succeeding periods. Petitioner utterly failed in this regard. It was not able to present conclusive evidence to show that the said input VAT was not applied to the succeeding quarters.

While it may be undisputed that petitioner exclusively sells its ores to PGPRC, the same does not foreclose the possibility of petitioner selling to other non BOI-registered entities, which transactions, may be subject to the 12% VAT rate. There is no preventing petitioner from selling to other entities which sales could be subject to VAT. Its exclusive sale to PGPRC in itself, does not denigrate the fact that petitioner may still subsequently and possibly incur the 12% output VAT (to which excess input VAT from previous periods may be applied) as the purposes for which petitioner was incorporated are not limited to selling ores, in general, and to selling the same products merely to BOI-registered entities exporting 100% of their products, in particular.

Finally, the Court is not bound by the finding of the ICPA. It may adopt, wholly or partly the ICPA Report or reject it in the same way. Settled is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[12] Moreover, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the State.[13] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[14]

Petitioner, as taxpayer-claimant, has the burden of proof to show that it is entitled to the refund of the amount claimed for taxes which are presumed to have been collected in accordance with laws and regulations on the matter. The burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to a refund.[15]

WHEREFORE, the Petition for Review filed by petitioner Filminera Resources Corporation on June 24, 2016, is hereby **DENIED** for lack of merit. Consequently, the Decision dated January 22, 2016 and the Resolution dated May 24, 2016, both rendered by the Court in Division, are **AFFIRMED**.

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[12] Philippine Geothermal, Inc. v. The Commissioner of Internal Revenue, G.R. No. 154028, July 29, 2005.
[13] Philippine Long Distance Telephone Company, Inc. v. City of Davao, et al., G.R. No. 143867, March 25, 2003.
[14] National Power Corporation v. Province of Isabela, G.R. No. 165827, June 16, 2006.
[15] Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd., et al., G.R. No. 68252, May 26, 1995.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring 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

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

FILMINERA RESOURCES CORPORATION, *Petitioner,*	**CTA EB NO. 1466** (CTA Case Nos. 8690 & 8716)
	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2017 3:06 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Filminera Resources Corporation thereby affirming the assailed Decision and assailed Resolution of the Court in Division which denied petitioner's claim for refund of unutilized input VAT for the periods **April 1, 2011 to June 30, 2011** and **July 1, 2011 to September 30, 2011** which are allegedly attributable to zero-rated sales of gold and silver ore to Phil. Gold Processing & Refining Corp. (PGPRC).

In denying the Petition for Review, the *ponencia* affirmed the factual findings of the Court in Division that **petitioner failed to establish with sufficient evidence that its substantiated input**

VAT in the total amount of ₱85,046,498.33 has not been applied against any output tax liability during the periods April 1, 2011 to June 30, 2011, July 1, 2011 to September 30, 2011, and in the succeeding quarters as to justify its refund.

In addition to the foregoing, I would like to state my observation that petitioner failed to prove that its substantiated input VAT for the period **July 1, 2011 to September 30, 2011** are **attributable to zero-rated sales** of gold and silver ore to PGPRC.

The BOI Certification (Exhibit P-8-A) issued on July 21, 2011 only proves that petitioner complied with the requirement that its buyer's products (PGPRC's products) were **100% exported for the period from April 1, 2011 to June 30, 2011**. Said BOI Certification does not, however, cover the period July 1, 2011 to September 30, 2011. For ease of reference, the BOI Certification (Exhibit P-8-A) is reproduced below:

EXHIBIT "P-8-A"

BOARD OF INVESTMENTS
PHILIPPINES

DEPARTMENT OF TRADE & INDUSTRY
PHILIPPINES

RMO 9-2000/BOI-ID Certificate No. 2011-A098
Date Filed: July 15, 2011
Appln. No.: 2011-C1307

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/Status 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 fiscal year covering **July 01, 2010 to June 30, 2011** based on the attached documents (Annexes B & C) submitted to the BOI summarized as follows:

TIN	:	004-498-686-000
Total Sales Volume/Value*	:	10,952,790.70 g / $234,873,985.27
Total Export Sales Volume/Value	:	10,952,790.70 g / $234,873,985.27
Direct Export Volume/Value	:	10,952,790.70 g / $234,873,985.27
Constructive Export Volume/Value	:	None
Indirect Export Volume/Value	:	None
% of Export to Total Sales	:	100%
Period Covered	:	FY July 01, 2010 to June 30, 2011

*subject to post-audit in case of computational discrepancy

It is understood that based on the affidavit executed by **Phil. Gold Processing & Refining Corp.**, attached as Annex "A", all information provided herein 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 07, 2000.

[illegible]

Phil. Gold Processing & Refining Corp.
Cert. Under RMO 9-2000
Page 2 [illegible]

This Certification is valid from **July 01, 2011** to June 30, 2011 [illegible] revoked by the BOI Governing Board for any or all of the [illegible] of the herein registered enterprise to comply with any of [illegible] terms, commitments, and conditions; (b) Failure to export 100% [illegible] in Section 2 of RMO No. 9-2000; (c) Submission of [illegible]; (d) Failure to submit Audited Financial Statements, Annual Income Tax [illegible] Annual Report on Actual Operations for the fiscal year 2011.

Since the firm's accounting reporting period [illegible] its succeeding applications **should be filed within fifteen (15) days from the end of the said fiscal year period in order that 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 [illegible] 2000, on this 21st day of July 2011 at Makati City, Philippines, upon the request of **Phil. Gold Processing & Refining Corp.** subject to the foregoing conditions.

[illegible] P. REYES
Executive Director
Project Assessment Group

7/21/11

With Enclosures:
- Letter Request
- Affidavit (Annex A)
- Sales Performance (Annex B)
- Detailed Schedule of Export Sales (Annex C)
- Secretary's Certificate
- Unaudited financial statements
- Bank certification
- Certification that the firm has not [illegible]

cc: Firm/BOI-Records [illegible]

PAG SMAII

While the aforesaid Certification is valid from July 1, 2011 to June 30, 2012, and that **PGPRC, the buyer of petitioner's products, is BOI-registered**, the BOI's confirmation of PGPRC's exportation of 100% of its total sales volume/value is **confined only to the fiscal year covering July 1, 2010 to June 30, 2011.**

The period July 1, 2011 to September 30, 2011 (first quarter of fiscal year July 1, 2011 to September 30, 2012) is obviously outside the period referred to in the BOI Certification anent PGPRC's exportation of 100% of its total sales volume/value. Thus, I submit that petitioner failed to prove that its substantiated input VAT for the period July 1, 2011 to September 30, 2011 were attributable to zero-rated sales of gold and silver ore.

In fine, I **VOTE** to: (i) **DENY** the Petition for Review filed by Filminera Resources Corporation; and, (ii) **AFFIRM** the assailed Decision and assailed Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice