REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**SECOND DIVISION**

**TAGANITO MINING CORPORATION,**
Petitioner,

- versus –

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA Case No. 8822**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**CASANOVA,** and
**COTANGCO-MANALASTAS,** *JJ.*

Promulgated:

SEP 14 2015 4:10 p.m.

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# DECISION

**CASTAÑEDA, JR.,** ***J.:***

## THE CASE

This is a Petition for Review[1] filed by petitioner Taganito Mining Corporation which seeks the refund of the amount of Twenty Two Million Eleven Thousand Three Hundred Thirty One and 91/100 Pesos (₱22,011,331.91) allegedly representing excess/unutilized input VAT paid on domestic purchases and importation of capital goods with aggregate acquisition cost exceeding ₱1 million attributable to its zero-rated sales, which were amortized in the years 2012 to 2013.

[1] Docket, p. 6-20.

## THE FACTS

Petitioner Taganito Mining Corporation (hereinafter referred to as "Taganito", for brevity) is a corporation duly organized and existing under and by virtue of the laws of the Philippines with current business address located at 29th Floor NAC Tower, 32nd Street, Bonifacio Global City, Taguig City.[2]

Respondent is the duly-appointed Commissioner of the Bureau of Internal Revenue (CIR), vested with authority to exercise the functions of the said office including, *inter alia*, the power to decide refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (1997 NIRC) and other laws administered by the Bureau of Internal Revenue, and holding office at the BIR National Office Building, Diliman, Quezon City.[3]

Petitioner is duly registered with the Securities and Exchange Commission (SEC) with Certificate of Registration No. 138682 issued on March 4, 1987. Petitioner is primarily engaged in the business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores.[4]

Petitioner is a VAT-registered entity with updated Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000046046.[5] It is also registered with the Board of Investments (BOI) with BOI Certificate of Registration No. EP 88-306 dated April 14, 1988.[6]

On December 27, 2013, petitioner filed its claim for refund of excess input VAT paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods in accordance with Section 112 (A) and (B) in relation to Section 106 (A)(2)(a)(1) of the National Internal Revenue Code of 1997, as amended (1997 NIRC) in the amount of ₱44,107,520.34 for purchases made during the year 2012 and for re-filed claims for refund of the amortized portion of input VAT on its capital goods purchased during the years 2008, 2010 and 2011.[7] 

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[2] Joint Stipulation of Facts and Issues (JSFI), Statement of the Facts, par. 1, Docket, p. 89.
[3] JSFI, Statement of the Facts, par. 2, Docket, pp. 89-90.
[4] Petition for Review, par. 5, Docket, p. 8.
[5] JSFI, Statement of the Facts, par. 4, Docket, p. 91.
[6] JSFI, Statement of the Facts, par. 5, Docket, p. 91.
[7] JSFI, Statement of the Facts, par. 6, Docket, p. 91.

Due to respondent's inaction on petitioner's administrative claim, petitioner filed the instant Petition for Review on May 23, 2014.

In the instant Petition for Review, petitioner prays for the refund of the amount of ₱22,011,331.91 allegedly representing excess/unutilized input VAT paid on domestic purchases and importation of capital goods with aggregate acquisition cost exceeding ₱1 million, which were amortized and attributable to zero-rated sales in the years 2012 to 2013, broken down as follows:

| | |
|---|---|
| 2012 Input taxes on purchases of goods and services and capital goods with aggregate acquisition cost exceeding 1M pesos amortized in 2012 and 2013. | ₱ 16,746,110.31 |
| 2011 Input taxes on purchases of capital goods amortized in 2013 | 4,339,548.88 |
| 2010 Input taxes on purchases of capital goods amortized in 2013 | 925,672.72 |
| **Amount of claim per Petition for Review** | **₱ 22,011,331.91** |

In her Answer,[8] respondent raised the following Special and Affirmative Defenses:

**"SPECIAL AND AFFIRMATIVE DEFENSES"**

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P22,011,331.91 allegedly representing petitioner's excess/unutilized VAT input taxes 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 failure to sustain the burden is fatal to the claim for refund/credit.

[8] Docket, pp. 42-46.

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.

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. As held by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. 145526, 16 March 2007:*

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. **Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim**.'

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. Requirements mention[ed] 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:

xxx xxx xxx

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:

xxx xxx xxx

5) Photocopies of invoices, import entry documents, official receipts or confirmation receipts evidencing payment 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 or services,

name of persons or entities (except in case of exports) to whom the goods and services were sold and date of the 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 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 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 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 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 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 submitted seven (7) 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 because the law already acknowledges it is entitled to refund. Thus, it merely has to substantiate the export sales and the excess/unutilized amount of input taxes attributable to the said export sales. 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.

The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad of activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people ***(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)***. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames. In the instant petition, the failure of petitioner to comply with such periods is fatal to its cause.

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 a 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.

The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer. **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).**

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et. al., CA G.R. SP No. 16432, March 30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)." (Citations omitted)*

A Notice of Pre-Trial Conference[9] was issued by the Court on June 17, 2014, informing the parties that a pre-trial conference is set on July 17, 2014.

Respondent filed her Pre-Trial Brief[10] on June 30, 2014 while petitioner filed its Pre-Trial Brief on July 14, 2014.[11] Thereafter, on September 23, 2014, the parties filed their Joint Stipulation of Facts

[9] *Ibid.*, p. 50.
[10] *Id.*, pp. 51-54.
[11] *Id.*, pp. 56-64.

and Issues[12] which was approved and adopted by the Court per Pre-Trial Order[13] dated October 8, 2014.

In support of its claim, petitioner presented the following witnesses: Ms. Lennie A. Terre,[14] petitioner's Vice-President for Finance, and Ms. Maria Gracia L. Morfe,[15] Court-commissioned Independent Certified Public Accountant (ICPA).

Petitioner filed its Formal Offer of Evidence[16] on February 2, 2015.

In a Resolution[17] dated February 13, 2015, the Court, acting on petitioner's Formal Offer of Evidence, admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8" and "P-8-A", "P-9" and "P-9-A", "P-10", "P-11" to "P-132", "P-133" to "P-424", "P-425" to "P-432", "P-434" to "P-808", "P-809" to "P-1326", "P-1358" to "P-1378", "P-1379" to "P-1420", "P-1421" to "P-1468", "P-1469" to "P-1515", "P-1516" to "P1573", "P-1574" to "P-1627", "P-1628" to "P-1692", "P-1693" to "P-1759", "P-1760" to "P-1842", "P-1843" to "P-1846", "P-1847" to "P-1851", "P-1852" to "P-1855", "P-1856" to "P-1864", "P-1865" to "P-1884", "P-1886" to "P-1906", "P-1907" to "P-1918", "P-1919", and "P-1919-A".

However, the following exhibits were denied by the Court, to wit:

| Exhibit Number | Reason |
|---|---|
| "P-433" | Not found in the records. |
| "P-1885" | Failure of the description of the actual exhibit to correspond to its description in the Formal Offer of Evidence. |

During the hearing dated February 18, 2015, respondent's counsel manifested that she is submitting the case for decision due to the absence of an Investigation Report.[18] As such, the Court granted respondent a period of thirty (30) days from said date within which to

[12] *Id.*, pp. 89-92.
[13] *Id.*, pp. 84-88.
[14] Minutes of the Hearing dated October 22, 2014, Docket, p. 107.
[15] Minutes of the Hearing dated December 3, 2014, Docket, p. 160.
[16] Docket, pp. 161-176.
[17] *Ibid.*, pp. 261-262.
[18] Minutes of the Hearing dated February 18, 2015, Docket, p. 263.

file her Memorandum.[19] Petitioner, on the other hand, was given a period of twenty (20) days from notice within which to file its Memorandum.[20]

Respondent filed her Memorandum[21] on March 18, 2015 while petitioner failed to file a Memorandum as per Records Verification Report dated March 23, 2015.[22] Thus, the Court submitted the case for decision per its Resolution dated March 26, 2015.[23]

It must be noted that on March 24, 2015, petitioner filed via registered mail a Motion for Extension of Time to File Memorandum[24] wherein it prayed for an additional period of thirty (30) days from March 16, 2015 or until April 15, 2015 within which to file its Memorandum. In a Resolution[25] dated April 30, 2015, the Court denied the said Motion for being filed out of time.

On April 20, 2015, petitioner filed a Motion for Reconsideration (And to Admit Attached Memorandum)[26] of the Court's Resolution dated March 26, 2015 which submitted the case for decision. However, in a Resolution[27] dated June 23, 2015, the Court denied the same for being moot and academic. Accordingly, the Court ordered that the attached petitioner's Memorandum be expunged from the records. The Court likewise ruled that its Resolution dated March 26, 2015 submitting the case for decision stands.

## THE ISSUE

The parties submitted the issue[28] stated below for this Court's consideration:

> "Whether or not Petitioner is entitled to the refund of its alleged excess VAT input taxes of **Twenty Two Million Eleven Thousand Three Hundred Thirty One and 91/100 Pesos (Php22,011,331.91).**"

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[19] Resolution dated February 18, 2015, Docket, p. 265
[20] *Id.*
[21] *Id.*, pp. 266-278.
[22] *Id.*, p. 279.
[23] *Id.*, p. 280.
[24] *Id.*, pp. 282-284
[25] *Id.*, pp. 286-288.
[26] *Id.*, pp. 289-309.
[27] *Id.*, pp. 311-313.
[28] JSFI, Statement of the Issue, Docket, p. 91.

## THE COURT'S RULING

Section 112 (A) and (C) of 1997 NIRC provides the basis for administrative and judicial claims for refund or tax credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales, quoted hereunder for easy reference:

> "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: 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: Provided, finally, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Based on the foregoing, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:[29]

1. the taxpayer-claimant is VAT-registered;

2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;

3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and

4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

Before dwelling on each of the above requisites, the Court deems it necessary to determine first the timeliness of the filing of the instant claim, particularly, the third requisite requiring that claims for refund must be filed within the two-year prescriptive period. Reckoned from the close of the taxable quarters when the zero-rated sales were made, petitioner had until the following dates to file an administrative claim:

| Period | Close of Taxable Quarter | Last Day for Filing Administrative Claim for Refund/Issuance of TCC |
|---|---|---|
| 1st Qtr - 2012 | March 31, 2012 | March 31, 2014 |
| 2nd Qtr - 2012 | June 30, 2012 | June 30, 2014 |
| 3rd Qtr - 2012 | September 30, 2012 | September 30, 2014 |
| 4th Qtr - 2012 | December 31, 2012 | December 31, 2014 |
| 1st Qtr - 2013 | March 31, 2013 | March 31, 2015 |

[29] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing Inc.) v. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011, 639 SCRA 521, 533.

| | | |
|---|---|---|
| 2nd Qtr - 2013 | June 30, 2013 | June 30, 2015 |
| 3rd Qtr - 2013 | September 30, 2013 | September 30, 2015 |
| 4th Qtr - 2013 | December 31, 2013 | December 31, 2015 |

Petitioner's administrative claim was filed on December 27, 2013.[30] Thus, the same was timely filed.

As to the timeliness of the judicial appeal, Section 112 (C) of the 1997 NIRC provides that the CIR has 120 days from the date of submission of the complete documents in support of the application for tax refund/credit within which to grant or deny the claim, and in case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before this Court within 30 days from receipt of the decision of the CIR. If after the 120-day period, the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to this Court within 30 days after the lapse of the 120-day period.

Petitioner, upon filing of its administrative claim on December 27, 2013, also submitted the documents in support thereof. As stated in petitioner's letter-claim dated December 23, 2013:

> "In support of the present application are the following documents covering the year 2012:
>
> 1) Duly accomplished BIR Form No. 1914;
>
> 2) Original and latest amended quarterly VAT Returns (BIR Form 2550Q) for the calendar year 2012 with supporting schedules or Summary Lists of Sales and Purchases and their corresponding supporting documents such as official receipts, export documents, bills of lading, IE[I]RD, bank credit memos, import documents, Bureau of Customs official receipts, official receipts or sales invoices from local suppliers, etc.;
>
> 3) Photocopy of certification issued by Security Bank Corporation as to the export remittance proceeds received by said bank in favor of TMC for the year 2012;
>
> 4) Photocopy of Annual Income Tax Return for CY 2012 duly filed with the BIR with attached audited

[30] *Supra*, Note 7.

Financial Statements for CY2012 and report of independent auditors;

5) Letter addressed to the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center requesting a certification that TMC has not filed any similar, previous and/or outstanding application for tax credit and duty drawback with the agency for the period January 1, 2012 to December 31, 2012 and prior years until the year 2008 and the corresponding certification issued by the DOF in response thereto.

For your easy reference, we hereby re-submit the supporting documents such as official receipts, import documents, Bureau of Customs official receipts, official receipts or sales invoices from local suppliers on purchases of capital goods exceeding P1 Million during the years 2008, 2010 and 2011, of which the amount of input taxes corresponding to the expense amortized in 2011 and 2012, is included in the present claim."

The records do not show that a notice was sent by the CIR informing petitioner that the documents earlier submitted are incomplete, or requiring petitioner to submit additional documents to stop the running of the 120-day period pursuant to Revenue Memorandum Circular No. 029-09.[31] Thus, the 120-day period started

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[31] RMC No. 029-09 provides:

"III. *Period within which Refund a Tax Credit of Input Taxes shall be Made.*

Section 112(C) of the Tax Code of 1997, as amended by Republic Act No. 9337, provides among others, that in proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents.** For the purpose of defining "proper cases" in the said provision, the taxpayer/claimant must have complied with the following conditions/requirements upon audit/verification of his/its claim:

a. **Submission of complete documents** necessary to determine and/or ascertain the correctness of the return and the amount to be refunded;

b. That all books of accounts and accounting records pertaining to the claim are immediately available to the concerned Revenue Office (RO) for audit/verification;

c. Any discrepancies/findings upon audit/verification shall be reconciled/explained in writing by the taxpayer/claimant within five (5) days from receipt of the notification from the RO; and

and continued to run from the date when petitioner filed its administrative claim together with the supporting documents.

Accordingly, petitioner has 30 days or until May 26, 2014 within which to file an appeal with this Court. Since the instant Petition for Review was filed on May 23, 2014,[32] the same was filed within the prescribed period.

Respondent argues that petitioner failed to submit complete documents as required under Revenue Memorandum Order (RMO) No. 53-98 dated June 1, 1998, in relation to Section 112 (C) of the 1997 NIRC. She contends that such failure makes its administrative claim for refund pro-forma; thus, the Court is without jurisdiction to entertain the instant petition.

The Court finds her argument unmeritorious. There is no need for petitioner to submit the complete documents required under RMO No. 53-98 in relation to Section 112 (C) of the 1997 NIRC. In the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)*,[33] the Supreme Court held:

> "The CIR's reliance on RMO 53-98 is misplaced. **There is nothing in Section 112 of the NIRC**, RR 3-88 **or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT**. The subject of RMO 53-98 states that it is a "Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities xxx." In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some

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d. The taxpayer/claimant has signified his concurrence to the outcome of the audit/verification, which shall be evidenced by an Agreement Form.

**In cases where taxpayer failed to comply with the above conditions/requirements,** i.e., failure to present accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, taxpayer refuses or incurs delay in the submission of the Agreement Form, **the running of the 120-day period shall stop from the date of notification to the taxpayer.** Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit, and the issue is referred to the Legal Division or the Legal Service, as the case may be, for resolution and issuance of legal opinion, which should be rendered within thirty (30) working days from receipt of the request." *(Emphasis supplied)*

[32] Petition for Review, Docket, p. 6.
[33] G.R. No. 205055, July 18, 2014, 730 SCRA 242, 255.

documents are required to be submitted by the taxpayer "if applicable." *(Emphasis supplied)*

Furthermore, it is well-settled that in claims for VAT refund, the non-submission of complete supporting documents in the administrative level is not fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the granting of a claim for refund lies within the sound discretion and judgment of the Court.[34]

The Court shall now proceed with the determination of petitioner's compliance with the other requisites.

Petitioner claims that these ores are 100% exported and/or shipped to foreign countries as certified by the Board of Investments (BOI) in accordance with RMO No. 9-2000.[35] Petitioner further contends that since these export sales were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP), the same are subject to zero-percent (0%) VAT, pursuant to Section 106 (A)(2)(a)(1) of the 1997 NIRC, which states:

*"SEC. 106. Value-added Tax on Sale of Goods or Properties. —*

*(A) Rate and Base of Tax. — xxx*

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:

[34] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB No. 474, September 1, 2009; *Commissioner of Internal Revenue vs. Toledo Power Company*, CTA EB No. 589, September 15, 2010; *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657, April 4, 2012.
[35] Petition for Review, par. 13, Docket, p. 10.

> (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); xxx"

According to the aforequoted provision, in order for petitioner's export sale to qualify for zero-rating, the following requisites must be present:

1. there was a sale and actual shipment of goods from the Philippines to a foreign country;
2. the sale was made by a VAT-registered person;
3. the sale was paid for in acceptable foreign currency or its equivalent in goods or services; and
4. the payment was accounted for in accordance with the rules and regulations of the BSP.

To prove the foregoing requisites, any VAT-registered person claiming VAT zero-rated direct export sales must present, in relation to Section 113 of the 1997 NIRC and Sections 4.113-1 of Revenue Regulations (RR) No. 16-2005, as amended, the following types of documents, to wit: (1) sales invoice as proof of sale of the goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other document proving payment for the goods shipped in acceptable foreign currency or its equivalent in goods or services. Further, the sales invoices supporting the export sales must be registered with the Bureau of Internal Revenue and must contain all the information required by law or regulations such as the imprinted word "zero-rated" as well as the taxpayer's TIN-VAT number. Evidently, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106 (A)(2)(a)(1) of the 1997 NIRC.

Records show that petitioner is a VAT-registered entity[36] primarily engaged in the business of mining and exporting nickel

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[36] *Supra*, Note 5.

saprolite and limonite ore and exploration activities.[37] As per BOI Certifications dated January 14, 2013[38] and January 22, 2014,[39] petitioner was reported to have exported 100% of its total sales volume for the periods of January 1, 2012 to November 30, 2012 and January 1, 2013 to December 31, 2013, respectively. For the taxable years 2012 and 2013, petitioner declared in its Quarterly VAT Returns zero-rated sales amounting to ₱3,093,865,540.54 and ₱3,273,782,021.06, respectively, detailed as follows:

| Exhibit | Period | Zero-Rated Sales |
|---|---|---|
| P-1477 | 1st Qtr - 2012 | ₱ 452,101,929.97 |
| P-1490 | 2nd Qtr - 2012 | 971,302,887.70 |
| P-1501 | 3rd Qtr - 2012 | 1,132,000,516.08 |
| P-1513 | 4th Qtr - 2012 | 538,460,206.79 |
| **Total - 2012** | | **₱ 3,093,865,540.54** |

| Exhibit | Period | Zero-Rated Sales |
|---|---|---|
| P-1523 | 1st Qtr - 2013 | ₱ 214,783,070.68 |
| P-1540 | 2nd Qtr – 2013 | 807,338,142.21 |
| P-1555 | 3rd Qtr – 2013 | 1,222,268,124.41 |
| P-1570 | 4th Qtr – 2013 | 1,029,392,683.76 |
| **Total – 2013** | | **₱ 3,273,782,021.06** |

Examination of petitioner's Summary of Zero-Rated Sales for the year 2012[40] and the corresponding supporting documents[41] revealed that out of the total declared zero-rated sales of ₱3,093,865,540.54, the amount of ₱186,044,021.18 should be disallowed for not being properly substantiated with export documents such as bank client advices for the foreign currency proceeds, detailed as follows:

| Exhibit | Invoice No. | Sales in USD | Forex Rate | Sales in PHP |
|---|---|---|---|---|
| *a. Sales supported by bank credit advices for the remittances of payment for different invoices* | | | | |
| P-442, P-444 | 423 | 1,262,250.00 | 42.655 | 53,841,273.75 |
| P-458 to P-461 | 426 | 1,262,250.00 | 42.955 | 54,219,948.75 |
| | 433 | 140,250.00 | 42.955 | 6,024,438.75 |

[37] Item 1, Corporate Information and Status of Operations, Notes to Financial Statements (Exhibit "P-1699")
[38] Exhibit "P-1902".
[39] Exhibit "P-1905".
[40] Schedule IV of Exhibit "P-9", Docket, pp. 227-228.
[41] Exhibits "P-425" to "P-808".

| | | | | |
|---|---|---|---|---|
| | Subtotal | **2,664,750.00** | | **114,085,661.25** |
| *b. Sales with no bank credit advice* | | | | |
| P-443 | 430 | 140,250.00 | 42.655 | 5,982,363.75 |
| P-451 | 501 | 68,714.60 | 43.070 | 2,959,537.82 |
| P-468 | 499 | 135,408.00 | 42.720 | 5,784,629.76 |
| P-530 | 500 | 274,388.40 | 43.270 | 11,872,786.07 |
| P-702, P-704 | 507 | 950,760.00 | 41.180 | 39,152,296.80 |
| | Subtotal | **1,569,521.00** | | **65,751,614.20** |
| *c. Sales with bank credit advice for remittance from different customer than that indicated in the invoice* | | | | |
| P-667, P-669 | 503 | 148,718.00 | 41.735 | 6,206,745.73 |
| | Subtotal | **148,718.00** | | **6,206,745.73** |
| **TOTAL** | | **4,382,989.00** | | **186,044,021.18** |

For taxable year 2013, petitioner's declared zero-rated sales per its Quarterly VAT Returns amounted to ₱3,273,782,021.06. However, upon scrutiny of petitioner's Summary of Zero-Rated Sales for the year 2013 and the corresponding supporting documents showed a total zero-rated sales in the amount of ₱3,109,100,863.35[42] only. Thus, the difference of ₱164,681,157.71 (₱3,273,782,021.06 less ₱3,109,100,863.35) should be disallowed for being unsupported. Further examination of the supporting documents[43] also revealed that the following sales in the total amount of ₱462,266,844.52 should likewise be disallowed for not being properly supported by bills of lading and bank client advices for the foreign currency proceeds and PEZA Certification of customers:

| Exhibit | Invoice No. | Sales in USD | Forex Rate | Sales in PHP |
|---|---|---|---|---|
| *a. Sales with no bank credit advice* | | | | |
| P-809, P-811 | 524 | 965,260.80[44] | 40.705 | 39,290,940.86 |
| P-810, P-812 | 527 | 127,680.00 | 40.705 | 5,197,214.40 |
| P-901 | 552 | 1,081,080.00 | 43.200 | 46,702,656.00 |
| P-1225 | 685 | 1,158,300.00 | 44.150 | 51,138,945.00 |
| P-1245, P-1247 | 545 | 393,583.93 | 41.070 | 16,164,492.01 |
| | Subtotal | **3,725,904.73** | | **158,494,248.27** |
| *b. Sales with no bill of lading* | | | | |
| P-1232 to P-1235 | 522 | 1,471,635.00 | 40.690 | 59,880,828.15 |
| | 526 | 169,827.10 | 40.690 | 6,910,264.70 |
| | Subtotal | **1,641,462.10** | | **66,791,092.85** |

[42] Schedule V of Exhibit "P-9", Docket, pp. 229-231.
[43] Exhibits "P-809" to "P-1326".
[44] Invoice amount of $967,680.00 less Credit Advice for $2,419.20 = $965,260.80.

| Exhibit | Invoice No. | Sales in USD | Forex Rate | Sales in PHP |
|---|---|---|---|---|
| *c. Sales to PEZA-registered entities with no PEZA Certification of customer* | | | | |
| P-1297 to P-1300 | 660 | (3,938.82) | 41.155 | (162,102.14) |
| | 535 | 57,722.73 | 41.155 | 2,375,578.95 |
| P-1301 to P-1303-A | 550 | 27,361.34 | 42.270 | 1,156,563.84 |
| | 661 | (196.01) | 42.260 | (8,283.38) |
| P-1304 to P-1307 | 662 | 3,951.58 | 43.200 | 170,708.26 |
| | 564 | 113,535.70 | 43.260 | 4,911,554.38 |
| P-1308 to P-1311 | 663 | 25,589.13 | 43.420 | 1,111,080.02 |
| | 606 | 320,869.11 | 43.420 | 13,932,136.76 |
| P-1312 to P-1315 | 624 | 378,477.94 | 43.610 | 16,505,422.96 |
| | 664 | 50,942.80 | 44.610 | 2,272,558.31 |
| P-1316 to P-1318-A | 665 | 62,987.18 | 43.540 | 2,742,461.82 |
| | 644 | 728,137.18 | 43.540 | 31,703,092.82 |
| P-1319 to P-1322 | 666 | 768,504.47 | 43.540 | 33,460,684.62 |
| | 682 | 85,389.39 | 43.540 | 3,717,854.04 |
| P-1323 to P-1325 | 684 | 1,000,995.01 | 43.760 | 43,803,541.64 |
| | 802 | 111,221.67 | 43.760 | 4,867,060.28 |
| P-1326 | 803 | 1,676,350.72 | 44.395 | 74,421,590.21 |
| | Subtotal | **5,407,901.12** | | **236,981,503.40** |
| **TOTAL** | | **10,775,267.95** | | **462,266,844.52** |

In sum, petitioner's substantiated zero-rated sales for the taxable years 2012 and 2013 are ₱2,907,821,519.36 and ₱2,646,834,018.83, respectively, computed as follows:

| | 2012 | 2013 |
|---|---|---|
| Zero-rated sales per VAT Returns | ₱ 3,093,865,540.54 | ₱ 3,273,782,021.06 |
| Less: Disallowances | | |
| Difference between VAT Returns and Schedule | | 164,681,157.71 |
| Not properly substantiated | 186,044,021.18 | 462,266,844.52 |
| Subtotal | 186,044,021.18 | 626,948,002.23 |
| **Substantiated zero-rated sales** | **₱ 2,907,821,519.36** | **₱ 2,646,834,018.83** |

Inasmuch as only a portion of the declared zero-rated sales were properly substantiated, only a portion of substantiated input tax attributable thereto shall be granted based on the following rates: *jr*

| | 2012 | 2013 |
|---|---|---|
| Properly substantiated zero-rated sales | ₱ 2,907,821,519.36 | ₱ 2,646,834,018.83 |
| Divided by: Total zero-rated sales per VAT Returns | 3,093,865,540.54 | 3,273,782,021.06 |
| **RATE** | **93.9867%** | **80.8494%** |

The Court shall now proceed to the determination of the amount of unutilized input taxes attributable to petitioner's zero-rated sales.

Petitioner's total input tax from purchase of capital goods with aggregate acquisition cost exceeding 1 million pesos based on its Quarterly VAT Returns filed for the taxable years 2010, 2011 and 2012 amounted to ₱4,628,363.58, ₱17,691,452.70 and ₱39,057,841.58, respectively, or an aggregate total of ₱61,377,657.86, as shown below:

| Exhibit | Period | Input Tax on CG > 1M |
|---|---|---|
| P-1386 | 1st Quarter - 2010 | ₱ 297,160.72 |
| P-1398 | 2nd Quarter - 2010 | 4,331,202.86 |
| P-1408 | 3rd Quarter - 2010 | |
| P-1417 | 4th Quarter - 2010 | |
| | **TOTAL - 2010** | **₱ 4,628,363.58** |

| Exhibit | Period | Input Tax on CG > 1M |
|---|---|---|
| P-1429 | 1st Quarter - 2011 | |
| P-1441 | 2nd Quarter - 2011 | ₱ 16,285,417.00 |
| P-1454 | 3rd Quarter - 2011 | 636,214.28 |
| P-1465 | 4th Quarter - 2011 | 769,821.42 |
| | **TOTAL - 2011** | **₱ 17,691,452.70** |

| Exhibit | Period | Input Tax on CG > 1M |
|---|---|---|
| P-1477 | 1st Quarter - 2012 | ₱ 14,493,692.00 |
| P-1490 | 2nd Quarter - 2012 | 19,124,787.00 |
| P-1501 | 3rd Quarter - 2012 | 3,186,798.00 |
| P-1513 | 4th Quarter - 2012 | 2,252,564.58 |
| | **TOTAL - 2012** | **₱ 39,057,841.58** |

Petitioner computed its claim as follows:[45]

[45] Exhibit "P-1"; Annex "C", Docket, p. 183.

| Year Incurred | Quarter | Input Taxes on Capital Goods Exceeding 1M | Amortized in 2012 | Amortized in 2013 | Total |
|---|---|---|---|---|---|
| 2008 | Q1 | ₱ 2,881,149.45 | ₱193,015.27 | ₱ 4,482.14 | ₱ 197,497.41 |
| | Q2 | 6,866,071.98 | 579,181.56 | | 579,181.56 |
| | Q3 | 17,771,552.86 | 2,231,533.42 | | 2,231,533.42 |
| | Q4 | 6,612,818.00 | 1,515,437.44 | | 1,515,437.44 |
| | | **₱34,131,592.29** | **₱4,519,167.69** | | **₱4,523,649.87** |
| 2010 | Q1 | ₱ 297,160.72 | ₱ 59,432.04 | ₱ 59,432.04 | ₱ 118,864.08 |
| | Q2 | 4,331,202.86 | 866,240.52 | 866,240.52 | 1,732,481.04 |
| | Q3 | | | | |
| | Q4 | | | | |
| | | **₱ 4,628,363.58** | **₱ 925,672.56** | **₱925,672.56** | **₱1,851,345.44** |
| | | | | | |
| 2011 | Q1 | | | | |
| | Q2 | ₱ 16,285,417.00 | ₱4,058,341.68 | ₱4,058,341.68 | ₱ 8,116,683.36 |
| | Q3 | 636,214.28 | 127,242.84 | 127,242.84 | 254,485.68 |
| | Q4 | 769,821.42 | 153,964.32 | 153,964.32 | 307,928.64 |
| | | **₱17,691,452.70** | **₱4,339,548.84** | **₱4,339,548.84** | **₱8,679,097.76** |
| | | | | | |
| 2012 | Q1 | ₱ 14,493,692.00 | ₱3,194,776.45 | ₱3,623,423.04 | ₱ 6,818,199.49 |
| | Q2 | 19,124,787.00 | 3,394,989.98 | 4,775,571.84 | 8,170,561.82 |
| | Q3 | 3,186,798.00 | 351,022.07 | 796,699.56 | 1,147,721.63 |
| | Q4 | 2,252,564.58 | 53,782.95 | 555,844.68 | 609,627.63 |
| | | **₱39,057,841.58** | **₱6,994,571.45** | **₱9,751,539.12** | **₱16,746,110.31** |
| TOTAL | | | | | 31,800,203.20 |
| Less: Applied for TCC in 2012 from CY 2008, 2010 and 2011 | | | | | 9,784,389.33 |
| **Available Balance** | | | | | **₱22,015,814.05** |

Upon verification of petitioner's Summary of Unapplied Input VAT Subject for Refund from Importation of Goods and Local Purchases of Capital Goods with Aggregate Value of At Least P1M (Exclusive of VAT) Purchased in 2010, 2011 and 2012, and Amortized in 2012 and 2013,[46] as well as the related supplier's invoices and Bureau of Customs Import Entries and Internal Revenue Declarations (IEIRDs),[47] the Court-commissioned Independent CPA found that petitioner's valid claim for refund amounts to ₱21,951,278.29.[48]

However, further examination by the Court reveals that the following input taxes from domestic purchases and importations of capital goods for the taxable years 2010, 2011 and 2012 in the aggregate amount of ₱9,335,682.00 should be disallowed for failure to comply with the invoicing requirements prescribed by law, to wit:

[46] Schedule I of Exhibit "P-9", Docket, pp. 224-225.
[47] Exhibits "P-1327" to "P-1392".
[48] Exhibit "P-9", pp. 22, Docket, p. 221.

| **IMPORTATIONS** | | | | |
|---|---|---|---|---|
| **Year** | **Exhibit** | **IEIRD No.** | **IEIRD/Payment Date** | **Input Tax** |
| *a. Bank debit advice amount does not correspond to the amount indicated in the IEIRDs and/or Assessment Form* | | | | |
| 2010 | P-1327 to P-1329 | 107658476 | 6/3/2010 | ₱ 4,098,060.00 |
| 2011 | P-1337 to P-1343 | 114789647 | 6/29/2011 | 3,084,516.00 |
| Subtotal | | | | **₱ 7,182,576.00** |
| *b. No bank debit advice* | | | | |
| 2012 | P-1350 to P-1353 | 119387633 | | ₱ 655,356.00 |
| Subtotal | | | | **₱ 655,356.00** |
| **TOTAL DISALLOWED INPUT TAX FROM IMPORTATIONS** | | | | **₱ 7,837,932.00** |
| **DOMESTIC PURCHASES** | | | | |
| **Year** | **Exhibit** | **IEIRD No.** | **IEIRD/Payment Date** | **Input Tax** |
| *a. Supported by undated invoice* | | | | |
| 2010 | P-1358 | C1013008 | | ₱ 146,678.57 |
| | P-1374 | A111974 | | 170,464.29 |
| | P-1375 | A111975 | | 170,464.29 |
| | P-1377 | C1013008 | | 146,678.57 |
| | P-1378-A | A112921 | | 146,678.57 |
| | P-1378-B | A112922 | | 146,678.57 |
| 2012 | P-1370 | 96032 | | 112,500.00 |
| Subtotal | | | | **₱ 1,040,142.86** |
| *b. Supported by invoice without the TIN of the purchaser* | | | | |
| 2011 | P-1366 | 4007 | 6/9/2011 | ₱ 111,321.43 |
| | P-1378 | C1013126 | 10/26/2011 | 183,107.14 |
| Subtotal | | | | **₱ 294,428.57** |
| *c. Supported by invoice with different TIN of the purchaser* | | | | |
| 2011 | P-1359 | C1009837 | 7/9/2011 | ₱ 145,000.00 |
| Subtotal | | | | **₱ 145,000.00** |
| *d. Supported by service and spare parts invoice showing purchase of supplies* | | | | |
| 2011 | P-1368 | 7255 | | ₱ 17,678.57 |
| Subtotal | | | | **₱ 17,678.57** |
| **TOTAL DISALLOWED INPUT TAX FROM DOMESTIC PURCHASES** | | | | **₱ 1,497,750.00** |
| | | | | |
| **TOTAL DISALLOWANCES** | | | | **₱ 9,335,682.00** |

The subject input taxes violate the substantiation requirements under Section 113(A) and (B) of the 1997 NIRC, quoted hereunder for easy reference: *fr*

"SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

(A) Invoicing Requirements. — A VAT-registered person shall issue:

(1) **A VAT invoice for every sale, barter or exchange of goods or properties**; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

(B) Information Contained in the VAT Invoice or VAT Official Receipt. — The following information shall be indicated in the VAT invoice or VAT official receipt:

(1) **A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN)**;

(2) **The total amount which the purchaser pays or is obligated to pay to the seller** with the indication that such amount includes the value-added tax: Provided, That:

(a) **The amount of the tax shall be shown as a separate item in the invoice or receipt**;

(b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) **The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service**; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, **the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client**." *(Emphasis supplied)*

The preceding provision is implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, to wit:

SEC. 4.113-1. Invoicing Requirements. —

(A) A VAT-registered person shall issue: —

(1) **A VAT invoice for every sale, barter or exchange of goods or properties**; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

**Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts.** Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) **A statement that the seller is a VAT-registered person, followed by his TIN**;

(2) **The total amount which the purchaser pays or is obligated to pay to the seller** with the indication that such amount includes the VAT; Provided, That:

(a) **The amount of tax shall be shown as a separate item in the invoice or receipt**;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of **sales in the amount of one thousand pesos (P1,000.00) or more** where the sale or transfer is made to a VAT-registered person, **the name, business style, if any, address and TIN of the purchaser, customer or client**, shall be indicated in addition to the information required in (1) and (2) of this Section.

Further, Section 4.110-8(a) of RR No. 16-2005 provides:

"SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

(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, 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.**

**(2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.**

(3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

(4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code." *(Emphasis supplied)*

Hence, out of the total ₱61,377,657.86 input taxes declared by petitioner in its Quarterly VAT Returns for the taxable years 2010, 2011 and 2012, only the amount of ₱51,741,707.76 is duly substantiated for VAT purposes, as computed below:

| | | | |
|---|---|---|---|
| **Input taxes from capital goods with acquisition cost exceeding P1M per VAT Returns:** | | | |
| Taxable Year 2010 | | 4,628,363.58 | |
| Taxable Year 2011 | | 17,691,452.70 | |
| Taxable Year 2012 | | 39,057,841.58 | 61,377,657.86 |
| Less: Disallowances | | | |
| 1. Unsupported input taxes | | | |
| Input taxes per VAT Returns | 61,377,657.86 | | |
| Less: Total input taxes per submitted supporting documents | 61,077,389.76 | 300,268.10 | |

| | | | |
|---|---|---|---|
| (Schedule I of Exhibit "P-9") | | | |
| 2. Not properly supported input taxes as found by the Court | | 9,335,682.00 | 9,635,950.10 |
| **Substantiated input taxes** | | | **51,741,707.76** |

Not all of the foregoing substantiated input VAT may be refundable. In accordance with Section 110(A)(2) of the 1997 NIRC, petitioner can only claim the amortized portion of its properly substantiated input tax, as computed below:

| Exhibit | Invoice Date | Input Tax | Asset Life (Months) | Monthly Amortization | No. of Mos. | 2012 | No. of Mos. | 2013 | Total |
|---|---|---|---|---|---|---|---|---|---|
| P-1360 | 6/8/2010 | ₱ 116,571.43 | 60 | ₱ 1,942.86 | | | 12 | ₱ 23,314.32 | ₱ 23,314.32 |
| P-1361 | 6/8/2010 | 116,571.43 | 60 | 1,942.86 | | | 12 | 23,314.32 | 23,314.32 |
| **Total - 2010** | | **₱ 233,142.86** | | | | | | **₱ 46,628.64** | **₱ 46,628.64** |
| P-1330 to P-1332 | 4/28/2011 | ₱ 12,021,962.00 | 48 | ₱ 250,457.54 | | | 12 | 3,005,490.48 | 3,005,490.48 |
| P-1333 to P-1336 | 5/11/2011 | 918,689.00 | 48 | 19,139.35 | | | 12 | 229,672.20 | 229,672.20 |
| P-1362 | 3/29/2011 | 131,250.00 | 60 | 2,187.50 | | | 12 | 26,250.00 | 26,250.00 |
| P-1376 | 10/13/2011 | 146,678.57 | 60 | 2,444.64 | | | 12 | 29,335.68 | 29,335.68 |
| **Total - 2011** | | **₱ 13,218,579.57** | | | | | | **₱ 3,290,748.36** | **₱ 3,290,748.36** |
| P-1344 to P-1349 | 2/10/2012 | ₱ 7,756,992.00 | 48 | ₱ 161,604.00 | 11 | ₱ 1,777,644.00 | 12 | ₱ 1,939,248.00 | ₱ 3,716,892.00 |
| P-1354 to P-1359 | 3/13/2012 | 6,081,344.00 | 48 | 126,694.67 | 10 | 1,266,946.70 | 12 | 1,520,336.04 | 2,787,282.74 |
| P-1360 to P-1368 | 4/10/2012 | 2,310,872.00 | 48 | 48,143.17 | 9 | 433,288.53 | 12 | 577,718.04 | 1,011,006.57 |
| P-1369 to P-1373 | 4/16/2012 | 7,920,347.75 | 48 | 165,007.24 | 9 | 1,485,065.16 | 12 | 1,980,086.88 | 3,465,152.04 |
| P-1374 to P-1376 | 5/21/2012 | 8,781,067.00 | 48 | 182,938.90 | 8 | 1,463,511.20 | 12 | 2,195,266.80 | 3,658,778.00 |
| P-1384 to P-1389 | 7/3/2012 | 915,068.00 | 48 | 19,063.92 | 6 | 114,383.52 | 12 | 228,767.04 | 343,150.56 |
| P-1390 to P-1394 | 8/14/2012 | 2,271,730.00 | 48 | 47,327.71 | 5 | 236,638.55 | 12 | 567,932.52 | 804,571.07 |

| Exhibit | Invoice Date | Input Tax | Asset Life (Months) | Monthly Amortization | No. of Mos. | 2012 | No. of Mos. | 2013 | Total |
|---|---|---|---|---|---|---|---|---|---|
| P-1340 to P-1346 | 11/12/2012 | 241,460.00 | 48 | 5,030.42 | 2 | 10,060.84 | 12 | 60,365.04 | 70,425.88 |
| P-1371, P-1372 | 11/22/2012 | 145,928.58 | 60 | 2,432.14 | 2 | 4,864.28 | 12 | 29,185.68 | 34,049.96 |
| P-1352 to P-1357-A | 12/26/2012 | 1,865,176.00 | 48 | 38,857.83 | 1 | 38,857.83 | 12 | 466,293.96 | 505,151.79 |
| **Total - 2012** | | **₱ 38,289,985.33** | | | | **₱ 6,831,260.61** | | **₱ 9,565,200.00** | **₱ 16,396,460.61** |
| TOTAL | | **₱ 51,741,707.76** | | | | **₱ 6,831,260.61** | | **₱12,902,577.00** | **₱ 19,733,837.61** |

As to whether or not the said input taxes were applied against any output tax and/or carried over to the succeeding taxable quarter(s), petitioner's Quarterly VAT Return for the fourth quarter of 2013[49] showed a deduction for "VAT Refund/TCC claimed" in the amount of ₱23,473,479.38,[50] which includes the total claim of ₱21,011,331.91[51] (and the substantiated input taxes of ₱19,733,837.61). Thus, petitioner could not have utilized the subject claim in the succeeding taxable period.

Applying the rate of substantiated zero-rated sales previously computed and petitioner's output taxes due for taxable years 2012 and 2013, petitioner's valid input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million which are available for refund amounts to ₱10,343,265.07, as shown below:

| | 2012 | 2013 | TOTAL |
|---|---|---|---|
| Substantiated amortized input taxes | ₱6,831,260.61 | ₱12,902,577.00 | ₱19,733,837.61 |
| Multiplied by the rate of substantiated zero-rated sales | 93.9867% | 80.8494% | |
| Valid input taxes attributable to zero-rated sales | 6,420,476.42 | 10,431,656.09 | 16,852,132.50 |
| Less: Output tax | 1,509,020.55 | 4,999,846.88 | 6,508,867.43 |
| **Refundable input taxes** | **₱4,911,455.87** | **₱5,431,809.21** | **₱10,343,265.07** |

In sum, petitioner has sufficiently proven that it is entitled to a refund in the amount of ₱10,343,265.07 representing unutilized amortized input taxes on importation and domestic purchases of Je

[49] Exhibits "P-1570" to "P-1573".
[50] Exhibit "P-1571", Line 23D.
[51] Exhibit "P-9", p. 21, Docket, p. 222.

capital goods with aggregate acquisition cost exceeding P1 Million incurred during the taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of ₱10,343,265.07 representing its unutilized amortized input taxes on importation and domestic purchases of capital goods with aggregate acquisition cost exceeding P1 Million incurred during the taxable years 2010, 2011 and 2012 and are attributable to zero-rated sales in the taxable years 2012 and 2013.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

*WE CONCUR:*

**CAESAR A. CASANOVA**
Associate Justice

(On Leave)
**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

## ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice