REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

CARMEN COPPER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9543

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 2 5 2020
3:42 A.m.

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DECISION

RINGPIS-LIBAN, *J*.:

This a Petition for Review filed by petitioner Carmen Copper Corporation against respondent Commissioner of Internal Revenue on February 24, 2017, praying for the refund of its alleged unutilized input value-added tax (VAT) arising from its domestic purchases of goods and services, as well as importations of goods, attributable to its zero-rated sales for the period covering July 1, 2014 to September 30, 2014, in the aggregate amount of ₱32,155,471.50.[1]

THE PARTIES

Petitioner Carmen Copper Corporation is a domestic corporation duly organized and existing under Philippine laws, with principal office at Unit 502-P & 503-P, 5/F, Five E-Com Center, Palm Coast Avenue corner Pacific Drive, Mall of Asia Complex, Barangay 76, Pasay City.[2]

On the other hand, Respondent is the duly appointed Commissioner of Internal Revenue (CIR) who is empowered to perform the duties of said office

[1] Statement of the Case, Pre-Trial Order dated August 25, 2017, Docket – Vol. I, p. 247.
[2] Par. 2, Statement of Facts and Issues, Pre-Trial Order dated August 25, 2017, Docket – Vol. I, p. 248.

including, among others, the power to decide, approve and grant tax refunds or tax credits as provided for by law.[3]

THE FACTS

On September 28, 2016, Petitioner filed with the BIR an Application for Tax Credits/Refunds (BIR Form No. 1914), requesting for the refund of its alleged unutilized input VAT amounting to ₱54,813,948.05, for the period covering July 1, 2014 to September 30, 2014.[4]

On January 25, 2017, Petitioner received a copy of the undated letter signed Decision rendered by Ms. Teresita M. Angeles, OIC–Assistant Commissioner for Large Taxpayer Service of the BIR, granting the issuance of a tax credit certificate in favor of Petitioner in the reduced amount of ₱22,658,476.55.[5]

Petitioner then filed the instant Petition for Review on February 24, 2017.[6] The instant case was initially raffled to the CTA First Division.

On March 29, 2017, Respondent filed his Answer,[7] interposing the following special and affirmative defenses, to wit:

> **"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 ₱32,155,471.50 representing alleged excess Value-Added Tax for the period 1 July to 30 September 2014, 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.
>
> 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. Petitioner must prove that it paid the alleged VAT input taxes for the periods stated.

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[3] Par. 3, Statement of Facts and Issues, Pre-Trial Order dated August 25, 2017, Docket – Vol. I, p. 248.
[4] Exhibit "P-6", Docket – Vol. I, p. 451.
[5] Exhibit "P-7", Docket – Vol. I, pp. 456 to 458.
[6] Docket – Vol. I, pp. 12 to 26.
[7] Docket – Vol. I, pp. 87 to 93.

9. Petitioner must prove that its sales of services is subject to VAT at zero percent (0%).

10. Petitioner must prove that its alleged unutilized input VAT has not been applied against any output tax liabilities both in the current or succeeding year.

11. Section 113 of the Tax Code provides:

> 'SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.---
>
> (A) Invoicing Requirements.--- A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> 1. A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN).
>
> x x x'

Likewise, Section 4.113-1 of Revenue Regulations No. 16-2005 provides:

> SECTION 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.

While it is true that Section 112(A) of the NIRC of 1997, as amended, allows tax refund or credit on input tax of zero-rated or effectively zero-rated sale, nonetheless, compliance with certain invoicing requirement must be met before such claim for refund or credit can be granted.

12. The input taxes claimed on the amortized input tax attributable to purchases/importations of capital goods exceeding ₱1,000,000.00 in the total amount of ₱32,155,471.50 was disallowed in accordance with the provisions of Section 112 of the NIRC of 1997 which provides, thus:

'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 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 non zero-rated sales.

13. 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)**.

14. 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)**.

15. 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, 321 SCRA 95) and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*"

The pre-trial conference was scheduled and held on June 22, 2017.[8]

Respondent's Pre-Trial Brief was filed on April 17, 2017,[9] while Petitioner's Pre-Trial Brief was filed on June 16, 2017.[10]

Respondent transmitted the BIR Records for the instant case on July 3, 2017.[11]

The parties submitted their Joint Stipulation of Facts and Issues (JSFI) on July 17, 2017.[12] In the Pre-Trial Order dated August 25, 2017,[13] the said JSFI was approved and adopted by this Court, and the Pre-Trial was deemed terminated.

Thereafter, the Independent Certified Public Accountant (ICPA) Report was submitted on November 6, 2017,[14] while his Supporting Schedules was filed November 27, 2017.[15]

The trial of the case then proceeded.

During trial, Petitioner presented documentary and testimonial evidence. As for its testimonial evidence, Petitioner offered the testimonies of (1) Mr. Fernando A. Rimando,[16] Petitioner's Chief Finance Officer; (2) Ms. Michelle E. Paray,[17] Financial Accounting Manager of Atlas Mining Corporation; and, (3) Mr. Neil U. Sison,[18] the Court-commissioned ICPA.

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[8] Notice of Pre-Trial Conference dated March 31, 2017, Docket – Vol. I, pp. 94 to 95; Minutes of the hearing held on, and Order dated, June 22, 2017, Docket – Vol. I, pp. 121 to 126.

[9] Docket – Vol. I, pp. 96 to 99.

[10] Docket – Vol. I, pp. 102 to 120.

[11] Compliance, Docket – Vol. I, pp. 131 to 132.

[12] Docket – Vol. I, pp. 151 to 158.

[13] Docket – Vol. I, pp. 247 to 253.

[14] Docket – Vol. I, pp. 319 to 336.

[15] Docket – Vol. I, pp. 340 to 389.

[16] Exhibit "P-9", Docket – Vol. I, pp. 163 to 177; Minutes of the hearing held on, and Order dated September 14, 2017, Docket – Vol. I, pp. 286 to 289.

[17] Exhibit "P-10", Docket – Vol. I, pp. 469 to 478; Minutes of the hearing held on, and Order dated, December 6, 2017, Docket – Vol. I, pp. 390 to 393.

[18] Minutes of the hearing held on, and Order dated, September 26, 2017, Docket – Vol. I, pp. 312 to 314 and 317 to 318, respectively;*Oath of Commission* dated September 26, 2017, Docket – Vol. I, p. 315; Exhibit "P-11", Docket – Vol. I, pp. 395 to 402; Order dated February 13, 2018, Docket – Vol. I, pp. 406 to 407.

On March 15, 2018, Petitioner filed its Formal Offer of Evidence (With Motion for Substitution of Exhibit),[19] praying for the following:

> "1. To replace the provisionally marked exhibit, 'P-3' with the attached Certified True Copy thereof, or alternatively, to set a commissioner's hearing for the purpose of the replacement thereof on March 25, 2018, 1:30 pm.
>
> 2. The foregoing exhibits be admitted as Petitioner's documentary and testimonial evidence for the respective purposes for which they are being offered."

Respondent filed his Comment (Re: Petitioner's Formal Offer of Evidence) on March 20, 2018.[20]

In the Resolution dated June 20, 2018,[21] the Court granted Petitioner's Motion for Substitution of Exhibit; and set the Commissioner's Hearing for the marking of Petitioner's BIR Certificate of Registration for its Branch Office as Exhibit "P-3" on June 28, 2018.

On September 18, 2018, the Court admitted[22] Petitioner's Exhibits, *except* for the following:

> "1. Exhibits **'P-20-B', ('P-20-R-156'), ('P-20-V-1' to 'P-20-V-6'), ('P-20-AA-26' to 'P-20-AA-27')**, and **('P-20-AD-1' to 'P-20-AD-16')**, for not being found in the records of the case; and
>
> 2. Exhibit **'P-20-AH'** (Summary List of Purchases 2nd Quarter of Taxable Year 2014), for failure of the exhibit formally offered to correspond with the pre-marked document, to wit:

Description in Formal Offer	*Pre-marked document*
Summary List of Purchases **2nd Quarter** of Taxable Year 2014	Summary List of Purchases **April** and **May** of Taxable year 201**5**"

In the Order dated October 1, 2018,[23] the instant case was transferred to the CTA Third Division.

[19] Docket – Vol. I, pp. 415 to 427.
[20] Docket – Vol. I, pp. 481 to 484.
[21] Docket – Vol. I, pp. 491 to 492.
[22] Resolution dated September 18, 2018, Docket – Vol. I, pp. 501 to 503.
[23] Docket – Vol. I, p. 504.

Respondent likewise presented documentary and testimonial evidence. As for his testimonial evidence, Respondent offered the testimonies of his sole witness, Mr. Dalisay Umlas,[24] Revenue Officer.

On January 29, 2019, Respondent filed, *via* private courier, his Formal Offer of Evidence.[25] No comment was filed thereon by Petitioner.[26]

In the Resolution dated March 29, 2019,[27] the Court admitted Respondent's Exhibits; and gave parties a period of thirty (30) days within which to submit their respective memoranda.

On April 25, 2019, Respondent filed his Memorandum,[28] while the Memorandum for Petitioner was filed on June 10, 2019.[29]

Henceforth, the instant case was deemed submitted for decision on June 13, 2019.[30]

THE ISSUES

The following issues[31] were submitted by the parties for this Court's resolution, *viz.*:

1. Whether or not Petitioner's excess and unutilized input taxes arising from purchases of goods for the 3rd quarter of taxable year 2014 in the amount of ₱32,155,471.50 denied by Respondent are properly substantiated and directly attributable to zero-rated sales;

2. Whether the Respondent, in denying a claim for tax refund, is required by Law and the Constitution to provide sufficient explanation and specific legal bases of the denial in compliance with the due process requirement of the Constitution.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that substantive law supports Petitioner's entitlement to the refund claim; that it complied with all the requisites for claiming refund;

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[24] Exhibit 'R-6", Docket – Vol. I, pp. 257 to 260; Minutes of the hearing held on, and Order dated, January 22, 2019, Docket – Vol. I, pp. 507 to 509.
[25] Docket – Vol. I, pp. 510 to 514.
[26] Records Verification dated February 19, 2019 and March 1, 2019, respectively, issued by the Judicial Records Division of this Court, Docket – Vol. I, pp. 515 to 516.
[27] Docket – Vol. II, pp. 520 to 521.
[28] Docket – Vol. II, pp. 522 to 529.
[29] Docket – Vol. II, pp. 542 to 556.
[30] Resolution dated June 13, 2019, Docket – Vol. II, p. 558.
[31] Issues, Pre-Trial Order dated August 25, 2017, Docket – Vol. I, p. 248.

and that its claim for refund was filed within two (2) years after the close of the taxable quarter when such sales were made.

On the other hand, Respondent mainly argues that since there was already a Decision rendered in this case partially denying Petitioner's administrative claim for refund for failure to substantiate the same, Petitioner can no longer submit any documents that have not been presented at the administrative level, following the ruling *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue.*[32] As such, for Petitioner, the Court should only resolve the issue on whether the denial was proper given the evidence submitted at the administrative level.

Respondent also claims that in the Memorandum Report dated November 17, 2016, addressed to the OIC-Assistant Commissioner, Large Taxpayers Service, the Revenue Officer who conducted the audit/investigation recommended the denial of the amount of ₱32,155,471.50 due to violation of the invoicing requirements as provided under Section 113, in relation to Section 110 of the 1997 NIRC, as amended. Thus, the burden is with the Petitioner in establishing the factual basis of its claim for tax refund.

THE RULING OF THE COURT

The instant *Petition for Review* lacks merit.

The Court shall first resolve the preliminary issue on whether or not Petitioner can no longer submit before this Court any documents that have not been presented at the administrative level.

At the outset, it bears noting that Respondent, in raising the foregoing issue, failed to specify the documents which Petitioner failed to present in the administrative proceedings, which were later on presented before this Court.

Moreover, the Supreme Court made it explicit in the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*[33] that refund claim will be litigated anew in the Court of Tax Appeals. Thus, the CTA may consider all pieces of evidence formally offered, irrespective of whether or not they were submitted in the administrative level, in this wise:

> "The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:

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[32] G.R. No. 207112, December 8, 2015.
[33] G.R. Nos. 206079-80 & 206309, January 17, 2018.

> Section 8.Court of record; seal; proceedings. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.
>
> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings."

Having resolved the foregoing preliminary issue, the Court shall now determine Petitioner's compliance with all the requisites provided by law for the grant of refund or issuance of TCC.

Requisites for the Grant of the Refund or Issuance of TCC Under the Law

Section 112 (A) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[34] provides:

> "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 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

[34] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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: *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 provision, jurisprudence has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT. Said requisites are classified into certain categories, to wit:

<u>As to the timeliness of the filing of the administrative and judicial claims</u>:

1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;[35]
2. that in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the

[35] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 155732, April 27, 2007; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

decision or after the expiration of the said 120-day period;[36]

With reference to the taxpayer's registration with the BIR:

3. the taxpayer is a VAT-registered person;[37]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[38]
5. for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;[39]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[40]
7. the input taxes are due or paid;[41]
8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[42] and
9. the input taxes have not been applied against output taxes during and in the succeeding quarters

Petitioner's Administrative and Judicial Claims Timely Filed

The first requisite pertains to the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two (2) years from the close of the quarter when the sales were made.

The present claim covers the 3rd quarter of taxable year 2014, which closed on September 30, 2014. Counting two (2) years from the said date,

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36 *Steag State Power, Inc. (Formerly State Power Development Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

37 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra*; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue, supra*; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

Petitioner had until September 30, 2016 within which to file its administrative claim for refund or issuance of tax credit certificate. Thus, the filing of its claim for refund on September 28, 2016, is well within the two-year prescriptive period. As such, there is no doubt that Petitioner was able to fulfill the *first* requisite.

The *second* requisite is to the effect that the judicial claim must have been filed within thirty (30) days from receipt of Respondent's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended. Petitioner received on January 25, 2017 the undated letter signed by Ms. Teresita M. Angeles, OIC–Assistant Commissioner for Large Taxpayer Service of the BIR, recommending the issuance of a tax credit certificate in favor of Petitioner in the reduced amount of ₱22,658,476.55.[43]

Counting 30 days from January 25, 2017, Petitioner had until February 24, 2017 within which to file its judicial claim for refund. Thus, the instant Petition was also timely filed on February 24, 2017.

Such being the case, Petitioner fulfilled the above-stated *first second* requisite.

Petitioner is a VAT-registered Person

Regarding the *third* requisite, Petitioner's head office is registered with the BIR as a VAT taxpayer under the BIR Certificate of Registration OCN No. 8RC0000791446E, and with TIN No. 233-903-100-00000.[44] Thus, Petitioner has satisfied the same.

Petitioner was Unable to Establish Engagement in Zero-rated Sales or Effectively Zero-rated Sales During 3rd Quarter of TY 2014

The *fourth* and *fifth* requisites require that the taxpayer be engaged in zero-rated or effectively zero-rated sales, and those zero-rated sales under Sections 106(A)(2)(a)(1) and 108 (B) (1) and (2) of the NIRC of 1997, as amended, are required to be paid for in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations. Said provisions are hereunder quoted for ready reference, to *wit*:

"SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

[43] Exhibit "P-7", Docket – Vol. I, pp. 456 to 458.
[44] Exhibit "P-2", Docket – Vol. I, pp. 195 to 196.

(A) Rate and Base of Tax. – x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) Export Sales. - The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x

x x x x x x x x x

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. —

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)."

Corollary thereto, the sales invoice issued must be in accordance with the invoicing requirements, containing all the required information under Section 113 (A) and (B) of the NIRC of 1997, as amended, *viz*:

"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

x x x x x x 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:

(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."

The foregoing provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, thus:

"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 peso (₱1,000.00) 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."

In addition to the aforementioned requirements, the sales 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, to *wit*:

"SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service xxx.

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."

Applying the foregoing provisions, a VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents: a) the sales invoice as proof of sale of goods; b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) the bank credit advice, certificate of bank remittance or any other document proving payment of goods in acceptable foreign currency or its equivalent in goods and services.[45]

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

In this case, records show that Petitioner is registered with the Securities and Exchange Commission (SEC) with Company Registration No. CS200414509 with the primary purpose to "carry on, either solely or in co-venture with others, the business of searching, prospecting, exploration and location of ores and mineral resources and to conduct all ground and airborne geophysical surveys, geochemical surveys, and other works or means commonly regarded as exploration work for the purpose of determining the existence of mineral resources, extent, quality and quantity and the feasibility of mining them for profit; or applying for exploration permit, and mineral production sharing agreement and other mineral agreements; and of mining, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging and otherwise producing and dealing in all kinds of ores, metals, minerals, hydrocarbons, acids and chemicals, and in the products and by-products of every kind and description and by whatsoever process, the same can be or may hereafter be produced; to purchase, lease, option, locate or otherwise acquire, own, exchange, sell, or otherwise dispose of, pledge, mortgage, deed in trust, hypothecate, and deal in mines, mining claims, mineral lands, coal lands, timber lands, water and water rights, shares of stocks of mining companies with interest in mines in the same area, and other property, both real and personal, and generally to do everything necessary, suitable or proper for the accomplishment of any of the purpose stated herein, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation under the provisions of the mining laws and other relevant laws."[46]

Petitioner is likewise registered with the Board of Investments (BOI) as a "New Producer of Copper Concentrate," with BOI Certificate of Registration No. 2006-158.[47]

Petitioner alleges that for the 3rd quarter of TY 2014, it exported 100% of its copper concentrates,[48] the export sales proceeds thereof were allegedly

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[45] *Carmen Copper Corp. vs. Commissioner of Internal Revenue*, CTA EB Case No. 1461 (CTA Case No. 8418), November 16, 2017.
[46] Exhibit "P-1", Docket – Vol. 1, pp. 429 to 431.
[47] Exhibit "P-8", Docket - Vol. I, p. 459.

paid for in acceptable foreign currency, which were inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP.

In its Amended 3rd Quarterly VAT Return for TY 2014,[49] Petitioner had a total sales amounting to ₱3,934,540,589.92, which is broken down as follows:

Type of Sales	Amount
Taxable	₱ 12,953,224.18
Zero-rated	3,920,664,175.74
Exempt	923,190.00
Total	**₱ 3,934,540,589.92**

As further detailed in the Summary List of Sales (SLS)[50] and Schedule of Zero Rated Sales,[51] Petitioner's zero-rated sales amounting to ₱3,920,664,175.74 was derived from its export sales of goods to the following customers:

Customer	Sales in US$	Sales in Php
MRI Trading AG	88,303,462.63	3,858,769,802.84
Mitsui & Co. Ltd.	1,412,468.57	61,894,372.90
Total	**89,715,931.20**	**3,920,664,175.74**

To support its reported zero-rated sales, Petitioner submitted the corresponding sales invoices and bills of lading,[52] which were duly examined by the Court-commissioned ICPA.

An examination of the said documents shows that the entire reported export sales for the 3rd quarter of TY 2014 amounting to ₱3,920,664,175.74 is properly supported with bills of lading. However, the amount of ₱105,471,946.18 must be disallowed on the ground that the sales amount per SLS cannot be traced to the sales invoices, as detailed hereunder:

Exhibit No.	Customer	SI No.	SI Date[53]	Amount in US$	Amount in Php
"P-20-M-1"	Mitsui & Co. Ltd.	5200	22-Sep-2014	$ 1,412,468.57	₱ 61,894,372.90
"P-20-M-2"	MRI Trading AG	5147	07-Aug-2014	(146.55)	(6,544.08)

[48] Exhibit "P-8-2", Docket - Vol. I, pp. 467 to 468.
[49] Exhibit "P-5", Docket - Vol. I, p. 450.
[50] Exhibit "P-20-H-1".
[51] Exhibit "P-20-M".
[52] Exhibits "P-20-M-1" to "P-20-M-22".
[53] Expressed in dd-mmm-yyyy.

"P-20-M-3"	MRI Trading AG	5148	07-Aug-2014	190,095.95	8,609,445.35
"P-20-M-4"	MRI Trading AG	5149	08-Aug-2014	415,267.31	18,558,296.03
"P-20-M-5"	MRI Trading AG	5150	08-Aug-2014	391,709.92	17,505,516.19
"P-20-M-12"	MRI Trading AG	5191	01-Sep-2014	71,276.38	3,187,479.85
"P-20-M-13"	MRI Trading AG	5192	01-Sep-2014	106,240.63	4,751,081.19
"P-20-M-14"	MRI Trading AG	5193	30-Sep-2014	249,299.61	11,048,958.87
"P-20-M-15"	MRI Trading AG	5194	01-Sep-2014	48,897.66	2,180,835.85
"P-20-M-16"	MRI Trading AG	5196	30-Sep-2014	(201,671.10)	(8,797,901.82)
"P-20-M-17"	MRI Trading AG	5197	30-Sep-2014	(194,338.36)	(8,502,303.32)
"P-20-M-18"	MRI Trading AG	5198	30-Sep-2014	(158,533.44)	(6,916,021.50)
"P-20-M-19"	MRI Trading AG	5199	30-Sep-2014	44,740.31	1,958,730.67
	Total			**$ 2,375,306.89**	**₱ 105,471,946.18**

Verily, out of the total declared zero-rated sales amounting to ₱3,920,664,175.74 for the 3rd quarter of TY 2014, only the amount of ₱3,815,192,229.56[54] is supported with sales invoices which are found compliant with the above-stated invoicing requirements.

With regard to the requirement that the direct export sales must be paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, the same has not been established. In fact, no evidence was submitted by Petitioner to prove that its substantiated export sales for the 3rd quarter of TY 2014 in the amount of ₱3,815,192,229.56 was paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP.

Thus, the entire amount of ₱3,920,664,175.74 zero-rated sales reported by Petitioner in its Amended 3rd Quarterly VAT Return for TY 2014 must be disallowed for VAT refund purposes. There being no valid zero-rated sales pursuant to Section 106(A)(2)(A)(1) of the NIRC of 1997, as amended, the claimed input VAT allegedly attributable thereto cannot be refunded.

In sum, Petitioner failed to fulfill the *fourth* and *fifth* requisites for the successful prosecution of the instant refund claim. Correspondingly, it becomes unnecessary to determine whether Petitioner fulfilled the remaining

[54] ₱3,920,664,175.74 less ₱105,471,946.18.

requisites for granting a credit/refund of input VAT for the period covering July 1, 2014 to September 30, 2014.

It bears stressing that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[55]

Simply stated, statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[56]

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

[55] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.
[56] *Panasonic Communications Imaging Corp. of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice