REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TAGANITO MINING CORPORATION, Petitioner,	**CTA EB NO. 2055** (CTA Case No. 9369)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2058** (CTA Case No. 9369)
- versus -	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and, MODESTO-SAN PEDRO, JJ.
TAGANITO MINING CORPORATION, Respondent.	Promulgated: JUL 23 2020 8:15 a.m.

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DECISION

DEL ROSARIO, P.J.:

Before the Court *En Banc* are the consolidated Petitions for Review filed by Taganito Mining Corporation (TMC) and the Commissioner of Internal Revenue (CIR), docketed as CTA EB No. 2055 and CTA EB No. 2058, respectively. Both Petitions assail the

Decision dated December 6, 2018[1] and Resolution dated April 12, 2019[2] promulgated by the Court in Division in *Taganito Mining Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent,* CTA Case No. 9369, partially granting the refund claim of TMC in the amount of ₱25,946,279.40, representing its unutilized excess input value-added tax (VAT) for the four (4) quarters of calendar year (CY) 2014. The dispositive portions of the assailed Decision and Resolution state:

Decision dated December 6, 2018

"**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue a tax credit certificate in favor of petitioner in the reduced amount of ₱25,946,279.40 representing its unutilized excess input VAT for the four quarters of CY 2014.

SO ORDERED."

Resolution dated April 12, 2019

"**WHEREFORE**, finding no cogent reason to reverse or set aside the ruling in the assailed Decision, petitioner's *Motion for Partial Reconsideration with Manifestation and Comment to Respondent's Motion for Partial Reconsideration* posted on [January 25, 2019] and respondent's *Motion for Partial Reconsideration (Re: Decision promulgated 6 December 2018)* filed on December 20, 2018 are **DENIED** for lack of merit.

SO ORDERED."

TMC seeks the grant of additional refund while the CIR prays for the partial reversal and setting aside of the assailed Decision and Resolution and denial of TMC's entire claim for refund.

PARTIES

TMC is a corporation duly organized and existing under and by virtue of the laws of the Philippines with present business address at 29/F NAC Centre, 32nd Avenue, Fort Bonifacio Global City, Taguig City.[3]

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[1] Penned by Associate Justice Catherine T. Manahan with Associate Justice Juanito C. Castañeda, Jr. concurring, CTA EB No. 2055 Docket, pp. 26-85.
[2] Penned by Associate Justice Catherine T. Manahan with Associate Justice Juanito C. Castañeda, Jr. concurring, CTA EB No. 2055 Docket, pp. 87-93.
[3] Paragraph IV(9), Petition for Review, CTA EB No. 2055 Docket, p. 8.

The CIR[4] is the duly appointed official vested with authority to decide refund of internal revenue taxes, fees or other charges, penalties imposed relative thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws administered by the Bureau of Internal Revenue (BIR).

FACTS

TMC is registered with the Securities and Exchange Commission with Certificate of Registration No. 138682 issued on March 4, 1987.[5] It is also a VAT-registered entity with updated Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000685884E duly issued by the CIR. In addition, it is registered with the Board of Investments (BOI) with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.[6]

On December 29, 2015, TMC filed with the BIR's Excise Taxpayers' Assistance Division under the Large Taxpayers Division, a claim for refund of excess input taxes paid on its domestic purchases and importation of taxable goods and services and importation of goods, including capital goods, for CY 2014.[7]

On May 12, 2016, TMC received an undated letter[8] with attached Tax Credit Certificate[9] in the amount of ₱512,883.39 from the BIR stating that out of TMC's ₱29,581,267 claim, ₱21,330,738.32 was recommended for issuance of tax credit certificate, to wit:[10]

PARTICULARS	BIR	BOC	TOTAL
Total Applied for TCC	654,430.00	28,926,837.00	29,581,267.00
Less: Disallowance	141,546.61	8,108,982.07	8,250,528.68
NET REFUNDABLE AMOUNT	**512,883.39**	**20,817,854.93**	**21,330,738.32**

Unsatisfied, TMC filed a Petition for Review[11] with the Court in Division on May 27, 2016.

On June 7, 2016, the CIR informed the Commissioner of Customs (COC) that the he has approved in favor of TMC, VAT credit in the amount of ₱20,817,854.93 representing input tax amortized in

[4] The incumber CIR is Hon. Caesar R. Dulay.
[5] Decision, CTA EB No. 2055 Docket, pp. 27-28.)
[6] Decision, CTA EB No. 2055 Docket, p. 28.
[7] *Id.*
[8] Annex C of the Petition for Review, CTA Case No. 9369 Docket, p. 32
[9] Annex D of the Petition for Review, CTA Case No. 9369 Docket, p. 33.
[10] Paragraph IV(20), Petition for Review, CTA EB No. 255 Docket, p. 11.
[11] CTA Case No. 9369 Docket, pp. 10-40.

CY 2014 on importations for the period from January 1, 2010 to December 31, 2014, attributable to zero-rated export sales of nickel ore sources.[12]

On the other hand, the Bureau of Customs (BOC) certified that it has not issued any refund of VAT in favor of TMC for CYs 2009 to 2014.[13]

On July 26, 2016, the CIR belatedly filed his Answer[14] asserting, among others, that it was incumbent upon TMC to prove that it submitted the relevant pieces of documents to substantiate its claim as listed in Revenue Memorandum Order (RMO) No. 53-98 and had observed the procedure laid down in Section 112 (C) of NIRC of 1997, as amended. He claims that TMC's failure to submit relevant documents to support its application for refund rendered the same *pro forma* as if no administrative claim for refund was applied for. In other words, TMC failed to exhaust administrative remedies before resorting to the Court of Tax Appeals (CTA). Hence, its Petition is dismissible for failure to observe a condition precedent before it resorted to court.

The Pre-Trial Conference proceeded on November 10, 2016.[15] On November 21, 2016, the parties submitted their Joint Stipulation of Facts and Issues.[16] The Pre-Trial Order was issued on November 28, 2019 thereby terminating the pre-trial.

TMC presented as its witnesses, Mr. George V. Villaruz, Court-commissioner Independent Certified Public Accountant (ICPA); [17] and Ms. Lennie A. Terre, Vice President for Finance of TMC.[18]

On July 26, 2017, TMC filed its Formal Offer of Evidence.[19] In the Resolution dated September 4, 2019, all offered exhibits of TMC were admitted in evidence.

In the October 9, 2017 Hearing,[20] the CIR manifested that there has yet been a report of investigation in the case and accordingly moved that the case be submitted for decision.

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[12] Decision, CTA EB No. 2055 Docket, p. 28.
[13] *Id.*
[14] CTA Case No. 9369 Docket, pp. 57-68.
[15] Order dated November 10, 2016, CTA Case No. 9369 Docket, p. 98.
[16] CTA Case No. 9369 Docket, pp. 109-114.
[17] Exhibits "P-11" and "P-11-D" (Judicial Affidavit of Mr. Villaruz), CTA Case No. 9369 Docket, pp. 135-141 and 181-184; Order dated March 29, 2017, CTA Case No. 9369 Docket, p. 156; Order dated July 17, 2017, CTA Case No. 9369 Docket, p. 186.
[18] Exhibit "P-10" (Judicial Affidavit of Ms. Terre), CTA Case No. 9369 Docket, pp. 144-153; Order dated March 29, 2017, CTA Case No. 9369 Docket, p. 156.
[19] CTA Case No. 9369 Docket, pp. 187-197.
[20] Order dated October 9, 2017, CTA Case No. 9369 Docket, p. 394.

On December 12, 2017, CTA Case No. 9369 was submitted for decision in view of TMC's posting of its Memorandum[21] on November 8, 2017 and the CIR's filing of his Memorandum[22] on November 29, 2019.[23]

On December 6, 2018, the Court in Division rendered the assailed Decision partially granting TMC's refund claim.

Both parties sought the reconsideration[24] of the assailed Decision. The Court in Division, however, found the motions for reconsideration unmeritorious and affirmed its Decision in the assailed Resolution dated April 12, 2019.

In its Motion for Partial Reconsideration with Manifestation and Comment to Respondent's Motion for Partial Reconsideration,[25] TMC manifested that as of January 25, 2019, the CIR, through the COC, refunded to it the amount of ₱20,789,920.49.

Undaunted, both parties, appealed to the Court *En Banc.*

In the Minute Resolution dated May 28, 2019, the Petitions were consolidated.[26]

The CIR filed his Comment (Re: Petition for Review)[27] on June 25, 2019, while TMC posted its Comment (To Petition for Review)[28] on July 8, 2019.

In the Resolution dated August 8, 2019,[29] the Petitions were given due course and the parties were directed to submit their respective memoranda within thirty (30) days from receipt thereof.

On November 14, 2019,[30] the consolidated cases were submitted for decision in view of the Manifestation[31] filed by the CIR on

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[21] CTA Case No. 9369 Docket, pp. 400-416.
[22] CTA Case No. 9369 Docket, pp. 418-425.
[23] CTA Case No. 9369 Docket, p. 426.
[24] Motion for Partial Reconsideration with Manifestation and Comment to Respondent's Motion for Partial Reconsideration, CTA Case No. 9369 Docket, pp. 500-523; Motion for Partial Reconsideration (Re: Decision promulgated 6 December 2018), CTA Case No. 9369 Docket, pp. 490-497.
[25] CTA Case No. 9369 Docket, pp. 500-501.
[26] CTA EB No. 2055 Docket, p. 115.
[27] CTA EB No. 2055 Docket, pp. 119-125.
[28] CTA EB No. 2055 Docket, pp. 130-133.
[29] CTA EB No. 2055 Docket, pp. 136-138.
[30] Resolution dated November 14, 2019, CTA EB No. 2055 Docket, pp. 164-165.
[31] CTA EB No. 2055 Docket, pp. 139-142.

August 22, 2019, stating that he is adopting the arguments in his Petition for Review filed on May 8, 2019 in CTA EB No. 2058 and the Comment on the Petition for Review in CTA EB No. 2055 as his Memorandum; and, the Memorandum[32] belatedly filed by TMC on October 1, 2019.

ISSUES

TMC raises the following assignment of errors in support of its Petition:

> "The appealed Decision and the appealed Resolution contain conclusions of law that are bereft of legal basis and are contrary to law, as follows:
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> B.1 In view of the overlapping of the Respondent's findings as against the CTA Division's Findings, the CTA Resolution does not provide a clear delineation and order specifying the amount which should be additionally granted to the Petitioner taking into consideration the amount already refunded by the Respondent through the BOC.
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> B.2 The CTA Resolution denying Petitioner's motion to adduce evidence on new trial, which is effectively for the purpose of substantiating the amounts already allowed by the Respondent but disallowed by the CTA Division and/or to provide clearer information which cannot be perceived from evidence previously adduced but found to be unclear by the CTA, is without factual and legal basis.
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> B.3 Pro-rating of input tax that arise from purchases which are all directly attributable to zero-rated sales to other non-zero-rated sales is without legal bases and is contrary to law."[33]

The CIR, on the other hand, claims that the Court in Division erred in partially granting TMC's refund claim for refund for unutilized excess VAT for the four quarters of CY 2014.[34]

Essentially, the pivotal question before the Court *En Banc* is whether TMC is entitled to the refund of its entire unutilized excess VAT for the four quarters of CY 2014 in the total amount of ₱28,926,837.00.

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[32] CTA EB No. 2055 Docket, pp. 148-162.
[33] Petition for Review, CTA EB No. 2055 Docket, pp. 15-16.
[34] Petition for Review, CTA EB No. 2058 Docket, p. 3.

ARGUMENTS

TMC's arguments

TMC insists that it is entitled to additional refund. It claims that there is no basis for the Court in Division to consider its Dispatch Income as exempt sales and on the basis thereof, pro-rate the amount of input taxes allowed in computing the refund granted to it. TMC submits that the amount of ₱308,796.69 as pro-rated input tax corresponding to unsupported 0% sales which was disallowed by the Court in Division but granted by the CIR without pro-rating should be affirmed by estoppel.

The treatment of the Court in Division of the Dispatch Income, as income from the sale of service instead of sale of goods has resulted in an absurd situation wherein the very same foreign customers to whom the ores (goods) were sold and shipped abroad and who paid the additional price for the ores were suddenly treated as non-resident foreign corporations requiring proof of non-residency.

TMC further claims that it is incumbent upon the Court in Division to render clarity to the case considering its manifestation and the difference between the amount granted by the Court in Division and the amount granted by the CIR. TMC submits that the Court in Division should have made the following pronouncement:

> "a. That Respondent's records clearly show that the Respondent, in granting/approving the amount of Petitioner's claim, would/should have granted or endorsed the amount of P23,388,560.27 to the BOC, corresponding to 98.54% of the allowed input tax amount of P23,735,092.62 broken down into P21,126, 651.62 input taxes on imported capital goods plus P2,608,441.00 input taxes on imported non-capital goods, were it not for a clear error in computation.
>
> b. That the CTA affirms the grant of the portion of the input tax which Petitioner stated that it intends to pursue with the CTA corresponding to the amount which the CTA already partly and substantially granted, specifically, the amount of P7,734,480.74 and that the CTA affirms the amount of BIR disallowances from Petitioner's 2013 purchases in the total amount of P5,191,744.10 which it has been approved in the appealed Decision.
>
> c. That Respondent should issue the corresponding refund for the amount of P65,704.36 in view of the fact that the Respondent has already approved the said amount which was found by the CTA as unsupported input tax but merely failed to issue the corresponding tax refund due to a clear computational error."

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Additionally, should estoppel be inapplicable to the CIR, TMC pleads to introduce evidence to prove the basis for its prayer for additional refund. TMC argues that the Court in Division's statement that the evidence sought to be presented are "forgotten evidence" is baseless. It explains that except for the amounts of ₱65,704.36 and ₱799,455.40, wherein the evidence consists of parts of other evidence submitted which were inadvertently excluded by the ICPA, the other disallowed amounts were properly supported but TMC sought to submit clearer copies derived from the BOC records as its own records which were submitted as evidence, were not clear enough for proper appreciation by the Court in Division.

In his Comment, the CIR counters that TMC must prove that it is entitled to the refund sought since claims for refunds, which are in the nature of tax exemptions, are construed *strictissimi juris* against the claimant. Further, TMC's contention that it is entitled to the refund of ₱28,926,837.00 and should be allowed to introduce evidence to show entitlement to such refund is bereft of merit.

<u>The CIR's arguments</u>

The CIR is adamant in insisting that the fact of connection between the input tax on purchases *vis-à-vis* the zero-rated sales should be established. He reasons that it is part of mandatory judicial notice that the VAT system was adopted from Europe and introduced in the Philippines in 1998 via Executive Order No. 273 (*Adopting a Value-Added Tax, Amending for this Purpose Certain Provision of the National Internal Revenue Code, and for Other Purposes, effective January 1, 1988)*. The VAT system was not a mere creation but rather a European system adopted by the Philippines. As it works in Europe, only the VAT paid for supplies in the business is creditable as an input tax of a VAT registered person. Thus, purchases must in turn relate to the supplies (goods/services) that a person uses to make products. Not all input tax accumulated by a person may be claimed. Purchases by businesses such as personal activities, business entertainment, corporate events, outside office meetings, cannot be claimed as an attributable and creditable input tax.

Similarly, Philippine laws do not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. Section 112 (A) of the NIRC of 1997, as amended, provides that what is refundable are "creditable input taxes". Section 110 of the NIRC of 1997, as amended, defines "creditable input taxes" as input taxes on purchases of goods which either form part of the finished product of the taxpayer or are factors in the chain of production, consistent with the universal definition of VAT as essentially a "tax on transactions". It is imposed at every stage of the distribution process on the sale, barter, exchange of goods or property and in the performance of services until it finally reaches the consumer. Since it is a value-added tax, it is levied on the value added to goods and services at every link of the chain of transactions in order to prevent doubly taxing a prior transaction in the subsequent use or sale of the same product. Thus, the law provides that they are either: resold as the finished product; converted or forms part of the finished products; used as supplies in the business; materials utilized for a service provided; or a capital equipment to produce goods/services.

After determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input taxes are attributable, meaning the connection between the purchases and the finished product is "concrete" and not "imaginary".

In its Comment, TMC claims that the contents of the CIR's petition are mere rehash of its previous arguments. It also submits that it is preposterous for the CIR to question the Court in Division's attribution rate of 98.45% of its input taxes considering that he previously granted and refunded to TMC input taxes based on a 100% attribution rate.

RULING OF THE COURT *EN BANC*

Both Petitions for Review deserve scant consideration. The Court *En Banc* finds no reason to modify much less reverse the assailed Decision and Resolution of the Court in Division.

The Petitions were timely filed.

Section 18 of Republic Act No. 1125, as amended, *vis-à-vis* Section 3 (b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), provides that a party adversely affected by a decision or a resolution of a Division of the Court on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.

In the cases at bar, the assailed Decision dated December 6, 2018 was received by the CIR on December 10, 2018 and by TMC on January 10, 2019. Thus, the filing of their respective Motions for Partial Reconsideration on December 20, 2018 and on January 25, 2019 was timely.

The assailed Resolution dated April 12, 2019 was received by the CIR on April 25, 2019 and by TMC on April 22, 2019. On May 3, 2019, TMC filed a Motion for Extension of Time (to File Petition for Review) which was granted in the Minute Resolution dated May 7, 2019, giving TMC until May 22, 2019 within which to file its Petition for Review. Therefore, the filing by the CIR and TMC of their respective Petitions on May 8, 2019 and May 22, 2019 was timely.

The Court in Division is not bound by the computation of the CIR.

TMC's prayer for additional refund rests primarily on its position that the Court *En Banc* should reconsider the disallowances made by the Court in Division and consider the entire amount granted by the CIR, as he is supposedly already estopped from questioning the refund previously granted to it in the administrative level.

TMC is mistaken in thinking that the Court in Division is bound by the computation of the CIR. It is well to remember that the CTA is a court of record where cases filed before it are litigated *de novo*. Thus, TMC should prove every minute aspect of its case by presenting, formally offering and submitting to the Court all evidence required for the successful prosecution of its administrative claim.[35]

Needless to say, the Court in Division did not err and merely performed its mandate in ascertaining TMC's refund claim based on the pieces of evidence submitted for its consideration.

The disallowance of the Dispatch Income and pro-rating of the valid input tax is proper.

Likewise, the Court in Division did not err in disallowing TMC's Dispatch Income. We quote with approval the Court in Division's ruling:

> *"Sales of services to non-resident foreign corporations*
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao,* Inc., the Supreme Court held that in order for the supply of services to be VAT

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[35] *Commissioner of Internal Revenue vs. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;
2. payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

Based on petitioner's submitted billing statements, official receipts and bank credit advices, the claimed zero rated sales/receipts of ₱23,478,725.99 arose from 'Laytime Saved' by petitioner at loading point for the [nickel] ore shipments. In her Judicial Affidavit, petitioner's Vice President for Finance, Ms. Lennie A. Terre, explained that this represents 'Dispatch income which is a form of premium payment or reward for early completion of ore loading or when ore loading is made earlier than the allowed loading days based on the contract terms. This is an additional payment to the contract price of the ores and is billed by and paid to petitioner in US Dollars thru the Philippine banking system.'

Clearly, petitioner complied with the first and second requisites considering that the amount of ₱23,478,725.99 pertains to services which fall within the scope of 'services other than processing, manufacturing or repacking of goods' and that the same was paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP.

However, petitioner failed to comply with the equally important third requisite, i.e., that its non-resident foreign clients were doing business outside the Philippines.

This Court has consistently held that for an entity to be considered a non-resident foreign corporation doing business outside the Philippines, the said entity must be supported at the very least, by the Certification of Non-Registration of Corporation/Partnership duly issued by the Securities and Exchange Commission (SEC) and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum and Articles of Association, or Certificate of Registration) or any other equivalent document.

For failure to present the aforesaid documents, petitioner's reported zero-rated sales/ receipts in the amount ₱23,478,725.99 shall be disallowed."[36]

Even assuming that the Dispatch Income may be properly treated as income from sale of goods and not from sale of services, the same should still be disallowed since it is not supported by official sales invoices.[37] It is settled that invoices and official receipts are not

[36] Decision, CTA EB No. 2055 Docket, pp. 51-53.
[37] See Exhibits "P-11-B-71" to "P-11-B-104.2"

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used interchangeably for purposes of substantiating input or output VAT. [38] When a VAT-taxpayer claims to have zero-rated sales of goods, it must substantiate the same through valid VAT sales invoices, not through any other document, like an official receipt which properly pertains to a sale of services. Thus, the challenged disallowance of the Dispatch Income is affirmed.

Considering that TMC failed to prove that all its sales are zero-rated sales, the Court in Division correctly pro-rated its valid input tax on the basis of its sales volume pursuant to Section 112 (A) of the NIRC of 1997, as amended, which expressly provides 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."

The NIRC of 1997, as amended, does not require that creditable input taxes be directly attributable to zero-rated sales.

It does not escape the Court *En Banc*'s attention that while the CIR has already partially granted TMC's refund claim, he still claims that TMC is not entitled to any refund owing to its purchases not being directly attributable to its zero-rated sales.

Section 112 of the NIRC of 1997, as amended, states:

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

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[38] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

> allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. *(Boldfacing supplied)*

Contrary to the CIR's position, there is nothing in the afore-quoted Section 112 (A) of the NIRC of 1997, as amended, and applicable jurisprudence[39] which require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law. *"Ubi lex non distinguit nec nos distinguere debemos."* When the law does not distinguish, neither should we."[40]

The denial of TMC's motion to introduce additional evidence is not erroneous.

TMC seeks to introduce additional documentary evidence[41] consisting of evidence previously submitted and admitted in evidence but were not clear enough for proper appreciation of the Court in Division, and evidence allegedly excluded by the ICPA through inadvertence. Essentially, TMC is requesting the Court *En Banc* for a new trial to prove that it is entitled to additional refund.

We affirm the denial of the Court in Division of TMC's motion to introduce additional evidence. To reiterate, a Motion for New Trial may be granted only upon specific, well-defined grounds set forth in the Rules. Section 5, Rule 15 of the RRCTA enumerates the grounds of motion for new trial, to wit:

> "Sec. 5. Grounds of motion for new trial. – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
>
> (a) **Fraud, accident, mistake or excusable negligence** which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) **Newly discovered evidence**, which the party could not, with reasonable diligence, have discovered and

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[39] *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

[40] *Philippine National Oil Company vs. The Hon. Court of Appeals, The Commissioner of Internal Revenue and Tirso Savellano / Philippine National Bank vs. The Hon. Court of Appeals, Court of Tax Appeals, Tirso B. Savellano and Commissioner of Internal Revenue*, G.R. Nos. 109976 and 112800, April 26, 2005.

[41] CTA EB No. 2055 Docket, pp. 101-112.

> produced at the trial and, which, if presented, would probably alter the result. xxx" *(Boldfacing supplied)*

As correctly found by the Court in Division, TMC's motion is not based on fraud, accident, mistake, excusable negligence or newly discovered evidence that would justify a new trial.

TMC's failure to submit clear copies of its evidence and those evidence excluded by the ICPA is a case of simple negligence. For this act of negligence, TMC cannot be allowed to seek refuge in a liberal application of the rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bar, a liberal application of the rules of procedure to suit TMC's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[42]

Further, to allow TMC to introduce additional evidence without having complied with the requisites for the grant of a motion for new trial is a dangerous proposition, which the Court *En Banc* refuses to countenance especially in light of the CIR's vehement opposition to TMC's motion for new trial.

On a final note, the Court *En Banc* reiterates that actions for tax refund or credit, as in the instant consolidated cases, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[43]

WHEREFORE, in light of the foregoing discussion, the Petitions for Review filed by Taganito Mining Corporation in CTA EB No. 2055 and the Commissioner of Internal Revenue in CTA EB No. 2058 are hereby **DENIED** for lack of merit. The assailed Decision dated December 6, 2018 and Resolution dated April 12, 2019 are hereby **AFFIRMED.**

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[42] *Commissioner of Internal Revenue v. A. Soriano, Corp., Court of Tax Appeals and Court of Appeals*, G.R. No. 113703, January 31, 1997.
[43] *Coca-cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN-MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice