REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGANITO HPAL NICKEL CORPORATION, Petitioner,	**CTA CASE NO. 9128**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson*, **Mindaro-Grulla,** and **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 08 2019 9:05 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a claim for refund, via issuance of tax credit certificate, in the amount of Thirty Nine Million Eight Hundred Twenty Thousand Seven Hundred Thirty-Six and 62/100 pesos (₱39,820,736.62), representing Taganito HPAL Nickel Corporation's unutilized input value added tax (VAT) attributable to its VAT zero-rated sales for taxable year 2013.

THE FACTS

Petitioner Taganito HPAL Nickel Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at Taganito Special Economic Zone, Brgy. Taganito, Claver, Surigao del Norte.[1] It is engaged in the business of manufacturing and exporting of nickel/cobalt mixed sulfide.[2]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as, among others, a VAT taxpayer under Certificate of Registration No. OCN-8RC0000050348[3] and with Tax Identification Number (TIN) 007-102-807-000. It is also registered with the Philippine Economic Zone Auhtority (PEZA) as an Ecozone Export Enterprise under Certificate of Registration No. 10-02.[4]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested by law with the authority to, among others, act upon and approve claims for refund or tax credit, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Effective January 1, 2014, petitioner was classified as a Large Taxpayer and was transferred to the jurisdiction of Revenue District No. 121, Excise Large Taxpayer Audit Division of the BIR.[5]

On March 30, 2015, petitioner filed a Letter Re: Application For Tax Credit Certificate[6] and Application for Tax Credits/Refunds (BIR Form No. 1914)[7] with the Excise Large Taxpayer Audit Division of the BIR, in the amount of ₱39,820,736.62 representing its unutilized input VAT payments for the taxable year 2013.

On August 11, 2015, petitioner received a Notice of Denial[8] dated July 16, 2015 from the BIR's Excise Large Taxpayer Audit Division, declaring that the application for VAT credit/refund has been denied due to lack of legal basis. The Notice of Denial pointed out that the input taxes subject to petitioner's claim were from domestic

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1 Exhibit "P-11"; Paragraph 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket (vol. I), p. 524.
2 Exhibit "P-11-1"; Par. 4, Admitted Facts, JSFI, docket (vol. I), p. 524.
3 Exhibits "P-6" and "P-6-1".
4 Exhibit "P-7"; Par. 6, Admitted Facts, JSFI, docket (vol. I), p. 524.
5 Par. 5, Admitted Facts, JSFI, docket (vol. I), p. 524.
6 Exhibit "P-1".
7 Exhibit "P-2".
8 Exhibit "P-3"; Exhibit "R-3", BIR records, p. 316.

purchase of service for the construction of a building outside PEZA which is not directly attributable to zero-rated sales.[9]

Aggrieved, petitioner filed with this Court the present Petition for Review[10] on August 26, 2015.

On November 23, 2015, respondent filed through registered mail his Answer[11], stating the following special and affirmative defenses:

> **"Claims for refund are construed strictly against the taxpayer and in favor of the government.**
>
> 5. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.' And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Else wise stated, taxation is the rule, exemption therefore is the exception.
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> 6. For this reason, the right of taxation cannot easily be surrendered, statutes granting tax exemptions are construed *strictissimi juris* against the person or entity claiming the exemption.
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> **The denial of the claim for refund is in accordance with Section 112 of the Tax Code.**
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> 7. The instant claim was properly denied through a letter dated July 16, 2015 and served to petitioner on August 11, 2015.
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> 8. The denial was in accordance with Section 112 of the Tax Code [*which*] states that: 9r

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[9] Par. 2, Admitted Facts, JSFI, docket (vol. I), p. 524.
[10] Docket (vol. I), pp. 10-27.
[11] *Id.*, pp. 147-153.

> **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 of 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: x x x.

9. In order to be entitled to a refund or issuance of a TCC of input VAT due or paid attributable to zero-rated or effectively zero-rated sales, petitioner must prove compliance with the following requisites:

1. That there must be zero-rated or effectively zero-rated sales;
2. That input taxes were incurred or paid;
3. That such input taxes are directly attributable to zero-rated sales;
4. That input taxes were not applied against any output VAT liability; and
5. That the claim for refund was filed within the two year prescriptive period.

10. Upon evaluation of the application for refund, it was disclosed that the input taxes subject of the claim were from domestic purchase of service of construction of new building outside PEZA which is not attributable to petitioner's

zero-rated sales. Thus, the claim for refund was properly denied.

11. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

12. To reiterate, claims for refund, are construed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. This is so because exemptions from taxation are highly disfavored in law and he who claims exemptions must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted." *(Citations omitted)*

On December 11, 2015, a Notice of Pre-Trial Conference[12] was issued setting the case for pre-trial conference on March 17, 2016. As such, Respondent's Pre-Trial Brief[13] was filed on March 11, 2016 while Petitioner's Pre-Trial Brief[14] was filed on March 14, 2016.

Meanwhile, on March 23, 2016, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant (CPA)[15], praying that Ms. Krista V. Bambao, Managing Partner of KB & Associates, be appointed as the independent certified public accountant (ICPA) for the present case pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA). Thus, in the Resolution[16] dated March 31, 2016, this Court found merit in petitioner's Motion and granted the same. *Jc*

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[12] *Id.*, pp. 155-156.
[13] *Id.*, pp. 159-163.
[14] *Id.*, pp. 467-485.
[15] *Id.*, pp. 500-503.
[16] *Id.*, pp. 521-522.

Then, on April 6, 2016, the parties filed their Joint Stipulation of Facts and Issues[17]. Accordingly, a Pre-Trial Order[18] was issued by this Court on May 17, 2016 which deemed the pre-trial terminated.

During trial, petitioner presented the following witnesses, who all testified on direct examination by way of judicial affidavits, *viz.*:

i. Mr. Ivan Hilario[19], General Accountant of petitioner Taganito HPAL Nickel Corporation, which is an affiliate of Sumitomo Metal Mining Philippine Holdings Corporation (hereinafter, "SMMPHC-THPAL");

ii. Engr. Ranil B. Oraba[20], Civil Section Manager of SMMPHC-THPAL;

iii. Ms. Lyna Anoya Wacsiden[21], Assistant Treasury Manager of SMMPHC-THPAL;

iv. Engr. Zosimo Oliver P. Villa[22], Geodetic Engineer and proprietor of Villa Land Surveying Services; and,

v. Ms. Krista V. Bambao[23], the court-commissioned ICPA.

Thereafter, petitioner filed its Formal Offer of Evidence[24] on December 5, 2016. In the Resolutions respectively dated March 7, 2017[25] and November 3, 2017[26], this Court admitted all of petitioner's offered exhibits except for Exhibit "P-147"[27] for failure to submit the duly marked exhibit. Petitioner was then deemed to have rested its case.

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[17] *Id.*, pp. 523-538.
[18] *Id.*, pp. 642-661.
[19] Exhibit "P-153", Judicial Affidavit of Ivan Hilario dated March 11, 2016, docket (vol. I), pp. 262-289; and, Exhibit "P-159", Supplemental Judicial Affidavit of Ivan Hilario dated September 27, 2016, docket (vol. I), pp. 864-875.
[20] Exhibit "P-154", Judicial Affidavit of Ranil B. Oraba dated April 14, 2016, docket (vol. I), pp. 557-574.
[21] Exhibit "P-156", Amended Judicial Affidavit of Lyna Wacdisen dated July 13, 2016, docket (vol. I), pp. 686-699.
[22] Exhibit "P-157", Judicial Affidavit of Zosimo Oliver Villa dated May 17, 2016, docket (vol. I), pp. 626-635.
[23] Exhibit "P-158", Judicial Affidavit of Krista V. Bambao dated September 15, 2016, docket (vol. I), pp. 802-816.
[24] Docket (vol. II), pp. 896-927.
[25] *Id.*, pp. 1235-1237.
[26] *Id.*, pp. 1255-1257.
[27] Described as "PRC ID No. 0004092", and formally offered for the purpose of establishing the qualification of petitioner's expert witness Engr. Zosimo Villa.

On the other hand, when called to present his case, respondent present his lone witness, Revenue Officer Dalisay C. Umlas[28], who also testified on direct examination by way of judicial affidavit.

After which, Respondent's Formal Offer of Evidence[29] was filed on February 12, 2018. In the Resolution[30] dated September 10, 2018, this Court admitted all of respondent's exhibits and further gave the parties a period of thirty (30) days within which to submit their respective memoranda.

In compliance, petitioner filed its Memorandum[31] on October 25, 2018, while respondent, on the other hand, manifested[32] that he is adopting the arguments he raised in his Answer dated November 23, 2015 as his memorandum.

Accordingly, in the Resolution[33] dated November 16, 2018, the present case was deemed submitted for decision.

ISSUE

The sole issue[34] submitted by the parties for this Court's resolution is, whether petitioner is entitled to a refund in the amount of ₱39,820,736.62, representing unutilized input VAT for taxable year ended December 31, 2013.

COURT'S RULING

Pertinent to the resolution of the present case are paragraphs (A) and (C) of Section 112 of the NIRC of 1997, as amended, which allows for refund/credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales, to wit:

"**SEC. 112.** *Refunds or Tax Credits of Input Tax.* — gz

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[28] Exhibit "R-5", Judicial Affidavit of Revenue Officer Dalisay C. Umlas dated March 11, 2016, docket (vol. I), pp. 168-172.
[29] Docket (vol. II), pp. 1264-1267.
[30] *Id.*, pp. 1311-1312.
[31] *Id.*, pp. 1319-1339.
[32] Manifestation dated October 19, 2018, docket (vol. II), p. 1315-1317.
[33] Docket (vol. II), p. 1340.
[34] Stipulated Issues, JSFI, docket (vol. I), p. 524.

(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 sales 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 nonzero-rated sales.

x x x

(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 above provision, a taxpayer engaged in zero-rated or effectively zero-rated transactions may claim a refund/tax credit certificate for input taxes attributable to such sales, upon compliance with the following requisites:

1. the taxpayer is VAT-registered;
2. the claim for refund was filed within the prescriptive period;

3. there must be zero-rated or effectively zero-rated sales;
4. input taxes were incurred or paid;
5. that such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.[35]

Petitioner is a VAT-registered taxpayer.

As shown in its BIR Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000050348[36] dated September 16, 2008 with Tax Identification Number (TIN) 007-102-807-000, petitioner is indeed a VAT-registered entity. More so, effective January 1, 2014, petitioner was classified as a Large Taxpayer and was transferred to the jurisdiction of Revenue District Office (RDO) No. 121, Excise Large Taxpayer Audit Division of the BIR. Clearly, petitioner has satisfied the first requisite.

The claim for refund was filed within the prescriptive period.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, a taxpayer who seeks refund or credit of input tax must file an administrative claim for the same with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The present claim covers four taxable quarters of 2013, thus, the two-year prescriptive period commences from the close of each taxable quarter. Counting two (2) therefrom, petitioner's claim must be filed on or before the close of each taxable quarters of 2015. A table is provided below for ease of reference, *viz.*: ℘

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[35] *Intel Technology Philippines, Inc. vs. CIR*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation vs. CIR*, G.R. No. 180345, November 25, 2009; *AT&T Communication Services Phil., Inc. vs. CIR*, G.R. No. 182364, August 3, 2010; and, *Southern Phil. Power Corp. vs. CIR*, G.R. No. 179632, October 19, 2011.

[36] Exhibit "P-6".

Taxable Year 2013	Close of the Taxable Quarter	Administrative Claim	
		Last Day to File	Date of Filing
1st Quarter	March 31, 2013	March 31, 2015	March 30, 2015
2nd Quarter	June 30, 2013	June 30, 2015	
3rd Quarter	September 30, 2013	September 30, 2015	
4th Quarter	December 31, 2013	December 31, 2015	

Accordingly, by filing a Letter Re: Application For Tax Credit Certificate[37] and Application for Tax Credits/Refunds (BIR Form No. 1914)[38] with the Excise Large Taxpayer Audit Division of the BIR on March 30, 2015, petitioner have complied within the period prescribed by the said Section.

With regard to the judicial claim, Section 112(C) speaks of two periods: (1) the period of 120 days, which serves as a waiting period to give time for respondent to act on the administrative claim for refund or tax credit; and (2) the period of 30 days, which refers to the period for filing a judicial claim with the Court of Tax Appeals (CTA).[39]

As to the 30-day period to file a judicial claim, the Supreme Court held in the landmark case of *Commissioner of Internal Revenue vs San Roque Power Corporation*[40] that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.

In the present case, perusal of the records show that petitioner simultaneously submitted its supporting documents upon filing of its administrative claim on March 30, 2015, as evidenced by an affidavit attesting to the completeness of the documents submitted in compliance with Revenue Memorandum Circular (RMC) No. 54-2014[41]. Stated simply, when petitioner filed its administrative claim with the BIR, the date of filing thereof shall also be considered as the ge

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[37] Exhibit "P-1".
[38] Exhibit "P-2".
[39] *ROHM Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[40] G.R. No. 187485, February 12, 2013.
[41] Clarifying Issues Relative To The Application For Value Added Tax (VAT) Refund/Credit Under Section 112 Of The Tax Code, As Amended.

date of submission of its *"complete set of supporting documents"* for purposes of determining the running of the 120-day period.

As such, respondent had one hundred twenty (120) days from March 30, 2015 or until July 28, 2015 within which to decide on the merit of petitioner's claim. However, records of the case further reveal that the Notice of Denial[42] dated July 16, 2015 issued by respondent's Excise Large Taxpayer Audit Division was only received by petitioner on August 11, 2015, since the said date of receipt was clearly beyond the 120-day period prescribed by law, it can therefore be presumed that it is as if respondent did not act on petitioner's claim.

Consequently, the counting of the 30-day period within which to appeal to this Court shall start from the expiration of the 120-day period which was on July 28, 2015 and not on August 11, 2015, the actual date of receipt. Thus, counting the additional thirty (30) days from July 28, 2015, petitioner has until August 27, 2015 within which to file its judicial appeal before this Court, as shown in the table below:

Filing of Administrative Claim	End of 120 days for CIR to decide	End of 30 days from expiration of 120 days	Filing of Petition for Review
March 30, 2015	July 28, 2015	August 27, 2015	August 26, 2015

By filing the filing of the present Petition for Review on August 26, 2015, petitioner has also timely complied with the period prescribed under Section 112 of the NIRC of 1997, as amended. Hence, petitioner satisfied the second requisite.

Petitioner is engaged in zero-rated sales or effectively zero-rated sales.

Petitioner has proven that it is an entity registered with the Securities and Exchange Commission (SEC) under Certificate of Registration No. CS200812951[43] dated August 22, 2008, established with the primary purpose: "To own, hold, sell, exchange, lease, mortgage or otherwise dispose of, deal in, and operate plants for

[42] Exhibit "P-3"; Exhibit "R-3", BIR records, p. 316.
[43] Exhibit "P-63".

processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of nickel cobalt mixed sulfide, nickel hydroxide, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deals in, distribute, market and otherwise turn to account or dispose of nickel cobalt mixed sulfide, nickel hydroxide, and any and all ingredients, products and by-products of any thereof."[44]

For taxable year 2013, petitioner alleges that it generated export sales of nickel/cobalt mixed sulfide that were paid for in acceptable foreign currency, specifically, in United States Dollars (USD), and accounted for in accordance with the rules and regulations of the BSP. Petitioner posits that such export sales are subject to zero-percent (0%) VAT pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, which states:

> "**SEC. 106.** *Value added Tax on Sale of Goods or Properties.* –
>
> (A) *Rate and Base of Tax.* – 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:
>
> (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);"

Based on the aforequoted provision, in order for an export sale to qualify as zero-rated, the following conditions must be present, *viz.*:

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[44] Exhibit "P-11-1".

1. there was 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. payment was accounted for in accordance with the rules and regulations of the BSP.

Corollary to the first requisite, Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and as implemented by Section 4.113-1(A)(1), B(1) and (2)(c) of Revenue Regulations (RR) No. 16-05[45], as amended, provides that a VAT taxpayer, like herein petitioner, shall for every sale, barter or exchange of goods or properties, issue a VAT invoice which must contain the following information:

> "**SEC. 113.** *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
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> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> x x x
>
> (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:
>
> x x x
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be

[45] Consolidated Value Added Tax Regulation of 2005.

written or printed prominently on the invoice or receipt;

x x x

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

"**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

x x x

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:

x x x

(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;" (*Underscoring supplied*)

Moreover, the invoices must be duly registered with the BIR as prescribed under Section 237 in relation to Section 238 of the NIRC of 1997, as amended, which respectively read as follows:

> "**SEC. 237.** *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, <u>issue duly registered</u> receipts or <u>sales</u> or <u>commercial</u> <u>invoices</u>, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: xxx" *(Underscoring supplied)*
>
> "**SEC. 238.** *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same
>
> No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

To summarize, the foregoing provisions Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c), and (3) of the same Code, and Sections 4.113-1(A)(1), B(1), and (2)(c) of RR No. 16-05, state that any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, namely: ***i)*** the sales invoice as proof of sale of goods; ***ii)*** bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and, ***iii)*** bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Also, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Going back to the present case, records show that on March 24, 2011, petitioner entered into an Off-Take Agreement[46] with Sumitomo Metal Mining Co., Ltd. (SMM), a non-resident foreign corporation based in Tokyo, Japan,[47] for sale of nickel/cobalt sulfide to the latter. Pursuant to the said agreement, petitioner made two (2) shipments of nickel/cobalt mixed sulfide during taxable year 2013 to SMM, in the total amount of ₱1,195,966,104.17 (equivalent to US$27,379,527.30). Petitioner further claims that the two export sales were the only sales transactions it made during taxable year 2013.

Scrutiny of petitioner's amended quarterly VAT returns[48] for the four quarters of taxable year 2013 reveal that indeed petitioner had no other sales except for the declared zero-rated sales in the total amount of ₱1,195,966,104.17[49], which can be broken down as follows:

Sales Invoice No.	Exhibit	Date	Client	Amount of Sales in US$	Peso Equivalent
00502	"P-65"	October 15, 2013	Sumitomo Metal Mining Co., Ltd.	$ 13,762,708.64	₱ 602,545,146.97
00503	"P-66"	December 1, 2013	Sumitomo Metal Mining Co., Ltd.	13,616,818.66	593,420,957.20
Total				**$27,379,527.30**	**₱1,195,966,104.17**

The declared zero-rated sales above in the total amount of ₱1,195,966,104.17 (equivalent to US$27,379,527.30) are supported by Provisional[50] and Final[51] Invoices, BIR-registered Sales Invoices[52], Bills of Lading[53], Export Declarations[54], Statements of Account (SOA) of petitioner's dollar account[55], Bank Credit Advices[56], and Certificate of Inward Remittance from Metrobank and Trust Company[57], detailed below as follows: *Je*

[46] Exhibit "P-10".
[47] Exhibits "P-14" to "P-14.1".
[48] Exhibits "P-16" to "P-19".
[49] Exhibit "P-19".
[50] Exhibits "P-67" and "P-68".
[51] Exhibits "P-69" and "P-70".
[52] Exhibits "P-65" and "P-66".
[53] Exhibits "P-71" and "P-73".
[54] Exhibits "P-72" and "P-74".
[55] Exhibits "P-36", "P-37", and "P-38".
[56] Exhibits "P-33" and "P-34".
[57] Exhibit "P-41".

Bill of Lading	Export Declaration
Exhibit "P-71"	***Exhibit "P-72"***
Shipper: Taganito HPAL Nickel Corporation	Exporter: Taganito HPAL Nickel Corporation
Consignee: Sumitomo Metal Mining Nickel Refinery	Importer: Sumitomo Metal Mining Nickel Refinery
B/L No.: THPAL-YB-01-13	E/D No. P0910181301
Ocean Vessel: M/V "Yushan Blossom" VOY-308	Ocean Vessel: M/V "Yushan Blossom"
Port of Discharge: Niihama, Japan	Country of Destination: Niihama, Japan
Description of Goods: Nickel/Cobalt Mixed Sulfide	Description of Goods: Nickel/Cobalt Mixed Sulfide
Gross Weight: 2,341,967.00 KG	Gross Weight: 2,401,374±10% KG
Date: October 21, 2013	Port and Date of Loading: TSEZ / October 15, 2013
	Port and Date of Departure: TSEZ /October 19, 2013
Exhibit "P-73"	***Exhibit "P-74"***
Shipper: Taganito HPAL Nickel Corporation	Exporter: Taganito HPAL Nickel Corporation
Consignee: Sumitomo Metal Mining Nickel Refinery	Importer: Sumitomo Metal Mining Nickel Refinery
B/L No.: THPAL-01-13	E/D No. P0911281301
Ocean Vessel: M/V "Hazel Ace" VOY-232	Ocean Vessel: M/V "Hazel Ace"
Port of Discharge: Niihama, Japan	Country of Destination: Niihama, Japan
Description of Goods: Nickel/Cobalt Mixed Sulfide	Description of Goods: Nickel/Cobalt Mixed Sulfide
Gross Weight: 2,280,427.00 KG	Gross Weight: 2,282,392 KG
Date: December 01, 2013	Port and Date of Loading: TSEZ / November 28, 2013
	Port and Date of Departure: TSEZ / December 02, 2013

Provisional Invoice				Final Invoice		
Exhibit "P-67"				***Exhibit "P-69"***		
Invoice Date: October 15, 2013				Invoice Date: April 11, 2014		
Shipment No. T001-101513				Shipment No. T001-101513		
Carrier Vessel: MV "Yushan Blossom"				Carrier Vessel: MV "Yushan Blossom"		
Product	Weight	Invoice Price (US$)	Amount Due – Initial (US$)	Product	Weight	Invoice Price (US$)
Nickel	2,584,353.41	11,468,068.26	10,321,261.43	Nickel	2,615,430.65	11,717,390.85
Cobalt	279,909.29	2,294,640.38	2,065,176.34	Cobalt	281,219.12	2,105,768.77
		13,762,708.64	**12,386,437.77**	Final Sales Value		13,823,159.62
				Less: Penalty		44,131.88
				Final Sales Value after Penalty		13,779,027.74
				Less: SAP Provisional Invoice		13,762,708.64
				Sales Increase/(Decrease)		16,319.10
				Add/(Deduct):		
				Prov. SAP Sales Invoice	13,762,708.64	
				Less: 90% Collection	12,386,437.77	1,376,270.87
				Net Amount Due from SMM		**1,392,589.97**
Exhibit "P-68"				***Exhibit "P-70"***		
Invoice Date: November 27 2013				Invoice Date: April 14, 2014		
Shipment No. T002-112713				Shipment No. T002-112713		
Carrier Vessel: MV "Hazel Ace"				Carrier Vessel: MV "Hazel Ace"		
Product	Weight	Invoice Price (US$)	Amount Due - Initial (US$)	Product	Weight	Invoice Price (US$)
Nickel	2,556,226.34	11,582,823.92	10,424,541.53	Nickel	2,577,431.41	12,151,042.64
Cobalt	257,363.44	2,033,994.74	1,830,595.27	Cobalt	245,013.40	2,049,292.08

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		13,616,818.66	**12,255,136.80**	Final Sales Value		14,200,334.72
				Less: Penalty		-
				Final Sales Value after Penalty		14,200,334.72
				Less: SAP Provisional Invoice		13,616,818.66
				Sales Increase/(Decrease)		583,516.06
				Add/(Deduct):		
				Prov. SAP Sales Invoice	13,616,818.66	
				Less: 90% Collection	12,255,136.80	1,361,681.86
				Net Amount Due from SMM		**1,945,197.92**

BIR Registered Sales Invoice			**Proof of Inward Remittance**	
			On Provisional Invoice	**On Final Invoice**
Exhibit "P-65"			**Exhibit "P-33"** - Credit Advice from SMBC	
Invoice No. 00502			Ref No. TRI0515291	
Invoice Date: October 15, 2013			Date: November 01, 2013	
For Shipment No. T001-101513			Amount Credited: **USD12,386,437.77**	
Product	Weight	Invoice Price (US$)		
Nickel	2,584,353.41	11,468,068.26	**Exhibit "P-36"** - SOA from SMBC	
Cobalt	279,909.29	2,294,640.38	Period Covered: Nov. 01, 2013 to Nov. 30, 2013	**Exhibit "P-38"** - SOA from SMBC Period Covered: Apr. 01, 2014 to Apr. 30, 2014 Date of Remittance: April 30, 2014 Amount Credited: **USD3,337,787.89*** *Broken down as follows: Final Invoice dated Apr. 11, 2014: USD1,392,589.97 Final Invoice dated Apr. 14, 2014: USD1,945,197.92
Zero-rated Sales		**13,762,708.64**	Date of Remittance: November 01, 2013	
		x 90%	Amount Credited: **USD12,386,437.77**	
Total Amount Due		**12,386,437.77**		
Exhibit "P-66"			**Exhibit "P-34"** - Credit Advice from SMBC	
Invoice No. 00503			Date: December 12, 2013	
Invoice Date: December 1, 2013			Ref No. TRI0530352	
For Shipment No. T002-112713			Amount Credited: **USD12,255,136.80**	
Product	Weight	Invoice Price (US$)		
Nickel	2,556,226.34	11,582,823.92	**Exhibit "P-37"** - SOA from SMBC	
Cobalt	257,363.44	2,033,994.74	Period Covered: Dec. 01, 2013 to Dec. 31, 2013	
Zero-rated Sales		**13,616,818.66**	Date of Remittance: December 12, 2013	
		x 90%	Amount Credited: **USD12,255,136.80**	
Total Amount Due		**12,255,136.80**		

Therefore, based on the above documents, petitioner has sufficiently established that the entire zero-rated sales in the amount of ₱1,195,966,104.17 (equivalent to US$27,379,527.30) qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended. Clearly then, petitioner has satisfied the third requisite.

Petitioner incurred/paid input taxes attributable to zero-rated sales, and the said input taxes were not applied against any output VAT liability.

Having resolved that petitioner had valid VAT zero-rated sales for the four quarters of taxable year 2013 in the total amount of ₱1,195,966,104.17, this Court shall now determine whether petitioner incurred input taxes in connection therewith and if said input taxes were not applied against any of its output VAT liability.

Accordingly, to prove compliance with the remaining requisites, petitioner in its amended quarterly VAT returns for the four quarters of taxable year 2013[58], reported a total amount of ₱41,858,408.18 input VAT arising from its domestic purchase of capital goods exceeding ₱1 million, domestic purchases of goods other than capital goods, importation of goods other than capital goods, and domestic purchase of services, more detailed as follows:

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Total**
	"P-16"	*"P-17"*	*"P-18"*	*"P-19"*	
Purchase of Capital Goods exceeding ₱1 Million	₱ 140,785.71	₱ 222,857.14	-	₱ 178,800.00	₱ 542,442.85
Domestic Purchases of Goods Other than Capital Goods	-	-	₱ 43,678.72	25,178.57	68,857.29
Importation of Goods Other than Capital Goods	-	10,325.00	-	-	10,325.00
Domestic Purchase of Services	789,723.54	35,107,954.93	2,231,117.54	3,107,987.03	41,236,783.04
Total	**₱930,509.25**	**₱35,341,137.07**	**₱2,274,796.26**	**₱3,311,965.60**	**₱41,858,408.18**

Out of the declared input VAT of ₱41,858,408.18, petitioner now claims TCC but only in the amount of ₱39,820,736.62. Petitioner clarifies that it intentionally did not include the difference of ₱2,037,671.56 in its present claim, the details of which are broken down in Annex 1 of the ICPA Report[59].

Nonetheless, petitioner is registered with PEZA as an Ecozone Export Enterprise at the Taganito Special Economic Zone, Brgy. Taganito, Claver, Surigao del Norte, with PEZA Certificate of Registration No. 10-02[60] dated January 7, 2010.

Perforce, Section 8[61] of Republic Act (RA) No. 7916, as amended, mandates that the PEZA shall manage and operate the gz

[58] Exhibits "P-16" to "P-19".
[59] Exhibit "P-62".
[60] Exhibit "P-7".
[61] ***SEC. 8.*** *ECOZONE to be Operated and Managed as Separate Customs Territory.* - The ECOZONES shall be managed and operated by the PEZA as separate customs territory. The PEZA is hereby vested with the authority to issue certificates of origin for products manufactured or processed in each ECOZONE in accordance with the prevailing rules of origin,

ecozones as a separate customs territory, thus, creating the legal fiction that the ecozone is a foreign territory. As a result, sales made by a supplier from the customs territory to a purchaser in the ecozone shall be treated as exportation from the customs territory. Conversely, sales made by a supplier from the ecozone to a purchaser in the customs territory shall be considered as an importation into the customs territory.[62]

Since an ecozone is regarded as a foreign territory, the sales of goods, properties and services to PEZA-registered enterprises made by VAT-registered suppliers from the customs territory are subject to VAT at zero percent rate. This is in accordance with the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*,[63] the excerpt of which reads as follows:

> "Notably, while an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as foreign soil. Sales by suppliers from outside the borders of the ecozone to this separate customs territory are deemed as exports and treated as export sales. These sales are zero-rated or subject to a tax rate of zero percent." *(Citations omitted)*

More so, in the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.) Inc.,*[64] the Supreme Court also made the following pronouncements, *viz.*:

> "The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT."

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and the pertinent regulations of the Department of Trade and Industry and/or the Department of Finance.

[62] *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.

[63] G.R. No. 149671, July 21, 2006.

[64] G.R. No. 150154, August 9, 2005

> Indubitably, no output VAT may be passed on to an ECOZONE enterprise since it is a VAT-exempt entity. The VAT treatment of sales to it, however, varies depending on whether the supplier from the Customs Territory is VAT-registered or not.
>
> Sales of goods, properties and services by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be treated as export sales. If such sales are made by a VAT-registered supplier, they shall be subject to VAT at zero percent (0%). In zero-rated transactions, the VAT-registered supplier shall not pass on any output VAT to the ECOZONE enterprise, and at the same time, shall be entitled to claim tax credit/refund of its input VAT attributable to such sales. Zero-rating of export sales primarily intends to benefit the exporter (*i.e.*, the supplier from the Customs Territory), who is directly and legally liable for the VAT, making it internationally competitive by allowing it to credit/refund the input VAT attributable to its export sales."

From the foregoing, the sale of goods, properties and services by VAT-registered enterprises to PEZA-registered enterprises are subject to VAT at zero percent rate. Meaning, no output VAT shall be shifted to or passed on to PEZA-registered enterprises, and conversely, no input VAT shall be paid by PEZA-registered enterprises from said purchases. That being the case, since no input VAT is paid by PEZA-registered enterprises, it necessarily follows that they are not entitled to a refund or issuance of tax credit certificate from their domestic purchases of goods, properties and services.[65]

Moreover, it also should be emphasized that the VAT zero-rating on the sales of goods, properties or services by a VAT-registered entity to a PEZA-registered entity applies only when such goods, properties or services are consumed, used or rendered within the Ecozone and in connection with the registered activities of the said PEZA-registered entity. Stated simply, if the sales of goods, properties or services are consumed, used or rendered within the customs territory, *i.e.*, outside the ecozone, such sales by a VAT-

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[65] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* CTA EB Case No. 403, May 29, 2009, as affirmed by the Supreme Court in the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.

registered entity to a PEZA-registered entity shall be then subject to the regular twelve percent (12%) VAT.

Going back to the present case, petitioner submitted as evidence the corresponding VAT invoices/official receipts of its input VAT claim in the total amount of ₱39,820,736.62, which were all duly examined by the ICPA in her report. As such, the court-commissioned ICPA made the following findings and observations, thus:[66]

	Exhibit	O.R. / Invoice No.	Date	VATable Amount	Input VAT
A. Purchase of Services/Rent Supported by VAT Registered OR					
i. Input VAT supported by VAT-registered OR *(Annex 6 of the ICPA Report)*					
SMCC Philippines, Inc.	"P-84"	1018	30-Sep-13	₱ 304,218.77	₱ 36,506.18
Brizo Underwater Diving Services (Buds), Inc.	"P-85"	0009	15-Mar-13	184,250.00	22,110.00
Subtotal					**₱ 58,616.18**
ii. Input VAT supported by VAT-registered OR with correction on Petitioner's address as countersigned by the supplier on the face of the same VAT-registered OR and as confirmed in a related certification from the supplier *(Annex 7 of the ICPA Report)*					
Manta Equities, Inc.[67]	"P-86"	5847	08-Jul-13	₱ 1,437,758.87	₱ 172,531.06
Manta Equities, Inc.	"P-87"	5853	23-Aug-13	280,306.20	33,636.74
Manta Equities, Inc.	"P-88"	6134	01-Oct-13	1,155,158.40	138,619.02
SMCC Philippines, Inc.[68]	"P-89"	0888	28-Jun-13	281,785.81	33,814.23
SMCC Philippines, Inc.	"P-90"	0887	28-Jun-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	"P-91"	0916	30-Aug-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	"P-92"	1045	31-Oct-13	495,000.00	59,400.00
SMCC Philippines, Inc.	"P-93"	1158	29-Nov-13	14,925,000.00	1,791,000.00
SMCC Philippines, Inc.	"P-94"	0864	26-Apr-13	1,485,000.00	178,200.00
Trends and Technologies, Inc.[69]	"P-95"	26014	13-Dec-13	381,413.10	45,769.57
Discovery Tours, Inc.[70]	"P-96"	111272	04-Jan-13	353,127.00	42,375.24
Discovery Tours, Inc.	"P-97"	111422	18-Jan-13	175,439.00	21,052.68
Discovery Tours, Inc.	"P-98"	111658	04-Feb-13	418,165.00	50,181.00
Discovery Tours, Inc.	"P-99"	111781	15-Feb-13	398,134.00	47,776.08
Discovery Tours, Inc.	"P-100"	111850	25-Feb-13	307,241.00	36,868.92
Discovery Tours, Inc.	"P-101"	112411	01-Apr-13	367,432.00	44,331.84
Discovery Tours, Inc.	"P-102"	112556	12-Apr-13	316,933.00	38,031.96
Discovery Tours, Inc.	"P-103"	114535	03-Sep-13	26,217.00	3,146.04
Discovery Tours, Inc.	"P-104"	115421	31-Oct-13	77,998.00	9,359.76
Subtotal					**₱ 3,748,951.28**

[66] Exhibit "P-62", Table 18 and Annexes 6 to 17.
[67] Exhibit "P-105" (Certification issued by Manta Equities, Inc.).
[68] Exhibit "P-106" (Certification issued by SMCC Philippines, Inc.).
[69] Exhibit "P-107" (Certification issued by Trends and Technologies, Inc.).
[70] Exhibit "P-108" (Certification issued by Discovery Tours, Inc.).

iii. Input VAT supported by VAT-registered OR with correction on Petitioner's business style as countersigned by the supplier on the face of the same VAT-registered OR and as confirmed in a related certification from the supplier *(Annex 8 of the ICPA Report)*					
Smartman Properties, Inc.[71]	"P-109"	6067	09-Oct-13	₱ 452,368.44	₱ **54,284.22**
iv. Input VAT supported by VAT-registered OR with correction on Petitioner's name and address as countersigned by the supplier on the face of the same VAT-registered OR and as confirmed in a related certification from the supplier *(Annex 9 of the ICPA Report)*					
SMCC Philippines, Inc.	"P-111"	0883	13-May-13	₱17,718,385.35	₱ 2,126,206.04
SMCC Philippines, Inc.	"P-112"	0898	31-Jul-13	275,437.50	33,052.50
SMCC Philippines, Inc.	"P-113"	0881	31-May-13	262,682,142.86	31,521,857.14
SMCC Philippines, Inc.	"P-114"	0899	31-Jul-13	4,178,571.43	501,428.57
Subtotal					**₱34,182,544.25**
v. Input VAT supported by VAT-registered OR with correction on Petitioner's TIN, address and business style countersigned by its Supplier *(Annex 10 of the ICPA Report)*					
Medicard Philippines, Inc.	"P-115"	01254	23-Sep-13	₱ 84,292.55	₱ 10,115.11
Medicard Philippines, Inc.	"P-116"	02210	03-Nov-13	105,172.29	12,620.67
Subtotal					₱ **22,735.78**
vi. Input VAT supported by VAT-registered OR with correction on Petitioner's TIN and business style countersigned by its Supplier *(Annex 11 of the ICPA Report)*					
Medicard Philippines, Inc.	"P-117"	187948	06-Jun-13	₱ 742,392.86	₱ **89,087.14**
vii. Input VAT supported by VAT-registered OR with the word "Corporation" in the name of Petitioner was shortened to "Corp." (Annex 12 of the ICPA Report)					
SMCC Philippines, Inc.	"P-118"	1041	29-Oct-13	₱ 295,178.67	₱ 35,421.37
SMCC Philippines, Inc.	"P-119"	1160	28-Nov-13	1,047,537.00	125,704.44
SMCC Philippines, Inc.	"P-120"	1021	30-Sep-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	"P-121"	1043	31-Oct-13	4,178,571.43	501,428.57
Subtotal					**₱ 1,163,982.95**
viii. Input VAT supported by old format VAT-registered OR without "valid until October 31, 2013 only" statement as required by RMC 52-2013 dated 13 August 2013 *(Annex 13 of the ICPA Report)*					
SMCC Philippines, Inc.	"P-122"	0917	30-Aug-13	₱ 296,517.92	₱ **35,582.08**
B. Purchases of Goods Supported by VAT Registered Sales Invoice					
i. Input VAT supported by VAT-registered SI with correction on Petitioner's address and business style as countersigned by the supplier on the face of the same VAT-registered SI and as confirmed in a related certification from the supplier *(Annex 14 of the ICPA Report)*					
Palaya Corporation[72]	"P-123"	4294	19-Dec-13	₱ 209,821.43	₱ **25,178.57**
ii. Input VAT supported by VAT-registered SI without Petitioner's business style and incomplete name (Annex 15 of the ICPA Report)					
Toyota Manila Bay Corp.	"P-125"	D203674	14-Mar-13	₱1,173,214.29	₱ **23,464.30**
C. Other Findings					
i. Unsubstantiated Input VAT *(Annex 16 of the ICPA Report)*					
Phil. Iron Construction & Marine Works, Inc.	-	-	-	-	₱ 25,052.57

[71] Exhibit "P-110" (Certification issued by Smartman Properties, Inc.).

[72] See Exhibit "P-124" for the Certification issued by Palaya Corporation.

National Book Store, Inc.	-	-	-	-	33,581.57
National Book Store, Inc.	-	-	-	-	4,455.00
Discovery Tours, Inc.	-	-	-	-	16,964.88
subtotal					**₱ 80,054.02**
ii. Input VAT claimed per refund does not tally with input VAT per VAT-registered OR *(Annex 17 of the ICPA Report)*					
Discovery Tours, Inc.	"P-126"	112776	26-Apr-13	296,843.00	₱ 27,548.64
Discovery Tours, Inc.	"P-127"	113216	31-May-13	274,485.00	27,655.20
Discovery Tours, Inc.	"P-128"	113414	14-Jun-13	226,851.00	21,946.44
Discovery Tours, Inc.	"P-129"	113617	27-Jun-13	283,439.00	22,112.52
Discovery Tours, Inc.	"P-130"	113901	16-Jul-13	254,292.00	23,088.84
Discovery Tours, Inc.	"P-131"	114125	31-Jul-13	102,827.00	8,796.72
Discovery Tours, Inc.	"P-132"	114401	16-Aug-13	302,992.00	31,224.36
Discovery Tours, Inc.	"P-133"	114544	09-Sep-13	295,649.71	29,884.56
Discovery Tours, Inc.	"P-134"	114928	27-Sep-13	244,741.00	24,303.36
Discovery Tours, Inc.	"P-135"	114800	17-Sep-13	282,037.00	28,230.84
Discovery Tours, Inc.	"P-136"	115307	18-Oct-13	231,009.00	18,561.49
Discovery Tours, Inc.	"P-137"	115420	31-Oct-13	173,431.00	13,403.16
Discovery Tours, Inc.	"P-138"	115674	15-Nov-13	140,352.00	14,031.12
Discovery Tours, Inc.	"P-139"	115913	22-Nov-13	254,511.83	30,464.28
Discovery Tours, Inc.	"P-140"	115900	29-Nov-13	177,488.75	9,118.32
Discovery Tours, Inc.	"P-141"	115899	29-Nov-13	49,070.00	5,886.40
Subtotal					**₱ 336,256.25**
iii. Unaccounted					**(0.40)**
				TOTAL	**₱39,820,736.62**

However, petitioner claims that the input taxes made in taxable year 2013 in the total amount of ₱39,820,736.62 are payments for (1) services for civil, building and construction works of grizzly, fence and evacuation road, rendered outside the Taganito Special Economic Zone in Surigao, (2) construction work performed at Taguig's Office (3) lease expenses on a building outside the PEZA zone, (4) hotel accommodations and transportation of some employees; and (5) purchase of office supplies, (6) salvaging and refloating of vessel, and (7) purchase of a vehicle, which were made outside of the PEZA zone. Petitioner submits that all of the mentioned purchases of goods and services are necessary expenses and costs to its operations and productions of nickel and/or cobalt mixed sulfide before it is exported to SMM.

Hence, to prove its claim, petitioner presented VAT invoices/official receipts[73] issued by its suppliers; Certificates of Acceptance and Turn Over[74]; Building Permits/Notarized Applications

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[73] Exhibits "P-84" to "P-104", "P-109", "P-111" to "P-123", "P-125" to "P-141".
[74] Exhibits "P-45", "P-46", "P-47", "P-48", "P-50", and "P-52.

for Building Permit[75]; Certificates of Occupancy[76]; and, Plan of Land showing the position of the Special Economic Zone under Proclamation Nos. 211 and 1966[77]. Petitioner also offered the testimonies, via their respective judicial affidavits, of Mr. Ivan Hilario[78], Engr. Ranil Oraba[79], Ms. Lyna Anoya Wacdisen,[80] and Engr. Zosimo Oliver Villa[81], to further establish that the input taxes claimed were incurred, consumed or performed outside the ecozone.

In his testimony, Mr. Ivan Hilario, General Accountant of the petitioner, stated that the input taxes which is the subject of the present claim for refund were sourced from petitioner's purchase of services, particularly, (1) the construction of grizzly, evacuation road, and fence, all outside of the PEZA zone in Surigao; and (2) the construction of leasehold improvements in the Manila Office, which is also outside the PEZA zone. With regard to the construction of leasehold improvements in their Manila Office, the same was supported by a Certification[82] dated March 7, 2016 issued by Manta Equities, Inc. attesting that NAC Tower located in 32nd Street, Bonifacio Global City, Taguig City, is not a registered site or zone of the PEZA; and that, the NAC Tower or any part thereof, has not been registered with PEZA from the time of its establishment on 2013 up to March 7, 2016.

While, Engr. Ranil B. Oraba, petitioner's Civil Section Manager of Engineering Department, testified that he was assigned to oversee the construction projects and tasked to receive the Certificates of Acceptance and Turn Over issued by SMCC Philippines, Inc., and also the grizzlies, evacuation road and fence were constructed outside the Taganito Special Economic Zone.

More so, Geodetic Engineer Zosimo Oliver Villa, testified that he personally examined and surveyed the land where Taganito HPAL Nickel Corporation Ecozone and the structures such as the grizzlies, fence, and evacuation road/route/stair were located. He also confirmed that the structures of Grizzly 2, Grizzly 3, evacuation stairs ge

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75 Exhibits "P-54", "P-54-1", "P-56", "P-56-1", "P-58", "P-58-1", and "P-150".
76 Exhibits "P-55", "P-57", "P-59", and "P-151".
77 Exhibits "P-148" and "P-149".
78 *Supra* No. 19.
79 *Supra* No. 20.
80 *Supra* No. 21.
81 *Supra* No. 22.
82 Exhibit "P-83".

and 2974 linear meters of perimeter fence are located outside the PEZA area.[83]

Accordingly, based on the foregoing, petitioner was able to establish that only its local purchases of services from SMCC Philippines, Inc. and the lease expenses incurred in Manila office were consumed and rendered outside the PEZA zone. However, it failed to sufficiently establish the other purchases of goods and services were consumed or rendered outside the ecozone. As such, only the input VAT relative to such purchases may be refunded by petitioner in line with the Destination Principle which provides that the destination of the goods determines its taxation or exemption from tax. Consequently, petitioner's purchases of services from SMCC Philippines, Inc. and Manta Equities, which were consumed outside the PEZA zone, do not qualify for VAT zero-rating, and accordingly, are subject to 12% VAT.

Since only the purchases from SMCC Philippines, Inc. and Manta Equities were proved as consumed and rendered outside the PEZA zone, only the corresponding input VAT of ₱38,828,673.65 from the said purchases represents petitioner's valid input VAT attributable to its zero-rated sales, detailed as follows:

Supplier	Exhibit	O.R. No.	Date	VATable Amount	Input VAT
SMCC Philippines, Inc.	P-84	1018	30-Sep-13	₱ 304,218.77	₱ 36,506.18
SMCC Philippines, Inc.	P-89	0888	28-Jun-13	281,785.81	33,814.23
SMCC Philippines, Inc.	P-90	0887	28-Jun-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	P-91	0916	30-Aug-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	P-92	1045	31-Oct-13	495,000.00	59,400.00
SMCC Philippines, Inc.	P-93	1158	29-Nov-13	14,925,000.00	1,791,000.00
SMCC Philippines, Inc.	P-94	0864	26-Apr-13	1,485,000.00	178,200.00
SMCC Philippines, Inc.	P-111	0883	13-May-13	17,718,385.35	2,126,206.04
SMCC Philippines, Inc.	P-112	0898	31-Jul-13	275,437.50	33,052.50
SMCC Philippines, Inc.	P-113	0881	31-May-13	262,682,142.86	31,521,857.14
SMCC Philippines, Inc.	P-114	0899	31-Jul-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	P-118	1041	29-Oct-13	295,178.67	35,421.37
SMCC Philippines, Inc.	P-119	1160	28-Nov-13	1,047,537.00	125,704.44
SMCC Philippines, Inc.	P-120	1021	30-Sep-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	P-121	1043	31-Oct-13	4,178,571.43	501,428.57
SMCC Philippines, Inc.	P-122	0917	30-Aug-13	296,517.92	35,582.08
Manta Equities, Inc.	P-86	5847	08-Jul-13	1,437,758.87	172,531.06
Manta Equities, Inc.	P-87	5853	23-Aug-13	280,306.20	33,636.74
Manta Equities, Inc.	P-88	6134	01-Oct-13	1,155,158.40	138,619.02

[83] Exhibits "P-148" and "P-149".

TOTAL	**₱38,828,673.65**

On the other hand, as to the input VAT in the amount of ₱992,062.97[84], which petitioner failed to prove as consumed or rendered outside the ecozone, the same shall be disallowed from its claim.

Therefore, petitioner's reported sales for taxable year 2013 in the total amount of ₱1,195,966,104.17 were all direct export sales, the substantiated input VAT of ₱38,828,673.65 is entirely attributable thereto.

Finally, as to whether the said input VAT was applied against any output VAT and/or carried over to the succeeding taxable quarters, petitioner's amended quarterly VAT returns for the subject period of claim showed that petitioner had no output tax liability against which the claimed input VAT may be applied or credited. Also, the present claim was already deducted as "VAT Refund/TCC Claimed"[85] in petitioner's amended Quarterly VAT Return for the fourth quarter of taxable year 2013. Hence, the subject claim no longer formed part of the excess input VAT of ₱11,496,102.74[86] as of the end of the fourth quarter of TY 2013, which means, it is already precluded from being applied to future VAT liability, if any.

WHEREFORE, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **Thirty Eight Million Eight Hundred Twenty Eight Thousand Six Hundred Seventy Three and 65/100 Pesos (₱38,828,673.65)**, representing petitioner's unutilized excess input VAT for the four quarters of taxable year 2013.

SO ORDERED.

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

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[84] ₱39,820,736.62 less ₱38,828,673.65.
[85] Exhibit "P-19-2".
[86] Exhibit "P-19-3".

WE CONCUR:

(On leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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